

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Region 19 Board of Education

Appearing on behalf of the Parent: Attorney Courtney F. Spencer
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Appearing on behalf of the Board: Attorney Anne H. Littlefield
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Hearing Officer: Justino Rosado, Esq.

FINAL DECISION AND ORDER

ISSUES:

1. Was the program provided by the Board for the 2014-2015 school year appropriate and did it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE)?
2. Does the program at Ben Bronz Academy offer the Student FAPE in the LRE?
3. Should the Board pay for the placement of the Student at Ben Bronz Academy for the 2014-2015 school year?
4. Did the Board fail to provide the Student with an appropriate transition program?
5. Was the Extended School Year Program (ESY) for the summer of 2014 appropriate and did it provide the Student FAPE in the LRE?

SUMMARY AND PROCEDURAL HISTORY:

The Student has been identified as Other Health Impaired and is entitled to receive FAPE as defined in the Individuals With Disabilities Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a et seq.

At a PPT meeting, the Parents rejected the program offered by the Board for the 2014-2015 school year. The Parents requested placement of the Student at Ben Bronz Academy for the 2014-2015 school year. The Board refused the Parents' request.

On July 24, 2014 the Parents' filed a request for due process (Hearing Officer's Exhibits¹ No. 2) on the above captioned matter. A prehearing conference was held on August 14, 2014 and the matter was discussed and issues were presented. A Pre-Hearing Conference Memo (H.O.3) was sent to all parties outlining the minutes of the pre-hearing conference. There was neither an objection to the Pre-Hearing Conference Memo nor a request to clarify the minutes. Hearing dates of October 2, 6 and 15, 2014 were chosen by the parties. The hearing date of October 2, 2014 was cancelled by the hearing officer to accommodate the order on the Motion to Dismiss.

On August 21, 2014 a Motion to consolidate this matter with Case No. 14-0572 (H.O. No. 4) (before Hearing Officer Ann Bird, Esq.), Student v. Willington Board of Education was filed by the Student's attorney. At the request of Hearing Officer Ann Bird, The Parents' attorney provided the hearing officers with copies of the request for due process of both matters. (H.O. No. 5) The hearing officers conferred on the consolidation of the two cases. On August 26, 2014, Hearing Officer Ann Bird, Esq. denied the Motion to Consolidate. (H.O. No. 6)

Neither Regional District 19 Board of Education nor the hearing officer had been made privy to the fact that there was another matter pending at the August 14, 2014 pre-hearing conference or that a Motion to Consolidate was being contemplated.

Upon receiving a copy of the due process complaint of Case No. 14-0572, Student v. Willington Board of Education, and comparing it to the due process complaint in this matter, it was noted that the relief sought in Case No. 14-0572 was the same relief sought in the this matter; "Whether the Program offered by the Board for the 2014-2015 school year was appropriate and did it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE), Does the program at Ben Bronz Academy offer the Student FAPE in the LRE and Should the Board pay for the placement of the Student at Ben Bronz Academy for the 2014-2015 school year?"

It was also noted that the local educational agency (LEA) at the time of the creation of the individualized education program (IEP), that is in contention, was the Willington BOE not Regional School District 19.

At the request of the hearing officer the parties filed briefs on the issue: Why this matter should not be dismissed? The parties filed simultaneous briefs on September 10, 2014. (H.O. Nos. 7 and 8)

The Parents' attorney in her brief and in the request for due process clearly states that

¹ Hereafter Hearing Officer's Exhibits will be noted as "H.O." followed by the number of the exhibit.

Regional School District 19 was not responsible for the Student until July 1, 2014 and that Regional School District 19 attended the planning and placement team (PPT) meeting of the May 2, 2014 PPT.

The allegations and issues presented in the request for PPT needing due process, Case No. 15-0059, Student v.

Regional District 19 BOE relate to the May 2, 2014 for which the LEA was Willington BOE. Section 34 CFR § 300.321(a)(4) ... "requires the IEP Team to include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable of LEA resources. A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements . It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided." 71 Federal Register 46670. The administrator with the authority to commit agency resources at the May 2, 2014 PPT was an employee of the Willington BOE and not Regional District 19. Second Circuit "snapshot" standard at the time of the allegations, in the request for due process when the May 2, 2014 IEP was created, would place the responsibility of the IEP on the Willington Board of Education.

The responsibility for the Student's program as stated by the Parents' attorney was not transferred to Regional District 19 until July 1, 2014. On July 1, 2014 Regional District 19 was required to implement the IEP created by the Willington BOE. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—(1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324. 34 CFR §300.323(e). The issues raised in this due process complaint all stem from the creation of the May 2, 2014 IEP, and not its implementation which became the responsibility of Regional District 19 BOE on July 1, 2014.

The Board's Motion to Dismiss the Student's due process complaint was granted on September 29, 2014. There was no relief in the request for due process in this matter that this hearing officer could order for the Student.

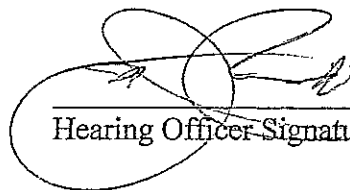
The mailing date for the Final Decision and Order is October 7, 2014.

FINAL DECISION AND ORDER:

THE MATTER IS DISMISSED.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature

Justino Rosado
Hearing Officer Name in Print