

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

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Appearing for the Board: Attorney Michelle Laubin
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Appearing Before: Attorney Scott P. Myers, M.A. (Clinical Psychology), J.D.,
Hearing Officer

FINAL DECISION AND ORDER

This matter was commenced by request for due process (the “Request”) dated May 15, 2009 and received by the State of Connecticut Department of Education, Due Process Unit (“CTDOE”) on May 18, 2009. The undersigned was appointed as Hearing Officer on May 20, 2009.

The Request states that the Student is a 5 year old identified as IDEIA-eligible on the basis of autism. The Request alleges that the Student was denied a Free and Appropriate Public Education (“FAPE”) in the 2007/2008 and 2008/2009 school years because the Individualized Educational Plans (“IEPs”) developed by the District for the Student for those school years were neither appropriate nor appropriately implemented. The Request alleges further that the Student’s IEP for the 2009/2010 school year is inappropriate. The Request states that the Parents raised their concerns at IEP team meetings in 2007 on February 13, April 3, June 14 and September 18, in 2008 at IEP team meetings on February 7, April 10 and November 6, and in 2009 at IEP team meetings on January 6 and May 1. The District allegedly took the position at each of those meetings that the IEPs at issue were appropriate and being implemented appropriately and that the Student was progressing in his program.

The Request asks that the Hearing Officer find that the IEPs for the 2007/2008 and 2008/2009 school years were “inappropriate” within the meaning of the IDEIA and that the IEP for the 2009/2010 school year is not appropriate within the meaning of the IDEIA. The Request then identifies the following “remedial relief” sought by the Parents for these denials of FAPE:

1. An order that the Board retain an “independent consultant acceptable to the family to help the PPT develop and implement an appropriate program that is consistent with the reports of the McCarton Center and Dr. Weiss and includes carefully coordinated direct one-to-one instruction at school and at home on a year-round basis (including

programming throughout the summer) as well as instruction in the general education classroom that is coordinated with the in-home and in-school instruction.”

2. An order that the Board “authorize the independent consultant [retained as provided above] to attend all planning meetings, make observations in all educational environments as needed, review all documents and data as needed, train all staff working with [the Student], consult with the family and school personnel and prepare and submit monthly reports to the PPT that asses[s] progress based on data analysis, and makes recommendations as to modifications and changes needed to facilitate and improve progress.”
3. An order directing the Board “to provide direct instruction by staff hired and trained by an outside private agency acceptable to the family.”
4. 0 services to the increased levels as recommended by the McCarton Center.”
5. An order directing the Board to “reimburse the family for in-home supports the parents have provided and are still providing due to the inadequacy of the educational program.”¹
6. An order directing the Board to “reimburse the parents for the independent educational evaluation of Dr. Michael Weiss.”

At hearing on August 4, 2009, the Parents stated that in addition to the relief stated above, they were seeking an order of compensatory education for the alleged denial of FAPE in the 2007/2008 and 2008/2009 school years. The Board objected to the inclusion of any such claim for relief in this proceeding. A procedural schedule for resolving that issue was developed but this matter was terminated before that issue was addressed by the Hearing Officer.

By agreement, a telephonic pre-hearing conference (“PHC”) was convened on June 5, 2009. Each party participated through counsel and the parties reported that they had agreed to try to resolve their dispute through a CTDOE-facilitated mediation. An initial scheduling order was issued on June 5, 2009, which, among other things: (1) extended the date for the mailing of the Final Decision and Order from July 31, 2009 to and including September 14, 2009;² (2) established dates for the exchange of witness lists and records; and (3) established the following hearing dates: August 3, 2009, August 4, 2009, August 10, 2009 and August 11, 2009, with additional hearing dates to be scheduled as needed. As provided in the June 5, 2009 scheduling order, the Board submitted its answer to the Request on June 30, 2009. No sufficiency challenge was filed.

¹ At the first day of hearing, the service provider for the in-house supports was identified as Creative Solutions for All Abilities, LLC.

² That extension would permit the parties an opportunity to resolve their dispute through mediation, and reflected the anticipated mediation date they had agreed to among themselves and the anticipated length of the testimonial evidentiary hearing.

The parties participated in a CTDOE-facilitated mediation on July 2, 2009. That mediation was not successful in resolving this matter. A second PHC convened on July 6, 2009, at which the parties reported that they would attempt a second CTDOE-facilitated mediation. That second mediation took place in mid-July 2009 and was also not successful. At the request of the Board, and absent objection by the Parents, the August 3, 2009 hearing date was cancelled.

Hearing convened on August 4, 2009. At that time, Parent exhibits P1-P122 inclusive, and including exhibits P4A, P18A, P58A, P77A, and Board exhibits B1-B17 inclusive were admitted into the record as full exhibits absent objection. Parent exhibit P123 was marked for identification and was not admitted into the record pending further proceedings. Two documents were marked as Hearing Officer exhibits. HO1 was the Request. HO2 was a chart summarizing the Goals and Objectives in the IEPs included in the record prepared by the Hearing Officer.³ The first witness called by the Parents for their case-in-chief was the Mother, whose direct testimony was essentially completed on August 4, 2009. At that hearing, the following hearing dates, in addition to August 10, 2009 and August 11, 2009, were identified: September 29, 2009, October 1, 2009 and October 3, 2009.

At the outset of the August 10, 2009 hearing, counsel for the parties reported that the parties had reached and executed a settlement resolving all issues between them. The settlement provided for withdrawal of this proceeding with prejudice. Accordingly,

IT IS HEREBY ORDERED that this matter is **DISMISSED WITH PREJUDICE**. The Hearing Officer has not made any Findings of Fact or reached any Conclusions of Law regarding any of the disputed issues in this case, and nothing in this Final Decision and Order should be construed or interpreted as a Finding of Fact or a Conclusion of Law.

³ The Hearing Officer prepared this chart for his own use because the documentary record was complicated and difficult to follow otherwise, given the number of IEPs at issue. During the course of the hearing, it became apparent that a set of proposed IEP Goals and Objectives prepared by the District and discussed by the parties associated with the January 6, 2009 IEP team meeting was not in the record, and that omission was a further potential source of the complication and confusion in the documentary record with respect to the IEP Goals and Objectives in effect at various points in time and the Student's progress in meeting them. The Hearing Officer shared HO2 with the parties with the suggestion that the parties review and correct the document as necessary and consider whether it could be used as a stipulation as to which Goals and Objectives were proposed and/or in effect at which points in time.