

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Greenwich Board of Education

Appearing on behalf of the Student: *Pro se, by the Father*

Appearing on behalf of the Board: Attorney Abby Wadler
Law Department, Town of Greenwich
101 Field Point Rd.
Greenwich, CT 06830

Appearing before: Attorney Mary Elizabeth Oppenheim,
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Whether the behavior that has resulted in the pending disciplinary action was caused by, or had a direct and substantial relationship to, the Student's disability; or if the conduct in question was the direct result of the Board's failure to implement the IEP.

SUMMARY:

This Student, who was eligible for special education and related services under the primary disability of Other Health Impairment due to his ADD, was facing disciplinary action due to the alleged out of school action of operating a drug factory. A manifestation determination meeting convened, and the Board staff agreed that the pending disciplinary action was not caused by and did not have a direct and substantial relationship to the Student's disability and the conduct in question was not the direct result of the Board's failure to implement the IEP. The Student requested this hearing to challenge this conclusion.

PROCEDURAL HISTORY:

The Student, through the Father, requested this hearing on January 14, 2011. A prehearing conference was held on January 25, and the hearing convened on February 11, 2011, within 20 school days of the filing of the request for hearing, taking into consideration school vacation days and days when the Board's schools were closed due to inclement weather. The Student has reached the age of majority, but submitted permission for his Father to represent him in the meeting [sic] on February 11, 2011.

The Board failed to convene a resolution meeting in this matter, but the Father and Board's attorney agreed on the record that they waived the meeting.

The Student's witnesses were the Father and the Father's Niece, who also served as a Spanish language interpreter for the Father.

The Board's witnesses were Joseph Russo, Board high school housemaster of Sheldon; Danielle Polizzi, the Board social worker; Lindsey Pontieri, Board special education teacher and Mary Forde, Director of Pupil Personnel Services.

The Board submitted 10 exhibits. The Student did not submit exhibits.

This case proceeded as an expedited hearing. The hearing date was convened within 20 school days of the request for hearing and this decision is issued within 10 school days of the closing of the evidentiary hearing in accordance with 34 CFR §300.532(c).

To the extent that the procedural history, summary and findings of fact actually represent discussion/conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

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 Administrative Procedure Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. The Student is currently 18 years old and in twelfth grade at the Board high school. [Exhibit B-5]
2. The Student is diagnosed with ADD, predominately inattentive type based on his long history of being impulsive and inattentive in school. [Exhibit B-7] He is identified as eligible for special education and related services with the primary disability of Other Health Impairment. [Exhibit B-8]
3. The Student's Individualized Education Program [IEP] for the 2010-11 school year was planned at a Planning and Placement Team [PPT] meeting on February 3, 2010. The Student at that time had not yet reached the age of majority. The Father was unable to attend the PPT meeting in February 2010, but gave his permission for the PPT meeting to be held without him. The Student attended the meeting. At the PPT meeting, the Student's program for the 2010-11 was planned to be 18 sessions per week of special education and one half hour per week of counseling through the social worker. His goals included (1) [the Student] will maintain the positive changes he has made in his behavior and focus, (2) [the Student] will continue in working on his organizational skills on long term assignments, (3) [the Student] will acquire the skills to successfully transition to a

two year or four year university, (4) [the Student] will explore how his disability can affect his ability to be inconsistent in school which may, in turn, affect future employment. [Exhibit B-8]

4. At the beginning of the 2010-11 school year, the Student's schedule was changed to primarily mainstream classes, but his IEP was not revised. Rather than having 18 sessions per week of special education, the Student was assigned 6 sessions per week, a third of the sessions listed in his IEP. There was no PPT meeting convened to discuss this change, nor was there an agreement to amend the IEP to this level of services. [Testimony Housemaster, Director, Social Worker, Special Education Teacher]
5. On December 15, 2010, the Board Superintendent was notified that the Student had been arrested by the Greenwich Police Department on the following charges: 21a-277(b) intent to sell, 21a-279(c) possession of (sic) marijuana, 21-279d possession within 1500' of daycare center, 21s-278a(B) possession within 1500' of housing complex and 21a-240b operating a drug factory. [Exhibit B-2]
6. On December 20, 2010, the Board notified the Parents that the Student was placed on out of school suspension for ten days for operating a drug factory, and that the Student may be subject to further disciplinary action. [Exhibit B-1]
7. The PPT convened on January 5, 2011 to conduct a manifestation determination. The IEP meeting summary notes that the housemaster, the Mother, the Father, the Student, two regular education teachers, the special education teacher, the guidance counsel and the family's Niece attended this meeting. [Exhibit B-5] The social worker testified that she also attended this meeting. [Testimony Social Worker]
8. The school based members of the team concluded that the Student's disability was not related to his misconduct. They also concluded that the IEP was being implemented as discussed and written. [Exhibit B-8]
9. The IEP document was not reviewed at this PPT meeting, and the Board staff failed to notice that the Board had failed to implement the Student's IEP for the entire 2010-11 school year. [Testimony Housemaster, Social Worker, Special Education Teacher, Director]
10. This failure to review the IEP continued. At this hearing when the Student was challenging the manifestation determination, the Board staff initially testified that the IEP was implemented. These staff members were recalled as witnesses, returning to the hearing room after the Board Director realized that the testimony was inaccurate. All Board witnesses then confirmed that the Board had indeed failed to implement the IEP as written. [Testimony Director, Housemaster, Social Worker, Special Education Teacher]
11. The Student's conduct in question, which is the subject of the disciplinary action and the manifestation determination, resulted in planning and purposeful actions over a period of time, as well as forethought. None of this relates to the Student's disability of ADD and

the related impulsivity and inattentiveness. [Testimony Housemaster, Social Worker, Special Education Teacher; Exhibits B-2, B-7]

12. The family members testified that the Student was under a great deal of stress due to being mainstreamed in his courses. The Niece, who also served as the family's Spanish language interpreter, testified that the Student was very stressed and the way he was coping with the stress was by smoking marijuana. She said he justified the selling of marijuana as this allowed him to smoke for free and alleviate his stress. He wasn't considering the consequences of his actions. [Testimony Niece, Father] The Student did not present to the school staff as being under stress at school. [Testimony Housemaster] No evidence was presented from the Student's providers or other medical or psychological professionals that the Student's disability manifested as a failure to consider the consequences of his actions.
13. The school members of the team concluded that the misconduct was not related to the Student's disability. [Testimony Housemaster, Social Worker, Special Education Teacher]
14. The Student, through his father, brought this hearing request to challenge this manifestation determination. [Exhibit H.O.-1]

DISCUSSION/CONCLUSIONS OF LAW:

The Individuals with Disabilities Education Improvement Act of 2004 [IDEA] provides for services to children with disabilities. The Student has been found eligible for special education services, and is afforded the protections of the Act and related regulations.

The IDEA provides that prior to the change of placement of a child with a disability due to violation of school rules, a manifestation determination must be completed. This provision provides that:

“ . . . within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine -

(1) if the conduct in question was caused by, or had a

direct and substantial relationship to, the child's disability; or
(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP." 20 U.S.C. §1415

If the Board, Parents and the members of the IEP team determine that either sub-clause is applicable for the child, the conduct is determined to be a manifestation of the Student's disability. *Id.*

In this case, the Student's behavior that has resulted in the pending disciplinary action was not caused by, nor had a direct and substantial relationship to, the Student's disability. The purported claim of engaging in the behavior to pay for the stress relief of smoking the marijuana was, even if found believable, not related to the Student's disability. The Student's actions were made with aforethought and planning, and were not the disruptive behaviors characteristic of the Student's disability.

The Student's IEP was not appropriately implemented, and in this manifestation determination meeting, that inquiry, i.e., whether the IEP was implemented, was not appropriately completed.

The Board merely conducted a cursory review of the Student's IEP at this manifestation determination meeting. The manifestation determination meeting serves an important purpose. It is not a rubber stamp of the disciplinary action taken by the Board. It must be a good faith inquiry into whether the behavior directly related to the Student's disability and whether it directly related to the failure to implement his IEP. That did not occur in this case. The Housemaster testified that they didn't go through the whole IEP, "we referenced it," testifying that people were aware of the contents although they didn't go through every page and concluding, inaccurately, that the IEP was fully implemented.

If an appropriate review of the IEP were undertaken the Board would have been aware that the Student was receiving only a third of the services which were provided in his IEP at the time of the manifestation determination. The Board failed to even do the requisite minimum inquiry as they did not know the contents of the Student's IEP but concluded that it was implemented.

While there was an egregious failure to implement the IEP and appropriately conduct the manifestation determination review, the complete inquiry in accordance with the regulations must include a determination of a causal connection, to wit, whether the conduct in question was **the direct result** of the Board's failure to implement the IEP. Based on all evidence presented, it cannot be concluded that the conduct was a direct result of the admitted failure to implement the IEP. The Student's disability was manifested by inattentiveness and impulsivity. The Student did not receive the educational benefit outlined in his IEP, but the conduct of running a drug factory was not the direct result of the failure of the Board to provide special education services to the Student.

The review of the conduct in question and the Student's disability necessitates the finding that the behavior that has resulted in the pending disciplinary action was not caused by, nor had a direct and substantial relationship to, the Student's disability; and the conduct in question was not the direct result of the Board's failure to implement the IEP. Based on the evidence presented, however, it is imperative that the state Department of Education review this matter and take corrective actions as necessary. The state Department of Education is directed to review this matter and institute corrective measures for the Board's failure to convene a resolution meeting, for the failure to conduct an appropriate manifestation determination meeting

including the failure to review the IEP during the meeting, and for the Board's failure to provide the Student with the services outlined in his IEP.

FINAL DECISION AND ORDER:

1. The behavior that has resulted in the pending disciplinary action was not caused by, and did not have a direct and substantial relationship to, the Student's disability.
2. The conduct in question was not the direct result of the Board's failure to implement the IEP.
3. Due to the failures of the Board to convene a resolution meeting, conduct an appropriate manifestation determination meeting and to provide the Student with the services outlined in his IEP, the state Department of Education shall review these actions and take the appropriate corrective actions to address these failures.