

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student¹ v. Ridgefield Board of Education

Appearing on behalf of Student: Attorney Piper Paul
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Appearing on behalf of the Board of Education: Attorney Michelle Laubin
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Appearing before: Attorney Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing in Case 13-0300 was requested by Student's Attorney via letter dated January 25, 2013.² It was received by Board of Education's ("BOE's") Attorney on January 25. The 30-day resolution period ended February 24. The original deadline to mail the final decision and order was April 10.

A telephonic pre-hearing conference was held on February 7. Attorney Moses appeared on behalf of BOE and Attorney Paul appeared on behalf of Student. BOE's Attorney expressed concern that the request raised issues under Section 504 of the Rehabilitation Act. The issues identified for hearing do not include any Section 504 issues over which the Hearing Officer has no jurisdiction.

The following issues were identified at the pre-hearing conference:

1. Did the Board of Education fail to provide Student a free appropriate public education during the 2011-12 school year?
2. Did the Board of Education fail to provide Student a free appropriate public education during the 2012 extended school year?

¹ In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student", "Parents", "School" and titles of school staff members and certain other witnesses in place of names and other personally identifiable information.

² All dates are 2013 unless otherwise indicated.

3. Did the Board of Education fail to timely and appropriately evaluate Student?
4. Did the Board of Education fail to properly identify Student as eligible for special education services?
5. Did the Board of Education fail to provide Student a free appropriate public education during the 2012-13 school year?
6. If the answer to any of the above Issues One through Five is in the affirmative, what shall be the remedy?

Hearings were scheduled for March 11, March 22, April 3 and April 9. Hearings began in Case 13-0300 on March 11. On that date, BOE's Attorney filed a request for due process seeking an order permitting BOE to conduct a psychiatric evaluation of Student in the absence of parental consent. The matter was assigned Case number 13-0341 and assigned to Hearing Officer Rosado.

The request for due process in Case 13-0341 was received by Student's Attorney on March 11. Upon motion to consolidate and after consultation with the undersigned, Hearing Officer Rosado granted the motion to consolidate Cases 13-0300 and 13-0341.

The original deadline to mail the final decision and order in Case 13-0341 was April 25. The consolidation of the two cases adjusted the timelines such that the deadline to mail the final decision and order in the consolidated cases was established as April 25:

The following issues were identified in the consolidated cases:

1. Did the Board of Education fail to provide Student a free appropriate public education during the 2011-12 school year?
2. Did the Board of Education fail to provide Student a free appropriate public education during the 2012 extended school year?
3. Did the Board of Education fail to timely and appropriately evaluate Student?
4. Did the Board of Education fail to properly identify Student as eligible for special education services?
5. Did the Board of Education fail to provide Student a free appropriate public education during the 2012-13 school year?
6. If the answer to any of the above Issues One through Five is in the affirmative, what shall be the remedy?

7. Shall the Board of Education be permitted to conduct a psychiatric evaluation of Student in the absence of parental consent?

On March 21, Student's Attorney filed a Motion to Dismiss Case 13-0341 on the basis that there is no basis under the IDEA for BOE to obtain an updated psychiatric evaluation without parental consent and, in the alternative, that BOE forfeited any right to further evaluation of Student.

At the March 22 hearing, Student's Attorney filed a written withdrawal of issues two and three. The request was granted on the record. Upon review, it was determined that the statement of issues that Student's Attorney sought to withdraw were issues identified in another case before this Hearing Officer and not any of the issues identified in this case. Student's Attorney subsequently sought to withdraw the request for withdrawal. The request to withdraw issues two and three was denied.

On March 28, BOE's Attorney filed a timely objection to the Motion to Dismiss. After fully considering the positions of the parties, the Motion to Dismiss was denied on the basis that the request for due process states a claim upon which relief can be granted.

Hearings were held on April 3 and April 9. At the April 9 hearing, after discussion about hearing dates, Student's Attorney made a verbal request on the record for an extension of the deadline to mail the final decision and order. BOE's Attorney did not object. After fully considering the positions of the parties, the request was granted on the record and the deadline to mail the final decision and order was extended until May 25.

Additional hearings were scheduled and held on April 25 and May 13. At the conclusion of the last hearing, a post-hearing briefing schedule was discussed. The parties were given until May 28 to simultaneously file post-hearing briefs without opportunity for reply briefs. BOE's Attorney made a verbal request on the record for an extension of the mailing date to accommodate a briefing schedule and permit the Hearing Officer time to issue a decision. Student's Attorney did not object to the request for an extension but reiterated Student's Parents desire to not delay and to have a decision soon. After fully considering the positions of the parties, the request was granted on the record and the deadline to mail the final decision and order was extended until June 24.

Findings of Relevant Fact

1. Student has attended BOE's schools from kindergarten through part of tenth grade. The majority of her grades were in the A range (Stip FOF 3).³ She received positive remarks from her teachers, had good attendance, and demonstrated an interest in school (P-1, P-2, P-3, P-4, P-5, P-6, P-7; Testimony of Student's Mother).
2. Student is described by her mother and BOE staff as being a quiet child.
3. In late fall 2010 (during her freshman year), Student began engaging in self-injurious behaviors such as cutting (P-8, P-33; Testimony of Student's Mother). Neither Student's Parents nor BOE staff were aware of Student's behaviors at that time (Testimony of Mother).
4. In April 2011, Student had suicidal ideations and took an overdose of pills (P-33; Testimony of Student's Mother).
5. Via e-mail dated April 26, 2011, Student's Mother notified Student's teachers and Guidance Counselor that Student had been diagnosed with Major Depression and that she had been "profoundly unhappy for some time (which comes as something of shock to me)." Student's Mother asked to be notified if the teachers notice anything "off" with Student. (B-23, B-24, B-25, B-26, B-27, B-28; Testimony of Student's Mother).
6. Student's Mother did not notify BOE that Student was seeing a therapist at that time (Testimony of Student's Mother).
7. In May, 2011, Student was taken to the emergency room due to her self-injurious behaviors as discovered by her parents. Student was diagnosed with Major Depressive Disorder. Student was hospitalized from May 25 to June 22, 2011 at Psychiatric Hospital (Stip FOF 4; P-8, P-16; Testimony of Student's Mother).
8. Student's Mother testified that she did not fully appreciate the seriousness of the situation and that it came as a shock to them at the time.
9. Student's Mother notified BOE and Guidance Counselor notified Student's teachers that Student would not return to High School for the remainder of the year and that the teachers needed to provide all the materials that Student would need to complete her course requirements and make a

³ Per Order of the Hearing Officer, the parties filed a Joint Stipulation of Uncontested Facts on March 7. It is cited as "Stip FOF." Hearing Officer Exhibits are cited as "HO-#"; Student's Exhibits as "P-#"; and BOE's Exhibits as "B-#".

plan for her to access her final exams (B-29). Student's teachers worked with Student's Mother to provide her school assignments while in the hospital (P-75).

10. Student was absent from school approximately 27 days during fourth quarter of the 2010-11 school year due to her hospitalization and in-patient program (B-31, B-34). Her fourth quarter grades ranged from B+ to A+, which was consistent with her first through third quarter grades (B-31). Her final exams were waived after her teachers determined that her grades and performance demonstrated that she had mastered the curriculum requirements (B-32, P-75; Testimony of Guidance Counselor). Student's Mother was notified and indicated that it would be a "great relief" to Student (B-32, B-33, P-75).
11. Student started her sophomore year at BOE's High School and participated in the Learning Independence through Future Experience ("LIFE") program (Stip FOF 5).
12. Student did not participate in the Human Relations course in the LIFE room because it conflicted with an honors level course that she wanted to take. Student's Parents wanted her to remain in honors level courses. They did not have concerns about Student's academic abilities (Testimony of Student's Mother).
13. Via e-mail dated September 12, 2011, Guidance Counselor asked to meet with Student's Parents to discuss a 504 plan to give Student some accommodations (B-35).
14. A 504 meeting was held on September 27, 2011 (Stip FOF 6; P-17, P-75). The 504 team determined that Student's mental impairment substantially limited her major life activity of learning due to concentration and attention issues (Stip FOF 6; B-38). Several accommodations were made, including extended time on assignments and tests, participation in the LIFE Program, and periodic check in with Guidance Counselor (P-75; Testimony of Student's Mother).
15. The LIFE Program is "an individualized support system designed to meet the unique needs of students who may be transitioning back to the high school from hospitalization, residential placement, or intensive day treatment programs..."(P-18).
16. Student spent time in the LIFE room and sought out Social Worker on occasion (P-75). When Student spent a class session in the LIFE room instead of her regularly assigned classroom, an absence would be reflected on her record for that class.
17. Student found the content of a required reading book to be triggering. She was provided an accommodation to allow her to view two movies and write a report as an alternative (Testimony of

Student's Mother, Guidance Counselor). Such alternative assignments are not uncommon for students.

18. Guidance Counselor notified Student's teacher that she did not feel comfortable standing in front of a class doing a skit. Student had an opportunity to practice in the LIFE room to prepare.
19. Student's self-injurious behavior resumed in fall 2011 (P-33, P-59; Testimony of Student's Mother). She engaged in cutting, burning, and "practicing" hanging herself (P-33).
20. In fall 2011, Student began pulling out her hair. Over the winter holiday break, Student increased her self-injurious behavior (P-59; Testimony of Student's Mother).
21. On January 9, 2012, Student was admitted to Psychiatric Hospital as a result of reoccurrences of self-injurious behavior (Stip FOF 7; P-21; Testimony of Student's Mother). She was cleared for discharge on January 20, 2012 and was recommended for residential placement (Stip FOF 7; B-46; Testimony of Student's Mother).
22. On January 14, 2012, Student's Parents informed staff at High School that they were attempting to transfer Student from Psychiatric Hospital to Private Residential Program which has a Private Special Education School (Stip FOF 8).
23. Student's Mother notified Guidance Counselor that Student was in "terrible shape" and not likely able to return to High School. Guidance Counselor responded that she would set up a Planning and Placement Team ("PPT") (B-41, P-75). Student's Step-Father notified Superintendent that Student was suffering from severe psychological issues and could not be left unsupervised. He inquired as to what role BOE would play when Student was admitted to a residential program (B-42).
24. On January 20, 2012, Student's treatment providers at Psychiatric Hospital wrote a letter stating "(i)t is the treatment team's clinical recommendation that [Student] attend [Private] residential treatment program at this time in order to meet her educational, social and emotional needs." (Stip FOF 9).
25. On January 20, 2012, Student was discharged from Psychiatric Hospital and was placed by her parents at Private Residential Program (P-23; Testimony of Student's Mother).
26. On January 20, 2012, BOE made a referral to determine if Student was eligible for special education (Stip FOF 10).
27. On January 23, 2012, Student entered the Private Residential Program's residential therapeutic program, where she still resides (Stip FOF 11, Stip FOF 18). Private Special Education School is an

- approved private special education program of the Connecticut State Department of Education (Stip FOF 12).
28. A duly noticed PPT meeting was held on January 30, 2012 to review Guidance Counselor's referral of Student for consideration of eligibility for special education (Stip FOF 12; B-44, B-45, B-47, B-57, P-26). Student's Parents attended the PPT meeting.
 29. The PPT meeting notes indicate Student had been hospitalized twice within the last year, was identified as having depression, and had been receiving services through a 504 plan.
 30. The PPT recommended a psychiatric evaluation and educational/achievement review (Stip FOF 12; B-57). Student's Parents provided consent for the evaluation and signed releases to allow Dr. Aversa, the evaluator, to obtain information (Stip FOF 12; B-58; Testimony of Student's Mother). BOE refused Student's Parent's request for reimbursement for the privately placed program (Stip FOF 12).
 31. Prior to January 2012, Student was performing well academically, received A's and B's, and was enrolled in honors courses (B-57).
 32. In March 2012, Student took the Connecticut Academic Performance Test ("CAPT"). She scored in the goal or advanced range on all subjects (B-60).
 33. On March 15, 2013, Dr. Aversa interviewed Student at her private placement. Dr. Aversa noted in his report that Student "is a sophomore at [High School] but has had significant difficulties over the past two years including depression, suicide attempts and significant self injurious behavior." (Stip FOF 13).
 34. On March 23, 2012, BOE's Special Education Director completed an educational review of Student (B-64, P-37). The review noted Student's high performance at BOE's schools from kindergarten through midyear of tenth grade when she was privately placed and at Private Special Education School (B-64). Special Education Director noted that Student continued to perform successfully within BOE's High School despite her absence in ninth grade. The educational review also cited her attendance history and performance on standardized tests.
 35. Student's March 30, 2012 academic progress report for Private Special Education School reflects grades ranging from 90 to 100 and teacher comments indicate "outstanding academic progress," "outstanding effort," and other positive comments (B-65, P-34).

36. Dr. Aversa completed a psychiatric evaluation of Student and issued his report in April 2012 (B-62, P-42).
37. Dr. Aversa made educational recommendations that included consider small class size, flexibility in class periods, a “go to” person with whom she can check in, ability to “take space”, reduced workload for a time period while psychiatric issues are being addressed, opportunities for socialization, on-going assessment and adjustment of school plan, and consideration of additional psychological and educational testing (B-62).
38. Dr. Aversa also made non-educational recommendations regarding therapeutic services and psychopharmacologic management (B-62).
39. A duly noticed PPT meeting was held on April 9, 2012 to review Student’s psychiatric evaluation and educational review and to determine Student’s eligibility for special education (Stip FOF 14; B-66, P-40).
40. At the PPT meeting, the team determined Student was eligible for special education under the Other Health Impairment (“OHI”) category and changed Student’s placement from BOE’s High School to the therapeutic day program at Private Special Education School (Stip FOF 14; B-70). The PPT recommended 25.5 hours of academic service and 30 minutes of counseling per week. BOE assumed the cost of the therapeutic educational day program retroactive to the date of placement (Stip FOF 14; B-70; Testimony of Student’s Mother).
41. Student’s Parents expressed disagreement with the OHI category and expressed that they thought Serious Emotional Disturbance (“SED”) was a better category (Stip FOF 14; Testimony of Student’s Mother). The PPT determined that Student did not qualify for special education on the basis of SED because the impact on her educational performance was limited (Stip FOF 14).
42. Following the PPT, Student’s Mother provided suggested edits to Dr. Aversa’s report (B-69; Testimony of Student’s Mother). Those edits were not made by Dr. Aversa (Testimony of Student’s Mother).
43. Beginning in spring 2012, Student began weekend home visits under close parental supervision (P-47, P-60; Testimony of Student’s Mother).
44. In May 2012, Private Residential Program’s Director of Psychiatry opined that Student requires continued residential treatment given the magnitude of her symptoms and tenuous nature of her

improvement; that Student needs supervision at all times; and that, absent such supervision, she is at risk for serious injury or death (P-49).

45. A duly noticed PPT meeting was held on May 21, 2012 to conduct an annual review, review or revise the IEP, and consider transition needs (Stip FOF 15; B-68, B-73). A transition goal was added to her IEP and counseling services were increased (B-73, P-52).
46. The present levels of performance portion of the IEP states “Student’s current psychiatric state is affecting her ability to fully access her academics. Student requires significant amount (sic) of structure and support in order to provide for her emotional needs.” Small group/individual instruction was recommended for 27.75 hours per week. Counseling in a small group was recommended for one hour per day and individual counseling instruction was recommended 1.5 hours per week. The PPT recommended that BOE fund the educational portion of the placement at Private Special Education School for the 2012-13 school year (Stip FOF 15).
47. Student’s June 15, 2012 academic progress report for Private Special Education School reflects final grades ranging from 92 to 100 and teacher comments again indicated “outstanding academic progress”, “outstanding effort” and other positive comments (B-76, P-55).
48. Student’s home passes were suspended in summer 2012 due to an incident involving alcohol and prescription drugs (P-62; Testimony of Student’s Mother). Home passes were reinstated in October 2012 (P-62).
49. In October 2012, Student’s Parents retained Dr. Eric Frazer to conduct a psychological evaluation (B-81; Testimony of Student’s Mother).
50. Dr. Frazer noted in his summary of evaluation results that “there has been a gradual decline over the past several years in Student’s functioning, with symptomatic features of depression, hair pulling, pathological food control and body image distortions, environmental influences, and decompensation brought on by deliberate acts of self-injury and suicide attempts.” He noted that while partial stabilization has occurred, “acute concerns have persisted specifically including symptoms of her Eating Disorder, self-harm behaviors while on passes, hair pulling, and complex identity difficulties.” He further noted “(t)he intense and chronic nature of her problems lends explanation to the significant therapeutic challenges that will take significant time for Student to incorporate practically and internally. As it pertains to her education, Dr. Frazer stated that “the

overall clinical data is clear that she requires this level of intense residential care to participate in her schoolwork and education constructively on a daily basis.” (Stip FOF 16).

51. Dr. Frazer testified that Student integrated well and was successful academically at Private Special Education School.
52. Private Special Education School Therapist testified that Student is highly intelligent and a highly motivated student who does quite well academically.
53. Student refrained from self-injurious behavior from January 8, 2012 until fall 2012 (P-60; Testimony of Student’s Mother).
54. BOE worked with Student’s Parents to provide more challenging academic coursework, including honors and AP classes (B-78, P-75).
55. Student’s November 2, 2012 academic progress report for Private Special Education School reflects final grades ranging from 95 to 100 and teacher comments again indicated “outstanding academic progress”, “outstanding effort” and other positive comments (B-76, P-64).
56. A duly noticed PPT meeting was held on November 26, 2012 to discuss Dr. Frazer’s report and Student’s Mother’s October 17, 2012 request that BOE pay for Student’s residential program (Stip FOF 17; B-80, B-83, P-68, P-85, P-86). At that meeting, BOE refused to fund the residential portion of Student’s placement, maintained her designation as OHI, and recommended an updated psychiatric evaluation by Dr. Aversa.
57. The PPT refused payment for the residential portion of Student’s program at Private Residential Program but continued to fund Student’s continued placement at Private Special Education School for the 2012-13 school year as an accommodation to the family (Stip FOF 17). The IEP reflects five hours per week of group counseling, and 1.5 hours per week of individual counseling, as well as 27.75 hours per week of special education instruction in small group or individual settings (Stip FOF 17).
58. Student’s Parents submitted an Addendum to the November 26, 2012 PPT meeting summary and asked that it be distributed to all members of the PPT (P-88; Testimony of Student’s Mother).
59. Student’s January 18, 2013 academic progress report for Private Special Education School reflects final grades ranging from 95 to 100 and teacher comments again indicated “outstanding academic progress”, “outstanding effort” and other positive comments (B-82). The report also indicates that Student is making satisfactory progress on her IEP goals and objectives.

60. Student's March 28, 2013 academic progress report for Private Special Education School reflects final grades ranging from 95 to 100 and teacher comments again indicated "outstanding academic progress", "outstanding effort" and other positive comments (B-91). The report also indicates that Student is making satisfactory progress on her IEP goals and objectives.
61. A PPT meeting was held on April 2, 2013 (B-92). The team again recommended that an updated psychiatric evaluation be conducted by Dr. Aversa and that an alternative placement be considered.
62. BOE has paid the cost of Student's Private Special Education School since she enrolled in January 2012 (P-85; Testimony of Student's Mother).
63. Student's Parents signed releases authorizing school officials to obtain information from Student's private therapist, psychiatric hospital, (B-37, B-50, P-19, P-31; Testimony of Student's Mother)

Conclusions of Law

1. BOE found Student to be eligible for special education and related services as defined in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Sec. 1401, et seq.; Connecticut General Statutes § 10-76a, et seq.
2. School districts must have in effect policies and procedures to ensure that all children with disabilities who are in need of special education and related services are identified, located, and evaluated. 34 CFR § 300.111.
3. The Hearing Officer has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ("FAPE") to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the PPT, or (C) to prescribe alternate special educational programs for the child. Connecticut General Statutes § 10-76h(d)(1).
4. Student has the burden of production in a special education due process hearing. Connecticut State Regulations § 10-76h-14.
5. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Connecticut State Regulations § 10-76h-14.
6. The PPT includes the parents of a child with a disability. 34 CFR § 300.321.

7. Where parents allege a procedural violation under the IDEA, a Hearing Officer may find a denial of FAPE if the violation 1) impeded the child's right to FAPE; 2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE; or 3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E); 34 CFR § 300.513(a); Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2001 (2007).
8. The standard for determining whether FAPE has been provided is a two-pronged inquiry: first, whether the procedural requirements of IDEA have been met, and second, whether the IEP is reasonably calculated to enable the child to receive educational benefits. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).
9. The proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2d Cir. 1997).
10. An appropriate public education under IDEA is one that is “likely to produce progress, not regression.” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 (2d Cir. 1998). The IDEA does not require that the school district provide the best available educational program or one that maximizes a student's educational potential. Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1121 (2d Cir. 1997).
11. Factors to be considered in determining whether an IEP is reasonably calculated to provide a meaningful educational benefit is whether the proposed program is individualized on the basis of the student's assessment and performance and whether it is administered in the least restrictive environment. 20 U.S.C. §1412(a)(5)(A); 34 CFR § 300.114(a); A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002); M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D.Conn. 2000).
12. A school district must convene a PPT meeting to determine whether ESY services are necessary to the provision of FAPE. 34 CFR § 300.106.
13. A student's IEP must be reviewed not less than annually and revised as appropriate. 34 CFR § 300.324(b).
14. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEP was developed. B. L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 537 (D. Conn. 2005).

15. “It is well established that ‘equitable considerations are relevant in fashioning relief’ under the IDEA.” M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ., 226 F.3d 60, 68 (2d Cir. 2000) (quoting Burlington v. Dep’t of Educ., 471 U.S. 359, 374 (1985)).

Discussion

Each of the issues identified in these consolidated cases are addressed in this Discussion section. All of the parties’ arguments have been reviewed and considered by the Hearing Officer and are not necessarily individually addressed here. Certain arguments and claims will be addressed for illustrative purposes.

I. Did the Board of Education fail to provide Student a free appropriate public education during the 2011-12 school year?

Student was a sophomore at BOE’s High School in the 2011-12 school year. Knowing from Student’s Mother that Student had been diagnosed with major depression and was hospitalized at the end of her freshman year, BOE’s Guidance Counselor asked to meet with Student’s Parents to discuss a 504 plan to provide Student with accommodations. Student’s Mother indicated that Student experienced concentration issues when doing her homework.

Several accommodations were made, including extended time on assignments and tests, participation in the LIFE Program, and periodic check in with Guidance Counselor. Student did check in with Guidance Counselor on occasion and took advantage of some of the resources in the LIFE room. She did not participate in the Human Relations course in the LIFE room because it conflicted with an honors level course that she wanted to take. Student’s Parents wanted her to remain in honors level courses. They did not have concerns about Student’s academic abilities.

Student’s self-injurious behaviors resumed in fall of sophomore year. They escalated over the winter break. Prior to January 2012, Student was performing well academically, received A’s and B’s, and was enrolled in honors courses.

In January 2012, Student was again hospitalized and then discharged to a residential placement. After this second hospitalization, BOE initiated a referral for special education. BOE conducted an evaluation and developed an IEP for Student. The IEP accommodated Student’s need for a therapeutic residential placement to provide her with counseling and to keep her safe and established goals and

objectives related to organization and study skills and ability to manage anxiety and stress. At the PPT meeting in which Student was determined to be eligible for special education services, BOE agreed to pay for Student's private school tuition retroactive to the date of placement. BOE did not agree to pay for the residential portion of Student's placement.

The issues that were identified for resolution in the therapeutic program related to family and personal issues, not school or academic issues. Student's need for a therapeutic residential placement did not relate to academic deficiencies but to psychiatric issues surrounding her family and personal life.

In March 2012, Student scored in the goal or advanced range on all subjects on the CAPT. Student's private placement indicated that she was performing well academically in the private special education school. BOE worked with Student's private placement to provide challenging coursework, including honors and college preparatory classes.

Student's argument with regard to provision of FAPE during the 2011-12 school year is centered on BOE's refusal to pay for the residential portion of Student's private placement.

Student was not placed residentially for educational reasons. Student's residential placement was necessary to keep her safe and provide her the therapies necessary to deal with her severe depression and related mental health issues.

Student was not disruptive at school, was able to learn in regular classes, and was capable of benefiting from her education. Student was capable of deriving, and did derive, educational benefit outside of the residential placement.

Student's progress in the residential portion of her placement is not primarily judged by educational achievement but by progress in her therapies and refraining from self-injurious behavior.

"When a child's behavioral and emotional problems are so closely intertwined with his educational difficulties that he requires residential placement, the school board must pay for that placement as long as it is appropriate." Plainville Board of Education v. RN, 2012 US Dist. LEXIS 46995, citing Mrs. B. v. Milford Board of Education, 103 F.3d 114, 1122 (2nd Cir. 1997).

In this case, Student's behavioral and emotional problems were not closely intertwined with any educational difficulties. BOE was not required to assume the cost of Student's residential placement in order to provide Student with FAPE. Student was a high-performer who continued to excel academically both at BOE's High School and later in the private placement.

Student's private residential placement is not primarily oriented toward enabling her to receive an education.⁴ The fact that Student needs to be in a therapeutic residential placement to resolve and deal with psychiatric issues related to family and personal matters and can not attend BOE's public high school at the same time does not mean that she needs residential placement to access her education.

Therefore, BOE did not fail to provide Student FAPE during the 2011-12 school year.⁵

II. Did the Board of Education fail to provide Student a free appropriate public education during the 2012 extended school year?

A school district must convene a PPT meeting to determine whether extended school year ("ESY") services are necessary to the provision of FAPE. 34 CFR § 300.106. There is no evidence that BOE convened a PPT meeting to determine whether ESY services were necessary for the provision of FAPE to Student.

A factor to consider in determining whether a student determined to be eligible for special education services needs ESY is whether the student would revert to a lower level of functioning as a result of interruption of educational services during the summer.

Uncontroverted testimony indicates that Student's final grade report for the 2011-12 school year reflects grades ranging from 92 to 100 and teacher comments indicated "outstanding academic progress," "outstanding effort," and other positive comments; that Student continued to excel academically in the 2012-13 school year as BOE worked with Student's Parents to provide more challenging academic coursework, including honors and AP classes; and that Student's November 2012 progress report reflected final grades ranging from 95 to 100 and teacher comments again indicated "outstanding academic progress," "outstanding effort," and other positive comments.

Student did not revert to a lower level of academic functioning as a result of interruption of educational services during the summer. In this case, failure to convene a PPT to determine whether ESY services are necessary did not result in a denial of FAPE or deprivation of educational benefits.

BOE did not fail to provide Student FAPE during the 2012 extended school year.

⁴ There was consistent uncontroverted testimony that Student had two goals for her treatment at that time: to decrease destructive behaviors and resolution around the divorce of her parents' and an alleged incident with her step-brother (Testimony of Student's Mother, Private Special Education School Therapist).

⁵ Facts and analysis related to the propriety of BOE's evaluation and child find obligations during the 2011-12 school year are addressed separately below under Issues III and IV.

III. Did the Board of Education fail to timely and appropriately evaluate Student?

Student argues that the fact that she began engaging in self-injurious behaviors in fall 2010, that she had low quiz grades in one class in March 2011, and that Student's Mother notified BOE staff in April 2011 that Student had been diagnosed with major depression put BOE on notice that she should have been evaluated for special education in 2011.

The evidence presented supports a finding that BOE staff were not aware of Student's self-injurious behaviors at that time and that her school behavior and educational performance were not impacted. In April 2011, Student's Mother indicated to Student's teachers that she (Student's Mother) was shocked to find out that Student had been "profoundly unhappy for some time." Student's Mother testified that Student's teachers were surprised to learn of her condition as they did not see a negative impact on her behavior or academic performance.

During Student's May 2011 hospitalization, Student's teacher and Guidance Counselor worked with Student's Parents to provide her with coursework and to ensure that she completed her academic requirements. Absence from school and diagnosis of major depression, absent an impact on educational performance, do not necessarily require a school district to evaluate a child for special education. In her brief, Student talks about "numerous red flags" – i.e. BOE's knowledge that Student was diagnosed with depression and that Student had missed the end of the 2010-11 school year – as notice of Student's disability and "its impact on her education." However, she does not cite any negative impact on her educational performance, other than low quiz scores in one class.

BOE did not convene a PPT at that time but did offer Student 504 accommodations in the 2011-12 school year. Student cites three situations that she claims are evidence of difficulties in school that should have caused BOE to convene a PPT (finding the content of a required reading book to be triggering, not feeling comfortable standing in front of a class doing a skit, and having a rough day such that she did not have time to review for a quiz). LIFE Program Coordinator⁶ testified that other students have found certain educational materials triggering and had alternative assignments. Student's Mother and BOE staff consistently and credibly testified that Student is shy, which may be consistent with not feeling comfortable standing in front of a class.

Student's brief states "[t]he LIFE program teacher testified that if she had known the extent of [Student's] behaviors, she would not have agreed that the LIFE program at [High School] could

⁶ LIFE Program Coordinator is also a Special Education Teacher.

adequately support [Student].” This supports a finding that BOE staff did not know the extent of Student’s behaviors or emotional issues at that time to trigger a special education referral.

When BOE learned that Student had been hospitalized a second time, Guidance Counselor immediately made a referral to special education and set up a PPT. Student’s evaluation included an educational performance review and a psychiatric evaluation.

BOE did not fail to timely and appropriately evaluate Student.

IV. Did the Board of Education fail to properly identify Student as eligible for special education services?

BOE referred Student for special education, conducted an evaluation, and determined her to be eligible for special education services. Student’s argument on this issue appears to be surrounding Student’s Mother’s position that Student should have been found eligible under SED instead of OHI.

To be eligible under SED, Student must exhibit, to a marked degree, certain enumerated conditions and that, as a result of these behaviors, her educational performance was adversely affected. There is not disagreement that Student exhibited to a marked degree inappropriate types of behavior or feelings under normal circumstances or a general pervasive mood of unhappiness or depression. There is no evidence that, as a result of those behaviors, her educational performance was adversely affected.

Regardless of whether one category is a better fit than another, the category under which Student is identified does not dictate the services to be provided. The services needed and provided are based on Student’s present level of performance and educational needs, not on a label.

BOE did not fail to properly identify Student as eligible for special education services.

V. Did the Board of Education fail to provide Student a free appropriate public education during the 2012-13 school year?

Student’s argument with regard to FAPE for the 2012-13 school year is the same as her argument with regard to the 2011-12 school year – that BOE failed to provide FAPE when it refused to pay for the residential portion of Student’s therapeutic placement.

As stated above, Student’s behavioral and emotional problems were not closely intertwined with any educational difficulties. The fact that Student needs to be in a therapeutic residential placement to resolve and deal with psychiatric issues related to family and personal matters and can not attend BOE’s

public high school at the same time does not mean that she needs residential placement to access her education.

BOE did not fail to provide Student FAPE during the 2012-13 school year.

VI. If the answer to any of the above Issues One through Five is in the affirmative, what shall be the remedy?

The answer to each of the above Issues One through Five is in the negative and, therefore, a remedy need not be ordered.

VII. Shall the Board of Education be permitted to conduct a psychiatric evaluation of Student in the absence of parental consent?

BOE argues that it learned more about Student's psychiatric issues and condition from exhibits offered in this case and that, as a result, it feels the need to conduct an updated psychiatric evaluation to determine whether Student's program is appropriate.

Throughout this case and hearing, BOE has argued that Student's psychiatric condition and need for residential placement are akin to a medical placement and are unrelated to Student's educational needs. BOE has pointed to Student's educational performance at both BOE's High School and at Private Special Education School as an indication that she does not need residential placement to succeed academically. Student has continued to excel academically despite any setbacks in her mental health and family issues.

The record is devoid of evidence that Student's educational performance or ability to succeed academically has deteriorated in any way. A change in what BOE deems to be Student's medical condition, absent any impact on her educational performance, does not give rise to a need to re-evaluate Student absent parental consent.

Under this current factual scenario, BOE shall not be permitted to conduct a psychiatric evaluation of Student in the absence of parental consent.

FINAL DECISION AND ORDER

1. Board of Education did not fail to provide Student a free appropriate public education during the 2011-12 school year.
2. Board of Education did not fail to provide Student a free appropriate public education during the 2012 extended school year.
3. Board of Education did not fail to timely and appropriately evaluate Student.
4. Board of Education did not fail to properly identify Student as eligible for special education services.
5. Board of Education did not fail to provide Student a free appropriate public education during the 2012-13 school year.
6. The answer to each of the above Issues One through Five is in the negative. Therefore, a remedy need not be ordered.
7. Under the current factual scenario, Board of Education shall not be permitted to conduct a psychiatric evaluation of Student in the absence of parental consent.