

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Achievement First Amistad Elementary School v. Student

Appearing on Behalf of the Parents: Attorney Elizabeth Knight Adams
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Appearing on Behalf of the Board: Attorney Marsha B. Moses
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Appearing Before: Attorney Justino Rosado, Hearing Officer

ISSUES:

1. Is the placement of the Student appropriate? If not:
2. Should the Board place the Student in an interim alternative educational setting (“IAES”)?

FINAL DECISION AND ORDER

SUMMARY:

The student is a 7 years and 10 months old who has been identified with emotional disturbance and is entitled to receive a free and appropriate public education (“FAPE”) as defined in the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. The Student’s educational placement, Achievement First Amistad Elementary School (“Charter School”), a charter school, requested that the Student be placed in an IAES. The Board objected to the request stating that the Charter School did not have standing.

PROCEDURAL HISTORY:

On or about May 19, 2010, the Board received notice of the Charter School’s request for due process. A hearing officer was appointed on or about May 17, 2010. A prehearing conference was held on or about May 24, 2010, The Board at the prehearing conference objected to the request for due process stating that the Charter School did not have standing and the hearing officer did not have jurisdiction. The Parent did not participate in the prehearing conference. Letters were sent to the Parent, the Board and the Charter School and the hearing officer attempted to contact the parent.

At the prehearing conference, a briefing schedule was set on the issue of standing of the Charter School and the hearing officer’s jurisdiction. On or about June 7, 2010, the Board filed a Motion to Dismiss. On or about June 16, 2010 the Charter School filed a Motion for Extension of Time of one week to file

their objection to the Motion to Dismiss. There was no objection to the extension of time. A timely objection to the Motion to Dismiss was filed by the Charter School.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law herein, which reference certain exhibits and are not meant to exclude other supported evidence. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of fact actually represent conclusions of law, they should be 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. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993).

The date for the mailing of the Final Decision and Order is July 9, 2010.

FINDINGS OF FACT:

1. It is undisputed that the Student is eligible to receive special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Charter School, on or about May 19, 2010, requested an expedited hearing stating that maintaining the Student in his current placement is substantially likely to result in injury to the Student. (Hearing Officer Exhibit¹-2)
3. The Student exhibits severe, unpredictable violent behavior issues including, but not limited to hitting another student across the face with a clip board; and hitting, threatening and pushing teachers, staff and/or students to the extent that the safety of others is compromised. (H.O.-2)
4. Due to an incident, the Student had a cumulative total of 10 days suspension. On or about March 15, 2010, a manifestation determination was held based on the suspension and a determination was made that the Student's behavior was a manifestation of the Student's disability. (Board Brief Exhibit²-2)
5. On or about May 13, 2010, the Board sent the Charter School, the Parent and other members of the Student's PPT notice of a PPT meeting scheduled for May 24, 2010 to review the Student's individualized education plan (IEP) and functional behavior assessment (FBA). (B-3)
6. At the May 24, 2010 PPT, the team reviewed the FBA and it was agreed that the Charter School staff would implement the FBA. The Board's social worker set up a meeting with the Charter School's staff and the social worker to discuss options to further support the Student in the school. The Parent or a guardian of the Student did not attend the PPT. The Charter School staff raised the issue of an IAES for the Student but the issue of an IAES was not a purpose for which the PPT had been requested. (B-4)

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 Act, 20 U.S.C. Sec. 1401, et seq.

¹ Hereafter Hearing officer's Exhibits shall be noted as "H.O." followed by the exhibit number.

² Hereafter Board's Brief Exhibits shall be noted as "B" followed by the exhibit number.

2. There is no dispute that the PPT has provided the Student with an IEP that provides him with FAPE and offers him a meaningful education. It is undisputed that the Student's IEP has been properly implemented by the Charter School. (Charter School Brief)
3. The matter as presented is a violation of the due process rights of the Parent. The Charter School alleges that the Board refused to discuss the issue of a change in placement at the May 24, 2010 PPT meeting. In reviewing the Notice of the PPT meeting, the issue of a change in placement was not identified as an issue that would be discussed at the PPT meeting and the Parent was not present at the meeting. (Findings of Fact # 5 & 6)
4. IDEA is very clear regarding the requirements of notice at individualized education program (planning and placement team) meetings:
§300.322 Parent participation.
 - (a) Public agency responsibility—general. Each public agency **must** (*emphasis added*) take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--
 - (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed on time and place.
 - (b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section **must**--
 - (i) **Indicate the purpose**, (*emphasis added*) time, and location of the meeting and who will be in attendance; and
 - (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
5. In the current case, although the Parent was not present and notice had been sent of the May 24, 2010 PPT meeting, the notice sent by the Board³ was faulty in that it did not state the purpose that the Charter School was seeking, a change in placement to an IAES. In a matter as critical as an IAES, the parent's presence is vital. Therefore, the notice requirement of the PPT meeting was not adhered to so that the Parent could be a meaningful participant of the PPT meeting.
6. Since the notice requirement was faulty, there is no need to discuss the issue of Standing of the Charter School.

FINAL ORDER AND DECISION:

THE MOTION TO DISMISS IS GRANTED.

THE MATTER IS DISMISSED WITHOUT PREJUDICE.

³ The Parent was present at the manifestation determination meeting on March 15, 2010. The Board should work with the Charter School to ensure that the Parent is present at the PPT meeting so that the matter can be resolved to the benefit of the Student.