

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Hamden Board of Education v. (Student)

Appearing of behalf of the Parents: Mother appeared pro se

Appearing on behalf of the Board: Attorney Marsha Belman Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Connecticut 06460

Appearing before: Attorney Christine B.Spak, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board's special education program and individualized education program (hereinafter, IEP) are appropriate.
2. Whether the Board's current and proposed placement violates federal or state statutes or regulations.
3. Whether the student should be placed in her home school with nondisabled students to the maximum possible extent with supplementary aids and services, including a mutually acceptable independent consultant.
4. Whether the Board adequately considered placing the student in regular classes in her home school before recommending a segregated placement.

SUMMARY:

This hearing was commenced by the Board in order to obtain an order permitting it to conduct evaluations of the student in view of the refusal of his mother to permit such evaluations. The student was identified as seriously emotionally disturbed in the spring of 1997 and has not had an evaluation since. The hearing was convened on December 29, 2000 at the offices of the Board. The Board submitted (Exhibits B-1 through B-41). The Mother attended the hearing but left after approximately 20 minutes. The hearing officer urged her to remain at the hearing but the Mother did not. The Board presented one witness, Sandra White, the Board's Director of Secondary Special Education. This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should

be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The student is a 15 year-old (DOB – 10/22/85) enrolled in the Board’s public schools. He is currently in his second year at the Board high school and is considered a 9th/10th grader. (Testimony, S. White).
2. In the spring of 1997, while a sixth grader attending the Board schools, the student was referred to special education. At that time, a developmental, educational, psychological and health evaluation was performed. The student was found eligible for special education with the identification of seriously emotionally disturbed (hereinafter SED). (Exhibits B-1, B-2, B-2A, Testimony, S. White). At all times since the initial identification, the student has qualified for special education and carries an SED label.
3. The student entered the Board high school at the beginning of the 1999-2000 school year, when he was enrolled in the F.I.R.S.T. program, a small program for at-risk students within the Board high school. The Mother requested that the student be removed from that program after several weeks. The school acceded to this request and placed him in Level 7 classes, which classes are above average in their demands upon the students. The student did not do well in those classes and was readmitted to the F.I.R.S.T. program. As of December 23, 1999, the student was again attending the F.I.R.S.T. program. (Exhibit B-6, p.2; Testimony, S. White)
4. A PPT was convened on December 23, 1999 because the school based members of the team had concerns about the student. As of the date of that PPT, the student was having both academic and behavioral issues. (Exhibit B-9) The Mother was invited to the PPT but did not attend. The school based members of the PPT recommended resource room and counseling for the student, but also expressed that an alternative placement may be necessary. The Mother indicated by phone that she agreed to the resource room and counseling services. (Exhibit B-6; Testimony, S. White). A functional behavioral assessment was completed and a behavior plan developed. (Exhibit B-6, pp. 13 – 19)
5. A PPT was reconvened on February 7, 2000. Both the Mother and the student attended this PPT and requested that resource support be terminated. The team disagreed with this request. As of the date of this PPT, the student was in Level 5 classes, which is the average level, and was performing in the fair to poor range in all classes except for pre-algebra where his performance was reported as good. His behavior was reported as defiant and uncooperative, although improvement in behavior was noted. The team also discussed referring the student to REACH, an alternative program within the Board public schools for 7th through 9th graders. REACH is a program operated within the Central Office building and has been in

operation for approximately 8 years. There are approximately 20 – 24 students attending the REACH program. Mrs. White is the chief administrator of the program, which has had significant success with students like the student. The Mother rejected the recommendation of REACH for the student at this PPT. The student continued to have counseling services available to him. (Exhibit B-10; Testimony, S. White)

6. The PPT was reconvened on March 20, 2000. The Mother attended this PPT. As of the date of that PPT, the student was failing English, pre-algebra, world history and biology. He was non-compliant and displayed mood swings. In ceramics class, he had not been able to demonstrate self-control and posed a danger to himself and others. (Exhibit B-12, p.13). The student had refused to access the counseling services that had been recommended for him. Again, the school based members of the team recommended that the student attend ACES or REACH. The Mother continued to refuse these services, although she indicated that she may be willing to visit them. The PPT minutes reflect that “[t]he school expresses significant concern about the student’s personal safety and that of others around him, due to the January 18, 2001 - 4- Final Decision and Order 00-310 continued display of his inappropriate conduct and lack of adherence to school policy and procedures.” (Exhibit B-12; Testimony, S. White)
7. The following day, March 21, Mrs. White was contacted by Colleen Palmer, the principal of the Board high school to discuss the situation regarding the student. Mrs. White telephoned the Mother and expressed her concerns about the student’s performance at the high school. Mrs. White reviewed with the Mother various options, including REACH, ACES, Foster School and Cedarhurst, but the Mother was not in agreement with any of them. When Mrs. White asked the Mother whether she had any options she wanted the school to consider, the Mother had no response. Mrs. White also spoke with the student in that phone conversation and asked him what he would want. He stated that he wanted to go to Career High School, an inter-district magnet school located in New Haven. Parents of students interested in that school must make application directly for their children, but Mrs. White stated that she would investigate whether Career High School would take a student mid-year and would also find out the application deadline for attendance during the 2000-2001 school year. Mrs. White suggested to the Mother on the phone that while alternatives were investigated, since he was doing so poorly at the high school, the student could attend a tutorial at the Keefe Community Center. He would receive tutoring there either on a one-on-one or one-on-two basis. Mrs. White believed that the Mother was interested in this alternative because it provided the student with an opportunity to salvage some credits. The Mother agreed to have a PPT convened on March 24, 2000. (Testimony, S. White)
8. Per the agreement with the Mother, and to accommodate the Mother’s schedule, the PPT was re-convened on March 24 at 4:30 P.M. The Mother did not attend the PPT. At 3:10 P.M., the Mother called and left a message that she could not attend the PPT and left a number where she could be reached through 4:00. Since Mrs. White did not receive the message until after 4:00, Mrs. White was unable to make contact with the

Mother, although she left a message for her that the PPT was proceeding. The PPT proceeded without the Mother. (Exhibit B-15; Testimony, S. White)

9. At the March 24 PPT, Mrs. White reported that she had learned that Career High School would not accept applications for students mid-year. She also reported that the application deadline was February 18, but that late applications may be accepted if openings exist. The PPT offered a tutorial program for the student, along with counseling. The Mother had previously indicated that she would not accept the counseling. At this PPT, the team stated that the student was due for a triennial and requested that the Mother sign permission for the evaluation. (Exhibit B-15)
10. The Mother was familiar with Career High School and ACES since her other son had attended both of these programs. (Testimony, S. White)
11. The proposed tutorial program for the student consisted of two components to a total of four hours per day of tutoring at the Keefe Center, with two separate tutors. In order to help the student make up for work he had not completed as of March, 2000, one tutor would work with the student two hours per day to address the uncompleted January 18, 2001 -5- Final Decision and Order 00-310 work. Another tutor would work two hours a day to present the student with the new materials in an attempt to keep him current in his subject matters. All of the tutoring sessions were delivered to the student on either a one-on-one or one-on-two basis. Mrs. Butler, the homebound coordinator and one of the tutors, communicated with the Mother, who agreed with this plan. (B-18, p.6; testimony, S. White)
12. The PPT reconvened on May 25, 2000. The Mother was invited but did not attend. (Exhibits B-17; B-18, p.4) The PPT reviewed the student's performance in the tutorial, noting that he did better with Mrs. Butler than with Mrs. Scalzo. He frequently came an hour or more late to the tutorial program and refused to do homework. He lived in walking distance to the Keefe Center. However, it appeared that the student could earn three credits for the year. The team was not clear whether the Mother had pursued an application at Career High School. They made another recommendation for an alternative placement for the student in the event that he was not going to attend Career High School. The team again recommended an evaluation of the student. (Exhibit B-18)
13. Another PPT was held on June 16, 2000. The Mother attended this PPT. Mrs. White began the meeting by trying to review the student's history so that all members of the PPT would have a common base of knowledge and also because she wanted the team to address the triennial evaluation. The Mother yelled that she did not want to discuss the past, only the future. Mrs. White explained why she believed it was important to review what had happened to date, and she continued to do so. The Mother stated that the student wanted to return to the Board high school for the 2000-2001 school year; the school based members of the team expressed concern that the student had not been successful there and were worried that he would experience the same problems. The Mother agreed that the student's emotions were impacting on his education and

Mrs. White again requested that the Mother give the Board permission to evaluate the student. The Mother stated that she wanted some time to consider this request. At this point, the Board was requesting a psychoeducational and social assessment of the student. (Exhibit B-20, p.7)

14. The PPT meeting became very difficult since it appeared that the Mother would only accept the student attending the high school in the fall. Mrs. White proposed that the student commence in September in the tutorial program. Mrs. Butler, the tutor with whom the student was more successful, would work with the student to parallel the curriculum of a first period class. This would give him the opportunity to prove he could attend, participate and do his homework. During September, the team would perform the evaluations of the student and then the team would meet in October. If the student had demonstrated the ability to be appropriate, he could transition into a period one class at the high school. If there were no further improvement, he would be referred to an alternative placement. The Mother agreed to this plan. (Exhibit B-20; testimony, S. White)
15. Mrs. White sent the Mother another Consent for Evaluation form on June 20, 2000. (Exhibit B-21). The Mother returned the form indicating that she was refusing January 18, 2001 -6- Final Decision and Order 00-310 consent for the evaluations. (Exhibit B-22). Early in July, 2000, the Mother called Mrs. White and told her that she wanted both the student and her other son to return to the Board high school in the fall. Mrs. White was both surprised and frustrated. She wrote a letter to the Mother, hoping that if she put her concerns in writing, the Mother would understand her rationale and would reconsider the plan that had been agreed upon at the June PPT. (Testimony, S. White; Exhibit B-23)
16. When school began in September of 2000, the student attended the Board high school. A PPT was convened on September 29, 2000. The Mother attended the PPT. As of the date of the PPT, the student was in level 5 courses and was failing English and earth science and was passing criminal law, algebra and photo class. He had been tardy to classes 14 times and tardy to school five times. He had demonstrated disruptive behavior, had failed to sign in when necessary, displayed disruptive behavior to a security guard, kicked a classroom door, failed to produce a pass when required and failed to appear for an assigned detention. He had been suspended five days. The team agreed to update the functional behavioral assessment and behavior plan. (Exhibit B-26). Again, the school based members of the PPT team offered an alternative placement for the student. Again, the Mother declined this recommendation. The team also recommended direct resource support for the student. The Mother rejected this proposal as well, although she accepted the recommended social work services. Finally, the team again requested consent for the evaluation. The Mother refused permission, and stated that she did not want the student involved in the evaluation. (Exhibit B-25; Testimony, S. White)
17. Another PPT was held on October 23, 2000. The Mother was invited and did not attend. As of this date, the student was failing algebra, English and earth science. He had been referred to administrators virtually every day for non-compliance and

insubordination. Prior to the PPT, because of concerns for his safety and the safety of others, Mrs. Palmer had assigned a staff member to shadow the student throughout the school day; she had advised the Mother of this action. At this PPT, the team recommended additional special education services for the student at the high school, including resource support, resource English, resource math and social work services. Additional IEP goals and objectives were developed. The team again recommended alternative placements such as ACES or Foster School to provide the student with a smaller environment with increased structure and supervision. Finally, the team again recommended an evaluation, and at this point suggested that a psychiatric evaluation may be necessary. It was agreed that another consent form would be forwarded to the Mother, along with a release for permission to forward records to out-of-district placements. (Exhibit B-29; Testimony, S. White)

18. While the PPT was being conducted, the student was found in an unauthorized area of the school. There was also an incident on October 23 when the student had pushed a boy to the ground. He had been demonstrating this type of physical aggressive behavior to other students throughout the day. Ms. Palmer contacted the Mother to share this information and to set up an appointment. The Mother, Ms. Palmer and Mr. Collins, the assistant principal, met on October 24 and discussed the concerns January 18, 2001 -7- Final Decision and Order 00-310 about the student's behavior. At that time, there was an agreement to develop a tutorial program for the student and to set up a PPT at 7:00 A.M. on October 26 so that the Mother could attend and the team could plan the tutorial together. (Exhibit B-31, p. 2)
19. The PPT convened on October 26. The Mother was in attendance at the beginning of the meeting. Although she had previously agreed to the tutorial program, at the PPT she indicated that she was not concerned with the student's behavior, that he was just fooling around in the same manner that he did with his sister. She stated that since the student did not want to go to the tutorial, she had some concerns about it. School based members of the team discussed the various options for the student, including giving him "incompletes" for his courses so that he could make up the missing work. The Mother indicated that she preferred that he receive the failing grades. A plan was proposed to have the student attend the first five periods of the day at the high school and then be transported to the Keefe Center for lunch and a tutorial program with Mrs. Butler. The Mother indicated that she would be in favor of this program but needed to first speak to the student about it. (Exhibit B-31, p. 2; Testimony, S. White)
20. At this PPT, Mrs. White again explained the need for an evaluation of the student. The Mother stated that her concern was that the student might not participate in the evaluation. Mrs. White explained that the individual who would do the psychological testing was Mr. McGraw who had done the testing in 1997 and had worked well with the student in the past. In addition, the Mother and the student both had a positive relationship with the school social worker, Mrs. Cushman. The Mother agreed to have Mr. McGraw and Mrs. Cushman speak to the student about the evaluation. The Mother then indicated that she needed to leave. Mrs. Palmer gave the Mother the consent form for the evaluation. By this time, the school based members of the team were requesting the following evaluations: psychological, educational, social update,

speech and language (if needed), medical update and psychiatric consult and/or evaluation if needed upon completion of the school based assessment. (Exhibit B-31, p. 14)

21. The October 26 PPT continued without the Mother. The team continued to recommend an alternative program with a small, highly structured environment, such as ACES or the Foster School. (Exhibit B-31; Testimony, S. White).
22. After the PPT, the Mother called the school to say that the student agreed to the plan to attend 5 periods per day at the high school followed by lunch and 2 hours of tutoring at the Keefe Center. That plan was implemented on October 30, 2000. However, by November 3, he began to refuse to attend the Keefe Center. (Testimony, S. White, Exhibits B-37, p.12; B-35, p. 16, 18, 20)
23. On November 1, 2000, the student was involved in an incident in school where he was acting in an intimidating way towards a teacher. As a result, it was arranged that the student would receive his 5 periods of instruction at the high school from a tutor January 18, 2001 -8- Final Decision and Order 00-310 on a one-on-one basis. On November 6, 2000, Mrs. Palmer and Mrs. White met with the student to review with him his various options. They discussed with him a tutorial program, the REACH and STEP programs, as well as various outside placements. The student was quiet, appeared unhappy and just listened. Mrs. Cushman, the school social worker, also met with the student and reported that he seemed distressed with his lack of success. (Testimony, S. White; Exhibits B-35, pp. 2-3; B-35, p.19)
24. Another PPT was held on November 13, 2000. The Mother was invited, did not attend, but gave permission for the PPT to proceed without her. The team reported on the student's inconsistent performance since the last PPT. The team believed that the program then in effect was not meeting the student's needs. It was recommended that the student attend the tutorial program at Keefe daily from 8:30 A.M. to 2:00 P.M. pending the outcome of the evaluations. The team stressed that this was an interim placement and again discussed its recommendation for the student to attend an alternative program, including REACH and that this program could be a diagnostic placement for the student. Finally, the team again recommended an out of district placement. (Exhibit B-35; Testimony, S. White)
25. By letter dated November 30, 2000, Mrs. White wrote to the Mother again requesting that she permit the school district to evaluate the student. The Mother did not respond to this request.
26. By letter dated December 1, 2000, the Board filed a Family with Service Needs referral with the Superior Court. (Exhibit B-37). An intake official was assigned and Mrs. White had some initial contact with that individual. The Board's referral was based both upon the student's behavior in school, as well as his absenteeism.

27. From October 30, 2000 and through December 22, 2000, the student was absent 24 days. Of these, seven days were excused absences due to illness. (Exhibits B-40; B-41; testimony, S. White).
28. At no time has the Parent consented to the evaluations. The evaluations are necessary at this time in order to determine the student's educational needs and plan an appropriate program for him.

CONCLUSIONS OF LAW:

1. "The Individuals with Disabilities Education Act (hereinafter "the Act"), and its Regulations provide that a free and appropriate education must be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. Section 1412(l); 34 C.F.R. Reg. 300.4, in the least restrictive environment 20 U.S.C. Section 1412(5)(B); 34 C.F.R. Reg. 300.550(b). In promulgating the Act, Congress found: "[I]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." January 18, 2001 -9- Final Decision and Order 00-310 20 U.S.C. Section 1400(c)(1). Prior its enactment in 1975 ". . .there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected. . ." 20 U.S.C. Section 1400(c)(2)(D). Identifying these children and seeking effective ways to provide them with educational benefit has, from the beginning, been a controlling force in the evolution of this law and its companion regulations. The Act places an obligation upon local school districts to identify students who have disabilities that qualify them for services under its provisions, 20 U.S.C. Section 1414(a)(1)(A); 34 C.F.R. Section 300.220. Once a child is identified as a potential beneficiary of special services, the local school district is charged with the responsibility ". . .to determine if the child qualifies as a child with a disability as defined in section 1401(3)(A) or 1401(3)(B) of this title. . ." Before the provision of services under the Act, an agency must conduct a full individual initial evaluation of a child: (i)to determine whether a child is a child with a disability (as defined in section 1401(3) of this title); and (ii)to determine the educational needs of such child. 20 U.S.C. Section 1414(a)(1)(B). Parental consent is required prior to the initial evaluation, although ". . .consent for evaluation shall not be construed as consent for placement for receipt of special education and related services." 20 U.S.C. Section 1414(a)(1)(C)(I)(i). If a parent does not consent to the evaluation, ". . .the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 1415 of this title. . ." 20 U.S.C. 1414(a)(1)(C)(ii)." 32 IDELR 19, *Putnam County Sch. Sys. State Educational Agency, Georgia*, September, 8 1999. There is no dispute that the student is a student who qualifies for special education services.
2. There is no dispute that the student is eligible for special education services.

3. A school district is required to ensure that a reevaluation of a student is conducted if conditions warrant a reevaluation and in any case, not less than every three years. 20 U.S.C. Section 1414(2)(A), 47C.F.R. 300.532.
4. The student's last evaluation was in the spring of 1997. More than three years have passed without an evaluation. The Board has been making consistent good faith efforts to procure the Mother's consent to an updated evaluation since March of 2000. In addition to the passage of time, conditions warrant a reevaluation given the academic and behavioral difficulties that the student has demonstrated in school over the past year and one half.
5. The Board must conduct a reevaluation to plan an appropriate program for the student and to be in compliance with the federal law. 20 U.S.C. Section 1414(2)(A). January 18, 2001 -10- Final Decision and Order 00-310
6. Due to the nature of the student's academic and behavioral difficulties the reevaluation must include a psychological evaluation, educational evaluation, medical update, speech and language evaluation and social update. After these are completed it may be necessary to conduct a psychiatric evaluation.

FINAL DECISION AND ORDER:

The Board shall undertake the following evaluations of the student, without necessity of permission of the Mother: psychological evaluation, educational evaluation, medical update, social update, speech and language and, if deemed necessary by the school based team members after completion of the ordered evaluations, a psychiatric consultation or evaluation. Pursuant to request of the moving party, the hearing officer shall retain jurisdiction of this matter pending the completion of the evaluations. The Board will notify the hearing officer promptly upon completion of the evaluations.