

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 14

Appearing on behalf of the Parents: The Student and Mother pro se

Appearing on behalf of the Board: Attorney William R. Connon and, on the briefs,
Attorney Susan Gundersen
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646 Prospect Avenue
Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong
Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

This hearing was requested on November 17, 2003. Hearing Officer Exhibit (HO) 1. This hearing officer was assigned to the case on November 18, 2003. A prehearing conference was held on November 25. The Board's attorney requested that the hearing be dismissed because of lack of jurisdiction. A long discussion was held with the Mother and the Board's attorney. The Board was allowed until December 9 to file its motion to dismiss. The Parties were given until December 16 to file exhibits. A hearing date was scheduled for December 22, with the Board's motion to dismiss to be heard first. The Board timely filed its motion to dismiss and hearing exhibits B-1 through B-82. The Parent sent an objection to the motion to dismiss by fax on December 12. On December 16 the Parent sent two fax transmissions of exhibits, which were not readable, and no witness list. The hearing convened on December 22. The Parent and the Student appeared pro se. A newspaper reporter was present in the room. The Parent requested that the reporter, who was present at her invitation, be permitted to attend the hearing. The Hearing Officer advised the parties that the hearing was either closed or open to any member of the public. After obtaining consent from the Parent and the Student, the hearing was opened to the public.

The Hearing Officer permitted the Parent to substitute readable copies of her exhibits. These were made courtesy of the Board and accepted into evidence as Exhibits P-1 through P-5 with consent of the Board's attorney. The Board's exhibits were accepted as full exhibits with consent of the Parent and the Student. The Board's motion to dismiss

was heard first. The Board presented testimony from the Parent and the Student to establish its claims that the Student was not a resident within the school district since 1999 and that she was home schooled throughout her school years except for brief periods in kindergarten and third grade. The Parent offered additional testimony from the Student that she resided in Woodbury until the end of 2001. The Board was asked to file supplemental written argument in support of its claims. The Parent was offered an opportunity to file an additional written objection. The parties were given one week to file these papers. Decision was reserved on the motion to dismiss.

At that point, the Parent was offered the option of scheduling a future hearing date on the merits of the case if the motion to dismiss was denied, which would require an extension of the January 2 decision deadline, or completing the hearing on the merits on December 22. The Parent and the Student did not agree to an extension of the decision deadline, therefore, the case was heard to completion on December 22. The Board was asked to present its case first. The Board presented testimony from Christopher Quirk, school psychologist. The Board then rested its case. Even though the Parent did not comply with the hearing notice by filing a list of witnesses five days prior to the hearing, the Hearing Officer, with consent of the Board attorney, permitted the Parent and Student to offer additional testimony in support of their claim that the Board did not properly evaluate the Student in determining that she was ineligible for special education. The Parent rested her case. Both parties filed timely supplemental papers.

ISSUES:

1. Does the Hearing Officer have jurisdiction to determine residency of the Student?
2. If the answer is yes, should the case be dismissed because the Student was not a resident of the school district since 1999?
3. If the answer to #2 is no, should the case be dismissed because the Student was home-schooled during her school years and is, therefore, not entitled to special education services from the Board?
4. If the answer to #3 is no, did the Board conduct an appropriate evaluation of the Student to determine her eligibility for special education in November 2001?

SUMMARY

In this hearing, the Parent and Student are challenging the Board's refusal to find the Student eligible for special education services based on an evaluation done in November 2001 by a school psychologist employed by the Board. They are also requesting an independent evaluation at public expense and compensatory education. Hearing Officer Exhibit 1. There was no PPT meeting held. The Parent contends that the Student suffers from slight dyslexia and should, therefore, be eligible for special education services. She has no education or training in the area of special education. The

Board contends that the Student is currently 23 years of age, was home schooled for her entire school career, except for two brief periods in 1985 and 1988, and that she is not a resident of the district. For these reasons, the Board argues that it has no obligation to the Student and that the Hearing Officer has no jurisdiction to hear the merits of this case. In terms of the merits of the Parent and Student's claims, the Board asserts that it conducted an appropriate evaluation of the Student in November 2001 and found no evidence of any specific learning disability. The findings of fact are made for purposes of deciding the Motion to Dismiss and the substantive issue raised in this hearing.

FINDINGS OF FACT:

1. The Student (date of birth 11/26/80), also referred to herein as R., is currently 23 years of age. Testimony of Mother; Exhibits B-1 and B-2.

2. R. currently resides in the town of Monroe with her boyfriend and his father. Testimony of Student.

3. Regional School No. 14 is comprised of the towns of Woodbury and Bethlehem. Exhibits B-2 through B-5.

4. The Parent has been a resident of the town of Woodbury at all times relevant to this case. Testimony of Mother and Board Exhibits.

5. R. has never been classified as eligible for special education services. No PPT meeting was ever held for R. Testimony of Mother and Board Exhibits.

6. R. entered kindergarten in September 1985 at Mitchell School in Woodbury. On September 17, 1985, R. was referred for misarticulation of certain final sounds, which was discovered during the preschool and kindergarten screening. Exhibit B-3. On October 3, 1985, a speech evaluation was recommended and the Parent's consent was requested. Id. The Parent did not consent to the evaluation, but instead withdrew R. from school. Testimony of Mother and Exhibit B-4.

7. On December 3, 1987, the principal of Mitchell Elementary School sent a certified letter to the Parent regarding R.'s absence from school and inquiring whether R. was being home schooled. He requested that the Parent meet with him and the Superintendent to discuss the state statutes and regulations concerning home instruction. Exhibits B-5 and B-6.

8. A telephone conversation took place on December 14, 1987 and a meeting was held on December 15. There was correspondence from both the Board and the Parent regarding the need for the Student to be presented for testing and for a hearing before the Board to determine the equivalence of her home program. Exhibits B-7 through B-12.

9. Because R. had not returned to school after she reached the mandatory school attendance age of seven, the Board's director of special services sent a notice on January 20, 1988 to the Department of Children and Youth Services ("DCYS"). Exhibit B-13.

10. Between January and July 1988 letters were sent to and from the Parent, DCYS and the State Department of Education (SDE) regarding the home curriculum, the Parent's resistance to testing the Student and the efforts to agree on a qualified third party to test the Student. Exhibits B-14 through B- 36.

11. On August 16, 1988, the Superintendent sent a certified letter to the Parent advising her that the Board, at its August 15 meeting, rejected her claim of providing "equivalent home instruction" because of the lack of any evaluation of the Student's academic progress. Copies of the letter were sent to DCYS, SDE, school officials and the Board's attorney. Exhibit B-37.

12. On August 16, 1988, the Superintendent wrote to DCYS requesting an investigation and assistance regarding the possibility of educational neglect. Exhibit B-38. On that date, the Superintendent also wrote to SDE requesting its assistance in the matter. Exhibit B-39.

13. In September 1988 the Parent enrolled R. in grade 3 at Mitchell School. Testimony of Mother and Exhibit B-41.

14. On December 9, 1988, the Parent called the school and stated that R. would be receiving home instruction until further notice. R. did not return to school thereafter. The principal wrote to the Parent on January 3, 1989 and expressed his disapproval and concern. He stated that R. was reading at a first grade level although chronologically a third grade student. The school had recommended small group instruction to improve R.'s reading. No special education referral was made, nor was any requested by the Parent. Exhibit B-42.

15. More correspondence ensued regarding the home instruction and the state requirement of equivalency. Exhibits B-43 through B-47.

16. The classroom teacher, Mrs. Lois Rycroft was able to test the Student's reading skills in March 1989. She reported to the Parent that R. scored 81 out of a possible 83 on the Ginn Level 5 Reading Test (98%). R. had perfect scores in comprehension and vocabulary. Mrs. Rycroft wrote that she thought the Student was making good progress in her home schooling. She offered the Parent assistance with the home program. Exhibit B-48.

17. In September 1989 the school principal attempted to have the Student brought to school for the Conn. Mastery Test. R. did not take the test. Exhibits B-52 through B-55.

18. An Informal Reading Inventory was administered to R. on December 20, 1989, apparently because the Board's approval of the home instruction program was conditioned upon an evaluation. Exhibits B-61 and B-62.

19. On November 19, 1990, DCYS notified the Board's director of special services that as a result of his referral on November 13, the family would receive ongoing services from DCYS. Exhibit B-64.

20. On January 14, 1991, R.'s scores on the Metropolitan Achievement Test, 6th edition, were reported to the Superintendent. Exhibit B-65.

21. R. continued in home schooling until June 1998 when her peers graduated from Nonnewaug High School. Testimony of Student and Mother. The Student did not graduate and has not received any further instruction since then. Id.

22. R. went to work sometime in November 1998 at a health club in Newtown. She met a man at work whom she began dating in or about March 1999. She began to stay at his home in Monroe on occasional weekends beginning in April and May 1999. She did not move her belongings there in 1999. Her mother's testimony in that regard was incorrect. At the end of 2001 R. filed a change of address with the Woodbury post office to the Monroe home of her boyfriend. Her relocation there was a gradual one between April 1999 and December 2001. Testimony of the Student.

23. R. has worked in several different jobs since 1999, including a health food store and driving an ice cream truck. She has had periods where she was unemployed. She had difficulties doing paperwork (purchase orders) at the health food store. She asked her Mother to obtain services for her from Region 14. Id.

24. On May 21, 2001, the Parent wrote to the Board's director of special services requesting that R. be permitted to attend summer school. The Parent notified the Board for the first time that while in her junior year of high school, R. complained of symptoms of dyslexia. Testimony of Mother and Exhibit B-71.

25. R. did not attend summer school. Testimony of the Student.

26. On November 2, 2001, R. wrote to the director of special services and requested testing for dyslexia. Her return address was listed at the home of the Parent in Woodbury. Exhibit B-72.

27. On November 15, 2001, R. signed a consent for an initial evaluation, specifically for the Wechsler Adult Intelligence Scale—Third Edition (WAIS-III) and the Wechsler Individual Achievement Test--Second Edition (WIAT-II) tests for cognitive and academic functioning to be performed by a school psychologist. Exhibit B-73.

28. On November 22, 2001, R. signed a consent form permitting the Board to discuss the test results with her mother. Exhibit B-74.

29. The evaluation was conducted by Maruta Jancis, school psychologist. The report is dated November 20, 2001. The tests were administered on November 15, 2001. Ms. Jancis reported that R. and her mother reported concerns about “information processing and learning style. They question possible ‘dyslexia’ after reading about this condition. R[.] reports that she misinterprets information, has some difficulty expressing herself clearly, and tends to make reversals and other errors when transcribing material (e.g. on purchase orders at work).” Ms. Jancis searched R.’s school records and found no previous test results, such as CMT. Exhibit B-75. Ms. Jancis retired in 2002 prior to the Board’s hiring Christopher Quirk in August 2002. Testimony of Mr. Quirk.

30. The tests administered to R. are the most up-to-date editions of the tests and are age appropriate for adults 20 and older. The tests are the most appropriate means of assessing whether an individual has a learning disorder. Id. R. was given all 12 subtests of the WAIS-III, which provides a full scale IQ, and the reading and language arts subtests of the WIAT-II. The math subtests were not given since R. said she had no problems in that area. Exhibit B-75.

31. The results for R. indicate that she has a full scale IQ of 119, which is in the high average range. Her verbal IQ was 118 and her performance IQ was 116. On the WIAT, R. achieved a score of 120 on word reading (decoding), 133 on reading comprehension, 118 on pseudoword decoding and 100 on spelling. The average scores range from 90-110. Her scores show R. in the superior range on reading comprehension. No indications of deficits in language processing or reading were shown. Spelling was a relative weakness, but still in the average range for her age. Id. If R. had a reading disability, it would have shown up in low scores on the WAIS. There were no discrepancies between the tests, which would indicate a possible learning disorder. There was no doubt that the Student was ineligible for special education and no need for any further testing. Testimony of Mr. Quirk.

32. On December 20, 2001, the Parent wrote to the director of special education for the Board and requested a PPT meeting. Exhibit B-76.

33. On January 4, 2002, the director of special services wrote to the Parent declining to schedule a PPT meeting for three reasons: R. lives in another district, the evaluation done was a courtesy and R. was over the age of 21. Exhibit B-77.

34. On February 20, 2002, R. sent a request for her educational records to the special education director. The address shown was her mother’s address in Woodbury. Exhibit B-78.

35. On January 28, 2003, the Parent sent a letter to the special education director requesting the completion of the evaluation started in November 2001. Exhibit B-80.

36. On November 14, 2003, R. sent a letter to the Superintendent requesting an independent evaluation paid for by the Board. She and her mother also sent a letter to

SDE requesting a due process hearing based on denial of testing for learning disabilities. Exhibits B-81 and HO-1.

37. There is no test, other than those administered in November 2001, which would show that R. has a learning disability. Dyslexia is not a term used in special education. The term is not specific enough. The tests results for R. show that she does not have any learning disability and there would be no reason for referral to a PPT. Testimony of Mr. Quirk.

38. The Student presented as a very attractive, intelligent young woman. She testified that she was shocked by her test results and surprised that they (Board staff) said she was smart. She thought she was stupid. Testimony of Student.

CONCLUSIONS OF LAW

1. The jurisdiction for this hearing is provided by Conn. Gen. Stats., Section 10-76h(a)(1), which provides in relevant part:

A parent or guardian of a child requiring special education and related services pursuant to sections 10-76a to 10-76g, inclusive, a pupil if such pupil is an emancipated minor or eighteen years of age or older requiring such services . . . may request, in writing, a hearing of the local or regional board of education or the unified school district 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. . . .

“ ‘Child’ means any person under twenty-one years of age.” Section 10-76a(2).

2. In this case the Student was under twenty-one years of age and had not graduated from high school at the time she requested testing for dyslexia, which under the above statutes would have given her less than one month of eligibility. Section 10-76d(b)(1). “. . . The obligation of the school district under this subsection shall terminate when such child is graduated from high school or reaches age twenty-one, whichever occurs first.”

3. The Board is responsible for identification of children requiring special education. Conn. Gen. Stats., Section 10-76d(a)(1). Conn. State Regs. Section 10-76d-6 provides in relevant part: “Each board of education is responsible for the identification of children requiring special education and related services. . . .” After the age of 18, a student who has not graduated from high school has the right to establish eligibility for special education services prior to age 21 by seeking an evaluation from the school district. Section 10-76d-9 provides in relevant part: “Each child who has been referred and who may require special education and related services shall be evaluated in order to determine whether special education is required.” In this case the Student referred herself

for evaluation on November 2, 2001, 18 days before her 21st birthday. At that time she was a resident of Woodbury, which is within Regional District No. 14.

4. The Parent requested a PPT meeting on December 20, 2001. Section 10-76d-10 provides in relevant part: “. . . The planning and placement team shall be responsible for the following. (a) Evaluation on referral. Conducting an evaluation, as set forth in section 10-76d-9 of these regulations, of every child who has been referred and who may require special education and related services. . . .” The Student was over the age of 21 at that time. The Board’s refusal to schedule a PPT meeting in December 2001 did not deny the Student due process. See Mrs. C. v. Wheaton, 916 F.2d 69, 71-73 (2d Cir. 1990).

5. Nearly two years later on November 14, 2003, the Student sent a letter stating her disagreement with the November 2001 evaluation and requesting an independent evaluation at public expense. Section 10-76d-9(c)(2) provides in relevant part: “Parents have the right to an independent evaluation at public expense if the parents disagree with an evaluation obtained by the board of education.” The Student was not a resident of Woodbury in 2003 and was not a “child” covered by the statutes and regulations since she was 23 years of age. Smith v. Special School District No. 1, 184 F.3d 764 (8th Cir. 1999). The Student is not entitled to an independent evaluation at public expense.

6. The claim for compensatory education must fail. The Student was never found eligible for special education and related services. The request for an evaluation to determine eligibility came only days before the Student turned 21. The Parent’s claim that the Board should have determined eligibility in kindergarten or third grade is unavailing. First, the Parent declined to consent to any testing, such as the CMT, which is administered to all children. Second, she withdrew the Student from school and chose to home school the Student, as was her right under Conn. Gen. Stats., Section 10-184. IDEA protects students who are placed in public or private schools. 20 U.S.C. Section 1412(1), (10). Third, the claim is time barred by the two-year statute of limitations. Conn. Gen. Stats., Section 10-76h(a)(3) and Conn. State Regs., Section 10-76h-4. Compensatory education is available for students over the age of 21 only in case of gross violations of the law by school districts. Mrs. C. v. Wheaton, supra; Garro v. State of Connecticut, 23 F.3d 734 (2d Cir. 1994); Fetto v. Sergi, 181 F. Supp.2d 53 (D.Conn. 2001); RM v. Vernon, 208 F. Supp.2d 216 (D. Conn. 2000); and State of Connecticut Unified School District No. 1 v. State Department of Education, 45 Conn. Supp. 57 (1997). There were no “gross” violations by the Board in this case. The evaluation conducted in November 2001 was appropriate and showed no evidence of a learning disorder. The Student was never eligible for special education during the relevant time period prior to age 21.

FINAL DECISION AND ORDER

1. The Hearing Officer has jurisdiction to determine residency of the Student for purposes of determining whether she is entitled to special education and related services provided by the Board.

2. The Student has not been a resident of the school district since December 2001.
3. The Student was home-schooled during her school years from 1985 to 1998 and was, therefore, not entitled to special education services from the Board.
4. The Board nevertheless conducted an appropriate evaluation of the Student to determine her eligibility for special education in November 2001 and found her to be ineligible. There is no basis for further evaluation of the Student.
5. The Student's request for an independent evaluation at public expense is denied.
6. The Student's request for compensatory education is denied.

COMMENT ON CONDUCT OF PROCEEDINGS

Pursuant to Conn. Gen. Stats., Section 10-76h(d)(1), the Hearing Officer offers the following comments. The Student, although not eligible for special education and related services, is encouraged to seek out programs available in her district such as adult education programs for the general equivalency diploma. See Conn. Gen. Stats., Section 10-5. As noted in Finding #38, the Student is an attractive and intelligent young woman. She can, as testified by Mr. Quirk, call her local district (Monroe) for assistance in pursuing available services.