

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Stratford Board of Education

Appearing on Behalf of Student: Attorney Richard McCarthy  
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Fairfield, CT 06824

Appearing on Behalf of the Board: Attorney Marsha Belman Moses  
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Appearing Before: Attorney Stacy M. Owens, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

Whether the Student's behavior, which resulted in disciplinary action by the Board, was a manifestation of his disabilities. Encompassed within this issue is the subissue of whether the individualized educational program (IEP) and the services provided under the IEP were appropriate to meet the special needs of the Student.

**PROCEDURAL HISTORY:**

On February 3, 2003, a letter dated January 31, 2003 from Attorney Richard McCarthy requesting a hearing in the above-stated matter, was received by the State of Connecticut Department of Education. On February 4, 2003, the undersigned was appointed as hearing officer to rule on all motions, make findings of facts and conclusions of law, and issue an order. A prehearing conference was originally scheduled for February 7, 2003. By memorandum sent via facsimile on February 5, 2003, Attorney Marsha Moses requested a rescheduling of the prehearing conference. The prehearing conference was rescheduled and conducted on February 10, 2003, at which time the issues were discussed and hearing dates were scheduled. The hearing convened on February 3 and 5, 2003. Briefs were submitted on March 14, 2003.

**SUMMARY:**

The Student is 14 years old and is enrolled in the 8<sup>th</sup> Grade at Flood Middle School. He has been diagnosed with Tourette Syndrome, Attention Deficit Disorder and learning disabilities. The Student has had issues relating to his social interactions and self-esteem

that have been reflected and addressed continuously in the goals and objectives of the Student's IEPs as far back as September 1997.

From May 2002 through January 2003, the Student has been involved in several incidents in which he displayed threatening or inappropriate behavior. The last of the incidents occurred on January 9, 2003 and resulted in the Student's suspension and potential expulsion for carrying two knives in the school, threatening other students, and specifically telling one student, "I'm going to cut you like a fish."

The Parent states the Student's Tourette Syndrome causes him to twitch and other children tease him. This upsets the Student and causes him to react. The Parent believes the IEP developed for the Student's 8<sup>th</sup> grade was not deficient academically, but failed to address issues regarding the Student's behavior. The Parent argues the Student's behavior is a manifestation of his Tourette Syndrome and/or other disabilities and that he should not be subjected to disciplinary action by the Board.

After conducting a manifestation determination planning and placement team meeting, the Board determined the Student's disability "did not impair his ability to understand the consequences and impact of his behavior." The Board argues the Student's misconduct was not a manifestation of his disability.

#### **FINDINGS OF FACT:**

1. In November 1996, while enrolled in 2<sup>nd</sup> grade at the Laurel Ledge Elementary School, the Student was found eligible to receive special education services based on his exceptionalities being learning disabled and speech and language. (Exhibit B2).
2. While in the 3<sup>rd</sup> grade at the Nichols Elementary School, the Student was diagnosed with Tourette Syndrome. Accordingly, an IEP was developed and implemented on September 5, 1997 (Exhibits B1, B8).
3. One of the goals for the Student in the September 5, 1992 IEP was to improve self-esteem by making three positive self-statements during each counseling session. (Exhibit B8).
4. Each of the Student's IEPs from September 1997 through November 2002 address issues relating to the Student's self-esteem, social behaviors and peer interactions. (Exhibits B8, B12, B19, B21, B24, B26, B35).
5. Each IEP from September 1997 through November 2002 reflect methods of implementation prescribing services with a special education/resource teacher and social worker. (Exhibits B8, B12, B19, B21, B24, B26, B35).
6. The services prescribed within each of the IEPs from September 1997 through November 2002 appropriately correlate with the Student's level of improvement or regressions in social behaviors. (Exhibits B8, B12, B19, B21, B24, B26, B35).

7. As noted by the Parent, the Student's guidance counselor, Myles Cohen, and the Student's special education teacher, Michael Cianculli, the Student demonstrated marked improvements in his social behaviors from 6<sup>th</sup> through 8<sup>th</sup> grades. (Tr. 3/3/03 pp. 45, 46, 52-55, 166-169, 191, 192; Tr. 3/5/03 pp. 15, 16)
8. As evidence of this marked improvement the IEP developed on September 21, 2000 established the following goal:  
    "[The Student] will demonstrate the ability to interact with peers in an age appropriate manner and he will enhance his social skills."  
    The objectives for this goal were:
  - a. [The Student] will identify one student that he considers to be a friend and he will interact with the student appropriately;
  - b. [The Student] will continue to develop mechanisms to cope with negative peer attention; and
  - c. [The Student] will speak to an adult when he feels antagonized by peer interactions. (Exhibit 24)
9. By contrast, though still necessitating further development in his social behavior, the Student showed improvement in his peer relationships as reflected in the March 29, 2001 IEP, which was developed for his program and placement for the 2001-2002 school year. (Exhibit B26; Tr. 3/3/31 pp. 61, 173)
10. By the time the PPT met for an annual review on March 4, 2002 to develop a program and placement for the Student for 8<sup>th</sup> grade, and upon review of the Student's performance throughout his 7<sup>th</sup> grade year, the IEP reflected the following:  
  
    "Richard has grown socially dramatically. He has made several friends and gets along well socially. He is enthusiastic and asks for help with problems."  
  
    However, the March 4, 2002 IEP still reflected room for improvement, citing, "Student will accept responsibility for their behavior," "To increase awareness of self-advocacy and self-advocacy skills," and "[The Student] will improve his social skills," as goals for the Student's social behavior. (Exhibit B29)
11. The Parent agreed with the IEP developed on March 4, 2002, which included a program for the Student's 2002-2003 school year in 8<sup>th</sup> grade. She agreed the Student had done socially well during 7<sup>th</sup> grade. (Tr. 3/3/03 pp. 52-55)
12. The Student has very comfortable relationships with his guidance counselor and teachers, and talks to them about personal issues or seeks advice. (Tr. 3/3/03 pp. 16, 17, 129-137, 156-159, 161, 195)

13. Mr. Cohen, the Student's guidance counselor, first met the Student at his 6<sup>th</sup> grade annual IEP meeting. Mr. Cohen sees the Student two or more times a day and observes him in the cafeteria and hallways. At which times, they chat and discuss matters personal to the Student. (Tr. 3/3/03 pp. 156-159, 195, 224)
14. The Student visits Mr. Cohen and has discussed such issues as hygiene, lack of lunch money, and health issues with Mr. Cohen. (Tr. 3/3/03 pp. 129-137, 158).
15. Mr. Cohen is very mobile as a counselor. Mr. Cohen spends very little time in his office. He is in the hallways, lunchroom and in the classrooms. He positions himself to be accessible to students and readily available if a student needs to be pulled from a class for counseling. (Tr. 3/3/03 pp. 224, 225)
16. Mr. Cohen never observed incidents of teasing or bullying by other students directed towards the Student. (Tr. 3/3/03 pp. 195, 196, 224)
17. Michael Cianculli, the Student's special education teacher, has seen the Student daily since August 2001 throughout the school years. (Tr. 3/5/03 pp. 9, 10)
18. The Student sometimes stops by Mr. Cianculli's classroom when he is not receiving special education instruction to socialize with the other students or to talk to Mr. Cianculli. Mr. Cianculli stated, "he always stops - - even if we're in the hall, just say hello. No matter where we are. If we're in the lunchroom, if I'm walking by, [the Student's] always very kind and polite to me." (Tr. 3/5/03 p. 16)
19. Mr. Cianculli never observed incidents of teasing or bullying by other students directed towards the Student. (Tr. 3/5/03 p. 19)
20. Anne Dellamarggio, the Student's Language Arts teacher, explained the Student interacts well with other students. She has never observed other students teasing or bullying the Student. (Tr. 3/5/03 pp. 47, 50)
21. In May 2002, the Student was suspended for one day following an incident in which he threatened another student and made reference to his brother's gun collection. (Exhibits B-30, B44; Tr. 3/3/03 pp. 56-58, 224)
22. As a student viewed "to bully other kids", the Student was placed in a "bullying group". (Tr. 3/5/03 pp. 58, 62, 61, 111)
23. Ms. Steglitz, the Student's school social worker, works with the Student individually and also directs the "bullying group" in which the Student once participated. (Tr. 3/5/03 pp. 62, 63)
24. While attending the "bullying group", Ms. Steglitz found the Student "was a full participant. He was eager to participate. He brought good conversation to the group.

He shared quite easily.” Also, “when other kids had brought problems to the group, he would often offer suggestions on how to resolve the issue.” (Tr. 3/5/03 p. 66)

25. The Student decided later in October 2002 to drop out of the bullying group because of the strained relationship between he and another student with whom he had a dispute over food in the cafeteria. (Exhibits B42, B43; Tr. 3/3/03 pp. 62, 64)
26. The Student continued to meet with Ms. Steglitz individually in accordance with his IEP. (Exhibit B42; Tr. 3/5/03 p.73)
27. On November 25, 2002, Mr. Cohen was informed by another student that the Student was engaging in threatening behavior towards other students at the bus stop and making reference to guns in his home. (Tr. 3/3/03 pp. 127, 174, 175)
28. A PPT meeting was already scheduled to convene on November 25, 2002. At that time the Student’s progress under the IEP was reported. There was positive feedback from all in attendance. (Exhibit B35).
29. On November 25, 2002, the Student’s goals and objectives under the IEP remained in effect, but his social work services with Ms. Steglitz were reduced from 30 minutes a week to 15 minutes a week. His social/emotional/behavioral performance indicated “noted improvement however *behavior continues to need monitoring.*” Emphasis added. (Exhibit B35; Tr. 3/3/03 pp. 176, 177)
30. The record reveals that the Parent commendably attended all by two of the Student’s scheduled PPT meetings since September 1997. (Exhibits B8, B12, B19, B21, B24, B26, B35)
31. The Parent never expressed any contentions relating to the IEPs developed by the planning and placement team for the Student during his 6<sup>th</sup> through 8<sup>th</sup> grade academic years. She testified that she agreed with the prescribed goals and objectives. (Tr. 3/3/03 pp. 42, 43, 53-55, 64-66; Tr. 3/5/03 p. 22)
32. The Parent acknowledged the Student made significant progress in his social behavior by his 2001-2002 school year and that he had successfully made several friends. (Tr. 3/3/03 pp. 52, 61)
33. On January 9, 2003, Mr. Cohen was told by two students that the Student threatened another student by saying, “I’m going to cut you like a fish.” Also, as described by Mr. Cohen, the two students were told by the Student , “ I have - - I have knives, two knives in my pocket and I’m going to - - and I’m going to get you.” The students expressed concerns that the Student possessed knives. (Exhibit B40; Tr. 3/3/03 p. 178, 183)

34. When Mr. Cohen approached the Student regarding the expressed concerns of the other students, the Student denied having a knife in his possession. (Exhibit B40; Tr. 3/3/03 pp. 179, 180)
35. Although the Student denied possessing a knife, two knives were found by Mr. Cohen in the Student's jacket pocket. Mr. Cohen then took the Student to see Ms. Aloï, the school principal. (Exhibit B40; Tr. 3/3/03 p. 180)
36. The Student stated he did not intentionally carry the knives to school, but rather upon leaving his home in the morning he forgot they were in his pocket until after the door to the house was already closed and locked. (Exhibit B40; Tr. 3/3/03 pp. 75, 77, 78, 181)
37. The Student informed Mr. Cohen that he had the knives because he was once "jumped" in the parking lot of his mother's job at night and he kept them for protection. (Exhibit B40; Tr. 3/3/03 pp. 75, 77, 78)
38. The Student informed Mr. Cohen and the Stratford Police that he was being teased by the other students about his Tourette Syndrome and that his misconduct was a reaction to the teases. (Exhibits P1, B40; Tr. 3/3/03 p. 182)
39. Mr. Cohen was unable to substantiate the Student's claims of being teased by the other students about his Tourette Syndrome. (Exhibit B40; Tr. 3/3/03 pp. 182, 183, 201-203)
40. The Student was placed on a 10-day out-of-school suspension and faces a possible six-week expulsion. (Exhibit B37, B44; Tr. 3/3/03 p. 213)
41. A manifestation determination PPT meeting was scheduled for January 13, 2003. (Exhibit B38)
42. Mr. Cohen informed the Parent of the PPT meeting scheduled for January 13, 2003 and its purpose. (Exhibit B37, Tr. 3/3/03 pp. 184, 185)
43. The Parent failed to attend the manifestation determination PPT meeting on January 13, 2003. However, the PPT team commenced discussions relating to the manifestation determination. (Exhibit B38, Tr. 3/3/03 pp. 186, 187)
44. Another manifestation determination PPT meeting was convened on January 31, 2003 at which the Parent and her attorney were present. (Exhibit B42, Tr. 3/3/03 pp. 79, 93-99, 188, 189)
45. It was determined at the manifestation determination PPT meeting that the Student's misconduct was not a manifestation of his disabilities. (Exhibits B38, B42)

46. At no time prior to the manifestation PPT meeting held on January 31, 2003, did the Parent or the Student ever inform members of the faculty or other Board members of concerns relating to bullying or teasing directed at the Student by other students because of his Tourette Syndrome. Considering the level of comfort the Student and Parent have both displayed in communicating with the Student's teachers and guidance counselor, it seems unlikely they would not make reports of bullying and teasing to the faculty. (Tr. 3/3/03 pp. 56, 59, 67, 68, 105-107, 133, 169, 190; Tr. 3/5/03 pp. 19, 50, 67).
47. The first time the Student said he reported any bullying directed towards him was sometime in February 2003, after the knives incident and the manifestation determination PPT meeting held on January 31, 2003. (Tr. 3/3/03 pp. 144-147, 196-198)
48. The Student spoke with Mrs. Steglitz, Mr. Cohen, and his reading teacher in February 2003 about being bullied, and in each case the situation was remedied by speaking with the students, or removing them from proximity to the Student in the classroom. (Tr. 3/3/03 pp. 144-147; Tr. 3/5/03 p. 77)
49. The Board's practice is to hold confidential all information relating to students' medical conditions and disabilities. (Tr. 3/3/03 pp. 225-227)
50. The Student has been prescribed clonidine to alleviate symptoms of twitching that result from his Tourette Syndrome. (Exhibits B1, B42; Tr. 3/3/03 pp. 100-104)
51. The Student stopped taking his medication some time during his 7<sup>th</sup> grade year. (Tr. 3/3/03 pp. 100-104)
52. The Student never stated the other students specifically said anything about his Tourette Syndrome, but rather, that other students picked on him by making twitching gestures, making fun of the way he writes, and his clothes, which upset him. (Tr. 3/3/03 pp. 114-120)
53. There is no evidence the other students actually knew what disabilities the Student has, and it is inconclusive whether other students mocked his gestures. Further, some of the teases described by the Student do not even relate to symptoms of Tourette Syndrome (i.e. teasing the Student about his clothes . . .). (Tr. 3/3/03 pp. 114-122, 182, 183)
54. The evidence further defies the claim that the Student may have acted impulsively as a result of his Attention Deficit Disorder. The Student testified that he knew he should not have had the knives in school, but rather than turning them in, he took the opportunity to subject his fellow students to threats while the knives were in his possession. This was not impulsive, but instead, a thought-out threat that specifically considered and referenced the two knives he had in his pocket.

**CONCLUSIONS OF LAW:**

1. In accordance with the Connecticut General Statutes and the Individuals with Disabilities Education Act ("IDEA"):

School personnel may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline . . . if the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency. 20 U.S.C. §§1415(k)(1) and 1415(k)(4); 30 CFR §300.520(a)(2)(I).

2. In this particular case, the Student, a child with Tourette Syndrome, Attention Deficit Disorder and learning disabilities, was placed on 10 days suspension from January 10, 2003 through January 24, 2003 for carrying two knives and threatening to cut another student.
3. A review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action no later than 10 school days after the date on which the decision to take that action is made. 20 USC 1415(k)(4), 30 CFR 300.523(a)(2).
4. The Board placed the Student on suspension on January 10, 2003. Despite notification from Mr. Cohen, the Parent failed to attend the manifestation determination PPT meeting that was held on January 13, 2003. However, the PPT reconvened on January 31, 2003 with the Parent and her attorney present for further discussion and to make a final determination.
5. When conducting a manifestation determination PPT meeting, the planning and placement team and other qualified personnel must consider: a) evaluation and diagnostic results; b) observations of the child; c) and the child's IEP and placement. 20 USC 1415(k)(4), 30 CFR 300.523(c)(1).
6. The Board met its burden by proving that each of these factors were considered and discussed during the manifestation determination PPT meetings that took place on January 13th and 31st, 2003. (Exhibits B38, B42)
7. More specifically, the PPT team found the student was passing all of his classes and averaging between the C to D range in grades. A Functional Behavioral Assessment was conducted and the results of the Student's psychological evaluation were reviewed. The PPT team further reviewed and considered the following evaluative, diagnostic and observational data and results as listed:



b.	FSIQ -	78
c.	VIQ -	72
d.	PIQ -	90
e.	WIAT Reading -	76
f.	Math Reasoning -	87
g.	Spelling -	70
h.	Reading Comp	76
i.	Math -	75

8. As evidenced by the minutes of the PPT meeting dated January 31, 2003, there was extensive discussion relating to the incident for which the Student was being disciplined, observations made by faculty concerning the Student's behavior, other incidents that had occurred, the appropriateness of the IEP and placement, past PPT meetings, and letters from medical professionals submitted by the Parent. (Exhibit B42)
9. In discussing the appropriateness of the IEP and placement, the PPT is also mandated under the IDEA to review the special education services, supplementary aids and service, and behavior intervention strategies that were provided and whether they were consistent with the Student's IEP and placement. 20 USC 1415 (k)(4), 30 CFR 300.523(c)(2)(i).
10. The record reveals the PPT team reviewed the IEP's goals and objectives and found that they "reflected that the team worked on [the Student's] focusing and attention, as well as various learning needs." Moreover, discussions relating to "negative peer attention" was an area highlighted by Attorney McCarthy from the Student's March 2001 IEP. Attorney Moses deemed this to not be evidence the Student was subjected to "bullying", but instead was noted for the purpose of meeting the Student's educational needs. (Exhibit B38)
11. Furthermore, as noted in the findings of facts, the Parent had attended the November 25, 2002 PPT meeting and agreed with the appropriateness of the IEP to meet her child's special needs. It was not until a manifestation determination PPT meeting was held that she expressed any contentions with the appropriateness of the IEP.
12. The PPT on January 31, 2003, also discussed incidents that occurred in the cafeteria and summed the incidents up to be "typical adolescent behavior," in which a teacher intervened and the situations were resolved.
13. The Parent expressed the Student tends to "keep things in", however, without faculty being specifically informed or witness to actual teasing or bullying directed at the Student, then they are unable to address the situation. (Exhibit B42)
14. Commentary from the Student's special education teacher, Mr. Cianculli, the social worker, Ms. Steglitz, and his regular education teacher, Ms. Dellmargio, provided

during the PPT meeting revealed the goals and objectives in the IEP were being met and that the Student was making progress.

15. In accordance with the IDEA the PPT was also mandated to consider whether the Student's disabilities impaired his "ability . . . to understand the impact and consequences of the behavior subject to disciplinary action," and whether the Student's disabilities impaired his "ability . . . to control the behavior subject to disciplinary action." 20 USC 1415(k)(4), 30 CFR 500.523(c)(2)(ii) and (iii).
16. In addressing these questions, the minutes of the January 31, 2003 PPT specifically reveal the following relating to the Student's ability to understand the consequences of his actions:

Ms. Aloi said that [the Student] stated that when he knew he had the knives, he tried to take them back to his house because he knew that he should not bring them to school. Ms. Steglitz stated that [the Student] followed school rules, was engaged in school and participated in classes. Mr. Cianculli stated that [the Student] seeks out help and advocates for himself.

17. In relation to the Student's ability to control his behavior, the following was written in the PPT minutes of January 31, 2003:

Mr. Cohen said that [the Student] consistently demonstrated his ability to ask for help. His behavior has never been an issue in school up till now. The school based members of the team said that they have discussed all of the reasons they have to show that [the Student] can control his behavior and he has consistently demonstrated that in school for a long period of time.

18. In support of his arguments, Attorney McCarthy, for the Parent, offered the case of Richland School District v. Thomas P., in which a student was not diagnosed with ADD and dysthymia until after the Board's manifestation determination was made and concluded the student's misconduct was not a manifestation of his existing learning disabilities. The Administrative Law Judge concluded the Board failed to prove the student's actions were not a manifestation of his disabilities. The parents prevailed when the Board appealed. Richland School District v. Thomas P., 32 IDELR 233 (May 2000).
19. Unlike the Richland School District case, however, all of the Student's known disabilities were considered at the time the Board conducted a manifestation determination PPT meeting. Further, as shown above, the Board in this matter not only satisfied the elements required in the IEP, but also satisfied the criteria mandated by state and federal regulations at the manifestation determination PPT meeting.

20. In the case of Doe by Gonzales v. Maher, the court found that a direct and causal relationship between the disability and the misconduct must exist in order to deem the behavior a manifestation of the child's disability. Doe by Gonzales v. Maher, 793 F.2d 1470, 1480 (9<sup>th</sup> Cir.. 1986).
21. The problem that seems to arise in the Parent's argument that the Student was being teased because of his Tourette Syndrome which caused the Student to become angry and react, is that there is no direct and causal relationship. Essentially, what the Parent has repeatedly stated is that the *teasing* caused the Student to engage in misconduct, not his disabilities. In other words, absent the teasing the Student was subjected to, there would not have been any misconduct that manifested.
22. Not only is a direct and causal relationship nonexistent, but as stated in the findings of fact, the evidence is inconclusive as to whether the Student was actually subjected to teasing and bullying prior to the January 31, 2003 manifestation determination PPT meeting.
23. Thus, the facts, testimony and evidence presented establish due consideration was granted by the PPT team to the Student's ability to discern right from wrong and to control his behavior at the time he engaged in the conduct for which he was suspended. As such, the PPT team properly found the Student's behavior was not a manifestation of his disabilities.

**FINAL DECISION AND ORDER:**

1. The Board correctly found the Student's misconduct on January 9, 2003, for which the Student was suspended, was not a manifestation of his disabilities. The Board's decision reflects consideration of the Student's IEP, and properly deems the IEP to be appropriate.