

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parent:

Parent, *Pro se*

Appearing on behalf of the Board:

Attorney for Board of Education
Office of Corporation Counsel

Appearing before:

Attorney Mary H.B. Gelfman, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

As determined at the pre-hearing conference June 24, 2010:

1. Are the Individualized Education Program (IEP) and placement for 2009-2010 appropriate for the Student's special education needs in the least restrictive environment?
2. Has the Student's 2009-2010 IEP been fully implemented?
3. Why has the Board planned to move the Student to a different school building?
4. Have School Officials provided copies of the Student's school records in a timely manner?
5. If the IEP and/or special education placement are not appropriate, should the Student be placed out of the school district?
6. Is the Board responsible for finding and funding an out of district placement for Student?
7. Does a Special Education Hearing Officer have the authority to address allegations of bullying in school?

As added by Parent on the day of the hearing, August 17, 2010, and accepted by the Hearing Officer over the objection of the Board:

8. Have Board of Education staff members made inappropriate comments about the Student and/or the Parent?
9. If such comments are substantiated, is that a sufficient reason for the Student to be placed out of the Board's School District?

10. Has the Board fulfilled the IEP specifications for communication between Family and School?

PROCEDURAL HISTORY:

This hearing was requested on June 2, 2010, and therefore the mailing date for the final decision and order was August 16, 2010. Initially, the Hearing Officer was unable to contact the Parent for the pre-hearing conference on June 24, 2010. The Board's Attorney approved the list of issues that the Hearing Officer had developed from the Parent's request for hearing and agreed to schedule the hearing for July 21, 2010. Later that day, the Parent contacted the Hearing Officer and agreed to the issues and the hearing date.

On July 19, 2010, Parent requested a two-week delay in order to accommodate settlement negotiations. The Hearing Officer granted this request and re-scheduled the hearing to August 5, 2010. On July 30, 2010, the Parent requested another delay for medical reasons. The Hearing Officer granted that request, re-scheduled the hearing to August 17, 2010, and extended the decision date from August 16 to September 15, 2010.

The hearing was held and completed on August 17, 2010.

The Parent did not submit a witness list or documentary exhibits to the Board prior to the hearing, as required by 34 C.F.R. § 300.512 (a) (3) and Section 10-76h-11 (a) (3), Regulations of Connecticut State Agencies (R.C.S.A.). When the Board's Attorney objected to the Parent's offering of three Home-School Communication Books at the hearing, the Hearing Officer recognized the correctness of the objection but admitted these exhibits, explaining that they might be helpful to understanding the case. After inspection of these documents, the Board's Attorney made no further objection. A tape recording proffered by Parent at the hearing was not entered, for technical reasons.

Parent offered Communication Books for school year 2009-2010 on condition that they not be copied and that they be returned to her after the hearing. The Hearing Officer explained that she would return the books, but if either Party appealed the Hearing Decision, the books would be required for court proceedings.

After swearing in the Parent and the two witnesses present, the Hearing Officer did not distinguish between the Parent's oral argument and testimony on the record. The Board's Attorney made an objection to this lack of formality, which is hereby recognized. Given the informality of administrative hearings, this Hearing Officer allowed the Parent to present material related to this case without a formal distinction between testimony under oath and argument, but adopted as facts only material supported by documentation or testimony from the School Principal or the Family Enrichment Services Representative, the only witnesses

All motions and objections not previously ruled upon, if any, are hereby overruled.

SUMMARY:

The Parent questioned many aspects of the Student's program and life in school, opposing the School Board's plan to transfer the Student back to School B, which serves his attendance district, for the school year 2010-2011 and doubting full implementation of his IEP. Parent requested an out of district placement for safety reasons.

The Board argued that the IEP had been implemented properly, that all reported incidents of bullying had been investigated and in some cases students had been punished, and that they believed that the Student was

safe in School A where he has been currently enrolled, and would be safe in School B, his attendance district school.

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g and related regulations at 34 C.F.R. § 99, the following decision uses “Student”, “School”, “Parent”, and titles of school staff members and other witnesses in place of names and other personally identifiable information.

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student is a ten year old boy who has just completed fourth grade. He receives speech/language therapy for an articulation problem, and is placed in a regular education classroom with some supports. (Exhibit B-5 p.1, Testimony Principal of School A)

2. The Student is identified as eligible for special education as Speech or Language Impaired. He has an articulation problem, and receives individual and small group speech therapy twice a week for a total of an hour. At Student’s annual review held on March 18, 2010, teachers reported that he was age appropriate in Academic/Cognitive: Language Arts, Academic/Cognitive in Math, Other Academic/Nonacademic Areas, Behavioral/Social/Emotional, Health and Development including Vision and Hearing, Fine and Gross Motor [skills] and Activities of Daily Living. His current performance in Communication: Oral and/or Written Language was described:
 Progress noted in all areas. [Student] can use vocalic /r/ in words with 98% accuracy; he can use vocalic /r/ in phrases and sentences with 91% accuracy; he can use vocalic /r/ in poems and short stories with 87% accuracy; he can use vocalic /r/ in spontaneous conversation with 85% accuracy.
 The impact of his speech disability was described as:
 Poor intelligibility of speech negatively affects classroom performance in the areas of oral participation, oral reading and overall effectiveness of communication.
 Program accommodations and modifications for the Student were:
 Communication log between home and school on a weekly basis, all academic areas for the duration of the IEP.
 Daily feedback to Student, Positive Reinforcement, All academic areas for the duration of the IEP.
 Oral reminders, All academic areas for the duration of the IEP.
 No pictures are to be taken of [Student] at any time, or anywhere including, but not limited to: school playground, school bus, after school activities, school functions, in school, in class, during fire drills, field trips, and/or any off [school] property functions, All academic areas for the duration of the IEP [,] Specials for the duration of the IEP [,] Hallways for the duration of the IEP [], Transition for the duration of the IEP [,] Transport for the duration of the IEP.
 (Testimony, Principal of School A, Exhibits B-5, B-6 pp. 4-5, 9)

3. Although there had been a delay in issuance of special education progress reports in 2009-2010, a report dated February 15, 2010, provided Goal and Objective Progress for the Student:
Goal: To improve speech intelligibility for communication in the educational setting.
Objective #1: [Student] will produce the correct vocalic /r/ sound in the medial and final positions of curriculum based words.

Pre data: As of 8/31/09, [Student] demonstrated slight distortions of the vocalic /r/ sound in the medial and final positions of words, based on a screening of all vocalic /r/'s.

Post data: As of 2/8/10, [Student] demonstrated the ability to produce the correct vocalic /r/ sound in the medial and final positions of words, based on the same screening of all vocalic /r/'s, with 93% accuracy. He demonstrated the ability to produce the correct /r/ sound in the medial and final positions of curriculum-based words with 96% accuracy.

Interpretation of data/Progress: Objective met. At times, [Student] has some difficulty spontaneously producing the final vocalic /r/'s: "ire" and "ear".

Objective #2: [Student] will use the correct vocalic /r/ sound in words within a phrase and sentence.

Pre data: As of 8/31/09, [Student] used the correct vocalic /r/ sounds in words within a phrase and sentence with 83% accuracy.

Post data: As of 2/8/10, [Student] demonstrated the ability to use the correct vocalic /r/ sound in words within a phrase [and] a sentence with 91% accuracy.

Interpretation of data/Progress: Objective met.

Objective #3: [Student] will use the correct vocalic /r/ sound when reading a poem or short story.

Pre data: As of 8/31/09, [Student] used the correct vocalic /r/ sound with 81% accuracy.

Post data: As of 2/8/10, [Student] demonstrated the ability to use the correct vocalic /r/ sound when reading a poem or short story, with 87% accuracy.

Interpretation of data/Progress: Objective is very close to being met. (Exhibit B-6 p. 17)

4. The Student's progress in the regular education classroom was reported on March 18, 2010:
 - Reading strengths: enjoys reading, DRP [scores], uses reading strategies, context cues, author's purpose
 - Weaknesses: open-ended responses
 - Math strengths: fractions, changing improper fractions to mixed numbers, place value, division
 - Language Arts strengths: editing and revising, nouns, verbs
 - Weaknesses: comparing with adjectives, writing – elaboration + using vivid details
 - Behavior Performance in Class: Participates in class, stays on task, listens attentively, uses appropriate listening skills
 - Communication: Demonstrates age appropriate articulation, is intelligible in conversational speech, uses and understands appropriate syntax and grammar, speaks in complete sentences, uses vocabulary on grade level.
 - Teacher's comment: [Student] is an excellent student and a pleasure to have in class. (Exhibit B-6 p. 18)
5. At a Planning and Placement Team (PPT) meeting held on May 6, 2010, at Parent's request, the Team addressed Parent's concerns. Progress to date [May 6, 2010] was summarized:
 - A review of the progress April 30, 2010 indicates satisfactory progress to improve speech intelligibility for communication in the educational setting. He got 89% accuracy while reading poems and short stories, and 83% accuracy in a spontaneous conversational sample. Therapy will continue to focus upon reinforcing these skill areas. (Exhibit B-5 p. 8)
6. Student's regular classroom teacher presented a progress report dated May 6, 2010:
 - Reading strengths: main ideas + details, uses reading strategies, fluency, decoding
 - Weaknesses: open-ended responses, using evidence to support answers
 - Math strengths: basic facts, place value, fractions, decimals (mult[placation], add, subtract) models of operations
 - Weaknesses: patterns, estimating
 - Language Arts strengths: verbs: tense, irregular, phrases, action; adverbs; negatives; editing + revising

Behavior and communication were the same as reported on March 18, 2010.
(Exhibit B-5 pp. 1, 4, 7-8)

7. Student's March 26, 2010, Report Card showed two grades in the 90's and five grades in the 80's. Teacher comments were: good class participation, good work habits, follows a series of directions, applies & understands basic concepts, good knowledge of basic facts, applies word recognition strategies, reads independently, and completes homework. (Exhibit B-5, p. 7; B-7 p. 1)
8. Student's final report card for the 2009-2010 school year showed three grades in the 90's and four grades in the 80's. Teacher comments were: good class participation, good work habits, follows a series of directions, good class participation, applies & understands basic concepts, good knowledge of basic facts, applies word recognition strategies, reads independently, understands current concepts, and comes prepared for spelling tests. (Exhibit B-7, p. 2)
9. The Board submitted documentation of Speech services provided to Student during the 2009-2010 school year, confirming that Student had received two half-hour speech sessions during full weeks; the weeks in which he received one session were shortened by school holidays. (Exhibit B-8)
10. Parent originally requested placement outside their attendance district because of domestic violence. She wanted to avoid Student's contact with the abuser and other family members. Although the Board offered to transport Student, Parent volunteered to drive him to school. At some point, he took a school bus to school. (Testimony, Parent, Principal of School A)
11. Parent requested that personally identifiable information about the Student be shielded from access by any school staff member not providing direct services to Student and that no pictures of Student are taken without specific permission from Parent. Parent also requested that any time the Student was seen by the School Nurse, the Parent was to be contacted immediately by telephone. (Testimony, Parent, Principal of School A, Exhibit B-6 p.2)
12. Placements of children outside their attendance districts are granted at the discretion of the School Administration, and are made for one year only. A continued out-placement requires an annual written request, with reasons, from a parent. The Parent did not make a written request for Student to continue at School A for school year 2010-2011. Parent stated that no one informed her of the requirement. (Testimony, Principal of School A, Parent)
13. The Student appeared to accumulate un-excused absences and tardies during 2009-2010 that exceeded Board rules, sufficient to cause him to be retained in grade four next year. Parent reported that she had provided many "doctors' notes" and that most of the absences and tardies should have been excused. Student's family had experienced the deaths of three uncles recently, and the methods used by the School to verify absences related to these deaths offended Parent. The Board's Attorney attempted to withdraw exhibits related to absences and tardies, but Parent objected and the Hearing Officer reversed her initial ruling and retained these records as related to the case. (Testimony, Parent, Principal of School A; Exhibit B-10)
14. Parent was also offended by a referral made to the Department of Children and Families concerning Student. The Family Enrichment Services Representative confirmed that Parent had improved her parenting skills and had cooperated in a support program. She had not visited Student's school or

communicated with School Staff members. She was concerned that the uncertainty over the Student's school placement for 2010-2011 was upsetting to both Student and Parent. No documentation of a DCF referral or specific allegations concerning Parent was entered on the record. (Testimony, Family Enrichment Services Representative)

15. Parent alleges that the Student has frequently been bullied at school. When incidents were reported, the Principal investigated and when bullying was confirmed, she meted out appropriate punishment. Student is reluctant to make such reports because he fears retaliation. (Testimony, Parent, Principal of School A)
16. The Principal consulted with a School Social Worker, School Psychologist, Student's Classroom Teacher and Lunch Aides concerning Parent's complaints of bullying. (Testimony, Principal of School A)
17. The Communication books offered in evidence by Parent confirm weekly written communication between Student's Speech Therapist and Classroom Teacher, from the School, and Parent. Parent alleged many times that the IEP was not being provided: School staff members confirmed that they were providing what was required by the IEP. (Exhibit P-1)
18. No evidence of specific instances of IEP non-compliance was offered by Parent. There had been a delay in providing special education progress reports. After Parent complained, Principal investigated and discovered that a new staff member had not been advised of marking period dates. This omission was corrected and reports were issued, as cited above. No impact on the Student's special education can be determined on the basis of testimony and documents submitted concerning this procedural error. (Testimony, Principal of School A, Parent)
19. No evidence was offered for a specific alternate placement, whether within the district or in another school district.

CONCLUSIONS OF LAW:

1. Section 10-76h, Connecticut General Statutes (C.G.S.), and related regulations at Section 10-76h, R.C.S.A., authorize an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Sections 4-181a of the C.G.S. Section 20 U.S.C. § 1415(f) and related regulations at 34 C.F.R. § 300.511 through § 300.520 also authorize special education hearings.
2. Several of the issues that trouble Parent are not within the jurisdiction of a Special Education Hearing Officer appointed pursuant to 34 C.F.R. § 300.507 (a) and Section 10-76h-3, R.C.S.A.:
... may request in writing a hearing regarding [a Board of Education's] proposal to or refusal to initiate or change the identification, evaluation or educational placement of a child or the provision of a free appropriate public education to the child.
"Placement" is defined as the particular program of special education, related services, and mainstream education offered to each student who requires special education. It does NOT mean a specific building or classroom. (Section 10-76d-16, R.C.S.A., 34 C.F.R. § 300.116)
3. The assignment of students to specific school buildings and classrooms is the responsibility of the local school district within which the student is enrolled. Parents may make written requests for specific schools

or classrooms, but the district is under no legal mandate to grant or deny such requests. (Section 10-220(a), C.G.S)

4. Bullying is a universal concern in schools, and local Boards of Education are required under Sec. 10-222d and 10-263e, C.G.S., to investigate all reports of bullying. Other statutes specify necessary policies and procedures, staff training and other related matters. When a report is substantiated, the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g, regulations at 34 C.F.R. § 99) protect the identity of both victim and perpetrator. Issues related to parental access to a student's school records or confidentiality of such records must be addressed to the school administration.

DISCUSSION:

The Parent's concerns for the safety of her child are reasonable. In addition to the usual hazards, this child might be subject to harassment or retaliation because of Parent's problems with domestic violence. The Board responded reasonably to specific complaints and to Parent's request for placement in a different school. While lacking the legal authority to place a specific child in a specific school when the special education services needed by that child are available in all the elementary schools in the district, this Hearing Officer suggests that rigid applications of district policies may contribute to Parent's concerns and agitation.

Parent's request that she be telephoned every time that Student goes to the School Nurse's office seems reasonable if student has been injured or is feeling ill. A visit to obtain a tooth brush is not an emergency, and the School Nurse has to be able to use professional judgment about notifying Parent of visits that are not directly related to current or past health issues.

While the Communication Books confirm that communication has occurred, it was observed in the hearing that the Parties both consider their positions to be appropriate. In an effort to improve the effectiveness of communication, it is suggested that a staff member who has not previously worked with Student and Parent be assigned to provide weekly telephone contact, to learn about Parental and School concerns and to try to mediate disputes that may arise. A School Social Worker, Guidance Counselor or Community Out Reach Person might fulfill this assignment.

The only specific evidence of school staff members communicating information about the Child or the Parent that might be considered derogatory was a report to DCF, the origin and contents of which were not provided in this hearing. All School Staff members are required by State law to report suspected child neglect or abuse. When a report of made, the Department of Children and Families investigates to determine whether neglect or abuse has occurred, and whether a family could benefit from support services. School Staff members, as mandated reporters, can be prosecuted for failure to report their suspicions. While such reports can be worrisome to all concerned, the care and safety of all children is a foremost goal of the State.

FINAL DECISION AND ORDER:

1. The 2009-2010 program and placement of the Student was appropriate to his special education needs in the least restrictive environment.
2. The Student's 2009-2010 IEP was fully implemented.

3. The Board's plan to return Student to his attendance district school, School B, for the 2010-2011 school year was based on district policy that outplacements are granted for one year only and subsequent outplacements must be requested in writing each year.
4. No specific evidence was offered concerning missing school records. The Board entered the documents for this hearing that it believed were relevant to the case. Parent did not produce any documents that she believed should have been on the record of the hearing, except for Communication Books that were in the Family's possession.
5. Since the IEP and placement were appropriate, it is unnecessary to address alternative placements.
6. The Board is not responsible for finding and funding an out of district placement for the Student.
7. A Special Education Hearing Officer lacks the authority to address allegations of bullying in school. The investigations described by Principal sounded reasonable and thorough.
8. The only evidence of "derogatory comments" by School staff members was a complaint to DCF. School staff members are mandated reporters of SUSPECTED child neglect and abuse: they can be prosecuted for failure to report a suspicion. The making of a referral to DCF by a school staff member who is a mandated reporter is required by law and is not subject to discipline by the School.
9. A report to DCF is not an appropriate reason for an out of district placement for the Student.
10. The Communication Books confirm that appropriate communication was provided. The Parent's undocumented allegations about IEP compliance were not sustained.