

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education A/Board of Education B

Appearing on behalf of the Parent:	Parent, <i>Pro se</i>
Appearing on behalf of the Board A:	Attorney Marsha Belman Moses Bercham, Moses & Devlin, P.C. 75 Broad Street Milford, CT 06460
Appearing on behalf of the Board B:	Attorney Andreana R. Bellach Shipman & Goodwin, LLP 300 Atlantic Avenue Stamford, CT 06901-3522
Appearing before:	Attorney Mary H.B. Gelfman Hearing Officer

PARTIAL FINAL DECISION AND ORDER

ISSUES:

1. Was the March 30, 2007, Magnet School Planning and Placement Team (PPT) decision, that Student's misbehavior was not related to his disability, correct? (Parent's original issue March 29, 2007.)
2. Shall the Board of Education B be joined as a party to this hearing? (Added by Hearing Officer at the first pre-hearing conference on April 16, 2007, after Board A's objection that Board B employees constituted the PPT meeting in question, with Board A representative present by telephone.)
3. Does the Student require a psychiatric evaluation at Board expense? (Issue added by the Boards of Education May 11, 2007.)
4. Does the Student require an interim placement pending the completion of the evaluation? (Issue added by the Boards of Education May 11, 2007.)

Issues added by Parent May 16, 2007, and deferred to the June 6, 2007, hearing session:

5. Did the Magnet School violate the Individuals with Disabilities Education Act (IDEA) by not completely and exactly implementing Norwalk's 2006 Individualized Education Program (IEP)?
6. Did the addition of security staff to monitor Student's behavior constitute a change in Student's IEP without a PPT meeting, a violation of IDEA?
7. Are Boards of Education required to produce school records requested by parents within five days?
8. Was the Magnet School required to provide written documentation of the manifestation determination to Parent?
9. When Student violates a school rule, is his special education teacher required to participate in any disciplinary action?
10. Was the Magnet School negligent in providing Student's education, given his test scores and academic failure?

PROCEDURAL HISTORY:

This hearing was requested as an expedited hearing on April 2, 2007. At a pre-hearing conference by conference telephone call on April 16, 2007 with Parent and Board A's representative, it was established that although Student was a resident of Board A, he was attending a magnet school in Board B. The Magnet School had initiated expulsion proceedings and had held a PPT meeting (with Board A represented by telephone) that found Student's misbehavior was not related to his disability. The hearing was requested to challenge that decision.

The Hearing Officer determined that a decision would be due on May 17, 2007 (thirty school days after the request for hearing) and also found that the Board of Education B was a necessary party to this hearing. Board B responded to the order of joinder, mooting the second issue. Parent reported difficulty in obtaining legal counsel, and Connecticut Legal Services was suggested.

At a second pre-hearing conference held on April 24, 2007, in which Parent and both Board A and Board B participated, the hearing was set for May 7, 2007. It was agreed that mediation by the State Department of Education might resolve the issues in dispute, and the parties agreed to request mediation. When mediation was scheduled for May 10, 2007, the hearing was deferred. Mediation was not successful.

The Hearing Officer attempted to re-schedule the hearing. Although Parent responded on May 14 that she could be available on May 15, neither Board Attorney responded concerning that date. Parent stated that because of job commitments she was not

available the weeks of May 21 and 28 and June 4, 2007. The Hearing Officer scheduled the hearing for June 11, 2007.

Because the hearing was still technically “expedited” and both Board Attorneys had expressed concern about delays, the Hearing Officer urged Parent to consider an earlier date for the hearing, and offered several dates. When Parent discovered a conflict with June 11, she agreed to holding the hearing on May 24 and June 6, 2007, also requesting that the hearing be limited to afternoon hours. Both Board Attorneys agreed to those dates.

On May 17, 2007, the Boards filed a joint motion requesting an immediate order for a psychiatric evaluation of Student and an interim placement at High Roads, “... [a State Department of Education] approved special education therapeutic program ...”. Parent responded in opposition to the evaluation and the interim placement on May 25, 2007.

The hearing convened on May 24, 2007. Stamford reported that they have been trying to re-convene the manifestation determination PPT, with a likely agenda of reversing the manifestation determination (acknowledging that Student’s misbehavior was related to his disabilities) and discussion of a psychiatric evaluation and an interim placement: this proposed action would moot the first issue. The Hearing Officer heard testimony and argument concerning the third and fourth issues.

All motions and objections not previously ruled upon, if any, are hereby overruled.

SUMMARY:

Parent believes that if the Magnet School had properly implemented the May 2006 Board A IEP, there would have been no problems and that therefore the Magnet School’s educational program was defective. Board A and Board B believe that Parent’s reluctance to allow psychological and psychiatric evaluations and implementation of behavior plans over several years has limited their ability to devise an appropriate special education program for Student. At this point, the two Boards of Education are concerned about the risk Student poses for harming himself or others.

This Partial Final Decision and Order sets forth the Hearing Officer’s summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the procedural history, summary, and 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 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. §1232g, and related regulations at 34 CFR §99, and at 34 CFR §§300.123, 300.229, 300.501(a), and 300.610 through

300.627, the following decision uses “Student”, “Magnet School”, “Parent”, and titles of school staff members and other witnesses in place of names and other personally identifiable information.

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student is a fifteen-year old young man (birth date July 9, 1991) who was identified as in need of special education in another state. When he moved to Board A, Parent did not reveal his special education history. He was referred for special education in 2002, and with a diagnosis of Attention Deficit Hyperactivity Disorder, he was classified as Other Health Impaired and received Resource Room support. (Exhibits B-4, B-5, B-11, B-13, B-15, B-21, B-30, B-40)
2. His behavior deteriorated, with many reported incidents of class disruption by his loud and offensive remarks. He wandered in and out of class, and rejected many efforts by school staff members. Eventually, his special education category was changed from OHI to Emotionally Disturbed. (Exhibits B-22, B-36, B-125)
3. Frequent PPT meetings were held, and Parent participated in all of them. Board A’s requests for psychological and psychiatric evaluations were rejected by Parent, although she did consent to School Social Work services. The record shows a school psychological evaluation in 5th grade, a social work summary in 5th grade, a psychiatric consultation in 6th grade, a social work report in 7th grade, a school psychological evaluation in 8th grade and a social work history in 9th grade. (Exhibits B-40, B-47, B-56, B-61, B-65, B-72, B-84, B-86, B-124, B-132, B-134, B-150, B-152, B-161, B-172)
4. Proposed behavior plans were also rejected by Parent, and a Functional Behavior Assessment was performed on November 20, 2003 (Student was in 6th grade) after Student had handed over a small pocket knife to his teacher. (Exhibits B-38, B-57, B-60, B-68, B-80, B-115, B-150, B-164)
5. Several PPT meetings recommended placement in therapeutic programs, which Parent also rejected. (Exhibits B-96, B-105, B-109)
6. Student’s family moved within Board A and his eighth grade year was at a different Middle School. This year he appeared to make more progress, and Parent referred to this placement as satisfactory. (Exhibits B-129, B-132, B-135, B-146, B-149; Testimony, Parent)
7. At an annual review PPT meeting held on May 2, 2006, Student’s present levels of educational performance were recorded:

Health & Development: Diagnosed with ADHD. Concerns/needs, ADHD behaviors.

Academic/Cognitive: strengths, reading, spelling, written expression, computer and hands-on activities. Concerns/needs, math skills.

Social/Emotional/Behavioral: Achenbach scales: acting-out behaviors have declined significantly. Concerns re anxiety, tension, impulsivity & occasional oppositional behavior. Strengths: substantial improvement in overall behavior. Concerns/needs: impulsivity, anxiety/tension, verbal aggression, oppositional (occasionally).

Motor skills: strengths, electronic and mechanical skills.

Communication: excellent verbal skills. (Exhibit B-145 p.4)

8. Goals and objectives were listed in the May 2, 2006, IEP:

- [Student] will improve his behavior in the school setting by achieving the following objectives:
 - The student will maintain self-control when faced with failure, frustration or disappointment.
 - The student will express self verbally in manner appropriate to a particular situation.
 - The student will use language in accordance with school and class rules.
 - The student will respond to staff using appropriate language.
- [Student] will improve reading skills as evidenced by the following objectives:
 - The student will use context clues to determine the meaning of unknown words.
 - The student will demonstrate comprehension by writing or orally retelling a summary that presents the key points.
 - The student will read high frequency words fluently when reading passages from a variety of texts.
 - The student will identify and use main ideas and supporting details when reading informational texts as a strategy for comprehending information.
- [Student] will improve math skills as evidenced by the following objectives:
 - The student will identify patterns presented in word problems to solve the problems.
 - The student will identify angles as acute, right or obtuse and draw an angle of specific size using a variety of tools.
 - The student will find the perimeter of a basic geometric figure by measuring and adding.
- To begin to explore career/vocational interests.
 - The student will select classes that provide some information about career/vocational interests.
 - The student will obtain passing grades in his classes, securing credits towards high school graduation. (Exhibit B-145, pp. 6-9)

9. The May 2, 2006, IEP specified that Student would received twelve hours per week of co-taught English, math, and social studies, and one half hour a week of social work services during the 2006-2007 school year. (Exhibit B-145 pp. 1, 11)

10. Student's 8th grade report card showed final grades of A in Language Arts ER; B in Health; B- in Math ER and Science ER; C+ in Language Arts Modified and Computer; C in Family and Consumer Science and Art; C- in Social Studies Modified; D- in Physical Education; and F in Technology Education. (Exhibit B-146)

11. Student applied for admission to the Magnet School operated by the Board B of Education. Admission is by a blind lottery, and Student was accepted. (Testimony, Parent)

12. There is no record or testimony in evidence that Board A held a PPT meeting and invited Magnet School staff to participate prior to Student's actual enrollment, as Parent requested.

13. The Board A May 2, 2007, IEP and the December, 2005, report of a school psychological evaluation were provided to the Magnet School. The Magnet School School Psychologist and Special Education Teacher testified that this was a very limited amount of information to receive about incoming students, although they were unaware of any attempts to secure more records from Board A or Parent. (Testimony, Magnet School School Psychologist, Magnet School Special Education Teacher)

14. The Magnet School is described as follows in the Connecticut State Department of Education publication, *Public School Choice in Connecticut: A Guide for Students and Their Families 2006-2007*:

The Magnet School is a Board B interdistrict magnet high school attracting students interested in the integration of information technology in academic and elective courses. The Magnet School provides students with a college preparatory academic environment in which essential information technology and communication skills, knowledge and understandings are emphasized. The technology focus, built around a core elective program of information technology and pre-engineering courses, is not just for those students with particular interests in these fields. The emphasis on technology represents a strategy for making lifelong learners out of our students. All core content courses are taught at the college preparatory level, and there is a full compliment of honors and Advanced Placement courses.

15. Almost immediately, Student began to have difficulties. His loud and offensive remarks and confrontations with school staff interfered with his learning and with that of classmates. He threatened to injure or kill several individuals. He was suspended twice and there were many contacts with Parent. (Attachments 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23 and 24 to Boards' Motion of May 17, 2007)

16. The Magnet School produced examples of writing and drawing alleged to have been produced by Student, who had either agreed to his authorship or not denied it. These works contained racial slurs, thoughts and images of violent death, and threats to individuals. Parent denied Student's authorship. (Attachments 18 and 19 to Boards'

Motion of May 17, 2007; Testimony, Parent, Magnet School Special Education Teacher, Magnet School Assistant Principal)

17. On January 19, 2007, Student took another student's bookbag and threw it into a trash can in the cafeteria. When asked by a security guard and a substitute teacher to retrieve the bookbag, Student refused and threatened to set the trash container on fire. For this, he was suspended for five school days. (Attachment 12 to Boards' Motion of May 17, 2007; Testimony, Magnet School Assistant Principal)

18. In a confrontation with an experienced school security guard, Student threatened to stab the guard. This threat was the basis for the Magnet School's initiation of expulsion proceedings, starting with a Manifestation Determination PPT meeting on April 2, 2007. This PPT held that Student's misbehavior was not a manifestation of his disabilities. (Attachments 16 and 17 to Boards' Motion of May 17, 2007)

19. On May 12, 2007, the Hearing Officer cautioned Parent concerning the Boards' rights if Student's behavior continued to deteriorate:

... raises the possibility that Student may again be suspended prior to the hearing. While the school must notify Parent of any removal of Student from a classroom or suspension from school, behavior that is a threat to Student's own safety or that of others overrides the Boards' obligations under IDEA to maintain "stay put".

On May 15, 2007, the Hearing Officer repeated her warning about Student's behavior and also commented:

While the Hearing Officer respects Parent's job responsibilities and her personal priorities, the message I am hearing from the two Boards of Education is that this student is in a crisis, and may be seen as a danger to himself or others. The school's responsibility to maintain a safe educational environment may require consideration of another suspension of up to ten school days (the legal maximum) and/or an immediate request for a hearing officer's order to place Student in an appropriate interim alternative educational setting. (Hearing Officer's Memoranda to the Parties, May 12 and 15, 2007)

20. When the hearing convened on May 24, 2007, Parent exercised her right to have Student present. Student was quiet throughout the proceedings, and did not testify. His special education teacher commented that it was difficult to answer some of the questions concerning his attitude and behavior with him present, but spoke candidly. (Observation of Hearing Officer)

21. Parent stated on the record of the hearing that the Boards' exhibits had been delivered late and therefore should not be admitted. (Argument, Parent)

22. The Magnet School Psychologist had met with Student from time to time, but had not formally observed or evaluated him. She expressed great concern about the risks Student presents of harm to himself or others. (Testimony, Magnet School School Psychologist)

23. Student's Magnet School Special Education Teacher has 32 years of experience as a special education teacher. She stated that he was respectful with her and tried to work in the [resource room], although his attendance was erratic. He frequently came to her room when he was having difficulties in another classroom, although the plan in his IEP was for him to go to the School Social Worker or School Psychologist, whose offices are nearby. She believed that he could learn the material with support. (Testimony, Magnet School Special Education Teacher)

24. The Magnet School Assistant Principal, who has eleven years of experience in education and three years as an assistant principal, had gotten to know Student because of his many referrals to the office on disciplinary matters. She is concerned about the safety of Student and others, and also the increasing disruption of classes by Student's outbursts. (Testimony, Magnet School Assistant Principal)

CONCLUSIONS OF LAW AND DISCUSSION:

1. Section 10-76(d), Connecticut General Statutes (CGS), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Section 4-181a of the CGS. Section 615(f)(1)(A) and 615(f)(3)(E), Individuals with Disabilities Education Improvement Act of 2004, also authorizes special education hearings.

2. Section 10-220(a)(3), CGS, requires each local or regional board of education to maintain a safe school setting.

3. Expedited hearings are defined at 34 CFR §300.532(c) and Section 10-76h-10, Regulations of Connecticut State Agencies (RCSA). As stated in the April 24, 2007, memorandum from the Hearing Officer after the first pre-hearing conference:

Because the Parent was trying to secure legal representation, the hearing was scheduled for May 7 with the decision due ten days later, May 17, 2007. The Hearing Officer extended the deadlines for an expedited hearing at the request of the Parent and considering that Student was back in school at the Magnet School as "stay put", pending the hearing.

4. The compressed time schedule for expedited hearings includes a deadline for exchange of documents two days prior to the hearing (Section 10-76h-10(e)(1), RCSA). The Boards' exhibits were timely received by Parent and properly entered on the record of the hearing on May 24, 2007.

5. The strict deadlines for an expedited hearing imposed by state and federal regulations are intended to serve special education students with disciplinary issues swiftly; however, 34 CFR §300.515(d) directs the hearing officer also to honor parents' convenience. Although the regulations do shorten the time limit for disclosures prior to the hearing, there is no mention in the Federal and State time-tables for motions by the parties to an expedited hearing. A further concern is the procedural confusion of "expedited" issues with "non-expedited" issues presented in this case. As provided at Section 10-76h-

8(f)(3), RCSA, the hearing officer has discretion in accepting additional issues and joining cases involving the same student. In the interest of efficiency, this hearing Officer is receptive to additional issues that are related to those issues already raised. The Hearing Officer also takes note of Section 10-76h-8(g), RCSA,:

Strict adherence to the formal motion practice shall not create unfair surprise or injustice. The Hearing Officer shall have the authority to waive any requirements in the interest of a fair and expedient resolution of the issues presented.

6. Section 10-76h(c)(3), CGS, Section 10-76h-13(e), RCSA, and 34 CFR §300.502(d) authorize an order for an evaluation by a special education hearing officer.

7. Another procedural problem has been raised by the minimal express statutory authority concerning special education students enrolled in magnet schools. Section 10-264l(h), C.G.S., provides:

In the case of a student identified as requiring special education, the school district in which the student resides shall: (1) Hold the planning and placement team meeting for such student and shall invite representatives from the interdistrict magnet school to participate in such meeting; and (2) pay the interdistrict magnet school an amount equal to the difference between the reasonable cost of educating such student and the sum of the amount received by the interdistrict magnet school for such student pursuant to subsection (c) of this section and amounts received from other state, federal, local or private sources calculated on a per pupil basis. If a student requiring special education attends an interdistrict magnet school on a full-time basis, such interdistrict magnet school shall be responsible for ensuring that such student receives the services mandated by the student's individualized education program, whether such services are provided by the interdistrict magnet school or by the school district in which the student resides.

The Connecticut Commissioner of Education's November 1, 2002, Circular Letter C-17 sets forth a variety of requirements for interdistrict magnet schools, including:

Special Education: All students are eligible to attend interdistrict magnet schools and the expectation is that all students will be included, regardless of any disability. Every effort must be made to accommodate and program for special education students. Only in the rare event that a student could not achieve satisfactorily even with the use of supplementary aids and services in the educational environment could it be found that placement in an interdistrict magnet school to be (sic) inappropriate.

Subsection (h) of 10-264l of the General Statutes requires the following: For students requiring special education services and attending an interdistrict magnet school, the school district in which the student resides shall: (1) hold the planning and placement team meeting and invite representatives from the interdistrict magnet school to participate in the meeting; and (2) pay the interdistrict magnet school an amount equal to the difference between the reasonable cost of educating the student and the sum of the amount received by the interdistrict magnet school for the student from all sources. Interdistrict magnet schools are responsible for ensuring that a special education student receives the services mandated by the

student's [IEP] whether these services are provided by the interdistrict magnet school or by the school district in which the student resides.

8. The assumption of the statute, that any and all special education students can and must be accommodated in interdistrict magnet schools when they are admitted through a blind lottery, is unrealistic. Some students are more difficult to accommodate than others, depending upon the nature and severity of their disability or combination of disabilities. Pursuant to Section 10-76d(d), CGS, local and regional boards of education may contract with other school districts, regional educational service centers, and private schools to provide services to special education students whom they are unable to accommodate appropriately. Such arrangements may only be made after a PPT meeting has established that it would be impossible to provide a free appropriate public education within the district, and has reviewed the requirements of least restrictive environment.

9. During the 2006-2007 school year, Student has been referred many times to Magnet School administration for insubordination, disruptive behavior, and threatening remarks heard by several staff members. While it is always possible that a psychiatric evaluation will rule out the potential danger to himself and others that concerns school staff, the evidence on the record in this case is sufficient to order such an evaluation over the objections of Parent. Failure to follow reasonable procedures to professionally assess the risks posed by individual students may be considered negligence in this time of publicized violence, injuries and even deaths in schools. Given that Dr. Gallo performed a prior evaluation, Dr. Ayers should be the first choice for evaluator.

10. Parent has opposed implementation of behavior plans for Student on several occasions. The Magnet School has a disciplinary program, described by Magnet School staff members on the record of the hearing that includes use of "behavior contracts" and a "think sheet" that students who have been referred for misbehavior may fill out. This program is the standard for all students. It is not clear from the record of the hearing whether a student with an individualized behavior plan is exempt from this system, or even whether all the staff members who may interact with a student involved in misbehavior are aware of individualized behavior plans. In Student's case, the Magnet School proposed a modified "think sheet", individualized to address the school's understanding of Student's behavior problems, and a behavior contract. Student agreed to the contract. When Parent learned about the contract and the think sheet, she objected. Students enrolled in a public school MUST either be accountable to the school's behavior code or have an individualized behavior plan. It is unrealistic to think that any student, whether eligible for special education or not, is exempt from reasonable standards of behavior while in school.

11. The Boards have requested an immediate interim placement in a therapeutic setting or as an alternative homebound tutoring. Parent requested "in-home" tutoring. While a therapeutic setting at this time could be helpful in serving as a diagnostic placement, there appears to be agreement that individual tutoring is an acceptable short-term alternative. This tutoring may be provided in Student's home or at a site to be identified by the Boards, with transportation to be provided. Tutoring shall continue until the

psychiatric evaluation is completed and discussed at a PPT meeting, and an IEP and placement are proposed for the 2007-2008 school year. Magnet School has already stated that it will hold a place for Student if the PPT finds AITE to be an appropriate placement.

12. While Hearing Officer respects Parent's loyalty to her son and her competent presentation of her case, her reluctance to allow communication among the various service providers, both school and private, has limited Board A and the Magnet School in trying to understand Student and to devise an educational program from which he will be able to derive benefit. Although Student did perform better and behave better in his eighth grade year, the reason(s) for that are not clear. It is troubling that Board A did not provide a "transition PPT meeting" prior to the beginning of the 2006-2007 school year and that Magnet School did not follow up on the very limited release of records from Norwalk prior to Student's enrollment. At (34 CFR §99.34(b), FERPA provides that school districts may transfer student records without specific parental consent to another school in which the student has enrolled

FINAL DECISION AND ORDER:

1. Because of Student's history of classroom outbursts and more recent threats of violence, the Boards' motion for an order for a psychiatric evaluation is reasonable and prudent. Such an order is GRANTED.
2. For the same reasons, the Boards are ORDERED to provide homebound tutoring sufficient to replicate Student's full program. If such tutoring cannot be provided in Student's home, a neutral site shall be selected by the Boards and transportation shall be provided.

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Parent:	Parent, <i>Pro se</i>
Appearing on behalf of Board A:	Attorney Marsha Belman Moses Bercham, Moses & Devlin, P.C. 75 Broad Street Milford, CT 06460
Appearing on behalf of Board B:	Attorney Andreana R. Bellach Shipman & Goodwin, LLP 300 Atlantic Avenue Stamford, CT 06901-3522
Appearing before:	Attorney Mary H.B. Gelfman Hearing Officer

PARTIAL FINAL DECISION AND ORDER

ISSUES:

(Note: the following decision addresses issues numbered five through ten, and should be read as completing the partial decision rendered on May 31, 2007.)

1. Was the March 30, 2007, Magnet School Planning and Placement Team (PPT) decision, that Student's misbehavior was not related to his disability, correct? (Parent's original issue March 29, 2007.)
2. Shall Board B, the school district for Magnet School, be joined as a party to this hearing?
(Added by Hearing Officer at the first pre-hearing conference on April 16, 2007, after Board A's objection that Board B's employees constituted the PPT meeting in question, with Board A representative present by telephone.)
3. Does the Student require a psychiatric evaluation at Board expense? (Issue added by the Boards A and B on May 11, 2007.)
4. Does the Student require an interim placement pending the completion of the evaluation? (Issue added by the Boards A and B on May 11, 2007.)

Issues added by Parent on May 16, 2007, and deferred to the June 6, 2007, hearing session:

5. Did the Magnet School violate the Individuals with Disabilities Education Act (IDEA) by not completely and exactly implementing Board A's May 2, 2006 Individualized Education Program (IEP)?
6. Did the addition of security staff at the Magnet School to monitor Student's behavior constitute a change in Student's IEP without a Planning and Placement Team (PPT) meeting, a violation of IDEA?
7. Are Boards of Education required to produce school records requested by parents within five days?
8. Was the Magnet School required to provide written documentation of the manifestation determination to Parent?
9. When Student violates a school rule, is his special education teacher required to participate in any disciplinary action?
10. Was the Magnet School negligent in providing Student's education, given his test scores and academic failure?

PROCEDURAL HISTORY:

(From the May 31, 2007, Partial Decision)

This hearing was requested as an expedited hearing on April 2, 2007. At a pre-hearing conference by conference telephone call on April 16, 2007 with Parent and Board A's representative, it was established that although Student was a resident of Board A's district, he was attending a Magnet School in Board B's jurisdiction. The Magnet School had initiated expulsion proceedings and had held a PPT meeting (with Board A represented by telephone) that found Student's misbehavior was not related to his disability. The hearing was originally requested to challenge that decision.

The Hearing Officer determined that a decision would be due on May 17, 2007 (thirty school days after the request for hearing) and also found that Board B was a necessary party to this hearing. Board B responded to an order of joinder, mooting the second issue. Parent reported difficulty in obtaining legal counsel, and Connecticut Legal Services was suggested.

At a second pre-hearing conference held on April 24, 2007, in which Parent and both Boards A and B participated, the hearing was set for May 7, 2007. It was agreed that mediation by the State Department of Education might resolve the issues in dispute, and

the parties agreed to request mediation. When mediation was scheduled for May 10, 2007, the hearing was deferred. Mediation did not resolve the dispute.

The Hearing Officer attempted to re-schedule the hearing. Although Parent responded on May 14 that she could be available on May 15, neither Board Attorney responded concerning that date. Parent stated that because of job commitments she was not available the weeks of May 21 and 28 and June 4, 2007. The Hearing Officer scheduled the hearing for June 11, 2007. Because the hearing was still technically “expedited” and both Board Attorneys had expressed concern about delays, the Hearing Officer urged Parent to consider an earlier date for the hearing, and offered several dates. When Parent discovered a conflict with June 11, she agreed to holding the hearing on May 24 and June 6, 2007, also requesting that the hearing be limited to afternoon hours. Both Board Attorneys agreed to those dates.

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The hearing convened on May 24, 2007. Board B reported that they have been trying to re-convene the manifestation determination (MD) PPT, with a likely agenda of reversing the manifestation determination (acknowledging that Student’s misbehavior was related to his disabilities) and discussion of a psychiatric evaluation and an interim placement: this proposed action would moot the first issue. The Hearing Officer heard testimony and argument concerning the third and fourth issues.

(Procedural History after the May 24, 2007, hearing session.)

On May 16, 2007, Parent had requested that additional issues be added for hearing. These issues (listed above as number five through ten) did not fall within the requirements for an “expedited hearing” as defined at 34 CFR § 300.532(c) and Section 10-76h-10, Regulations of Connecticut State Agencies (RCSA). (The Federal regulations cited in the Connecticut regulations were revised in 2006 to reflect amendment of the IDEA in 2004. Therefore, the Federal regulatory citations in this decision will be those published in the Federal Register on August 14, 2006.) The Boards’ issues concerning a psychiatric evaluation and an interim placement were closely related to the appeal of the manifestation determination, and were heard first in an effort to comply with the requirements for an expedited hearing. The Parent’s additional issues were scheduled to be heard later and the decision deadline for those issues was determined to be June 30, 2007.

Having extended the May 17, 2007, deadline for the decision by two weeks to May 31, 2007, the Hearing Officer issued a Partial Final Decision on May 31, 2007. A psychiatric evaluation for Student and an interim placement of tutoring were ordered.

When the hearing re-convened on June 6, 2007, the Boards of Education requested clarification of the tutoring order, which was discussed on the record. The Hearing Officer agreed to issue a clarification immediately that would include some agreements made in the discussion. After testimony from Student's private therapist, the Hearing Officer stated that she had enough on the record to respond to the six issues remaining, and closed the hearing.

The Parent presented one witness, the private therapist who has been treating Student since November 2005. The Boards presented three witnesses, a special education teacher, school psychologist, and assistant principal from Magnet School.

All motions and objections not previously ruled upon, if any, are hereby overruled.

SUMMARY:

Parent believes that if the Magnet School had properly implemented the May 2006 IEP as developed by Board A, there would have been no problems and that therefore the Magnet School's educational program was defective. Boards A and B believe that Parent's reluctance to allow psychological and psychiatric evaluations and implementation of behavior plans over several years has limited their ability to devise an appropriate special education program for Student. At this point, the two Boards of Education are concerned about the risk Student poses for harming himself or others.

This Partial Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the procedural history, summary, and 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 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. §1232g, and related regulations at 34 CFR §99, and at 34 CFR §§300.123, 300.229, 300.501(a), and 300.610 through 300.627, the following decision uses "Student", "Magnet School", "Parent", and titles of school staff members and other witnesses in place of names and other personally identifiable information.

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

(Findings of Fact from May 31, 2007, partial decision are incorporated herein by reference.)

1. A Planning and Placement Team (PPT) Annual Review meeting was held at Board A's middle school on May 2, 2006, toward the end of Student's eighth grade year. Student was identified as having an emotional disturbance. PPT recommendations were:

Parent invited, unable to attend, gave permission to proceed. [Student] has applied to [Magnet School] in [Board B's district] and plans on attending there in September, 2006. If [Student] attends [Board A's High School] the following special education services are recommended: Co-taught English, Math, Social Studies. Counseling Services. (Exhibit B-145 p. 1)

Prior written notice for this meeting listed implementation of the new IEP for September 1, 2006. (Exhibit B-145 p.3)

Present Levels of Educational Performance were listed:

Health & Development: Diagnosed with ADHD. Concerns/needs: ADHD behaviors.

Academic/Cognitive: Math SS 65/ GE 4.4; Strengths, reading, spelling, written expression, computer, hands-on activities. Concerns/needs: math skills.

Social/Emotional/Behavioral: Achenbach Scales. Acting-out behaviors have declined significantly. Concerns re anxiety, tensions, impulsivity & occasional oppositional behavior. Substantial improvement in overall behavior. Verbal aggression.

Motor Skills, Communication, and Activities of Daily Living were marked as age appropriate. (Exhibit B-145 p. 4)

Goals and objectives were listed in the May 2, 2006, IEP:

- [Student] will improve his behavior in the school setting by achieving the following objectives:
 - The student will maintain self-control when faced with failure, frustration or disappointment.
 - The student will express self verbally in manner appropriate to a particular situation.
 - The student will use language in accordance with school and class rules.
 - The student will respond to staff using appropriate language.
- [Student] will improve reading skills as evidenced by the following objectives:
 - The student will use context clues to determine the meaning of unknown words.
 - The student will demonstrate comprehension by writing or orally retelling a summary that presents the key points.
 - The student will read high frequency words fluently when reading passages from a variety of texts.
 - The student will identify and use main ideas and supporting details when reading informational texts as a strategy for comprehending information.
- [Student] will improve math skills as evidenced by the following objectives:
 - The student will identify patterns presented in word problems to solve the problems.

The student will identify angles as acute, right or obtuse and draw an angle of specific size using a variety of tools.

The student will find the perimeter of a basic geometric figure by measuring and adding.

- To begin to explore career/vocational interests.

The student will select classes that provide some information about career/vocational interests.

The student will obtain passing grades in his classes, securing credits towards high school graduation. (Exhibit B-145, pp. 6-9)

The May 2, 2006, IEP specified that Student would receive twelve hours per week of co-taught English, Math, and Social Studies, and one half hour a week of social work services during the 2006-2007 school year. "Co-taught" classes are taught by collaborating special and regular education teachers. (Exhibit B-145 pp. 1, 11; Testimony, Magnet School Special Education Teacher)

Program Modifications/Adaptations were listed for all academic classes:

Tests/Quizzes/Time: Extra time-tests, Extra time-written work, Pace long-term projects.

Grading: Base grade on IEP.

Behavior Management/Support: Positive reinforcement, Cue expected behaviors, Structure transitions.

Instructional Strategies: Check work in progress. (Exhibit B-145 p. 14)

2. Student's 8th grade report card showed final grades of A in Language Arts ER; B in Health; B- in Math ER and Science ER; C+ in Language Arts Modified and Computer; C in Family and Consumer Science and Art; C- in Social Studies Modified; D- in Physical Education; and F in Technology Education. (Exhibit B-146)

3. There is no documentary record or testimony in evidence that Board A held a PPT meeting and invited Magnet School staff to participate prior to Student's actual enrollment, as Parent requested. There is also no record of Student's program and placement at the opening of the 2006-2007 school year at Magnet School. (Testimony, Parent)

4. The Magnet School offers co-taught classes in only a few subjects. The Magnet School provides services comparable to "Resource Room" in "IED". (Testimony, Magnet School Special Education Teacher)

5. The May 2, 2006, IEP and the December, 2005, report of a school psychological evaluation were received by the Magnet School on September 25, 2006. The Magnet School School Psychologist and Special Education Teacher testified that this was a comparatively limited amount of information to receive about incoming students, although they were unaware of any attempts to secure more records from Board A or Parent. (Exhibit B-150 p. 2; Testimony, Magnet School School Psychologist, Magnet School Special Education Teacher)

6. The Magnet School held three PPT meetings during the 2006-2007 school year, prior to the MD PPT on March 30, 2007. On October 18, 2006, both Student and Parent attended the PPT meeting. Student was identified as having an emotional disturbance.

The PPT recommended:

Ed Evaluation; Psychological (parent refused psyc); Developmental History.
IEP diagnostic plan: 11 hrs Sp. Ed. 2 pers IED and 1 per. Co-taught Biology;
Counseling .5; Behavior Contract will be developed.

Summary of the meeting included:

Present teacher reports indicate concerns w/both behavior and academics in most classes. [Board A] sent IEP and Behavior Scales 6 weeks after the school year had started. Psyc Eval and SW summary have yet to be received. It is recommended that [Student's] present hours be increased until Evaluations are sent from [Board A] or new evaluations administered. Typically [special education] students at [Magnet School] receive 3.5 hours of IED (Sp. Ed.) per week. [Student] will be receiving 7 hrs IED plus 3.5 hrs co-taught science.

Permission slip for new evaluations was given to parent. She will return it to school. Goals for Sp. Ed. Classes were developed. (Exhibit B-150 p. 2)

Written prior notice for this PPT meeting noted: Conduct a Re-evaluation and Revise IEP. (Exhibit B-150 pp. 3, 4)

Present Levels of Academic Achievement and Functional Performance were reported as:

Academic/Cognitive

Language Arts: age appropriate, functioning on grade level in reading comprehension and written expression.

Math: [Student] can perform basic mathematical calculations.

Concerns/needs: basic achievement skills test indicates [Student's] performance is below grade level. [Student] will have a difficult time w/Algebra 1 mathematical demands.

Other academic/nonacademic areas: age appropriate.

Behavioral/Social/Emotional

Board A notes administration of Achenbach Scales. Improvement in acting out behaviors was noted as improved on [Board A] IEP 5/2/06. [Board A] IEP 5/2/06 notes anxiety, tension, impulsivity & occasional oppositional behavior. Transition into [Magnet School] has been problematic. [Student's] inappropriate behaviors can be disruptive to his learning as well as disruptive to class routines. An understanding of behavioral expectations and routines need to be established for [Student] to be successful.

Communication, Vocational/Transition, Fine and Gross Motor, and Activities of Daily Living

All recorded as age appropriate.

Health and Development

Past IEP from [Board A] notes diagnosis of ADHD. No medical documentation. (Exhibit B-150 pp. 5-6)

Goals and Objectives adapted the May 2, 2006, IEP goals from Board A to the Magnet School program:

1. [Student] will improve organizational skills in order to pass mainstream classes.
[Student] will maintain a daily assignment book to review and develop study plan [in] all classes.
2. [Student] will understand that living things share common materials and structures which perform basic life functions.
Understand the role of the cell membrane in controlling materials entering and leaving the cell.
Describe the processes and results of mitosis and meiosis.
3. [Student] will improve his behavior in the school setting by achieving the following objectives:
The student will maintain self control when faced with failure, frustration or disappointment.
The student will express self verbally in manner appropriate to a particular situation. (Exhibit B-150 pp. 8-10)

Services to be provided were: Academic Support 8.75 hours per week, in small group and individual instruction; Science instruction in a co-taught class 4.38 hours per week; and social work, 0.25 hours per week, flexible schedule depending on student need. (Exhibit B-150 p.13)

Program accommodations and modifications for all classes were:

Materials/books/equipment: access to computer assistive technology; access to word processor.

Tests/Quizzes/Assessments: Extra credit options, Extra time-tests/projects/written work; Hands-on projects.

Behavioral Interventions and support: Cue expected behavior; positive reinforcement; enhanced staffing.

Instructional Strategies: Check work in progress; Immediate feedback, multi-sensory approach, use manipulatives. (Exhibit B-150 p. 17)

This IEP record included a signed consent from Parent for the Magnet School to release all of Student's school records to the private therapist who had been treating Student. (Exhibit B-150 p. 21)

7. On December 13, 2007, both Student and Parent attended another PPT meeting. The PPT recommended: Psychological (parent refused psyc); Share developmental history w/team (refused by parent); 11 hrs Sp. Ed. (2 pers IED and 1 per. Co taught Biology.); Counseling.

Summary of the meeting included:

Most of [Student's] academic teachers attended meeting. Strengths and concerns were noted by each. Parent discussed her concerns w/missing assignment and implementation of IEP accommodations. Ed Evaluation was presented, strengths and weaknesses were noted. Team requested psychological to [be] administered for the 2nd time. Parent refused this recommendation. Social Work History was completed in November. Parent refused to share information with team. A behavior plan was recommended to deal with [Student's] inappropriate classroom

behavior. Parent refused recommendation. Meeting was adjourned due to time constraints. Team will reconvene meeting in January. (Exhibit B-161 p.2)
Written Prior Notice for this meeting showed proposed actions as Revise IEP, Behavior plan proposed by team, Conduct a Re-evaluation, Psychological Evaluation, and Team requested that the Social Work history be shared w/team to help provide an appropriate educational plan. Parent refused all proposed actions. (Exhibit B-161 pp. 3, 4, 5, 6, 7, 8)
Present Levels of Academic Achievement and Functional Performance were listed:

Academic/Cognitive

Language Arts: [Student] is presently failing 9th grade English and History. Writing fluency is a significant strength. Reading vocabulary is age appropriate. Reading ability is mildly impaired (sight reading). Mechanics of written language is an area of concern. [Student's] deficiencies in skills make it difficult for him to pass college prep. LA classes.

Math: [Student] is presently failing Alg. 1. [Student] can perform basic mathematical calculations (+-X) Math fluency is a strength. Applied problem solving is age appropriate. Basic achievement skills test indicate [Student's] performance is below grade level. Broad Math is an area of relative concern. [Student] will have a difficult time w/Algebra 1 mathematical demands.

Other academic/nonacademic areas: age appropriate. [Student] attends classes regularly. [Student] does not complete required tasks (homework, classwork). Ability and attentional issues make it difficult for [Student] to pass college preparatory classes.

Behavioral/Social/Emotional

Board A notes administration of Achenbach Scales. Improvement in acting out behaviors was noted as improved on [Board A] IEP 5/2/06. [Board A] IEP 5/2/06 notes anxiety, tension, impulsivity & occasional oppositional behavior. Transition into [Magnet School] has been problematic. [Student's] inappropriate behaviors can be disruptive to his learning as well as disruptive to class routines. An understanding of behavioral expectations and routines need to be established for [Student] to be successful.

Communication, Vocational/Transition, Fine and Gross Motor, and Activities of Daily Living

All recorded as age appropriate.

Health and Development

Past IEP from [Board A] notes diagnosis of ADHD. No medical documentation. (Exhibit B-161 pp. 9, 10)

Progress on goals and objectives was reported, and goals were added:

Goal 1 [organizational and study skills] LP [not defined]

Goal 4 [Science goal formerly #2] Unsatisfactory Progress

Goal 5 [Behavior goal formerly #] [No progress recorded]

Goal 2 [new] Demonstrate an improvement in comprehension skills necessary to read for information and understanding. Objective: Demonstrate the ability to read and understand content in subject area materials.

Goal 3 [new] [Student] will use algebraic skills and concepts, including functions, to describe real-world phenomena symbolically and graphically, and to model quantitative change. [Two objectives] (Exhibit B-161 pp. 12-16)

Program Accommodations and Modifications to be provided in all classes:

Materials/Books/Equipment: All classes Books on Tape; access to computer, calculator, spell check. Assistive Technology, access to portable word processor; Access to tape recorder; Access to Word Processor.

Tests/Quizzes/Assessments: Extra credit options, Extra time-tests/projects/written work; Hands on projects.

Grading: Assistive Technology: Access to Word Processor.

Behavioral Interventions and Support: Cue expected behavior, positive reinforcement.

Instructional Strategies: Check work in progress; Immediate feedback; Multi-Sensory Approach; Use Manipulatives. (Exhibit B-161 p. 17)

The special education services were to be provided as scheduled in the October 2006 IEP. (Exhibit B-161 p. 20)

8. On January 10, 2007, both Student and Parent attended a third PPT meeting. This PPT recommended: Psychological [evaluation]; share developmental history w/team; Behavior Plan; 11 hrs Sp. Ed. (2 pers IED and 1 per. Co-taught Biology); Counseling .75.

The meeting summary included:

... Team requested psychological to be administered. This was the second request. Parent refused this recommendation. Social Work History was completed in November. Team requested [Parental] permission to have information shared. Parent refused to share information with team. A behavior plan was recommended to deal w/[Student's] inappropriate classroom behavior. Parent refused recommendation. [Student] is presently having a great deal of difficulty academically and behaviorally at [Magnet School]. He is receiving the maximum amount of services offered within the parameters of our program. It was explained to Parent what the services are and how they are implemented. Team felt strongly that a behavior plan would be a good strategy to help [Student] become more successful in school. Parent expressed her feelings about behavior plans that had been implemented in the past as well as psychological assessments that had been administered. She felt that they were not productive for her son. Team explained that many strategies are employed within the mainstream classes to assist students who have attention issues. [Student] is receiving the maximum support we provide. Program recommendations would continue: 2 (IED) classes and 1 (co-taught science) class. Counseling w/social worker would also continue. (Exhibit B-164 pp. 1-2)

The written prior notice for this meeting listed Revise IEP, behavior plan proposed by team, Conduct a re-evaluation, Psychological evaluation, and Team requested that the

Social Work history be shared w/team to help provide an appropriate educational plan. Parent refused all PPT recommendations. (Exhibit B-164 pp. 3, 4, 5, 6, 7, 8)

There were few changes from the December 2006 IEP. Program Accommodations and Modifications added were:

Tests/Quizzes/Assessments: Prior notice of Tests.

Organization: Assignment Pad, Daily Assignment List, Post Assignments, Post Routines.

Environment: Preferential Seating.

Behavioral Interventions and Support: Behavior Contracts (Exhibit B-164 p. 18)

9. An Agreement Not to Convene [the PPT] dated January 19, 2007, recording that Student was dropping co-taught Biology, was signed by a school representative.(Exhibit B-167)

10. By letter dated January 19, 2007, the Magnet School Principal notified Parent that Student had been suspended from school “for a minimum of five days” because:
[Student] was suspended for inappropriate behavior involving another student, confiscation of personal property, insubordination, threatening vandalism and inappropriate language towards students and adults. Police presence was required due to the nature of the complaints. Other witnesses reported that [Student] was aggressive in his actions. (Exhibit B-168)

11. The Magnet School is described as follows in the Connecticut State Department of Education publication, *Public School Choice in Connecticut: A Guide for Students and Their Families 2006-2007*:

The [Magnet School] is [an] interdistrict magnet high school attracting students interested in the integration of information technology in academic and elective courses. [Magnet School] provides students with a college preparatory academic environment in which essential information technology and communication skills, knowledge and understandings are emphasized. The technology focus, built around a core elective program of information technology and pre-engineering courses, is not just for those students with particular interests in these fields. The emphasis on technology represents a strategy for making lifelong learners out of our students. All core content courses are taught at the college preparatory level, and there is a full compliment of honors and Advanced Placement courses.

12. The testimony of Student’s private therapist was weakened by her assertion that she knew nothing about Student’s difficulties in school. The record shows that Parent signed consent for release of all of Student’s school records to this therapist on October 18, 2006. (Exhibit B-150 p. 21)

CONCLUSIONS OF LAW AND DISCUSSION:

1. Section 10-76(d), Connecticut General Statutes (CGS), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 10-176e through 4-180a, inclusive, and Section 4-181a. Section 615(f)(1)(A) and 615(f)(3)(E), IDEA, also authorizes special education hearings.

2. There is no dispute that Student is eligible for special education pursuant to 34 CFR §300.8(a) and Section 10-76d-10, RCSA.

3. Section 10-264l(h), CGS, provides:

In the case of a student identified as requiring special education, the school district in which the student resides shall: (1) Hold the planning and placement team meeting for such student and shall invite representatives from the interdistrict magnet school to participate in such meeting; and (2) pay the interdistrict magnet school an amount equal to the difference between the reasonable cost of educating such student and the sum of the amount received by the interdistrict magnet school for such student pursuant to subsection (c) of this section and amounts received from other state, federal, local or private sources calculated on a per pupil basis. If a student requiring special education attends an interdistrict magnet school on a full-time basis, such interdistrict magnet school shall be responsible for ensuring that such student receives the services mandated by the student's individualized education program, whether such services are provided by the interdistrict magnet school or by the school district in which the student resides.

4. The Connecticut Commissioner of Education's November 1, 2002, Circular Letter C-17 sets forth a variety of requirements for interdistrict magnet schools, including:

Special Education: All students are eligible to attend interdistrict magnet schools and the expectation is that all students will be included, regardless of any disability. Every effort must be made to accommodate and program for special education students. Only in the rare event that a student could not achieve satisfactorily even with the use of supplementary aids and services in the educational environment could it be found that placement in an interdistrict magnet school to be inappropriate.

Subsection (h) of 10-264l of the General Statutes requires the following: For students requiring special education services and attending an interdistrict magnet school, the school district in which the student resides shall: (1) hold the planning and placement team meeting and invite representatives from the interdistrict magnet school to participate in the meeting; and (2) pay the interdistrict magnet school an amount equal to the difference between the reasonable cost of educating the student and the sum of the amount received by the interdistrict magnet school for the student from all sources. Interdistrict magnet schools are responsible for ensuring that a special education student receives the services mandated by the student's [IEP] whether these services are provided by the interdistrict magnet school or by the school district in which the student resides.

5. The record does not show a PPT meeting involving Boards A and B prior to Student's actual enrollment at the Magnet School. No testimony was offered regarding how or if the elements of the May 2, 2006, IEP were adapted to the Magnet School curriculum and course offerings without any documentation when school opened. After receiving minimal documentation in late September, a PPT meeting was held in October. On the record of the hearing, Magnet School staff members were candid in discussing their program and resources. Board A had recommended "co-taught classes for English, Math and Social Studies". The Magnet School did not offer co-taught classes in these subjects. Student did attend a co-taught science class, but was removed from that class later in the year. The record of the October 18, 2006, Magnet School PPT meeting and the IEP developed at that meeting demonstrate that the Magnet School PPT paid close attention to the May 2, 2006, Board A IEP and incorporated as much of it as was possible at the Magnet School. Since Parent enrolled Student at Magnet School, the placement cannot be considered as made by Board A. Thus there is no violation of IDEA concerning the impossibility of completely and exactly implementing Board A's IEP at the Magnet School.

6. Section 10-220(a)(3), CGS, requires each local or regional board of education to maintain a safe school setting. Written disciplinary rules, classroom behavior standards, and deployment of school staff are some of the factors in maintaining school safety. When school administration becomes aware of potential safety issues, preventative measures must be taken. In this case, when Student returned from a suspension and was under consideration for expulsion because of a variety of disciplinary offenses including threatening, one preventative measure was assignment of additional security personnel who monitored Student's behavior. Since these staff members were not providing direct educational services to Student, there was no need to modify his IEP. No evidence was offered as to the effectiveness of this plan, and the record does not include reports on Student's behavior in school after his return. Security measures that did not change Student's IEP are within the administrative prerogative of the Magnet School.

7. Within a section concerning records of students requiring special education, Section 10-76d-18(b)(2), RCSA, requires that when a parent makes a written request for copies of education records, the records must be produced within five school days. Parent did not provide 1) a dated copy of a written request and 2) evidence of the actual date she received the records. Therefore, it is impossible to rule on whether this requirement was met.

8. Federal regulations provide the procedures to be followed in holding a manifestation determination meeting, and Connecticut has established a policy that an MD shall be held by a PPT. At 34 CFR §300.530(e), the team is required to "review all relevant information in the student's file ..." as a part of determining whether the misbehavior was:

- ... caused by, or had a direct and substantial relationship to, the child's disability,
- or**
- ... was the direct result of the LEA's failure to implement the IEP.

After a PPT determination that misconduct was not related to the individual student's disability, the Board is free to pursue expulsion proceedings. However, in this case Parent's request for a special education hearing to appeal the MD decision stayed the expulsion proceedings. There are no specific documentation requirements for an MD, other than the general requirement that Parent has access to all student records.

9. Pursuant to 34 CFR § 99.31(a)(2), a public school district may disclose student records without parental consent when:

... [disclosure is] to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

Such un-consented disclosure is subject to the rules at 34 CFR § 99.34, that the disclosing school district notify the parent and provide copies of the records disclosed if requested, unless the district's records policy includes a provision that such disclosures will be made without parental consent. The May 2, 2006, PPT record notes that Student had applied to Magnet School. It is difficult to understand why no records were provided to Magnet School prior to the start of the 2006-2007 school year.

10. Parent refused implementation of individualized behavior plans and a Magnet School behavior contract. There is no support for Parent's contention that Student's Special Education Teacher participate in any Magnet School disciplinary action concerning Student.

11. Based on the documentary and testimonial evidence offered at the hearing, it can be concluded that Student was having a very difficult year at Magnet School. However, the evidence is insufficient to establish "fault" for his difficulties. Magnet School conducted three PPT meetings (October, December and January) and made reasonable recommendations: Parent refused all proposals.

12. Magnet School might have been better prepared to accommodate Student's special education needs if they had received his school records in a timely fashion, prior to his actual enrollment, and if a PPT meeting including personnel from both Boards A and B had been held prior to his actual enrollment. The record is silent on whether a specific policy is in place regarding transition planning for magnet schools.

FINAL DECISION AND ORDER:

1. The Magnet School did not receive the May 2, 2006, IEP from Board A until late September, after Student's actual enrollment. In mid-October, the Magnet School's PPT met and developed an IEP that incorporated many of the special education services listed in Board A's May 2, 2006, IEP. There is no statutory support for Parent's allegation that IDEA requires complete and exact duplication of a prior IEP when a parent enrolls a student in an interdistrict magnet school.

2. Assignment of security and other staff by a public school in order to deter behavior that may be dangerous is not a violation of IDEA.

3. Connecticut Boards of Education are required to respond to a written request from a parent for copies of school records within five school days. Without dated documentation, it is impossible to determine whether Magnet School and/or Board A violated this requirement.
4. There is no specific requirement concerning documentation for manifestation determination meetings.
5. Unless a student's IEP provides otherwise, violations of school rules are treated according to the school's general discipline policies. Since Student did not have an individualized discipline plan, there is no foundation for the claim that his special education teacher should have been involved in disciplinary actions when he violated school rules.
6. Magnet School provided substantial compliance with Student's May 2, 2006, IEP after it was received in late September, 2006. At PPT meetings in October and December, 2006, and January, 2007, Parent refused requests for additional evaluations, documentation, and program modifications recommended by the team.
7. In light of the apparent failure of Board A to share Student's school records with Board B prior to his enrollment at Magnet School, it is ORDERED that Board B develop a policy for informing the school districts of residence of students who are accepted for enrollment in Magnet Schools at the time that such acceptances are sent out. Boards A and B shall also develop procedures for confirming students' enrollment plans after such notice, and scheduling of PPT meetings prior to the beginning of a new school year. Copies of these policies and procedures shall be submitted to the Bureau of Special Education, Connecticut State Department of Education.

Comment on the Conduct of the Hearing

Attorneys for the two Boards of Education collaborated smoothly in presenting their positions. Parent presented her case effectively, although she lacked knowledge of the complexity of State and Federal special education statutes and regulations. Although there was disagreement on the issues, all parties demonstrated concern for Student.