

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Stamford Board of Education

Appearing on behalf of the Parent: Attorney Joseph P. Sargent, 1129 Post Road, Fairfield, CT 06824

Appearing on behalf of the Board of Education: Susan C. Freedman, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919

Appearing before: Attorney Elisabeth Borrino, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the student was properly exited from special education on March 8, 2005.
2. Whether the student's claim is barred by the two-year statute of limitation.

PROCEDURAL HISTORY:

This hearing was requested on April 24, 2007 and this Hearing Officer was assigned on April 26, 2007. On April 27, 2007, the Parent filed an Ex Parte Application for Injunctive Relief. By way of an Order dated May 2, 2007 the Hearing Officer denied the Application. On May 1, 2007, the Board filed a Motion to Dismiss the Request. By way of an Order dated May 2, 2007, the Hearing Officer denied the Motion to Dismiss, without prejudice, subject to renewal upon completion of the evidentiary hearing.

A Prehearing Conference was held on May 8, 2007. The hearing convened on June 19 and 28, 2007 and was completed on June 28, 2007. The parties requested leave to submit closing argument by way of written briefs. The request was granted. The parties were ordered to file simultaneous written briefs by July 3, 2007 at 5:00 p.m. The parties agreed to this Order without objection.

On July 3, 2007, counsel for the Parent filed a document entitled "Objection to Motion to Dismiss" claiming that the briefing schedule failed to provide adequate time to respond to the Board's Motion to Dismiss. Counsel also filed a document entitled "Post Trial Brief."

The Board did not renew its Motion to Dismiss but addressed the issues by way of its Post-Hearing Brief filed in conformity with the Order of the Hearing Officer. Moreover, the issues were properly identified and agreed to at the Prehearing Conference, the Prehearing

Conference Memorandum provided thereafter, and at both the commencement and conclusion of the administrative hearing without objection.

Significantly, Counsel for the Parent filed a very comprehensive and well-written Brief which appears to address the issues raised in his Objection to Motion to Dismiss.

The deadline for the final decision and order was set for July 8, 2007.

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

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

SUMMARY:

This Final Decision and Order sets forth the Hearing Officer's procedural history, findings of fact and conclusions of law. 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. *Bonnie Ann F. v. Callallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993), *SAS Institute Inc. v. S & H Computer Systems, Inc.* 605 F. Supp. 816, (March 6, 1985)

FINDINGS OF FACT:

1. The student, whose date of birth is June 12, 1989, is now eighteen years old and was successfully graduated from the Stamford Public Schools with a regular education High School Diploma on June 21, 2007. The student attended the Academy of Information and Technology and Engineering ("AITE") in Stamford, a magnet school with an emphasis on technology. The student transferred to Stamford High School when he entered the twelfth grade. The student has been accepted to college. (Exhibit B-10, Testimony of Parent 6/28/07; Testimony of Diane Mannetti 6/28/07)
2. The student has not been joined in this action.
3. Due to the severity of his mental health issues, the student was admitted to Hall-Brooke Center for treatment of General Anxiety Disorder and Depressive Disorder in December 2001, and Four Winds Hospital on January 2, 2002 and March 13, 2002. He was diagnosed as having Major Depressive Disorder and continued to receive mental health treatment thereafter including from Psychologist Dr. Steven Boksenbaum. (Exhibits P-1, P-2, P-3, P-4, P-7, P-11, P-36, B-2, B-3, B-8)
4. On February 7, 2002, a 504 Student Accommodation Plan ("the 504 Plan") was implemented citing that the student "has been diagnosed [sic] a Major Depressive

- Disorder." The 504 Plan included in-school counseling on an as needed basis, extended time on testing and projects, decreased work load, shortened day, and for the guidance counselor to act as a liaison between the parents, teachers, and counselors. The 504 Plan was reviewed on April 25 and September 12, 2002. The Parent attended these meetings. (Exhibits P-7, P-8, P-22)
5. On December 12, 2002, a child study team meeting convened and then "reopened" as a Planning and Placement Team (PPT) meeting with the agreement of the Parents. The Parents consented to an Initial Evaluation. The PPT concluded that additional testing was required. The parents received a Notice and Consent to Conduct an Initial Evaluation which indicated that the areas of assessment included a psychological observation and behavioral rating scales performed by a psychologist. The parents attended this meeting and consented to the evaluation. (Exhibits P-26, P-27, P-28)
 6. The PPT meeting was reconvened on April 3, 2003 wherein the evaluations and testing were discussed and reviewed. These included an extensive neuropsychological evaluation by Dr. Stephen Boksenbaum, Ph.D. (the student's psychologist), a school counselor report, an educational evaluation, and a language and speech assessment. (Exhibits P-34A through P-34H, P-35)
 7. The April 3, 2003 PPT determined that the student has a primary disability of "Other Health Impairment", including ADD/ADHD and was eligible for special education. The parents consented to the placement. (Exhibits P-34A, P-35)
 8. The April 3, 2003 PPT minutes have a handwritten portion that states "[P]rocedural safeguards were offered, the Parent had no questions and the meeting proceeded." The parents fully participated in the PPT. (Exhibit P-34A, Testimony of Parent 6/28/07)
 9. On March 3, 2004, the Board sent Notice of a Planning and Placement Team Meeting identifying that its purpose was to conduct an annual review to the parents. The Notice was drafted, signed, and mailed by Diane Mannetti, Special Education Facilitator. The box stating that "A copy of Procedural Safeguards in Special Education is enclosed" was not checked. The Board did in fact provide and the Parent did in fact receive the Procedural Safeguards prior to the March 16, 2004 PPT commencing. (Exhibit P-38, Testimony of Diane Mannetti 6/28/07, Testimony of Parent 6/28/07)
 10. On March 16, 2004, the PPT convened. Diane Mannetti acted as both Administrative Designee and Special Education Teacher. The PPT minutes indicate that the "Parent was mailed prior written notice w/safeguards within 5 day time frame." According to the PPT the student's disability required that he receive supportive help from special education in order to be successful in mainstream classes. The Parent fully participated in the PPT. (Exhibit P-43, Testimony of Parent 6/28/07)
 11. On February 27, 2005, the Board provided Notice of Planning and Placement Team Meeting to the parents and that its purpose was to conduct an annual review. The Notice

was drafted, signed, and mailed by Diane Mannetti, Special Education Facilitator. The box stating that "A copy of the Procedural Safeguards in Special Education is enclosed" was not checked. (Exhibit P-44)

12. On March 8, 2005, the PPT convened. Diane Mannetti acted as both Administrative Designee and Special Education Teacher. The PPT minutes indicate that the "Parent was mailed prior written notice w/safeguards Rights were reviewed at meeting . . . condensed version of rights was reviewed at meeting." This information was typed and/or handwritten on the PPT minutes before being signed by the Parent. The Parent signed the minutes and fully participated in the PPT. (Exhibit P-46, Testimony of Diane Mannetti 6/28/07, Testimony of Parent 6/28/07)
13. The March 3, 2004 and February 27, 2005 Notices of the Planning and Placement Team Meeting fail to check the box that represents the Procedural Safeguards are included with the Notice. However, the PPT minutes from March 16, 2004 and March 8, 2005 clearly represent that the Procedural Safeguards were so provided. The Parent signed both PPT Minutes. Nothing in the record indicates that the Parent disagreed with or disputed any statement contained in the PPT minutes. (Exhibits P-38, P-43, P-44, P-46, Testimony of Diane Mannetti 6/28/07, Testimony of Parent 6/28/07)
14. At all times mentioned herein and relevant thereto, Diane Mannetti had a practice and procedure of including the Procedural Safeguards with the Notice of the Planning and Placement Team Meeting, asking the parent whether he/she had any questions about those safeguards at the commencement of a PPT meeting, and providing a condensed version of the safeguards in writing prior to the PPT commencing. (Testimony of Diane Manetti 6/28/07)
15. Diane Mannetti presented as a credible witness and her testimony was reliable.
16. There is no reason to believe nor reliable and credible evidence proffered that Ms. Mannetti deviated from her stated practice and procedure when she mailed the February 27, 2005 Notice nor when the PPT convened on March 8, 2005.
17. Ms. Mannetti also appears to have a practice of not always checking the box that Procedural Safeguards are included when signing and mailing Notices of the Planning and Placement Team Meeting, despite that she does in fact enclose the Procedural Safeguards. (Exhibits P-44, P-46, Testimony of Diane Mannetti 6/28/07)
18. The Parent contends that she did not receive the Procedural Safeguards with the February 27, 2005 PPT Notice, but also testified alternatively she cannot recall how she ever received any of the Procedural Safeguards, including for prior years. She believes that if they were provided it was "probably at the meeting." The Parent supported her testimony regarding the 2005 Notice by stating that had she received the Procedural Safeguards she would have attached them to her calendar and that the Notice came in a "thin" envelope. However, the Parent did not testify that stapling such Notices to her calendar was her practice and procedure or that she would not have deviated therefrom.

(Testimony of Parent, 6/28/07)

19. The Parent did not present as a credible witness nor was her testimony reliable as regards receipt of the Procedural Safeguards. Significantly, the Parent also testified that she was in complete agreement with exiting the student from special education, the student wanted to exit special education, and that he "deserved a chance." Yet, when asked what she would have done differently had she received the Procedural Safeguards the Parent disingenuously claimed she would have "requested evaluations." Given the Parent's stated sound and apparently well-reasoned basis for agreeing with exiting the student from special education, which appeared to be reached after much reflection and consultation with the student's psychologist, and the student's demonstrated academic proficiency, the Parent's claim that she would have requested an evaluation is not credible. (Testimony of Parent, 6/28/07)
20. The finding that the Parent lacks credibility in this regard is based upon the discrepancies in testimony, the demeanor of the Parent while testifying which includes not knowing how she ever received Procedural Safeguards in the past, presenting as not being totally convinced that the Procedural Safeguards were not included with the February 27, 2005 Notice, and that the Parent presented as an individual who was intelligent, knowledgeable, and sophisticated such that she would not sign a document which contained inaccuracies -- such as acknowledging that the Procedural Safeguards had been provided and reviewed.¹
21. The preponderance of the reliable and credible evidence establishes that the Procedural Safeguards were provided prior to the commencement of both the March 16, 2004 and March 8, 2005 PPT. Nothing in the record establishes that there is any dispute as to the adequacy of the information contained in the Procedural Safeguards. (Exhibits P-38, P-43, P-44, P-46, B-11, Testimony of Diane Mannetti 6/28/07, Testimony of Parent 6/28/07)
22. On March 8, 2005, the student was exited from special education with the consent of the Parent, the student, and the Board. (Exhibit B-11, Testimony of Parent 6/28/07, Testimony of Diane Mannetti 6/28/07)
23. The student's ongoing treating Psychologist, Dr. Boksenbaum with whom he met up to several times per week, was aware of the student being exited from special education. There is no evidence that Dr. Boksenbaum disagreed with this. Instead, after being informed by the Parent, Dr. Boksenbaum stated that if he "got red flags" he would advise her. She was never so advised by the psychologist. (Testimony of Parent 6/28/07)

¹ Nothing in this Decision should be construed as finding or implying that the Parent intentionally misrepresented that the Procedural Safeguards were not received. Instead, the more plausible explanation is that the Parent simply did not recall receiving the Procedural Safeguards given the passage of time in that there does not appear to have been any issues raised until approximately February or March 2007 when the student began having behavioral issues.

24. On March 8, 2005, the student and the Parent were informed at the PPT that the "door would be open" such that if the student needed to resume services he could do so. The student continued to utilize the resource room and had access to the social worker. (Testimony of Parent 6/28/07, Testimony of Diane Mannetti 6/28/07)
25. Until April 20, 2007, neither the student nor the Parent indicated any disagreement with or concerns about the student requiring special education. No request for review or due process hearing was filed. (Exhibit B-12, Testimony of Parent 6/28/07, Testimony of Diane Mannetti 6/28/07)
26. At all times mentioned herein, although the student suffered from anxiety and depression, this did not affect his academics. According to the Parent, academics were "the only part of his life he had control over." The student was academically very capable. (Exhibits B-12, P-5, P-15, P-31, P-32, P-33, Testimony of Parent 6/28/07)
27. The Parent claims that there were multiple procedural violations in the manner in which the March 8, 2005 PPT was conducted. These include but are not limited to that a proper PPT meeting was not conducted since Ms. Mannetti acted as both administrator and special education teacher, that appropriate evaluations were not conducted, that the Board inappropriately and exclusively relied upon the progress reports by teachers rather than appropriate evaluations, and that the February 27, 2005 Notice failed to provide appropriate notice that the intent of the PPT was to exit the student from special education rather than its stated purpose of conducting an annual review. (Exhibit H.O.-1, Testimony of Parent 6/28/07)
28. In order to proceed on the Parent's claims that the student was inappropriately exited from special education due to the stated multiple procedural violations, other than whether the Safeguards were provided, the Due Process Request for Hearing was required to have been filed by March 8, 2007. The Parent submitted no authority that would permit the untimely filing of this Due Process Complaint, other than if the Procedural Safeguards were not provided. Therefore, the Hearing Officer has no jurisdiction to adjudicate the Parent's claims other than whether the Procedural Safeguards were properly provided. The Parent did not claim that the content of the Procedural Safeguards was inadequate. (Testimony of Parent 6/28/07)
29. The Due Process Complaint was dated April 20, 2007 and received on April 24, 2007, which is more than two years from the subject PPT and action by the Board. (Exhibits HO-1, B-11)
30. It is uncontroverted that the student is over the age of eighteen as of June 12, 2007. It is also uncontroverted that the student was not joined in these proceedings. This issue was not raised by the Board during the May 8, 2007 Prehearing Conference presumably because the issue did not arise until the student's eighteenth birthday on June 12, 2007. The Board did raise this issue at the commencement of the June 28, 2007 administrative hearing. Counsel for the Parent did not object to the Board doing so.

31. On June 21, 2007, the student successfully graduated from the Stamford Public Schools. There is no request for compensatory education and the Parent has failed to identify any relief that could be ordered by the Hearing Officer. The Board did not raise this issue during the May 8, 2007 Prehearing Conference presumably because the issue did not arise until June 21, 2007 when the student graduated and received his diploma. The Board raised this issue at the commencement of the June 28, 2007 administrative hearing. Counsel for the Parent did not object to the Board doing so. (Exhibits HO-1, B-15, Testimony of Parent 6/28/07)

CONCLUSIONS OF LAW

1. The student was entitled to and did receive special education and related services as a student identified with a learning disability and thereby entitled to receive a free and appropriate public education ("FAPE") pursuant to 20 U.S.C. §1400 *et seq.* the Individuals with Disabilities Education Act ("IDEA", also "the Act"), 34 C.F.R. §300.7 *et seq.* and §10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
2. The standard for determining whether FAPE has been provided is set forth in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met. The Board provided the Parent and student with the Procedural Safeguards, Notice of the PPT, and the Parent and student were afforded a full opportunity to and did participate in the PPT. Both the Parent and student agreed and consented to the student being exited from special education. The Parent was able to cite sound reasons for this agreement which reflected careful consideration.
3. If the parents disagree with the education plan outlined by the PPT, the parents may seek review of such Independent Education Plan ("IEP") through an impartial due process hearing. *CGS* §10-76h(a)(1). Following the hearing, an aggrieved party may bring a civil action in state or federal court. 20 U.S. C. §1415. The subject Due Process Complaint was filed pursuant to the IDEA, 20 U.S.C. §1400 *et seq.* based upon the Parent's contention that the student remains eligible for special education services having been exited from special education in violation thereof. The Parent alleges multiple procedural violations in support of her claim.
4. IDEA provides that "A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part [10 USCS §1411 *et seq.*] in such time as the State law allows." 20 U.S.C. §1415(f)(3)(c)).
5. According to the Regulations of Connecticut State Agencies ("RCSA"), a party must file a request for hearing within two years "from the time the public agency proposed or refused to initiate or change the identification, evaluation or education placement of, or the provision of a free appropriate public education to the child." RCSA §10-76h-4(a), *M.D., v. Southington Bd. of Educ* 334 F.3d 217, 222 (2d. Cir. 2003). If the Board fails to

give notice of the Procedural Safeguards, the two year statute of limitation shall be calculated from the time such notice of the Safeguards is properly given. RCSA §10-76-h-4(a).

6. The Board did in fact provide the requisite Notice of the Procedural Safeguards to the Parent prior to the March 8, 2005 PPT commencing as evidenced by the PPT Minutes, the Parent's signature on the PPT Minutes, and the credible testimony of Diane Mannetti. The Request for Hearing was filed on April 24, 2007, which is more than two years from action which now forms the basis of the instant complaint. The filing of the Request for Hearing is barred by the applicable two year statute of limitation. The Parent submitted no authority to the contrary, other than her misplaced reliance on her allegation that the Board failed to provide the Procedural Safeguards.
7. The instant Request for Hearing also fails to state a claim upon which relief may be granted in that the student has been successfully graduated from the Stamford Public Schools having received a regular education diploma, he is over the age of eighteen, and there is no request for compensatory damages. *Russman v. Bd. of Educ.* 260 F.3d 114, 118-119 (2d Cir. 2001), *T.S v. Indep. Sch. Dist. No. 54*, 265 F.3d 1090, 1092 (10th Cir. 2001), 20 U.S.C. §1414 (c)(5)(b)(I), 34 C.F.R. §300.305(e)(2), *Moseley v. Bd. of Educ. of Albuquerque Public Schools* 483 F.3d 689 (10th Cir. April 16, 2007). The Board did not raise this issue during the May 8, 2007 Prehearing Conference, presumably because such issue did not arise until the student graduated and received his diploma on June 21, 2007. The Board orally raised this issue at the commencement of the June 21, 2007 administrative hearing without objection.
8. The Board is under no further obligation to provide FAPE to the student. *Wexler v. Westfield Board of Education*, 784 F.2d 176 (CA-3 1986).
9. The student turned eighteen years of age on June 12, 2007 and has not been joined in these proceedings. According to RCSA §10-76a-1(13), and 20 U.S.C. §1415(b) the right of the Parent to maintain these proceedings transferred to the student on June 12, 2007. The Board did not raise this issue during the May 8, 2007 Prehearing Conference presumably because the issue did not arise until June 12, 2007 when the student became eighteen years old. The issue was raised by the Board at the commencement of the June 28, 2007 administrative hearing without objection.

FINAL DECISION AND ORDER

1. The Request for Hearing is barred by the applicable two year statute of limitation.
2. The Parent has failed to state a claim upon which relief may be granted.
3. The right to maintain these proceedings transferred to the student on June 12, 2007. The student has not been joined in these proceedings.