

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Avon Board of Education

Appearing on behalf of the Student:

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Appearing on behalf of the Board:

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Appearing before:

Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

The following issues were preliminarily identified for determination at the hearing:

1. Did the Board of Education provide a Free Appropriate Public Education for the 2017-18 School Year?
2. Does this hearing officer have jurisdiction over a Free Appropriate Public Education for 2017-18 School Year?
3. Did the Student graduate from high school with a regular diploma?
4. If the Student is entitled to services for the 2018-19 School Year from the Board of Education, is the Grove School Transition program appropriate?
5. If the Student is entitled to services for the 2018-19 School Year, what program and services are appropriate?

PROCEDURAL HISTORY:

The Student filed a Request for Due Process, initiating this special education case, on September 20, 2018. This Impartial Hearing Officer was assigned to the case on September 20, 2018. A Prehearing Conference was convened on October 12, 2018. Attorney Berliner appeared on behalf of the Student and Attorney Santiago appeared on behalf of the Avon Board of Education (Board). It was established that the deadline for

filing the final decision in this case is December 4, 2018. An evidentiary hearing was scheduled for November 27, 2018.

The Board filed a Motion to Dismiss on October 2, 2018. In its Motion to Dismiss, the Board argued, among other things, that a Settlement Agreement executed between the Board and the Student's parents on April 27, 2017, when the Student was 16 years of age, effected a release and waiver of all claims made in this case. The Board also argues that the Student, who turned 18 years of age on August 18, 2018, is no longer eligible for special education and related services because he graduated from high school with a regular diploma on August 17, 2018.

Attached to the Motion to Dismiss as Exhibit A is the Settlement Agreement referenced in the Request for Due Process (Settlement Agreement). Attached as Exhibit B is the record of a Planning and Placement Team meeting that took place on September 6, 2018 (9/6/18 PPT).

The Student filed Opposition to the Motion to Dismiss on October 17, 2018. The Student did not dispute the authenticity of either Exhibit A or Exhibit B attached to the Motion to Dismiss. Instead, the Student argued, among other things, that the Settlement Agreement signed by his parents does not bind the Student. He also clarified that the claims made in this case are based exclusively on events that took place after the Student reached adulthood on August 18, 2018. Indeed, the Student points out that his parents are not even parties to this case and that their only role here is to act as the Student's agents.

Accordingly, the Student argues, he may pursue the claims in this case because they arose when he was an adult and were not released or waived by his parents in the Settlement Agreement. The Student further claims that he is not ready to graduate from high school, as he continues to have academic and transition needs that could be addressed through further matriculation at Grove School. The Student requested oral argument and testimony in support of his Opposition to the Motion to Dismiss.

The Board submitted a Supplemental Submission in support of its Motion to Dismiss on October 19, 2018. Attached to the Board's Supplemental Submission is a Grove School Report Card for the 2017-2018 School Year ending on August 17, 2018, which is referred to in the Request for Due Process (Report Card). The Student also submitted a Supplemental Opposition to the Motion to Dismiss on October 30, 2018. In his Supplemental Opposition, the Student did not dispute the authenticity of the Report Card.

The arguments and submissions of the parties in support of and in opposition to the Motion to Dismiss, taken in the light most favorable to the Student, demonstrate that there are no material facts in dispute and that the Student's Request for Due Process should be dismissed. Neither oral argument nor testimony is necessary to reach this conclusion.

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. *See SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

A Student with a disability category of Other Health Impaired-ADD/ADHD claimed entitlement to continued services after earning a regular high school diploma. The Student maintains that all of his claims are based on alleged violations that took place after he became an adult, so that his parents' release of claims when he was a minor does not bind him. Since the Student completed regular diploma requirements and lost his eligibility for special education and related services before reaching adulthood, he had no rights under IDEA during the time of the events that are the subject of this case. As a result, there is no dispute over which this Hearing Officer has jurisdiction and the matter must be dismissed.

STATEMENT OF JURISDICTION:

This matter was filed as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, 20 United States Code (U.S.C.) Section 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178, inclusive, Section 4-181a and Section 4-186.

FINDINGS OF FACT:

After considering the submissions of the parties in support of and in opposition to the Motion to Dismiss, including their supplemental submissions, as well as the Request for Due Process, I find that the following facts are not in dispute:

1. The Student was born on August 18, 2000. He turned eighteen years of age on August 18, 2018. (Request for Due Process)
2. The Student was identified as eligible to receive special education and related services from the Board under the disability category of OHI-ADD/ADD sometime before April 27, 2017. (Request for Due Process)
3. Sometime before April 27, 2017, the Student's parents claimed that the Board failed to provide the Student with a Free Appropriate Public Education at Avon High School and at the Farmington Valley Diagnostic Center, where the Board had placed him. The parents requested that the Board place the Student at a therapeutic residential program as a result of these claims. (Request for Due Process)

4. On April 27, 2017 and April 28, 2017, the Student's parents and the Board each signed a Settlement Agreement resolving the parents' claims regarding the Board's alleged denial of a Free Appropriate Public Education to the Student and resolving all claims through at least the end of the 2016-2017 School year. (Request for Due Process; Settlement Agreement)
5. In addition, as part of the Settlement Agreement, the Board agreed to reimburse the Student's parents for the costs of Grove School for the balance of the 2016-2017 School Year and the 2017-2018 School year. (Request for Due Process; Settlement Agreement)
6. It was the parents' intention that the Student be educated at Grove School from his placement there in May 2017 through the end of the 2017-18 School Year, when he would graduate from high school. (Settlement Agreement)
7. The Student was educated at Grove School from May 1, 2017 until August 16, 2018 or August 17, 2018¹, when Grove School's 2017-18 School Year ended. (Report Card; Student's Opposition)
8. Grove School issued a Report Card for the 2017-2018 School Year that reported that the Student earned a final grade of D in U.S. History, D+ in Chemistry, D in Ceramics and grades of C or higher in his remaining subjects. (Request for Due Process; Report Card)
9. The Board awarded the Student a total of 29.31 high school credits, based on courses taken at Avon High School, Farmington Valley Diagnostic Center and Grove School. (9/6/18 PPT)
10. The Student's 29.31 credits exceeded the requirements for his receipt of a regular high school diploma from the Board. (9/6/18 PPT; Motion to Dismiss)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) and Connecticut special education law (Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations) require that "all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. Section 1400(d)(1)(A).
2. This Hearing Officer was appointed under the authority of 34 C.F.R. Sections 300.500 *et seq* and Regulations of Connecticut State Agencies Sections 10-76h-1 *et seq* to hear and decide requests for due process relating to the identification, evaluation or

¹ For the ease of this discussion, the end date of August 17, 2018 will be used here.

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.

3. Under both IDEA and Connecticut special education law, a student's right to receive, and a board of education's duty to provide, special education and related services ends with the earlier of: a) the student's high school graduation with a regular diploma; b) the student's twenty-first birthday; or c) the student's achievement of such other criteria as are established by his or her Planning and Placement Team. 34 C.F.R. Section 300.102(a)(3)(i); C.G.S. Section 10-76(d). *See also, DJ v. Connecticut State Board of Education*, 71 IDELR 210 (D.Conn 2018); *Letter to Richards*, 17 IDELR 288 (OSERS 1990)

4. A "regular high school diploma" is a diploma that is fully aligned with state academic standards and does not include an alternative degree outside of state academic standards, or a certificate, or is general education development (GED) credential. 34 C.F.R. §300.102(a)(3)(iv).

5. High school graduation requirements are determined exclusively by state law and school district policy and apply equally to disabled and non-disabled students. If a student with a disability meets state and school district requirements for award of a regular high school diploma, he or she cannot be denied a diploma simply because he or she has a disability. *Sammons v. Polk County School Board*, 45 IDELR 29 (11th Cir. 2006); *In re: Student with a Disability*, 56 IDELR 183 (New York ED 2011); *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994).

6. The decision whether or not a student has attained the requirements for high school graduation with a regular diploma is a school board decision, not a decision of the Planning and Placement Team, and is not subject to review in a special education due process hearing. *Letter to White*, 63 IDELR 230 (OSERS 2014); *In re: Student with a Disability*, 56 IDELR 183 (New York ED 2011); *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994).

7. Moreover, a student graduates with a regular diploma for IDEA purposes when he or she meets the academic credit and other requirements for graduation, not when he or she receives or accepts a diploma or participates in a graduation ceremony. *Sammons v. Polk County School Board*, 45 IDELR 29 (11th Cir. 2006); *Doe v. Marlborough Public Schools*; 54 IDELR 283 (D.Mass 2010); *Wauwatosa School District*, 69 IDELR 173 (Wisconsin ED 2016); *Cranston School District*, 114 LRP 38615 (Rhode Island ED 2014); *In re: Student with a Disability*, 56 IDELR 183 (New York ED 2011).

8. The decision to discontinue special education services because of high school graduation is a "major change of placement" requiring that the board of education convene a Planning and Placement Team meeting and give prior written notice a reasonable time before discontinuing special education and related services. 34 C.F.R. Section 300.503 (a)(1); *Letter to Hagen-Gilden*, 24 IDELR 294 (OSEP 1996); *Letter to Steinke*, 21 IDELR 379 (OSEP 1994).

9. In this case, all of the educational services that formed the basis of the Board's determination that the Student earned 29.31 credits and was entitled to a regular high school diploma took place before the end of Grove School's 2017-18 School Year on August 17, 2018 and before the Student turned 18 years of age on August 18, 2018. (Finding of Fact Nos. 7, 8 and 9)

10. Accordingly, the Student had already earned a regular high school diploma and the Board was no longer obligated to educate him the day before he turned 18 years of age on August 18, 2018. 34 C.F.R. Section 300.102(a)(3)(i); C.G.S. Section 10-76(d).

11. A board of education may be required to continue a student's education even after he or she earns a regular high school diploma if the board failed to offer the student a Free Appropriate Public Education as required by IDEA. *Doe v. Marlborough Public Schools*, 54 IDELR 283 (D.Mass. 2010).

12. This exception to the rule ending education services upon graduation from high school with a regular diploma, however, is not applicable here. After all, the Student's Request for Due Process, based exclusively on events occurring after he became an adult, does not challenge the propriety of his childhood education.

13. In addition, the Student concedes that any alleged failure to provide a Free Appropriate Public Education before he entered Grove School was resolved by the Settlement Agreement. Since he does not fault his education at Grove School, even his parents have no unresolved claim of failure to provide a Free Appropriate Public Education.

14. It is also significant that the Student does not challenge the Board's determinations that he earned 29.31 high school credits or that his 29.31 credits were sufficient to award a regular high school diploma, in his Request for Due Process.

15. Instead, the Student argues that in June 2018 and thereafter, he was not "on track to graduate"² and that even today, he continues to have unmet special education needs that would be addressed in a transition program at Grove School for the 2018-2019 school year.

16. The Student's position that he was not then, and is not now, "ready to graduate" is not pertinent. The issue here is whether the Student in fact passed a sufficient number and types of high school courses to earn the credits required under Board policy and state law to receive a regular high school diploma. The Student does not dispute the Board's position that he did earn such a number and type of high school credits.

17. The Student's claim of a continuing need for special education and transition

² The claim that the Student was not "on track to graduate" relates to a provision of the Settlement Agreement and is not relevant to this analysis.

services also misses the mark. Neither IDEA nor Connecticut law makes the absence of need for services the benchmark for discontinuing services. Indeed, many students, including those who are not disabled, have continuing needs for academic and other services after graduation from high school. Many are not fully ready to meet the challenges of adulthood when they leave high school. The law simply does not require that students be “ready” when they graduate from high school and lose eligibility for special education and related services. *Doe v. Marlborough Public Schools*; 54 IDELR 283 (D.Mass 2010); *Cranston School District*, 114 LRP 38615 (Rhode Island ED 2014).

18. It is also notable that the Request for Due process does not cite as a violation the Board’s failure, if any, to convene a Planning and Placement Team meeting and give prior written notice before discontinuing special education and related services. Such a meeting would have been held before the Student completed the 2017-18 School Year at Grove School and before the Student became an adult. Such a failure, therefore, would have occurred before the period of time addressed in the Request for Due Process.

19. Even if the Request for Due Process did challenge the Board’s compliance with the procedural requirements to convene a meeting and give prior written notice before discontinuing services, such a failure would deprive the Student of a free appropriate public education only if it impeded his right to receive appropriate services, significantly impeded his parents’ opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir. 1992).

20. Since the Student was not entitled to further educational services from the Board after finishing his high school education on August 17, 2018, he could not suffer an impediment to his right to such services or loss of educational benefit on or after August 18, 2018. Moreover, since his parents are not parties to this case, their opportunity to participate in the process is not at issue here.³ *In re: Student with a Disability*, 56 IDELR 183 (NewYork ED 2011).

21. Neither interpretation nor enforcement of the Settlement Agreement is pertinent to resolution of the Student’s Request for Due Process in this case. Reading the Request for Due Process and submissions in opposition to the Motion to Dismiss in a light most favorable to the Student reveals that there are no material facts in dispute and that the Request for Due Process does not state a cognizable claim under IDEA or Connecticut special education law.

22. The Student finished high school having earned a regular high school diploma on or before August 17, 2018. At that point in time, he was no longer entitled to receive special education or related services from the Board. His Request for Due Process is based exclusively on events that took place on and after August 18, 2018, a time when

³ Similarly, since the parents are not parties to this case and their rights are not at issue, the claim that the Board failed to send the parents a copy of the 9/6/18 PPT should be dismissed.

he was no longer eligible for services under IDEA or Connecticut special education law. Accordingly, the Request for Due Process must be dismissed.

FINAL DECISION AND ORDER:

The Student's Request for Due Process fails to state a claim upon which relief can be granted and is hereby dismissed.