

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on behalf of the Parents: Attorney Elizabeth Moyse
Law Office of Jennifer Laviano LLC
76 Route 37 South
Sherman, CT 06784

Appearing on behalf of the Board: Attorney Michelle Laubin
Berchem, Moses & Devlin PC
75 Broad Street
Milford, CT 06040

Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board of Education (“Board”) deny the Student a Free Appropriate Public Education (“FAPE”) for the 2017/2018 School Year because the program offered was not intensive, individualized or sufficient, did not include sufficient therapeutic services to ensure safe participation in the educational program, did not include therapeutic services in a consistent and appropriate milieu or offer a continuum of appropriate placements to enable her to learn in the least restrictive environment, and/or violated her procedural safeguards by failing to invite Journey/Solstice staff members or a general education teacher to PPTs?
2. If so, did the Student require a residential placement during the 2017/2018 School Year in order to receive FAPE?
3. If so, was Journey Home and/or Layton High School appropriate for the Student?
4. If so, should the Student’s Parents be reimbursed for the expense of Journey Home and/or Layton High School, including travel?
5. Did the Board violate the Student’s rights under Section 504, and if so what remedy is appropriate?
6. Did the Board violate the Student’s rights under the Americans With Disabilities Act, and if so what remedy is appropriate?

PROCEDURAL HISTORY:

The Parents of the Student initiated this special education due process case on July 12, 2018.

This Impartial Hearing Officer was assigned to the case on July 12, 2018. A Prehearing Conference was convened on July 23, 2018. Attorney Elizabeth Moyses appeared on behalf of the Parents and Attorney Michelle Laubin appeared on behalf of the Board. It was established that the deadline for filing the final decision in this case is September 25, 2018. An evidentiary hearing was scheduled for September 18, 2018.

On July 26, 2018 the Board filed a Motion to Dismiss (“Motion”) the Request for Due Process. On August 10, 2018, the Parents submitted Opposition to the Motion.

The Board’s Motion submits that the matter must be dismissed because the Parents lack standing to pursue this case, as all of the Parents’ rights under the Individuals with Disabilities Education Act (“IDEA”) were transferred to the Student when she turned eighteen years of age on May 15, 2018. The Board further claims that the Hearing Officer lacks jurisdiction over the Parents’ claims under Section 504 and the Americans With Disabilities Act so that those claims must also be dismissed.

All motions and objections not previously ruled upon, if any, are hereby overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

SUMMARY:

For many years, the Student was identified as eligible to receive special education and related services from the Westport Board of Education under the disability category of Emotional Disturbance. The Parents, claiming that the Board failed to offer the Student FAPE for the 2017-2018 School Year, unilaterally placed her in a private program outside of Connecticut. The Student turned eighteen years of age on May 15, 2018. The Parents now seek reimbursement for the expense of the unilateral placement for the 2017-2018 School Year from the Board.

The Parents lack standing to pursue their claim for reimbursement for the expense of their unilateral placement, as all rights under IDEA to pursue such a claim were transferred to the Student upon her eighteenth birthday. As the Hearing Officer lacks jurisdiction over the remaining claims in this case, the entire case is dismissed.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (“C.G.S.”) Section 10-76h and related regulations, IDEA, 20 United States Code (“U.S.C.”) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act, C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

FINDINGS OF FACT:

The following facts, alleged in the Request for Due Process, are taken as true for the purposes of the Motion:

1. The Student has been identified as eligible for special education and related services under the disability category of Emotional Disturbance for several years.
2. The Student is a resident of Westport, Connecticut.
3. The Parents unilaterally placed the Student in a private program outside of Connecticut for the 2017-2018 School Year.
4. The Student turned eighteen years of age on May 15, 2018.
5. No evidence was presented that the Student notified the Board that she authorized her Parents to continue to have the right to make educational decisions on her behalf after age eighteen, or that she has been determined to be incapacitated.

CONCLUSIONS OF LAW AND DISCUSSION:

1. IDEA and Connecticut law provide that parents of students with disabilities may request a due process hearing before an impartial hearing officer to challenge a school district's proposal or refusal to initiate or change the identification, evaluation or educational placement or the provision of a free appropriate public education for their children. 20 U.S.C. Section 1415(f)(1)(A); C.G.S. Section 10-76h(a)(1).
2. The United States Supreme Court has recognized that the parental right under IDEA to request an impartial special education due process hearing is a direct one and not merely derivative of the child's rights. *Winkelman v. Parma City School District*, 550 U.S. 516, 526 (2007) (Parent may pursue parental claim in special education due process case *pro se*)
3. IDEA also allows individual states to provide that parental rights under IDEA concerning their children's education transfer to the student when he or she reaches the age of majority under state law. 20 U.S.C. Section 1415(m)(1); 34 C.F.R. Section 300.520.
4. Connecticut has chosen to provide that all the rights of parents concerning their child's special education under IDEA and state special education law transfer to the student upon reaching the age of majority. Regulations of Connecticut State Agencies ("R.C.S.A."), Section 10-76d-12 states:
 - (b) Transfer of rights; exception. When a child with a disability reaches the age of eighteen, (1) the board shall provide any notices required by the IDEA . . . to such child and the parents of such child, and (2) all other rights accorded to the parents of such child under the IDEA . . . shall transfer to such child. . . .
 - (e) A child with a disability who has reached eighteen years of age may notify, in writing, the board of education that the parent of such child shall continue to have the right to make educational decisions on behalf of such child notwithstanding the fact the child has turned eighteen years of age. . . .
 - (f) Any child with a disability who has been determined to be incapacitated by a court shall be represented by the legal guardian appointed by the court. . . .

5. Several federal courts and hearing officers have addressed the question whether a parent may pursue a due process claim after the student has reached the age of majority and educational rights have transferred to the student in the absence of the student's written authorization or a determination of incapacity. Most have dismissed parents' cases for lack of standing. *See, e.g. Harris v. Cleveland Board of Education*, 71 IDELR 189, 118 LRP 8181 (E.D. Tenn. 2018)(challenge to eligibility); *Ravenna Board of Education v. Williams*, 59 IDELR 158, 112 LRP 40307 (N.D. Ohio 2012)(challenge to eligibility); *Neville v. Dennis*, 48 IDELR 241, 107 LRP 58662 (D. Kan. 2007); and *Loch v. Edwardsville Board of Education*, 48 IDELR 9, 107 LRP 28148 (S.D. Ill. 2007)(challenge to eligibility).

6. Similarly, several due process hearing officers have dismissed cases brought by parents because the student reached the age of majority. *See, e.g. Mansfield Public Schools*, 47 IDELR 281, 117 LRP 8855 (MA SEA 2017); *Hamden Board of Education*, No. 09-0516 (CT SEA 2009); *Stamford Board of Education*, No. 07-0111 (CT SEA 2007); and *Willamette Education Service District*, 32 IDELR 22 (OR SEA 2000).

7. Most of the cases referenced above did not arise in the context of a parent's claim for reimbursement for a unilateral placement, as here. In one case cited by the Parents, by contrast, a district court reached the opposite result. In *Latynski-Rossiter v. District of Columbia*, 928 F.Supp.2d 57, 60 IDELR 215, 113 LRP 9159, (D.C. 2013) the parent sought reimbursement for a unilateral placement that had been implemented while the student was still a minor. The court reasoned that because the parent's cause of action arose before the right to reimbursement transferred to the student at age eighteen, the parent ought not lose the right to pursue reimbursement for expenses the parent paid.

8. The *Latynski-Rossiter* court's reasoning is appealing. After all, it was the parent and not the student who paid for the unilateral placement. It may seem unjust to unilaterally transfer a reimbursement claim to the student or to prevent a parent from pursuing the claim where the student refuses to cooperate in the parent's effort.

9. On the other hand, Connecticut's regulation makes no distinction on its face between parental claims for reimbursement for unilateral placement and other types of due process claims, such as challenges to eligibility determinations or evaluations. It would not be appropriate to read a qualification into the clear language of the regulation to exempt only reimbursement claims from transfer. Instead, the regulation's use of the term "all" should be given its ordinary meaning.

10. And, contrary to the *Latynski-Rossiter* court's suggestion, there are good reasons that Connecticut and other states would choose to vest *all* educational rights in the student to the exclusion of parents after the age of eighteen. There is no mechanism in the law, for instance, to guide an impartial hearing officer where a student and parent do not agree whether a violation occurred or what is an appropriate remedy. Extending the right to pursue a claim to both a student and a parent would also make it difficult, if not impossible, to resolve cases through the resolution and mediation processes.

11. Connecticut's regulation is, on its face, clear and unambiguous that "all" parental rights provided under IDEA are transferred to the student upon the age of majority. It does not include an exception for parents to retain a right to reimbursement for unilateral placements or otherwise. Under the circumstances, the Parents' claims in this case must be dismissed for lack of standing.

12. The Parents also claim that the Board violated Section 504 of the Rehabilitation Act and the Americans With Disabilities Act. The Parents submit that these claims should survive the Motion to Dismiss.

13. I was appointed as impartial hearing officer under the authority of R.C.S.A. Sections 10-76h-1 *et seq* and 34 C.F.R. Sections 300.500 *et seq* to hear and decide due process complaints relating to the identification, evaluation or educational placement of children with disabilities or the provision of a free appropriate public education for children with disabilities under IDEA and Connecticut special education law. This case came to me under that authority. My jurisdiction does not include the determination of legal claims under Section 504 or the Americans With Disabilities Act.

14. Accordingly, the Parents' claims under Section 504 and the Americans With Disabilities Act also must be dismissed for lack of jurisdiction.

FINAL DECISION AND ORDER:

1. All of the Parents' rights under IDEA, including the right to pursue the claims made in this case, transferred to the Student when she turned eighteen on May 15, 2018. The Parents, therefore, lack standing to pursue the claims made in this case under IDEA and Connecticut special education law and the claims must be dismissed.

2. The Hearing Officer lacks jurisdiction over the Parents' claims under Section 504 and the Americans With Disabilities Act and these claims must be dismissed.

3. This matter is dismissed in its entirety for lack of standing and lack of jurisdiction.