

**STATE OF CONNECTIUCT  
DEPARTMENT OF EDUCATION**

Student v. Rocky Hill Board of Education

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Appearing on behalf of the Board: Attorney Lawrence Campana  
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Appearing before: Attorney Stacy M. Owens, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Student should be identified as a special education student in accordance with the IDEA? and , if so
2. Whether the Parent should be reimbursed by the Board for unilateral placement of the Student at the Hyde School.

**PROCEDURAL HISTORY:**

1. The Parent requested a hearing by letter dated April 17, 2001 concerning the issues as stated above in this matter. Prehearing conferences were held on April 25, 2001 and June 12, 2001 at which time dates were scheduled for hearings and the issues were provided. Hearings were conducted on May 31<sup>st</sup>, July 20<sup>th</sup>, August 6<sup>th</sup> and August 15<sup>th</sup>, 2001. Such dates were agreed to by the parties, incorporating an extension of the deadline for release of the final decision and order.
2. The Hearing Officer pursuant to a motion made by the Parent's attorney granted a bifurcation of the hearing. Therefore, the issue before the Hearing officer solely related to whether the Student should be identified as a special education student in

accordance with the IDEA. To which, once resolved, it would be determined whether the second issue would be heard.

**SUMMARY:**

1. The Student, whose date of birth is October 1, 1984, is a student who resides in the Rocky Hill School District (hereinafter referred to as the "Board"). The Student presently attends the Hyde School in Woodstock, Connecticut. Subsequent to attending school in the Board's district and being admitted to several institutions for rehabilitation and clinical assistance, the Parent decided to unilaterally place the Student at the Hyde School. PPT meetings were held on October 4, 2000 and February 7, 2001 at which the Parent requested identification of the Student as a special education student and support for him at the Hyde School. The Board refused to identify the Student as a student eligible for special education and regards him as a student that suffered from a drug dependency and not a disability requiring special educational placement.
2. The Parent attributes her son's educational improvement at the Hyde School to the fact that the Board failed to provide the Student with the educational services to meet his special needs while attending in-district school, and now he is receiving the appropriate services from the Hyde School. The Parent believes her son qualifies for special education as a student that suffers from a severe emotional disturbance (SED) and/or Attention Deficit Hyperactivity Disorder (ADHD). The Board disagrees and refuses to identify the Student as a special education student based on an SED classification or as a student with ADHD.

**FINDINGS OF FACT:**

1. The Student commenced his high school studies in the Board's District in September 1998. His academic record for 9<sup>th</sup> grade revealed final grades ranging from a 64.00 to an 81.00. (Exhibit P-6)
2. In 10<sup>th</sup> grade his academic record revealed final grades ranging from 63.00 to 83.00 (Exhibit B-25)
3. Testimony from Donna Hayward, Assistant Principal, revealed that while attending the Board's high school, the Student was subjected to disciplinary action on several occasions for engaging in inappropriate behavior. (Exhibits B-1 through B-6, B-36)
4. On May 23, 2000 he was issued a detention for "leaving a field trip." (Exhibit B-1)
5. On May 25, 2000 he was issued a detention and counseled for engaging in disruptive and threatening behavior when, after provocation, he told another student, "I'm going to kill you." (Exhibit B-2)

6. On June 5, 2000 he was issued an internal suspension and committed to five hours community service for writing, “very disrespectful and inappropriate responses on his Saturday detention reflection sheet.” When he met with Ms. Hayward, she regarded his behavior as, “incredibly rude and defiant.” (Exhibit B-4 through B-6)
7. As a result of the Parent’s concerns for her son’s maladjusted behavior and suicidal ideation, he was interviewed for a program at the University of Connecticut Health Center, which was unable to provide the Student with the appropriate intervention. He was then seen by Dr. Patrick Russolillo who referred him to the Rushford Center. When placement at Rushford did not work out the Student was admitted into the Institute of Living from June 9, 2000 through June 14, 2000. (Exhibit B-7, B-21)
8. While under the care of the Institute of Living, the Student was treated for depression and substance abuse. The Student had an extensive history of cannabis abuse, which began at age 12 for which he had prior treatment at the Rushford Center in May 2000. However, during his sessions at the Institute of Living he indicated that despite his prior treatment at the Rushford Center, “he continued to abuse marijuana on a daily basis, up to three joints per day. Additionally, he used hallucinogens weekly and Ecstasy weekly.” (Exhibit P-1)
9. The treatment team at the Institute of Living recommended the Student be placed in a residential substance abuse program since he had failed at other approaches addressing his problem. Thereafter, he was referred to Stonington Institute and was discharged from the Institute of Living with a diagnosis of cannabis dependence, hallucinogen abuse and depressive disorder, NOS. (Exhibit P-1)
10. The Student was admitted to the Stonington Institute on June 14, 2000. There he underwent further evaluation (Exhibit P-2)
11. From July 6 through July 26, 2000, the patient was enrolled in the Safe Journey Wilderness program as a prerequisite for entry into the Hyde School. In a report from Safe Journey dated July 26, 2000, it was revealed that the Student wanted to be in a drug-free environment, such as Hyde School, so that he would have a better chance of staying sober. (Exhibit P-4)
12. Support for the Student’s enrollment in the Hyde School came from Clifford Stockton, Field Supervisor, of Safe Journey, in which he recommended the Student, “be enrolled in an interim program, one that is not located at home and is appropriate to [The Student’s] interests. A return to his neighborhood, where he has access to his friends and to marijuana, could sabotage his transition into the Hyde program.” (Exhibit P-4)
13. Testimony from Dr. Patrick Russolillo, who began seeing the Student in the summer of 1999 pursuant to a request for evaluation from the Board, concluded that the Student may suffer from ADHD. He found there were some irregularities in the Student’s achievement performance; mild word finding difficulties and use of

expressive language; very poor modulation skills; and he was not socially or verbally sophisticated.

14. After administering several different tests, Dr. Russolillo, found the Student to fall within the average range of intelligence and functioning. However, the results also revealed addictive tendencies, low self-worth, moodiness and significant problems with organization, attention and self-regulation. (Exhibit B-11)
15. Dr. Russolillo found that the Student's problems were not totally induced by drugs, and that he more likely suffered from dysthymia and not depression. He further testified that cannabis abuse causes memory impairment, distorted sensory performance, and some forms of depression, anxiety and irritability.
16. As noted in reference material submitted by the Board's attorney, some of the behaviors exhibited by the Student are also symptoms of cannabis abuse. (Exhibit B-37)
17. Dr. Russolillo stated that upon a review of the Student's grades and teacher's reports, he found the Student was inconsistent in meeting expectations, but was overall average. He further admitted that inconsistency is a sign of marijuana dependency
18. Dr. Russolillo hypothesized about the chance of the Student having ADHD, but failed to draw a conclusive theory. His testimony revealed that he did not assess the Student's behavior in the school setting in compliance within the DSM-4 criteria for diagnosing ADHD. Dr. Russolillo admitted that an assessment in the school setting, and not just in the home setting, is needed to conclude the Student does, in fact, suffer from ADHD.
19. Dr. Joel Bregman, an adolescent psychiatrist, administered the psychological evaluation for the Student. In his report, he found that the Student struggled academically as a result of attention deficit hyperactivity disorder with respect to executive functioning, sustained attention, working memory, organization, and flexibility. (Exhibit B-18)
21. Dr. Bregman stated that in drawing such conclusions, he relied upon the psychological testing done by Dr. Russolillo, as well as previous school reports, other aspects of history, and the Student's own discussions with him.
22. Dr. Bregman noted that, "there is data to suggest that children and adolescents with attention deficit hyperactivity disorders have a relatively high likelihood of developing substance abuse problems....They also have a significantly increased risk of developing a range of neuropsychiatric disorders, including depression, anxiety, conduct disorder, and anti-social behaviors."

22. Dr. Bregman qualified the Student's underlying substance abuse problems as, " a disability in terms of his attentional problems and ADHD symptomology and depressive symptomology.
23. Despite this qualification, on cross-examination, Dr. Bregman admits that his conclusion that the Student has attention deficit hyperactivity disorder was not drawn on his own review, but rather, that provided in Dr. Russolillo's report, which, as stated above, is deemed to be a hypothesis lacking relevant assessments for a conclusive diagnosis.
24. The Parent's Attorney submitted reference material that provides that children with ADHD have a higher risk for substance use disorder. However, the Student in this case has not been diagnosed with ADHD for us to conclude his substance abuse is a manifestation of his condition.
25. In fact, the record reveals in a psychological evaluation performed by AnneMarie Heller Cox, that , "while areas related to ADHD are elevated, the fact that all other areas are also elevated suggests a behaviorally involved at-risk profile rather than an ADHD profile." (Exhibit B-16)
26. Therefore, based on the credible testimony of Drs. Russolillo and Bergman weighed with the evaluations provided in the record, this hearing officer finds there is no compelling evidence that the Student has ADHD. The student has undergone substantial testing and evaluations, none of which provides any clear indication that his behavior is, in fact, a result of ADHD. (Exhibits B-15 through B-18)
27. The Parent testified that in July 2000 she called the Board's Director of Pupil Services, Ruth L. Young, to inform her that she was seeking assistance to place the Student in a program at the Hyde School. The Parent stated Ms. Young informed her that the Student could be supported within the high school, but the Parent felt that since it had not worked for two years she was going to remove the Student and place him in the Hyde School.
28. The Parent stated that she did not request an evaluation because the Student was in Boise, Idaho at the time, enrolled in the wilderness program. She does, however believe Ms. Young told her she needed a PPT meeting.
29. Since being in the Hyde School program, the Parent testified that her son has shown significant improvement, academically and socially. She said the Hyde School is a more structured environment with smaller class size. As part of his program, the Student receives counseling for drug therapy and emotional needs.
30. Subsequent to the Student's enrollment in the Hyde School, he underwent educational and psychological evaluations. (Exhibits B-15, B-16, B-18)

31. Nina White, Education Evaluator, administered several tests to determine whether the Student required special education services. (Exhibit B-15)
32. More specifically, the Student was observed in the classroom setting at the Hyde School and administered the Woodcock-Johnson – III Tests of Achievement, Gray Oral Reading Tests – 3, Gates-MacGinitie Reading Tests, Level F and a Test of Written Language - 3. (Exhibit B-15)
33. In sum, Ms. White found the Student to be very attentive, able to follow directions and participate appropriately. She considered the Student very slow and methodical in his approach to timed tests, but he did well in comprehension. She deemed his vocabulary knowledge and receptive knowledge as “very good” and stated that he “demonstrated very good writing skills and very good imagination.” Ms. White found the Student did not portray any issues of poor memory, and his writing was well organized and formulated. (Exhibit B-15)
34. Ms. White expressed the Student did not demonstrate a learning disability, and did not require special education services. (Exhibits B-15, B-20, B-22)
35. The Parent’s attorney has also argued that the Student suffers from a severe emotional disturbance (SED) qualifying him for special education services in accordance with applicable state and federal laws.
36. The Parent has stated through testimony and in interviews with the Student’s evaluators that she was concerned that her divorce from the Student’s biological father and his father’s alcoholism were factors in the Student’s behavioral and educational problems.
37. Testimony and evidence provided throughout the proceedings has failed to establish the Student suffered from any severe emotional disturbance, but rather was socially maladjusted.
38. The record reveals that all of the treatment facilities and programs in which the Student was admitted were deemed drug intervention and rehabilitation. This is inclusive of the program administered at the Hyde School. (Exhibits P-1, P-2, B-8, B-15 through B-18)
39. As described by the Parent, it is a place where her son is in a more structured environment in which he receives counseling for drug therapy.
40. Though argued by the Parent’s counsel that the Student’s drug dependency and his behavioral and academic problems are a result of a Severe Emotional Disturbance and/or ADHD, the facts show otherwise. (Exhibits P-1 through P-11)
41. The facts show the student’s behavioral and academic problems are actually the result of his drug dependency. The proof of which is a direct correlation in his academic

performance with his drug usage. As his substance abuse increased, his academic performance became inconsistent and declined. He began to exhibit more defiant and delinquent behavior warranting disciplinary actions by school authorities. (Exhibit B-1 through B-6 and B-25 through B-36)

42. The fact that the Student has shown significant improvement in his behavior and academic performance is not the result of a special education program devised by the Hyde School, but rather, an educational program inclusive of a drug rehabilitation program.
43. Just as the Student accomplished academic tasks prior to his excessive drug usage, he has proven his ability to do it again after rehabilitation. This has been accomplished absent special education support services.

### **CONCLUSIONS OF LAW:**

1. In accordance with Connecticut General Statutes §10-76h(a)(1), “ A parent or guardian or a child requiring special education and related services...may request, in writing, a hearing of the local or regional board of education...responsible for providing such services *whenever such board or district proposes or refuses to initiate or change the identification*, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil.
2. In this particular case the Parent has requested a hearing based on the Board’s refusal to initiate the identification of the Student as eligible for special education services.
3. The Parent’s position is that the Student qualifies for special education services as a child with Severe Emotional Disturbance and/or ADHD.
4. To decide if the Student is eligible for special education, it must be decided first if he falls within the definition of a student with Severe Emotional Disturbance within the meaning prescribed by the IDEA, 34 CFR 300.7 (c)(4) and Connecticut General Statutes Section 10-76a which provides:  
“Serious emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:
  - a. An inability to learn that cannot be explained by intellectual, sensory or health factors;
  - b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - c. Inappropriate types of behavior or feelings under normal circumstances;
  - d. A general pervasive mood of unhappiness or depression; or
  - e. A tendency to develop physical symptoms or fears associated with personal or school problems.”

5. Evidence and testimony provided reveals that the Student has exhibited one of more of the following characteristics, but the evidence is less than preponderant in finding that such characteristics have occurred over a long period of time and have adversely affected his educational performance.
6. Specifically, the Student has not exhibited an inability to learn; he has maintained interpersonal relationships with peers and teachers; he has not developed physical symptoms or fears associated with personal or school problems. He has, however, engaged in inappropriate types of behavior under normal circumstances and has had a general pervasive mood of unhappiness or depression.
7. The record shows the Student was subjected to disciplinary action from on March 23, 2000 through June 6, 2000 – 2 ½ months. The State Guidelines interprets a “long period of time” as several months, but makes the distinction of a “temporary reaction to a situational trauma.” State of Connecticut Department of Education, *Guidelines for Identifying and Educating Students with Serious Emotional Disturbance* (1997).
8. In this situation, the Student was faced with the situation of drug use to which his reaction was inappropriate behavior and pervasive depression. Subsequent to drug therapy such “reactions” have been testified to have subsided.
9. The Student’s educational performance was adversely affected to some degree, but the affects were inconsistent. Furthermore, absent any special education services, his educational performance has since improved.
10. Although the Student has displayed some of the elements as defined by the IDEA for serious emotional disturbance, schools have been cautioned by the Connecticut State Department of Education to recognize the distinction between serious emotional disturbance and social maladjustment. (*See State Guidelines* at 5)
11. Social maladjustment is an exception to coverage under the IDEA and is characterized by deviant behavior with conscious control. Individuals with Disabilities Education Act, Section 601 et seq., as amended, 20 U.S.C.A. Section 1400 et seq, 34 C.F.R. Section 300.7 (a)(1), (b)(9) In such instances:
  - a. signs of depression are not pervasive;
  - b. problem behaviors are goal directed, self-serving, and manipulative;
  - c. actions are based on perceived self-interest;
  - d. general social standards are understood, but not accepted;
  - e. countercultural standards of peers are accepted and followed; and
  - f. problem behaviors have escalated during pre-adolescence and adolescence.(*See State Guidelines* at 13)
12. Courts have routinely declined to equate social maladjustment with serious emotional disturbance. *A.E. v. Independent Sch. Dist. No. 25*, 936 F.2d 472, 476 (10 Cir.1991); *Doe v. Board of Educ.*, 753 F.Supp. 65, 71 n. 8 (D.Conn.1990).



13. The Student has been diagnosed with depression, for which he takes Paxil. However, because his depression is not generally considered pervasive, testimony from Drs. Russolillo and Bergman characterized the Student's condition to be more likely dysthymia, a mild form of depression.
14. The Parent has testified that the Student has had suicidal ideations, which would seemingly render his depression pervasive, but such pervasiveness did not occur until his drug use increased. Thus, the pervasiveness of his depression is a secondary manifestation attributable to substance abuse, which is not covered under the IDEA.
15. The Student's problems have been clearly self-serving and manipulative as evidenced by his disciplinary reports. As written in his reflection sheet, "[he was] only trying to make [the administrator] feel dumb by having [her] read this." October 26, 2001 -9- Final Decision and Order 01-109
16. As stated in his Adolescent Psychiatric Assessment with Stonington Institute, the Student wanted to get help for himself. He stated that he, "had a lot of freedom and started hanging with kids that smoked and got in trouble." Thus, he acknowledged his understanding of general social conventions and standards, but failed to accept them and followed countercultural standards of his peers. **(Exhibit P-2)**
17. Prior to his increased substance abuse, the Student made steady educational progress. Though some remedial assistance was required at times, he maintained consistent scores and advanced from grade to grade. " Board of Educ. v. Rowley, 458 U.S. at 207, 102 S.Ct. at 3051 (1982).
18. In quoting the decision of *In re Pflugerville Indep. Sch. Dist.*, 21 IDELR 309 at 311 (SEA TEX.1994), the Court in *Springer v. The Fairfax County School Board*, reasoned that, "it is inferentially permissible to attribute any lowering of his grades to his unwise choice to spend less mental energies on his academics and to spend more mental energies on his [drug activities]" *Springer v. The Fairfax County School Board*, 134 F.3d 659 (1998)
19. Similarly, based on the correlation of grades with the Student's drug activity, the same inferences can be drawn in this case.
20. In accordance with its obligations under Connecticut General Statutes Section 10-76ff, the Board held PPT meetings for the Student on October 20, 2000 and February 7, 2001. The Student was evaluated both educationally and psychologically, and based on all pertinent information, the Board drew the appropriate conclusion in finding the Student was not educationally disabled and ineligible for special education services.

**FINAL DECISION AND ORDER:**

1. The Student is not eligible for special education services.
2. Based on the foregoing decision, the issue of whether the Board should pay for the child's education at the Hyde School is moot and is, therefore, dismissed.