

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Naugatuck Board of Education

Appearing on behalf of the Parents: The Mother and Father pro se

Appearing on behalf of the Board: Attorney Nicole A. Bernabo
Sullivan, Schoen, Campana & Connon, LLC
646 Prospect Avenue
Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

This hearing was requested on February 13, 2004. Hearing Officer Exhibit (HO) 1. This hearing officer was assigned to the case on that date. A prehearing conference was held on February 26, 2004. Hearing dates were scheduled for March 15 and 18. The Board's attorney offered to file exhibits by March 5 in order to avoid duplication of exhibits by the Parents. The Parents filed their exhibits and witness list the same day. They also filed a copy of the SDE publication entitled The Connecticut Framework Preschool Curricular Goals and Benchmarks (1999), as well as a document which appeared to be a written narrative of their claims in the case. The Board's exhibits were B-1 through B-34. The Parents' exhibits were P-1 through P-22. The hearing convened on March 15. The Parents appeared pro se.

The Hearing Officer permitted the parties to confer prior to the start of the hearing for purposes of a possible settlement. No agreement was made. At the beginning of the hearing, the parties were asked for objections to exhibits. The Board's attorney objected to P-6, P-9, P-15, P-19, P-20 and P-21. These exhibits were marked for identification only. Most of the Parents' full Exhibits are duplicates or partial duplicates of Board Exhibits. The Parents did not object to any of the Board's exhibits, which were accepted as full exhibits. The Parents, through the Mother, made an opening statement. The Board's attorney made an opening statement.

The Parents presented testimony from Joanne Conrad and Marion Zirolli, school speech and language pathologists, Karen Schiaroli, school psychologist, Robert Piola, Coordinator of Pupil Services, Laura Cyr, Director of Special Services, and the Mother. The Parents rested their case. None of the exhibits that were marked for identification were offered into evidence during the Parents' presentation. They were advised and they agreed that that these exhibits would not be considered as evidence in the case decision. During the hearing of March 15, an additional

exhibit, B-35, was received into evidence without objection. Exhibit B-36 was added on March 18 without objection. The Board presented its case on March 18 with testimony from Dr. Paul W. Cascella, speech language pathologist, Marion Zirolli and Robert Piola. The Board rested its case. The Parents requested 30 days to obtain transcripts and file a brief. Both parties were given until April 19 to file proposed findings of fact and briefs. The decision deadline was extended to May 13, 2004. Both parties filed timely supplemental papers.

ISSUES:

1. Did the Naugatuck Board of Education provide the Student with a free appropriate public education ("FAPE") for the period from February 2003 to February 2004?
2. If not, are the Parents entitled to an award of compensatory education in the form of additional speech and language services for the Student?

SUMMARY

In their due process request, the Parents claimed that on February 25, 2002, the "evaluation conducted [was] not sufficiently comprehensive to identify all of A[.]'s special ed & related service needs[.]" The February 24, 2003 "IEP fails to address A[.]'s individual needs. Lack of knowledge of her actual speech disability led to inappropriate goals & objectives." Hearing Officer Exhibit 1. In the hearing, the Parents stipulated that they are not challenging the period from February 2002 to February 2003. They felt A. made progress in that year. They are claiming that the services provided from February 2003 to February 2004 were not appropriate to her needs. They agreed that the February 2004 IEP is appropriate. Exhibit B-30. At the February 2004 PPT meeting a report was presented by an independent consultant in speech language pathology paid for by the Board. Exhibit B-27. This report by Dr. Paul Cascella is the basis for the Parents' claim that their daughter is entitled to compensatory education for the prior year in which they say she made little or no progress. The Board believes that the dispute is over methodology and that its approach is appropriate to the total needs of this preschool child.

FINDINGS OF FACT:

1. The Student (date of birth 3/18/99), also referred to herein as A., is currently 5 years of age. Testimony of Mother; Exhibits B-1 and B-2.
2. A. currently attends a private preschool program and receives speech and language services from the Board for one hour per week for the standard school year. Exhibit B-28. The Parents agree that this is the least restrictive environment for A. Testimony of Mother.
3. The Student was referred for a speech evaluation by her pediatrician due to concerns regarding her expressive language skills. Exhibit B-1. She was evaluated in October 2001 at the Access Rehabilitation Center of Greater Waterbury by Lorraine Tragakis, a speech pathologist, who administered the Preschool Language Scale—3 (PLS-3) and the Goldman-Fristoe Test of Articulation (GFTA), did a clinical observation and interviewed the Mother. On the PLS-3 A. was at the age equivalent of 4-0 for receptive language and 1-6 for expressive language. Id.

4. On October 30, 2001, A. was evaluated at the Darcy Early Childhood Center of Cheshire by Elaine Fay-Coelho, speech-language pathologist, and Donna Notti, special education teacher. They evaluated A. at home with her mother and administered the Battelle Developmental Inventory (BDI) and the Infant Mullen Scales of Early Learning (MSEL). They found a significant expressive language delay and concluded A. was eligible for services from the Birth to Three program. Exhibits B-2 and B-3.

5. With the Parents' authorization, Birth to Three sent a referral to the Board in November 2001. Exhibit B-4.

6. A PPT meeting was held on December 3, 2001. At that time, A. was receiving 3 sessions per month of speech-language services. The team discussed an evaluation to be performed by Ms. Fay-Coelho to determine strengths and weaknesses and special education eligibility. The Parents were asked to consent to the administration of the PLS-3 and GFTA, which the Father signed. Exhibit B-5.

7. A PPT meeting was held on February 25, 2002 to review the evaluation results and determine eligibility. An IEP was developed with one goal—to facilitate oral communication skills--and three objectives. Weekly speech therapy of 1.5 hours was recommended starting on March 18, 2002, along with extended school year services of 0.5 hours per week in the month of July. Exhibit B-6. The Parents agreed with the initial placement into special education and the Mother signed a consent form. Id. and Exhibit B-9.

8. On January 24, 2002 Ms. Fay-Coelho administered the PLS-3 and GFTA. On the PLS-3 A. scored an age equivalency of 3-10 on receptive language and on the expressive language 2-5, 11 months of progress since the October test. There were four standard deviations between A.'s receptive and expressive skills. Exhibit B-7. On the GFTA A. scored in the first percentile, at an age equivalent of less than 2 years. Id. and Exhibit B-8.

9. On February 6, 2003, the Mother signed consent for permission to have a speech-language pathologist in the Board's employ to perform a speech/articulation evaluation. Exhibit B-11.

10. Marion Zirolli performed this evaluation on the same date. Id. and Testimony of Mrs. Zirolli. The GFTA test was administered. The raw score was 33 and the percentile was 18. Exhibit P-22.

11. The purpose of this evaluation was for an annual review. The recommendation was to continue with speech therapy twice weekly for a total of 1.5 hours. Exhibit B-11 and Testimony of Mrs. Zirolli.

12. On February 24, 2003, a PPT meeting was held to conduct an annual review. The evaluation by Mrs. Zirolli and the information supplied by the Parents were considered. The recommendations were to continue with 1.5 hours weekly of speech therapy in two 45-minute

sessions and for an extended school year of 0.5 hours weekly in the month of July. An IEP was developed with one goal—A. will improve articulation skills—and three objectives.

- A. Given oral-motor activities, A[.] will initiate correctly.
- B. A[.] will produce target sounds/structures in words.
- C. A[.] will produce target sounds/structures in sentence when attempting to communicate with others.

Exhibit B-12. The two sessions of 45 minutes, rather than three 30-minute sessions were done at the request of the Mother to accommodate A.'s private preschool schedule and Mrs. Zirolli's availability. Testimony of Mother and Mrs. Zirolli.

13. Based on the speech-language evaluation, the PPT found that A. had impairments in the areas of oral language production and phonology, which both had an adverse impact on education. She was found to meet criteria for a speech-language disability and in need of speech-language services as special education. Exhibit B-13. This document form was taken from the SDE Guidelines for Speech and Language Programs, Volume II, pages 60-61. Id.

14. From March to July 2002, Joanne Conrad provided A.'s speech therapy. In September 2002 Mrs. Zirolli began providing speech therapy and continues to do so. Testimony of Ms. Conrad, Mother and Mrs. Zirolli. The reason for the change in therapists was that Ms. Conrad provided services to the preschool program at Hop Brook School. It was Board policy to assign children to their neighborhood school once services were established. Mrs. Zirolli was the speech and language pathologist assigned to Western School, A.'s neighborhood school. Testimony of Ms. Conrad.

15. Ms. Conrad did not complete the progress report on the IEP for April and June 2002. It was an error not to do so for June 2002. There was a Speech Book for A., which was exchanged between home and school with A.'s work in each session. Id. and Exhibit B-35. A.'s progress was discussed by Ms. Conrad with Mrs. Zirolli when she became A.'s speech therapist. Testimony of Ms. Conrad and Mrs. Zirolli.

16. A. had some difficulties with transitioning to speech therapy with Mrs. Zirolli. In or about November 2002 the schedule for A. was changed from three days of 30 minutes to two days of 45 minutes per week by mutual agreement of Mrs. Zirolli and the Mother. Id.

17. In October 2003 Mrs. Zirolli and the Mother discussed reducing A.'s service hours from 1.5 to 1.0 hour per week. The topic was discussed in February 2003, but the Mother wanted to wait until the fall. In September the Mother wanted to wait until A. settled in, which is the reason Mrs. Zirolli waited until October to make the recommendation. Mrs. Zirolli thought that A. had made nice progress on oral motor movements and that her speech was more intelligible. A. was also working on more sounds. Testimony of Mrs. Zirolli.

18. On October 28, 2003, a PPT meeting was convened to review and modify the IEP. The team recommended continuing the 1.5 hours per week of speech-language therapy until March 3, 2004 because the Parents disagreed with reducing it. The Parents requested that the

team review an evaluation they had obtained on October 24 at Access Rehabilitation. A PPT was scheduled on November 14 to discuss that report. Exhibit B-15. The Mother also signed a release for the Board personnel to speak with A.'s teachers at the private preschool. Exhibit B-16.

19. Ms. Tragakis of Access completed a report on November 6, 2003. She administered the PLS-3 and the GFTA, did an observation and a parent report. On the PLS-3 A. received a total language score of 133 and a percentile of 99 for an age equivalent of 6-11. On the GFTA she had 38 errors for a standard score of 70 and a percentile of 6 with an age equivalency of 2-2. Ms. Tragakis concluded that A.'s receptive and expressive language skills are in the above average range. Her articulation skills are significantly delayed. Her errors are characteristic of verbal apraxia. Ms. Tragakis recommended speech therapy for articulation using verbal apraxia guidelines. Exhibit B-17. Mrs. Zirolli found a miscalculation on the number of errors scored, which should have been 33 or 35 not 38. This would raise the standard score, as well as the percentile and age equivalency. Testimony of Mrs. Zirolli.

20. On November 14, 2003 the PPT meeting recommended that A. continue therapy 1.5 hours per week and that an apraxia evaluation be completed. Mrs. Zirolli would consult with Ms. Tragakis pending Parents' consent. Exhibit B-18.

21. On November 12, 2003 the co-directors of A.'s preschool wrote to the Board at the Parents' request regarding her classroom speech patterns. They noted that A. was in her second year at the school and that her individual articulation skills had improved. "However her integral language skills remain at the same point. She has difficulty communicating her thoughts to other[s] in a comfortable and intelligible manner." Exhibit B-20.

22. On December 9, 2003, the PPT meeting recommended that A. continue with two 45-minute sessions of speech-language therapy. The Parents did not agree to have Mrs. Zirolli conduct the Kaufman Speech Apraxia Test. Mrs. Zirolli suggested ruling out apraxia by administering the test because it was mentioned in Ms. Tragakis' report. Exhibit B-22 and Testimony of Mrs. Zirolli and Mother. The Parents wanted the evaluation to be done at the University of Massachusetts by Dr. Shelley Velleman.

23. Ms. Conrad and Mrs. Zirolli observed A. at her preschool on November 21, 2003. Ms. Conrad wrote up her notes, which were included with the December PPT documents. Exhibit B-22a. She said: "I found A[.] to continue to produce sounds in error but she is much easier to understand th[a]n when I last saw her. A[.]'s MLU (Mean Length of Utterance) has also changed. She was independently producing 5 to 7 work sentences. Her eye contact was consistent and she initiated conversation appropriately with this observer and her peers." Id. and Testimony of Ms. Conrad and Mrs. Zirolli.

24. On December 11, 2003 the Parents wrote a lengthy letter to Mr. Piola contending that their daughter had regressed in the previous year and blamed the schedule. They requested that A. receive three sessions per week and asked for an evaluation for apraxia by Dr. Velleman. Exhibit B-23. On December 15 the Parents wrote to Mrs. Christine Link, the principal of

Western School, requesting that the letter be attached as an addendum to the December 9 PPT meeting summary. Exhibit B-24.

25. A PPT meeting was scheduled on December 23. The team recommended an independent evaluation to be performed by Dr. Paul Cascella and paid for by the Board and to continue the current IEP as developed on February 10, 2003. Exhibit B-25 and Testimony of Mr. Piola. The Parents signed a release authorizing the school system to speak with, receive records from and release records to Dr. Cascella and a consent for him to do the evaluation. Id.

26. The Student's progress reports indicated she was making satisfactory progress on all three objectives of her current IEP. Exhibits B-25a and Testimony of Ms. Schiaroli and Mrs. Zirolli. Progress was also supported by Dr. Cascella.

27. On January 29, 2004 a PPT meeting was held to discuss Dr. Cascella's report. The recommendations of the team were to continue the current IEP and to reconvene on February 10, 2004 to conduct an annual review. Exhibit B-26.

28. On February 10 a PPT meeting was held to conduct annual review and to develop an IEP for February to June 2004. Three goals and objectives for each goal were agreed on, A.'s speech therapy was reduced to one hour per week of individual therapy. A triennial evaluation was noted for the fall of 2004. The Board agreed to provide consultation with Dr. Cascella for one hour per month. The PPT would reconvene in June 2004. Exhibit B-28.

29. The Parents filed this due process request on the basis that Dr. Cascella's report supported their claim that the previous IEP failed to provide appropriate goals and objectives. Exhibit B-29 and HO-1 and Testimony of Mother.

30. Dr. Cascella, PhD, an associate professor of communication disorders at Southern Connecticut State University for eight years, is familiar with special education under IDEA, speech-language disability and programming and is familiar with the SDE guidelines. He was recently contacted by SDE about other guidelines and newer developmental guidelines. He suggested the Arizona Articulation Proficiency Scale (AAPS). Testimony of Dr. Cascella.

31. Dr. Cascella conducted his evaluation in two visits with the Student. The first day included a 45-minute observation of the Student during speech-language therapy and 1.75 hours of direct interaction with the Student. The second day included a 15-minute observation of the student during therapy and 45 minutes of direct interaction. Speech samples were taken on both days and four standardized tests were administered: the AAPS-3, the Verbal Motor Production Assessment of Children (VMPAC), the Kaufman Speech Apraxis Test for Children (KSPT) and the Phonological Awareness Test (PAT). Based on her performance on the AAPS, the Student might not qualify for special education services, but she would qualify based on weaknesses with phonemic processing. She was not found to have apraxis based on the KSPT. She performed poorly on the PAT, but this test is not normed for her young age. He concluded the Student has a mild level of articulatory impairment and a moderate deficit in the category of connected speech as shown on the VMPAC. "At the present time, A[...] appears to have a speech sound disorder characterized by multiple phonological process patterns that, when combined, especially make

her speech difficult to understand for the unfamiliar listener.” Exhibit B-27 and Testimony of Dr. Cascella.

32. Dr. Cascella’s recommendations for the PPT were: 1) address stabilization of A[.]’s phonological system; 2) address A[.]’s speech production at the sentence level using prosodic elements; 3) introduce early phonological awareness activities into speech-language therapy; 4) discontinue the use of isolated oral motor activities; 5) re-evaluate A[.]’s receptive and expressive language skills; 6) begin to consider classroom supports as A[.] transitions to kindergarten; and 7) re-consider the amount of speech-language service time A[.] receives. Id.

33. The Student had made progress based on his review of previous tests and other records and his observation of A. with Mrs. Zirolli. Mrs. Zirolli is a qualified speech-language therapist who has built up a rapport with the Student. Mrs. Zirolli’s comments to Dr. Cascella about A’s cluster reduction and final consonant reduction were consistent with his findings. A.’s October 2003 score on the PLS-3 showed above average receptive and expressive language development, thereby dissipating concerns about her expressive language. Her speech has become more intelligible since she began speech therapy. There was no evidence of regression in A.’s speech development. Id.

34. There was no failure to accurately diagnose A.’s speech problem by the Board. Mrs. Zirolli’s work with A. on her sound inventory was on target. Whether she labeled it phonological processing or not, that was what she was working on with A. In the February 2003 IEP objectives B and C are directed to phonological processes. Testimony of Dr. Cascella and Mrs. Zirolli. See also Exhibit B-13 identifying A.’s impairment as oral language production and phonology.

CONCLUSIONS OF LAW:

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. This includes preschool children. Id. at Section 1401(8). The Parties also agree that A. is a child with a speech or language impairment. This is defined as:

[A] communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

34 C.F.R. Section 300.7(c)(11).

2. The Board has the burden of proof on the appropriateness of the program for the 2003-04 school years, including the ESY summer 2003 program. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs. Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is

whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207. The Board must establish these by a preponderance of the evidence. Walczak v. Florida Union Free School District, supra.

3. The Parents have raised several procedural violations in this hearing. The first claim is that A. did not receive a complete and comprehensive evaluation of her disability. They assert that A. was labeled with an articulation disorder when she should have been assessed with a phonological processing disorder. They point to the SDE Guidelines for Speech and Language Programs (1993) at 29 and Volume II of the Guidelines (1999) at 44-47. The Parents offered no expert testimony in support of this claim that the wrong testing instruments were used by the Board in December 2001 and February 2002. The Parents assert that the Board should have administered the Khan Lewis Phonological Analysis rather than repeat the GFTA. The Parents are not challenging the appropriateness of the 2002-03 IEP developed at the February 2002 PPT meeting.

4. The Board is responsible for identification of children requiring special education. Conn. Gen. Stats., Section 10-76d(a)(1). Conn. State Regs. Section 10-76d-6 provides in relevant part: “Each board of education is responsible for the identification of children requiring special education and related services. . . .” Section 10-76d-9 provides in relevant part: “Each child who has been referred and who may require special education and related services shall be evaluated in order to determine whether special education is required.” The Board is obligated to evaluate a student for all suspected areas of disability. 34 C.F.R. Section 300.320. The Board may rely on existing evaluation data as part of an initial evaluation. Section 300.533. In this case there was ample information from the previous evaluations, as well as the information obtained from the evaluation done by Birth to Three between the December 2001 and February 2002 PPT meetings. The Board followed the state and federal regulations and SDE guidelines (see pages 22-38) in conducting its evaluations of the Student. The Parents’ request for an evaluation was made in November 2003. The Board promptly offered an evaluation by Mrs. Zirolli, which the Parents rejected in December 2003. The Board then obtained the services of an outside evaluator acceptable to the Parents. The evaluator promptly performed a comprehensive evaluation in January 2004. His report and testimony support the Board’s program of speech therapy for A.

5. The Parents claim that Ms. Conrad failed to provide them with a progress report in April and June 2002. The April 2002 report would have been due only a couple of weeks after A. started in her program on March 18. Ms. Conrad admitted it was an error not to provide a June 2002 report. They also claim that a PPT should have been scheduled in June 2002 to discuss a change in the personnel delivering speech therapy from Ms. Conrad to Mrs. Zirolli. They claim that Mrs. Zirolli had more students on her caseload than the guidelines of the ASHA (American Speech-Language-Hearing Association) recommends. There was no evidence offered that Mrs. Zirolli did not provide the number of hours in the IEP to the Student. Procedural safeguards under IDEA, see 34 CFR Sections 300.500 et seq., including notice and consent, parent participation in PPT meetings and development of the IEPs, were satisfied in this case. These omissions complained of do not rise to the level of procedural violations of IDEA. The Board is not obligated to assign a particular staff member to a Student or to notify a parent of a

change in staff unless the IEP specifies it. See Gellerman v. Calaveras Unified Sch. Dist., 37 IDELR 125 (9th Cir. 2002).

6. The second prong of Rowley, supra, whether the IEP is “reasonably calculated to enable the child to receive educational benefits,” has also been satisfied. The credible evidence at the hearing established that the Student received educational benefits during the entire time since March 2002, including the period from February 2003 to February 2004. She progressed in the goals and objectives on her IEPs as indicated by progress reports, test data and testimony of therapists and evaluators. The Board, therefore, satisfied the requirements of state and federal law in providing a FAPE to the Student.

7. Where, as here, a Board has provided FAPE there can be no claim for compensatory education. Compensatory education is available in cases of gross violations of the law by school districts. Garro v. State of Connecticut, 23 F.3d 734 (2d Cir. 1994); Mrs. C. v. Wheaton, 916 F.2d 69, 71-73 (2d Cir. 1990); Fetto v. Sergi, 181 F. Supp.2d 53 (D.Conn. 2001); RM v. Vernon, 208 F. Supp.2d 216 (D. Conn. 2000); and State of Connecticut Unified School District No. 1 v. State Department of Education, 45 Conn. Supp. 57 (1997). There were no “gross” violations by the Board in this case.

FINAL DECISION AND ORDER:

1. The Student was provided with FAPE from February 2003 through February 2004.
2. The Parents’ request for compensatory education is denied.