

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Farmington Board of Education

Appearing on Behalf of the Parent: Pro Se

Appearing on Behalf of the Board: Attorney Julie Fay
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One Constitution Plaza
Hartford, CT 06103-1919

Appearing Before: Attorney Justino Rosado, Hearing Officer

ISSUES:

1. Should the Board provide 2 hours of tutoring four times a week at the Learning Incentive? If yes;
2. Should the Board provide the Student transportation to the Learning Incentive?
3. Should the Learning Incentive be required to participate in IEP meetings going forward during the 2009-2010 school year?

FINAL ORDER AND DECISION

SUMMARY:

The Student is a 10 years and 3 months old child who has been previously identified as Developmentally Delayed and is entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Educational Improvement Act (IDEIA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At a PPT meeting the Parent requested extended day services at the Learning Incentive. The Board denied the Parent's request and the Parent filed for due process. The parties attempt to mediate the matter on November 4, 2009 was not successful. The matter proceeded to hearing.

PROCEDURAL HISTORY:

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. On or about October 5, 2009, the Board received notice of the Parent's request for due process. Mediation was held on November 4, 2009. An impartial hearing officer was appointed on October 8, 2009 and a pre-hearing conference was held on October 19, 2009. Hearing dates of December 7, 16, 17, 2009 and January 7, 2010 were chosen by the parties. At the first day of hearing the Parent opened the hearing to the public. The parties agreed to oral

arguments and therefore, post trial briefs were not filed. The mailing of the final decision and order was extended, with agreement of all parties, in order to accommodate the hearing dates and the mailing of the final decision and order. The mailing date of the final decision and order is February 24, 2010.

This 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 in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. SAS Institute Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and Bonnie Ann F.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student is a student diagnosed as learning disabled and eligible to receive special education and related services as defined in the Individuals with Disabilities Education Improvement Act (IDEIA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.
2. In March 2007, the Student was given a psychological evaluation in order to evaluate her cognitive functioning. Autism rating scales were completed so as to get a better picture of her behaviors. The Student's full scale intelligence quotient was in the borderline delayed range but her nonverbal IQ score in the Comprehensive Test of Nonverbal Intelligence was in the average range. The Gilliam Autism Rating Scale was given to the Student's mother, her classroom teacher and special education teacher. The results were consistent and noted that the Student had a low to very low probability of autism. The evaluator gave various recommendations to assist the Student with her language based disorder. (B-4)
3. During the 2007-2008 school year, the Student was being provided with 2 ½ hours a week of reading instruction pull-out service by her special education teacher. The Parent did not want any pull-out services during the Student's word study or science and social studies classes. The Parent did not want the Student to miss any of her academic education during the school day. The IEP team recommended that the Student's special instruction not interrupt initial instruction from the regular education teacher and to have Parent meetings every 3-4 weeks. The Parent had no concerns with math. The Student was reading at a 2nd grade level with 97% accuracy, 1.5 self corrections, 85 wpm, level 1-2 comprehension and level 3 fluency; this was an improvement from her prior year. This was the 2nd year in the 2nd grade for the Student. (Testimony of Special Education Supervisor. B-5, P-15)
4. At the June 11, 2009 IEP meeting, the team found that the Student had made progress in her IEP goals and objectives. The Student had mastered her academic/cognitive goals.

The team found that the Student has problems organizing written material. She was using graphic organizers in speech in order to communicate her thoughts. The team recommended that the Student preview her vocabulary within the speech/language therapy time. Accommodations were provided for the Student in testing, organization, visuals, manipulative and preferential seating. The Parent was of the opinion that the IEP did not properly address the Student's educational needs and that the Student needed private after school tutoring and ESY. The IEP team was of the opinion that the Student did not require ESY at the Learning Incentive but in order to continue working with the Parent the team agreed to the ESY at the Learning Incentive and speech and language services at CyberSlate. The Student attended the sessions at the Learning Incentive but the Parent did not send the Student for the speech and language services. (P-13, B-32, Testimony of Special Education Supervisor)

5. The Team wrote goals and objectives for the Student's 2009-2010 school year. The first goal targeted was inference, the Student's main reading deficiency. There was no objection to the goals and objectives proposed by the IEP team. At the end of her 3rd grade school year, the Student was reading at a mid 3rd grade level with 97% accuracy, 0 self-corrections, 110 wpm, level 2 fluency and level 8 comprehension. The Student was to receive 2 ½ hours of reading instruction in the regular education classroom. (P-13, Testimony of Special Education Supervisor)
6. The Student, during the summer of 2009, attended the Learning Incentive as her extended school year services (ESY). The Board provided this ESY program. The Learning Incentive provided her with tutoring to address reading comprehension. A screening of reading skills was given to the Student, this was composed of the Wide-Range Achievement Test (WRAT) and the Gates McGinty Reading Test. The Learning Incentive does this screening in order to see the Student's reaction to testing situations. This is done with students that enter the summer study skills program. It helps evaluate the struggles students have when they are taking these tests. This was not a complete evaluation. The WRAT showed that the Student was reading at a fourth grade, sixth month level, in spelling she scored at the fifth grade, ninth month level and math, fourth grade. In vocabulary and comprehension, the Gates McGinty Reading Test showed that the Student was only on a second grade level and had the ability to decode probably on a fourth grade level. When it came to understanding the vocabulary, she had difficulty. In the reading comprehension piece, even though she was able to decode the comprehension part of the test, she had difficulty analyzing and answering the questions. (Testimony of Director of LI, B-31)
7. The Learning Incentive (LI) made various recommendations and strategies to assist the Student in her reading. Some of the recommendations were that the Student continue tutoring, continue with the graphic organizer used during the summer and that the Student read modified text with simplistic language patterns. These recommendations were directed to the Parent and not intended to be a part of the Student's educational program. The Student does not need an after school program; if given focused strategies that are recommended, the Student will be more successful. If pre-teaching is provided the Student will develop vocabulary and comprehend the reading. Pre-teaching makes the Student

familiar with the topic before she reads it. The material used during the summer program at LI may not be applicable during the school year. It will not be possible for the Director of LI to do consulting work for the Student or attend IEP meetings. (Testimony of Director of LI, B-34)

8. The Parent was of the opinion that the recommendations from LI should have been followed and incorporated into the Student's IEP. The Parent wants a reading specialist to work with the Student, not a reading teacher. The Student's fourth grade progress report showed that in the 1st marking period she was near grade level in nearly all areas. The Student was not assessed in the 2 areas of critical thinking. The Parent will not allow additional reading services during the school day because it will conflict with the Student's schedule. Even if the district could show the Parent the appropriate time during the school day that could be allocated to assist the Student in reading, the Parent would not be in agreement because it was not what she requested. (Testimony of Mother, P-19, P-21)
9. The special education teacher does not use the book utilized at LI during the summer of 2009. In her reading, the Student shows a deficiency in her inferential thinking skills. The teacher utilizes the following reading strategies to assist the Student:
 - a. KWL charts.
 - b. Visualization.
 - c. The invisible suitcase, which allows the reader to be cognizant of the fact that they are reading for meaning,
 - d. Pre-teaching vocabulary
 - e. After reading, small group discussion which would allow students to express their understanding of the text.(Testimony of Special Education Teacher)
10. The Student has goals and objectives for reading. The Student's teachers meet in order to discuss what is being done with the Student throughout her program. The Student is provided with ½ hour 4 days a week of guided reading with the special education teacher and ½ hour one day a week of guided reading with the regular education teacher. As part of her 30 minute guided reading, the special education teacher pre-teaches the Student for 10 minutes. Guided reading is small group instruction. There is a particular book chosen to meet the needs of those students at a particular level. There is guided practice depending on the kind of skills the group needs or on the variety of skills they may be working on. The teacher may stop the reading to ask comprehension questions or help a student decode a word and at the end they have a conversation about the book. (Testimony of Special Education Teacher, Testimony of Literacy Specialist)
11. The Student's degree of reading power score (DRP) in the fall of the 3rd grade was 29. In March, the spring of her 3rd grade, her DRP was 39. In the Fall of 3rd grade the Student's score was in the remedial range; in the spring it was in the "within reach" range. An increase of 10 to 15 points reflects progress. The Student does not require an after school program for reading. (Testimony of Literacy Specialist, B-66, B-67)

12. At the December 7, 2009 IEP meeting, the Director of LI participated by telephone. This was a continuation of the November 1, 2009 IEP meeting. The Parent did not attend the meeting although she had received sufficient notice. The Director of LI stated that even though the recommendations offered by LI were not recommended to be included in the Student's IEP, the strategies recommended would help the Student in her reading and writing. The LI was not recommending an extended school day for the Student (B-71)

CONCLUSIONS OF LAW:

1. It is undisputed that the Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Improvement Act, 20 U.S.C. Sec. 1401, et seq.
2. The most comprehensive test for determining whether any violation of the IDEA has occurred is set forth by the Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982). In *Rowley*, the Supreme Court reversed and remanded an order requiring the school to provide a deaf student with a sign-language interpreter in all of her classes. The Supreme Court held that the IDEA's requirement of a "free appropriate public education" is satisfied when the state provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from the instruction. *Rowley*, 458 U.S. at 201, 102 S. Ct. at 3048. The child must receive "some educational benefit" from the education provided; the best possible education is not required. *Id.*
3. The IDEA imposes strict procedural requirements on educators to ensure that a student's substantive right to a "free appropriate public education" is met. 20 U.S.C. § 1415. These procedural requirements allow for participation of the Parents or guardian throughout the development of the IEPs together with due process procedures to challenge questionable placements or decisions. Under *Rowley*, when challenges to a student's individualized educational program are made, the Court undertakes a two-part inquiry, determining: (1) whether the procedural mandates of the act were followed and (2) whether the student received individualized educational services designed to provide some educational benefit. *Rowley*, 458 U.S. at 206, 102 S. Ct. at 3051. The Parent has presented no evidence of any procedural violations of IDEA. There has been strong evidence that the Parent has been a very active and listened to participant of the Student's IEP team. Notice requirements were clearly adhered to and the Parent did not allege or present evidence that in response to her requests, she was not properly and timely provided with the Student's educational records.
4. IDEA requires the relevant public education authority to prepare and review at least annually an "individualized education program" (IEP) for each child with a disability. 20 U.S. 1414(d)(4); 34 C.F.R. 300.324. The IEP is the primary vehicle for ensuring that a disabled child's educational program is individually tailored

based on the child's unique abilities and needs. See U.S.C. 1414(d); 34 C.F.R. 300.320-300.324. A child's IEP describes, among other elements, the child's present levels of educational performance, measurable annual goals for addressing the child's educational needs that result from the child's disability and the individualized instruction and services that will be provided to help the child. 20 U.S.C. 1414(d)(1)(A); 34 C.F.R. 300.320.

5. Additionally, the IEP must include a statement of the individualized instruction and services (including supplementary aids and services and program supports and modifications for school personnel) that will allow the child to make appropriate progress toward attaining the annual goals of the IEP, "to be involved and progress in the general curriculum", "to participate in extracurricular and other nonacademic activities" and "to be educated and participate with other children with disabilities and nondisabled children" in those extracurricular and other nonacademic activities. 20 U.S.C. 1414(d)(1)(A)(IV)(bb); 34 C.F.R. 300.320(a)(3) These IDEA requirements were met by the Board. The Student might not be making the educational progress the Parent is expecting but she is being provided with sufficient independent educational support services to permit her to receive educational benefit from her instruction as IDEA mandates and the second prong of *Rowley* requires.
6. It must be noted that the Parent's case, while no doubt brought with sincerity and in good faith, was presented in such a disorganized fashion that the proceedings were unnecessarily prolonged. In addition, in regard to the Parents' claims that are not supported by this decision, at times comments would be blurted out by the Parent (often during the questioning by the Parent in response to answers witnesses were giving), which, had evidence been presented to support the blurted comments, might have resulted in different findings. Wide latitude was given to this pro se parent. In other words, perhaps the Student had a better case than was presented, but the hearing officer must decide based on the evidence that the parties actually present, not the statements, opening, closing or intermittent (all of which are not under oath), that are presented in the course of a hearing.
7. The Parent presented almost no evidence on her preferred placement, the Learning Incentive and that the tutoring the Parent was seeking could not be provided by the Board in her school setting. The Parent was not willing to allow the Board to provide the Student with additional reading instruction throughout the regular school day to address the Student's deficits. (Findings of Fact # 8) Evidence was not presented on the nature of the tutoring the Student would receive at LI and, to the contrary, testimony presented by the Director of LI was that she could not act as a consultant nor attend IEP meetings for the Student; these were the issues that the Parent alleges were denied by the Board and were primary issues of this hearing. Even the most basic of information such as whether LI has an opening for this Student was not presented. The record does not support the need for an extended day tutoring programming at LI nor the requirement that LI be a required participant of the Student's IEP meetings.

8. Even though the Student's IEP is providing the Student with FAPE, the team should review the Student's school day program and see where additional reading instruction can be provided to the Student. If the IEP team finds that additional reading instruction can be provided without jeopardizing another academic subject, and reaches consensus on this, it shall be provided even if the Parent objects.
9. To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

FINAL DECISION AND ORDER:

1. The Board does not have to provide 2 hours four times a week of tutoring at the Learning Incentive.
2. The issue of transportation to the Learning Incentive is moot.
3. The Learning Incentive is not a necessary party at the IEP meetings. If the Parent wants to invite them to the Student's IEP meetings, they may, but at the Parent's expense.