

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing on behalf of the Parent: Parent, Pro Se

Appearing on behalf of the Board of Education: Attorney Ann F. Bird
Assistant Corporation Counsel
550 Main Street
Hartford, CT 06103

Appearing before: Attorney Mary H.B. Gelfman, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Are the special education program and placement offered to Student by the Board appropriate to his needs in the least restrictive environment?
2. If not, what is an appropriate special education program and placement for Student?
3. What is the appropriate special education identification for Student?

PROCEDURAL HISTORY:

The request for hearing dated June 21, 2002, was received at the State Department of Education on September 4, 2002, and the Hearing Officer was appointed on the same day. No explanation for the delay was offered by either party on the record of the hearing.

A pre-hearing conference was held on September 16, 2002: Parent did not respond to telephone contact. Because a request for mediation was included with the request for hearing, the Board agreed to attempt mediation and therefore the Hearing Officer extended the deadline for the mailing of the final decision and order from October 21, 2002, to November 20, 2002. Notice of the hearing scheduled for October 17 was sent out on September 17 with a memo summarizing the pre-hearing conference. No mediation was held.

The hearing convened on October 17, 2002, with Parent and Student present. After a brief conference, Parent agreed to have Student try a proposed placement. An additional hearing session was scheduled for October 31 in case any issues remained in dispute. The hearing re-convened on October 31, 2002, and Parent reported on Student's status and her concerns.

SUMMARY:

Student had been moved from HTLA to a less restrictive placement at South Middle School in March, 2002, in response to Parent's concerns. After several disciplinary incidents resulting in suspensions, Parent requested a change of placement. After the initiation of a due process hearing in September, 2002, the Board offered a placement at Quirk Middle School.

FINDINGS OF FACT:

1. Student was born on October 22, 1990, is now 12 years old and is currently in the 7th grade. (Exhibit B-11)
2. In March, 2002, Student transferred from a specialized program at HTLA to a less restrictive program at South Middle School. The Board provided after school tutoring three days a week with transportation and a half-hour of social work services per week. The record of the March 14, 2002, Planning and Placement Team (PPT) meeting showed Student as "SED" [seriously emotionally disturbed]. (Exhibit B-2)
3. Evaluations conducted in February and March, 2002, showed Student's performance in reading, mathematics and writing skills as low average and language skills as average. The evaluator noted that in morning testing sessions, Student was easily re-focused when he was distracted. However, in afternoon sessions, he had more difficulty remaining focused. (Exhibit B-1)
4. An Occupational Therapy evaluation dated March 28, 2002, summarized Student's status:
[Student] scored in the average range in all visual perception and visual motor testing. [Student] demonstrates fair letter formation, word spacing and orientation to the line when writing. No Occupational Therapy services are recommended at this time. (Exhibit B-3)
5. A psychological evaluation dated March 27 and April 3, 2002, reports a 1999 diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). Student's behavior in his current placement was described as:
... a wide range of behavior difficulties including oppositional and defiant tendencies. He has argued with his teachers, refused to do work, and used

inappropriate language. His after school tutor has reported that [Student] has demonstrated very inconsistent levels of cooperation and effort. He, at times, chooses not to do his work. He has required a tremendous amount of structure and behavior management, with little success noted at this time.

This evaluator described Student's behavior in the testing setting:

[Student], a moderately overweight, nice looking boy, appearing his stated age, presented for evaluation in a somewhat disgruntled, yet cooperative manner. Mood vacillated from somewhat hostile and opposing to joyful and personable. As test items were introduced, he often initially gave the impression that he may or may not comply depending upon how he felt. With gentle encouragement, [Student] was able to comply with all test demands. He made direct eye contact, offered appropriate spontaneous conversation, and exhibited adequate social interaction skills. Although [Student] appeared to be putting forth good effort, he exhibited a notably low tolerance for frustration. As items became more challenging, he often responded in a haughty and defensive manner. At times stating emphatically, "I can't do that one!" He often looked for reassurance and assistance and complained as tasks became more difficult. He frequently wanted "hints" or a "head start" on the timed tasks. [Student] required a great deal of reassurance and prompting. During projective testing and student interview, [Student] presented as somewhat mistrustful and defensive. However, as rapport was established, [Student] was more open with his thoughts and feelings. On a self-report inventory, [Student] often challenged the statements on the paper and attempted to re-word them himself. Some of the changes were only minute but he insisted that they be changed. Overall, good care was taken, yet the following results may be a slight underestimate of [Student's] true potential due to an opposing manner and a very low frustration tolerance. (Exhibit B-4)

6. The March and April, 2002, psychological evaluator reported Student's Verbal Intelligence Quota as 100, or average, and Performance Intelligence Quota as 75, or borderline. Further comments from this evaluator:

Personality assessment reveals Student to be a verbally bright boy who appears to be experiencing significant feelings of anger, frustration, and hostility that may be masking some underlying feelings of sadness, inadequacy, and powerlessness. Student demonstrates a need to control his environment and can be very powerful, fixed, and manipulative when attempting to get his needs met. He denies any wrongdoing, feels persecuted, and consistently blames others for his difficulties. Denial and rationalization are used as primary ego defense mechanisms against the anxiety caused by his misbehaviors. Student exhibits very little remorse for his past problems as well as little insight. On a teacher-completed behavior rating scale (TRF), clinically significant scores were obtained under characteristics associated with delinquent behavior and aggressive behavior. Teacher reported that Student, "demonstrates little guilt, uses vulgar language, argues, acts defiantly, brags, fights with other students, talks out, disrupts the class, shows off, and acts in a demanding manner". Positive attributes assigned to Student include his engaging manner and his bright verbal ability. (Exhibit B-4-3)

7. Behavior rating scales for Student completed by two of his teachers in April, 2002, were included in the record submitted by the Board for this hearing. While reasonable people might differ as to whether these behavior scales indicate a diagnosis of emotional disturbance or one of ADHD, or both, the disruptive behaviors identified cause disruption of Student's education, as well as that of his classmates. One teacher identified 17 disruptive behaviors occurring frequently (once per hour) or very frequently (once per half hour). The second teacher identified 33 disruptive behaviors occurring frequently or very frequently. (Exhibits B-5, B-6)
8. During his placement at South Middle School, Student had many referrals for administrative intervention. His disruptive behavior and harassment of peers was addressed by counseling, telephone calls to Parent, and time-out. He also served seven days of out-of-school suspension. (Exhibits B-9, B-10)
9. The Parent believes that tutoring and social work services ceased after a few weeks. The Board's coordinator testified that Student became less cooperative over time. An April 12, 2002, PPT meeting decided to continue tutoring, but noted that the tutor would "determine when tutoring will cease". (Testimony, Parent, Coordinator; Exhibit B-8)
10. The April 12, 2002, PPT also offered consultation for Parent to help with Student's difficult behavior at home. In addition, the PPT recommended that Parent seek "outside counseling". (Exhibit B-8)
11. The Parent did not respond to telephone contact for the pre-hearing conference on September 16, 2002. The Hearing Officer sent the scheduling notice for the October 17, 2002, hearing to Parent and to the Board's attorney. With the notice was a memorandum summarizing the discussion at the pre-hearing conference. The notice included the date of the hearing and that the hearing was scheduled for 10 a.m. to 5 p.m.
12. When the hearing convened on October 17, 2002, the Board offered Student a placement in the TOPS program at Quirk Middle School. Parent agreed to bring Student to Quirk the next week, and stated that she had a medical appointment and could not stay for the hearing. Before Parent left the hearing on October 17, 2002, another hearing session was scheduled for October 31, 2002, in case any issues remained in dispute. The notice for this hearing stated that the hearing was scheduled for 10 a.m. to 5 p.m., but the hearing was adjourned upon the Parent's departure. (Transcript)
13. The TOPS placement is a self-contained program, with two teachers and two paraprofessionals. Specials (i.e., physical education, art, etc) are provided with mainstream students. The program provides academic subjects in a self-contained class, with immediate response to misbehavior. Students who misbehave may be sent to a time-out area or in-school suspension. With parental cooperation, students who

are having "a bad day" may go home. Only serious infractions are punished with out-of-school suspension. (Transcript, Testimony of Teacher, Coordinator)

14. Student enrolled in the Quirk program on October 24, 2002. On October 25, he returned from a special class and was sent to get his math book. When he attempted to take his back pack, Teacher told him to take the math book only. A dispute arose about the back pack, with Teacher and Student both grabbing it, and pushing each other. Student's and Teacher's descriptions of this incident were consistent. (Transcript)
15. After a conference involving Student, Parent, Teacher and an Assistant Principal, Student was suspended for two days. Student remained out of school and came to the hearing with Parent on October 31, 2002. Parent complained of questions by Teacher that she considered intrusive: Teacher explained that the TOPS program required close communication between home and school. (Transcript, Testimony of Parent, Teacher)
16. This Hearing Officer had two opportunities to observe Student, at the October 17 and 31, 2002 sessions of the hearing. Student was extremely well-behaved, and cheerful at the beginning of each day. Student testified candidly about his difficulties in school, although he did not acknowledge his misbehavior.
17. On October 31, 2002, Parent became upset during the hearing and challenged several statements made by a school staff member. Parent also challenged Student's classification as seriously emotionally disturbed. At approximately 12 noon, Parent announced that she had an appointment and refused to remain at the hearing for testimony to be provided by Teacher from Student's TOPS program. The Hearing Officer concluded the hearing after hearing Teacher's testimony. (Transcript)
18. Student's current Individualized Education Program (IEP) goals, as determined at the April 12, 2002, PPT meeting, are:
 - Student will demonstrate measurable improvement in reading skills.
 - Student will demonstrate measurable improvement in writing skills.
 - Student will demonstrate measurable progress in mathematics skills.
 - Student will demonstrate measurable progress in compliant behavior.
 - Student will demonstrate measurable improvement in appropriate school behavior.
 - To increase responsible behavior. (Exhibit B-8)

CONCLUSIONS OF LAW:

1. Student has been identified by the Board as Seriously Emotionally Disturbed. The definition for this disability is given at 34 C.F.R. §300.7(c)(4):

Emotional disturbance is defined as follows:

- (i) The term 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 a child's 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.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
2. Students with ADHD may be roughly divided into three groups, pursuant to the September, 1991, memorandum from the U. S. Department of Education. Some students with ADHD, with or without medication, do not demonstrate any difficulty in school. A second group, who demonstrate some difficulties in school, can be provided with support services under §504 of the 1973 Rehabilitation Act, such as classroom modifications to help with focusing and monitoring of assignments, and administration of medication during the school day, when prescribed by a physician. A third group, those with serious problems in school, may be eligible for special education. In the latter case, the PPT considers the results of a comprehensive evaluation and develops an Individualized Education Program (IEP) that addresses the students' strengths and weaknesses. The federal special education regulations address eligibility for those with ADHD at 34 C.F.R. §300.7(c)(9):

Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that -

 - (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and
 - (ii) Adversely affects a child's educational performance.
3. Student may be viewed as emotionally disturbed and/or having ADHD. None of his test scores suggest mental retardation. Since Parent is very concerned about his special education classification, additional evaluations are needed. The PPT should consider a psychiatric evaluation to address the issues raised.
4. Student's start in the program at Quirk was marred by a disagreement with a teacher that resulted in a suspension. Student's Parent objected to questions from this teacher that she considered personal. The teacher explained that the behavioral component of this program relies on close communication with parents. Since Student has also displayed disruptive behavior at home, a coordinated approach to behavior problems

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(e).

Mary H. B. Gelfman
Hearing Officer Signature

MARY H. B. GELFMAN
Hearing Officer Name in Print