STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Newington Board of Education

Appearing on behalf of the Student:	Parent, Pro Se
Appearing on behalf of the Board:	Attorney Nicole A. Bernabo Sullivan, Schoen, Campane & Connon, LLC 646 Prospect Avenue Hartford, CT 06105-4286
Appearing before:	Attorney Christine B. Spak Hearing Officer

ISSUES:

1. Whether procedural violations occurred for the 2003-2004 school year including inappropriate scheduling of PPT without parents, and student; and continual harassment;
2. Whether the Board failed to provide a free appropriate public education including: inappropriate credit status and lack of cultural diversity.
3. Whether a psychiatric evaluation was inappropriate (raised during the pre-hearing conference).

SUMMARY:

The parties were previously involved in a due process hearing which proceeded over eleven scheduled days and concluded in a Final Decision on October 30, 2003. Connecticut State Department of Education Decision No. 03-219. This request for due process was filed on December 23, 2003. On January 8, 2004, the Board filed a motion to dismiss this case in its entirety as a result of the decision and orders issued in Case No. 03-219. The hearing officer held her decision in abeyance regarding the Board's motion to dismiss and heard evidence regarding the scheduling of PPT meetings after Case No. 03-219 was issued, and the psychiatric evaluation. The Board submitted a written brief regarding its proposed findings of fact and conclusions of law by the deadline selected by the Parent. The Parent did not submit anything after the date of hearing.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v.*

S&H Computer Systems, Inc., 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student turned eighteen years old on or about January 8, 2004. The Student did not appear at the hearing or otherwise participate in the hearing. Although the Parent submitted a letter signed by the Student stating that her mother represents her interests in this matter. The letter was not notarized, was not witnessed by an impartial party, and was not signed under oath. Exhibit P-1

2. The Student was first identified as eligible for special education and related services in May of 2003. She was identified as Emotionally Disturbed. Exhibit B-78 At that time it was agreed that the Student would be in a diagnostic-type placement so that the information regarding the Student's learning styles could be observed for purposes of making IEP recommendations. B-69 Since that time, the Student has not participated in her educational program on a consistent basis in order for the PPT to make appropriate educational recommendations. Testimony of Dr. Hartranft

3. The Board had been seeking a psychiatric evaluation of the Student for several months. Testimony of Dr. Hartranft . The Hearing Officer in Case No. 03-219 ordered such an evaluation as a result of the Board's request. See Case No. 03-219, Conclusions 60, 25-28 and Order 9. The Parent testified that the Student has refused to see Dr. Black to begin the psychiatric evaluation. A psychiatric consult report was written by Dr. Black based on his conversations with the mother, Board staff and a letter written by the Student. Exhibit B-99

4. The Parent contends that the psychiatric evaluative report is not adequate, yet she testified at the hearing that the Student has not seen Dr. Black and is refusing to do so. She also claims that the Student was sick for several weeks after the hearing officer decision was issued and couldn't participate in the psychiatric evaluation. The Board made reasonable efforts to schedule the psychiatric evaluation at a mutually convenient time to no avail. Exhibit B-96; Testimony of Dr. Hartranft; testimony of Parent.

5. Given that the Student has not agreed to participate in the psychiatric evaluation over an extended period of time (since on or about August 2003), and given the lack of any supporting evidence at hearing (such as a letter from a doctor) the Parent's testimony is not credible regarding the reasons for the Student's lack of participation during the months of November and December 2003. Furthermore, the Parent and the Student failed to sign the Board-requested Releases. Exhibit B-93

6. The stay put placement ordered by the hearing officer in the previous hearing was the Learning Incentives (LI) program in West Hartford, Connecticut. See Case No. 03-219. The Student rarely attended LI. Exhibit B-104 She did not earn any

credits while she was placed at LI because of her excessive absences. Exhibit B-110

7. On November 14, 2003, State Department of Education Consultant Thomas Badway wrote to the Board's attorney, Nicole Bernabo, seeking information regarding the implementation of the hearing officer's orders in Case No. 03-219. Exhibit B-97 Attorney Bernabo replied that the Board was attempting to set up the psychiatric evaluation and a planning and placement team meeting consistent with the hearing officer's orders. Exhibit B-98

8. Dr. Hartranft made a number of attempts to arrange for the psychiatric evaluation and PPT meetings. She felt that a PPT meeting was needed so that the Student's IEP could be updated given the new information from Dr. Black after his testimony at the hearing. The Parent refused to participate in the PPT meeting on December 3, 2003 which was finally scheduled after telephone calls that were placed by Dr. Hartranft to secure a mutually convenient date for the meeting were unsuccessful. On the morning of the PPT, the Parent called Dr. Hartranft requesting that the PPT be cancelled because she could not attend. The Parent acknowledged that the PPT invited her to participate by telephone if she could not be physically present at the meeting but that she declined for reason of being too ill to participate even by telephone. The Parent did however contact the State Department of Education consultant John Purdy by telephone on the day of the PPT to complain about the PPT going forward without her input. The Parent did not participate in the PPT by telephone and she did not attend the meeting. Testimony of Dr. Hartranft; testimony of Parent.

9. Based on the information available to the PPT at the December 3, 2003 meeting, the recommended educational placement for the Student was Newington High School. Exhibit B-100 See Case No. 03-219, Conclusion 19, pp.22-23. The IEP developed by school staff included the recommendations of Dr. Black. Exhibit B-99.

10. The Student was forwarded information regarding the special education process and her individual rights. Exhibit B-113

11. The Parent requested another PPT after December 3, 2003. A PPT was therefore scheduled on January 9, 2004. Exhibit B-112

12. The Student was disenrolled from the Newington Public Schools on January 7, 2004. Exhibits B-111-112 The Student and the Parent never appeared for the PPT on January 9, and therefore, the meeting was cancelled. Testimony of Dr. Hartranft.

CONCLUSIONS OF LAW

1. There is no dispute that the student is entitled to special education and related services pursuant to 20 U.S.C. §1400 et. seq., the Individuals with Disabilities Education Act ("IDEA"), 34 C.F.R Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).

   The Act defines FAPE as special education and related services which:

   "(A) have been provided at public expense, under public supervision and direction, and without charge;

   (B) meet the standards of the State educational agency;

   (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

   (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. Section 1401(8).

2. "Special education" means
   "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including –
   (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
   (B) instruction in physical education." 20 U.S.C. Section 1401(25)

3. "Related services" are defined as "transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children." 20 U.S.C. Section 1401(22).

4. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al. v. Rowley,* 458 U.S. 176 (1982), 102 S.Ct.3034. The first prong is determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program

developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.

5. In examining the record it is concluded that the Board complied with the procedural safeguards set out in the IDEA. The Board has attempted to satisfy what the IDEA requires for school districts, but has been confronted with repeated roadblocks by the Parent along the way.

6. Procedural claims made by the Parent include the failure to allow her to participate in the PPT process, and harassment in that notices were hand delivered to her home. Both these claims fail. The Board has sustained its burden of proof in explaining the myriad of reasonable attempts that were made to include the Parent and Student in the process. The history of this case reveals that the Parent thwarted the Board's ability to assist the Student including a refusal to allow the Board to speak with the Student and prohibiting the Student from communicating with school staff [B-66]; enrolling the Student in another school; intervening with the numerous tutorial proposals – homebound and at the Learning Incentives, refusing to allow the Board to speak with the Student's therapists [B-85], denying the PPT the opportunity to review the complete psychiatric evaluation; and refusing to allow the Student to undergo a psychiatric evaluation [B-99]. In contrast, the Board has included the Parent to a point where the Parent's communications continuously interfered with the PPT productivity. See Case No. 03-219, conclusion 8, pp.20-21. The Parent claims that she was ill for weeks and was not able to participate in the PPT on December 3, 2003, yet she provided no proof of this extended illness at hearing; further, the Parent was afforded the opportunity to participate in the December 3, 2003 PPT by telephone and refused for reason that she was too ill. Yet on the very same morning of the PPT when she testified she was too ill to participate by phone, she was able to call the State Department of Education to complain about the Board. The Board acted in a reasonable and responsible manner in scheduling the PPT. There is not a scintilla of evidence of harassment. It is more likely that the Parent made a concerted choice not to participate and the Board cannot be faulted for going forward with the PPT at that time, especially since the Student was not attending LI and a review of the IEP was due given the stay put status of the placement during the pendency of the previous hearing. Furthermore, inquiries had been made by the State Department of Education regarding the status of the implementation of the hearing officer's order in Case No. 03-219. See Exhibits 97 and 98. The Board was between the proverbial rock and a hard place. If they failed to conduct a PPT they risked accusations of dilatory behavior and when they did conduct a PPT they were accused of harassment. The Board was required to act in a timely manner, given the circumstances of the case, with regard to the Student's educational placement and program after the prior hearing officer issued her decision in the prior due process matter. Accordingly, the Board's action in going ahead with the December 3, 2003 PPT is found to be appropriate.

7. The purpose of the IDEA was to "open the door of public education to [disabled] children on appropriate terms [, not to] guarantee any particular level of education once inside." *Board of Educ. v. Rowley*, 458 U.S. 192. "If personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free, appropriate public education" as defined by the Act." Id. at 3041 The law does not require that a school district provide an educational program to maximize a student's educational potential. Id. at 3046. Rather, the individualized educational program should be "reasonably calculated to enable the child to receive educational benefits[.]" Id. at 3051. The *Rowley* Court interpreted IDEA as requiring a "basic floor of opportunity," so that the goal of IDEA is not to maximize a special education child's potential, but rather to provide access to public education for such children. *K.P. v.* Juzwic, 891 F. Supp 703, 718 (D. Conn. 1995), citing, Rowley, supra, at 200-201. The IDEA "does not [require the Board to provide] the best education money can buy. . . ." *Lunceford v. District of Columbia Board of Educ.,* 745 F.2d 1577, 1583 (D.C. Cir. 1984) (Ruth Bader Ginsburg, J.); or to provide an education "that might be thought desirable by 'loving parents.'" *Tucker v. Bay Shore Union Free Sch. Dist.,* 873 F.2d 563, 567 (2d Cir. 1989); see also *Kerkam v. McKenzie,* 862 F.2d 884, 886 (D.C. Cir. 1988) ("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act").

8. While boards of education do not have the responsibility to provide the best education that money can buy, the benefit to be conferred under the IDEA requires more than a trivial educational benefit. *Polk v. Central Susquehanna,* 853 F.2d 171,180 (3d. Cir. 1988). The Third Circuit Court noted that the *Rowley* Court relied upon the legislature's intent in passing the IDEA to enable children with disabilities "to achieve a reasonable degree of self-sufficiency." *Id.* at 182.

> (W)e infer that the emphasis on self-sufficiency indicates in some respect the quantum of benefits the legislators anticipated: they must have envisioned that significant learning would transpire in the special education classroom—enough so that citizens who would otherwise become burdens on the state would be transformed into productive members of society. Therefore, the heavy emphasis on self-sufficiency as one goal of education, where possible suggests that the benefit conferred by the EHA and interpreted by Rowley must be more than de minimis. *Id*. at 182.

9. The PPT appropriately incorporated into the IEP the recommendations of Dr. Black, Exhibit B-99, goals and objectives that were recommended by Cynthia Cordes from the Learning Incentives program and the Student's program was reasonably calculated to enable her with educational benefits. No expert testified on behalf of

the Parent at all, and it therefore follows that there was no expert testimony stating that the Student's IEP was procedurally flawed.

10. The claims that the credits of the Student are not appropriate were not supported by any evidence indicating that such credits should be awarded. This issue was dealt with at length in the previous, and recent, Memorandum of Decision. See Case No. 03-219, Finding 64; Conclusion 18, p.22. The hearing officer's previous findings and conclusions on this issue are therefore incorporated herein, and to address these issues again would be *res judicata*. The Parent's claims regarding a denial of FAPE for the 2003-04 school year find no support in the facts of the instant case.

FINAL DECISION AND ORDER:

1. No significant procedural violations occurred for the 2003-2004 school year. The PPTs were scheduled in an appropriate manner and there was no harassment.

2. There was no denial of FAPE.

3. The psychiatric evaluation was appropriate given the limitations created by the Parent.