

February 19, 2019

Final Decision and Order 19-0264

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

Appearing on behalf of the Parent:

Self-represented

Appearing on behalf of the Board:

Attorney Christine A. Sullivan
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75 Broad Street
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Appearing before:

Attorney Raymond J. Rigat
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Should the Student be reinstated in the Early Education Program?

SUMMARY:

The Student had previously been enrolled in a full day preschool program in New York as a special education student in the area of speech and language development. He was subsequently enrolled in the integrated preschool program at the Trumbull Early Childhood Education Center, (“TECEC”), where he was provided speech and language therapy. In September 2018, the Student was reevaluated to determine eligibility for continued services. Following that evaluation, the Planning and Placement Team, (“PPT”), determined that the Student was no longer eligible for special education services and should be exited from the preschool special education program.

PROCEDURAL HISTORY:

The Board received an initial request for a Due Process Hearing from the Parent on December 3, 2018, and a prehearing telephone conference convened on December 21st.

The hearing convened on February 4, 2019, and concluded that same day. Both parties made closing arguments at the conclusion of the hearing and were given until February 6th to submit briefs in support of their respective positions.

The Parent testified.

The Board called five witnesses: (1) Dr. Mathew Wheeler, school principal; (2) Ms. Rachel Orr, special education teacher; (3) Ms. Jessica Sapia, speech-language pathologist; (4) Ms. Hannah Duffy, school social worker; and (5) Kimberly Soule, Ph.D., school psychologist.

The Parent submitted exhibit P-2. The objection to exhibit P-1 was sustained and this exhibit was not entered as a full exhibit. The Parent did not submit a post hearing brief in support of his position.

The Board submitted exhibits number B-1 through B-21, which were entered as full exhibits. The Board submitted a post hearing brief in support of its position.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993).

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes, (“CGS”), § 10-76h and related regulations, 20 United States Code § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (“UAPA”), CGS §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. Following relocation from New York to Trumbull, the Student was placed in an integrated four-year-old classroom in the Trumbull preschool program where he received special education services in a full day program under the classification of developmental delay. In this program the Student received speech and language therapy. [Exhibit B-13]
2. On July 24, 2018, the PPT met to review the Student’s Individualized Education Program, (“IEP”) from New York. The team recognized that the Student was previously enrolled in a full day preschool program in New York, and decided to enroll him in both the morning and afternoon sessions of TECEC’s integrated preschool program.

3. The Student was to attend lunch during the hour between the morning and afternoon sessions, and was to receive one hour of speech and language therapy per week. The Student was to be provided with transportation. The PPT recommended a reevaluation of the Student. [Exhibit B-4]
4. The PPT established as measurable annual goals: (1) follow 1-2 step related directions; (2) play and take turns; (3) identify familiar items in pictures; (4) produce words with no deletions and nophonological processes; (5) understand and use early pronouns and prepositions; answer simple (what, where, who, and yes and no) questions and questions about his biographical information; use words for a variety of pragmatic functions and will label more pictured items; (6) produce words with no phonological processes; (7) demonstrate age appropriate social skills; and (8) attend small and large group structured activities. [Exhibit B-4, pages 10-25]
5. The PPT set the following four short term objectives to support the Student's mastery of goal 1 for the Student to show that he could follow directions and identify familiar objects: (1) follow simple 1-step directions and will take turns; (2) follow simple 1-step directions and play appropriately with toys; (3) follow simple 1-2 step directions; and (4) identify familiar items (advanced body parts, clothes, food, animals). Each of these four short term goals were to be demonstrated in clinical/class- room settings 9/10 times with fading support as measured by the SLP in three months. [Exhibit B-4, pages 10-11]
6. The PPT set the following five additional short term objectives to support the mastery of goal 2 for the Student to be able to use single words: (1) produce 1-2 syllable single words with no consonant deletions 10/12 times; (2) produce 2-3 syllable single words with no consonant deletions 10/12 times; (3) produce 1-2 syllable single words with no initial deletions 10/12 times; (4) produce 2-3 syllable single words with no initial syllable deletions 10/12 times; (5) produce 1-2 syllable single words with no gliding processes 10/12 times. Each of these five short term goals were to be demonstrated in clinical/class-room settings 10/12 times with fading support as measured by the SLP in three months. [Exhibit B-4, pages 12-13]
7. The PPT set the following four additional short term objectives to support the Student's mastery of goal 3 for the Student regarding pronouns: (1) understand and use pronouns (me, you, mine, and your); (2) understand and use gender pronouns (he and she); (3) understand and use possessive markers on nouns; and (4) understand and use prepositions (in, on, under). Each of these four short term goals were to be demonstrated in clinical/class- room settings 9/10 times with fading support as measured by the SLP in three months. [Exhibit B-4, pages 13-14]
8. The PPT set the following five additional short term objectives to support the Student's mastery of goal 4 for the Student regarding answering questions: (1) answer simple

“what” questions; (2) answer simple “where” questions; (3) answer simple “yes” “no” questions; (4) answer simple “who” questions; and (5) answer questions about his name, age, and gender. Each of these five short term goals were to be demonstrated in clinical/class- room settings 9/10 times with fading support as measured by the SLP in three months. [Exhibit B-4, pages 16-17]

9. The PPT set the following six additional short term objectives for the Student regarding making requests and labels: (1) use 3-4 words to request foods and drinks; (2) use 3-4 words to request for “more”; (3) use a full sentence to request assistance; (4) use a full sentence to request for objects; (5) label actions; and (6) label familiar items. Each of these five short term goals were to be demonstrated in clinical/class- room settings 8/10 times with fading support as measured by the SLP in three months. [Exhibit B-4, pages 18-19]
10. The PPT set the following five additional short term objectives for the Student regarding gliding,¹ deaffrication,² and cluster formations³ when producing words: (1) produce 2-3 syllable single words with no gliding processes; (2) produce 1-2 syllable single words with no deaffrication processes; (3) produce 2-3 syllable single words with no deaffrication processes; (4) produce 1-2 syllable single words with no cluster reductions; and (5) produce 2-3 syllable single words with no cluster reductions. Each of these five short term goals were to be demonstrated in clinical/class- room settings 10/12 times with fading support as measured by the SLP in three months. [Exhibit B-4, pages 20-21]
11. The PPT set the following four additional short term objectives for the Student regarding his demonstration of age appropriate skills: (1) watch other students play and join; (2) taking turns; (3) play cooperatively with another child for at least five minutes; and (4) play in large group games for at least five minutes. [Exhibit B-4, pages 22-23]
12. The PPT set the following four additional short term objectives for the Student regarding his demonstration of his ability to attend small and large group structured activities: (1) attend small group structured activity for at least fifteen minutes with prompts; (2) attend small group structured activity for at least fifteen minutes without prompts; (3) attend large group structured activity for at least fifteen minutes with prompts; and (4) attend

¹ Gliding is the term used to describe a phonological process that occurs in speech when a person replaces a specific consonant with “w” or “y.”

² Deaffrication is when “ch” or “j” is replaced with a frictive stop like “sh,” an example would be saying “ships” for “chips.”

³ A consonant cluster occurs where two or three consonants occur in sequence in a word, children will sometimes drop one of the consonant sounds when speaking the word, i.e., saying “poon” for “spoon.”

large group structured activity for at least fifteen minutes without prompts. [Exhibit B-4, pages 24-25]

13. On September 7, 2018, an agreement to change the IEP without convening a PPT meeting was signed, adding an academic achievement assessment to the Student's comprehensive evaluation. [Exhibit B-11, page 1]
14. The WPPSI assessment revealed that the Student demonstrates high average cognitive skills, and that he performed within the high average range on verbal comprehension, working memory, and processing speed indices. The Student's performance on fluid reasoning and visual spatial tasks were within the average range. In the area of language, he demonstrated overall average abilities across all language domains. His academic skills were within the average range in the areas of reading, math, writing and spoken language. The Student demonstrated high average knowledge of general information. [Exhibit B-13, page 20]
15. On November 1, 2018, the PPT conducted an annual review on and determined that the Student was no longer eligible for special education. This determination was based on the Student having met all the goals previously established by the PPT. [Exhibit B-14; Exhibit B-15].
16. The Student's mother testified that the Student had difficulty with upper and lower case letters, only knew the letters "A" through "E," and could only follow 50% of her directions at home when given to the Student in Arabic. [Testimony of the Mother]
17. Dr. Wheeler, principal of the Early Childhood Education Program, testified that the Student does not demonstrate any delays. [Testimony of Dr. Wheeler]
18. Ms. Rachel Orr, special education teacher, testified that the Student is a very kind, caring and engaged little boy who loves school, initiates with his peers, follows along with the day's activities, functions independently, and performs above the level of the objectives set for him. Ms. Orr further testified that the Student is improving in social skills, engages in cooperative play, effectively uses words work with his peers in play and achieving common goals, and uses full sentences. She stated that his use of expressive language is never a concern at school. She further testified, that the Student initiates conversation with peers and adults, that he is active in discussion in both large and small groups, retains information, loves and thrives on art, and enjoys building. [Testimony of Ms. Orr]
19. On cross-examination, Ms. Orr testified that it is common for a four-year-old to tell his parent that he doesn't know what he did in school that day when asked, and at the same time demonstrate knowledge with his lessons. [Testimony of Ms. Orr]

20. Ms. Sapia, speech pathologist, testified that the Student demonstrates strong language abilities; and that he only has shown difficulty communicating with his peers at lunchtime, because of their problems with language. [Testimony of Ms. Sapia]
21. Ms. Sapia further testified that the Student is respectful and a model for other students in the program. [Testimony of Ms. Sapia]
22. Ms. Hanna Duffy, school social worker, testified that observed the Student over ten days while in the classroom. She described him as a delightful little boy, who was engaged and wants to be of assistance. She testified that he communicates better with adults, because the rest of the students have language difficulties. [Testimony of Ms. Duffy]
23. Dr. Kimberly Soule, school psychologist, testified that she first observed the Student in the classroom, and then performed individualized cognitive testing over two sessions. She obtained behavior rating scales from the Student's teachers and his parents. She found the Student to be attentive and engaged, followed directions, and worked over a full hour on testing with minimal breaks. She determined that the Student has an IQ of 117, with above average ability in matrix reasoning (solving puzzles). The Student demonstrates no behavior problems, navigates independently at school (although the parents report the opposite at home), and is a sweet little boy. Dr. Soule opined that because the Student can demonstrate independence at school, he can function independently in the world (even if he does not do so at home). She further opined that the Student does not need to be in a special education program in order to access his education. [Testimony of Dr. Soule]
24. On cross-examination, Dr. Soule testified that the Student's disability designation changed, because he has had special education schooling for a year to a year and a half and is smart. She testified that she has no concerns with any areas of the Student's development.

DISCUSSION/CONCLUSIONS OF LAW:

1. The purpose of the Individuals with Disabilities Education Act, ("IDEA"), is "to ensure that all children with disabilities have available to them a free and appropriate education." 20 U.S.C. § 1400(d)(1)(A). FAPE includes both "special education" and "related services." § 1401(9). "Special education [is] specially designed instruction... to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child... to benefit from" that instruction. §§ 1401(26) and (29). A State covered by the IDEA must provide a disabled student with such special education and related services "in conformity with the student's individualized education program." § 1401(9)(D).

2. The IDEA defines a child with a disability, for a child aged 3 through 9, as a child experiencing developmental delays as defined by the State. In Connecticut, developmental delay “means significant delay in one or more of the following areas: (A) Physical development; (B) communication development; (C) cognitive development; (D) social or emotional development; or (E) adaptive development, as measured by appropriate diagnostic instruments and procedures and demonstrated by scores obtained on an appropriate norm-referenced standardized diagnostic instrument.” C.G.S. § 10-76a(6).
3. The Board has the burden in this case to prove by a preponderance of the evidence that the Student no longer has a developmental delay and is not entitled to special education under the provisions of the IDEA. Regulations of Connecticut State Agencies, (“R.S.C.A.”), § 10-76h-14(a).
4. The Board has proven by the preponderance of the evidence that the Student is no longer qualified for special education. The Student has mastered all of his IEP goals and objectives—his evaluation results which demonstrate that he is functioning at average to above average levels—he is therefore no longer eligible for special education services.
5. The Parent has expressed concern that the Student does not function independently at home, and cannot tell the Parent what he does at school. Ms. Orr, however, credibly testified that it is common for a four-year-old not to answer a parent when asked what they did in school that day. Dr. Sapia also credibly testified that if the Student can demonstrate independent functioning at school, then he is able to independently function (even if he does not do so at home when cared for by his parents).
6. The Parent described perceived developmental delays, but the Student has been tested and demonstrates an IQ score of 117 (above average intelligence), and scored in the average to above average level in the school psychologist’s battery of tests conducted as a part of the Student’s assessment.
7. Finally, the Parent raised concerns that the Student was designated as a special needs student in New York and that his status should not change by virtue of having moved to Connecticut. Dr. Sapia, however, explained that the Student, who is smart, had the benefit of an additional year of special education since the IEP developed in New York. The Student has benefitted from a successful education program and no longer requires special education.

FINAL DECISION AND ORDER

The Board is not required to reinstate the Student in the early Education Program, because the Student no longer requires special education.