

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing on behalf of the Parent: Non-Attorney Advocate* – Frances Klein
12 Bellevue Street
East Hampton, CT 06424

Appearing on behalf of the Board: Attorney Ann F. Bird
Assistant Corporation Counsel
City of Hartford-550 Main Street
Hartford, CT 06103

Appearing before: Attorney Margaret J. Slez, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board properly determine that the student was no longer eligible for special education and related services under the IDEA?
2. Did the parent have a right to an independent educational evaluation under 34 CFR Section 300.502?

SUMMARY:

At the end of the 1996-97 school year, in the third grade, the student was evaluated and found eligible for special education services based on the identification of a specific learning disability. Intensive services were provided to the student over the course of two years in fourth grade, school years 1997-98 and 1998-99, and in fifth and sixth grade, school years 1999-2000 and 2000-2001. In the fall of 2001, the triennial review was conducted and the student, now in the seventh grade, was found to be no longer eligible for special education and related services. The parent disagreed with the decision to exit the student from special education and requested further assessment by an independent evaluator. The required Multidisciplinary Evaluation Report was not completed until a PPT meeting held on March 15, 2002. The parent requested due process hearing by an undated letter received by the Due Process Unit on March 20, 2002. (Exhibit H.O.-1).

* The legislative history of the IDEA reveals no intent on the part of Congress to allow non-lawyers to represent parties at due process hearings. In the Matter of Arons, 32 IDELR 253 (Del.Sup.Ct. 2000); Arons v. New Jersey State Bd. of Educ., 842 F.2d 58 (3d Cir. 1988). Nevertheless, there is no Connecticut law or regulation which prohibits a non-attorney advocate such as Ms. Klein from representing a parent in a due process hearing notwithstanding a complete lack of training and skills that a lawyer is expected to exhibit in matters of evidence and procedure. The errors of a non-attorney advocate, no matter how well-intentioned the advocate, cannot be addressed by grievance or appeal and, thus, pose a danger to the rights of parents and students. It can only be hoped that the Connecticut legislature will see fit to address this gray area of the law.

PROCEDURAL HISTORY:

The hearing was convened on April 9, 15, 24, and 26, 2002. The original date for the mailing of the final decision and order was May 6, 2002. The hearing officer, however, extended the date, *sua sponte*, to May 13, 2002, in order to allow proper and sufficient time to consider the evidence and draft the final decision and order.

FINDINGS OF FACT:

1. When the student was in grades one and two, school years 1994-95 and 1995-96, the student's parents refused to give consent for testing, notwithstanding the concerns of Board personnel.
2. In third grade, school year 1996-97, the student was still making very little progress in reading and was again referred for academic and cognitive evaluation. Testing completed in May 1997 indicated that the student was functioning within the average range, as measured by the WISC-III (performance 89, verbal 93, full scale score 90). However, it was determined that the student's status as a nonreader, demonstrating significant underachievement, was the result of "processing deficits in the visual and auditory modalities," as well as "visual-motor perception." (Exhibits B-8, p. 1; P-12.) The student was identified as "learning disabled" and special education services were to begin in grade four, school year 1997-98.
3. From September 1997 to February 1998, in the fourth grade, the student received special instruction in the resource room for six hours each week in the student's neighborhood school (Naylor). Due to continuing "lack of progress and continuing delay," the PPT met in February 1998 and modified the student's IEP, moving the student to a self-contained special education classroom in another Board school (Clark) some distance from the student's neighborhood. (Exhibits B-9, p. 1; P-8, p.1.) The student was retained in grade four for the 1998-99 school year.
4. On September 26, 1998, the student was evaluated by Rhea Klein, Ph.D. Dr. Klein is employed by the East Hartford Board of Education as a special education department chair and evaluated the student at the request of her mother, the parent's advocate, Frances Klein. Dr. Klein's masters' degree and doctorate are in special education. She testified that she had been significantly involved in coordinating policy and procedures for implementation of the Connecticut learning disability guidelines, has trained teachers and administrators, and has "interfaced with the state" regarding the LD guidelines. (Testimony, April 9 and 26, 2002.)

Dr. Klein did not request compensation as an outside evaluator and did not receive compensation from the Board. (Testimony, April 9, 2002.) Dr. Klein is not a certified school psychologist.

5. On September 26, 1998, Dr. Klein administered various subtests of the Woodcock-Johnson Psycho-Educational Battery Revised (WJR) to measure the student's cognitive abilities and achievement, the Beery Developmental Test of Visual-Motor Integration, and an informal dynamic reading assessment. With regard to broad cognitive ability, the student's scores ranged from below average to above average, with "most clusters" within the average range. "Visual processing was at the high end of the average range and visual processing speed was just below average." Dr. Klein found these results to be consistent with the results of the Board evaluation in May 1997. The student's overall intellectual functioning was found to be in the lower end of the average range, with significant strengths in auditory short-term memory as well as visual discrimination and memory. "Working memory, auditory processing, comprehension/knowledge, nonverbal reasoning and visual-motor integration were commensurate with overall cognitive ability." Dr. Klein determined the student to be "a fourth grade student who is functioning within grade level range in all areas except reading, spelling and writing," and concluded that "full time placement in a special education class appears restrictive." (Exhibit P-8)
6. The student ended the 1997-98 school year and began the 1998-99 school year, a second year of fourth grade, in a self-contained special education classroom at Clark, the out-of-neighborhood Board school. On October 23, 1998, however, the PPT met to review the independent evaluation done by Dr. Klein and agreed that Clark was not the least restrictive environment for the student. The student's IEP was modified and on January 11, 1999, the student returned to Naylor where two full-time paraprofessionals were assigned to the student for taping all assignments, copying all board work, reading aloud all content area assignments, and copying all class work and tests to be mailed to the parents on a weekly basis. The student's reading instruction was changed to the Let's Read program, undertaken for one hour each day in the resource room. An intensive after-school tutorial program, three hours per week, was instituted to review, re-test, and reinforce the skills learned during the day. The student was untimed or permitted extra time to complete math assignments and was given one week notice prior to math quizzes. Homework assignments were reduced and quizzes and tests were presented orally to the student. The Let's Read program was continued uninterrupted during summer 1999. The student's IEP was unchanged for fifth grade, the 1999-2000 school year. (Exhibits B-1; B-9, p.1)
7. At the request of the parent, Dr. Klein evaluated the student again on February 5, 2000, administering the Woodcock-Johnson letter-word and passage comprehension tests, the Gray Oral Reading Test(1992), the Barnell-Loft Spelling Test, and a writing prompt. Since the 1998 testing, the student's WJR Letter Word Identification had improved from a score of 71 to a score of 80. Dr. Klein found that the student demonstrated approximately a two-year increase in reading achievement since spring 1999. "A significant improvement was observed in reading fluency since the last assessment." Dr. Klein found "a decrease in the discrepancy between [the student's] ability and achievement in the area of reading." The student's spelling performance had also improved, although "poor discrimination and articulation of sounds within words" caused errors. The student was able to compose an expository piece of writing within guidelines required on the Connecticut

Mastery Test; “this performance was much more advanced” than the student’s performance in spring 1999 “when he was unable to write a composition.” (Exhibit B-2)

8. During the 2000-2001 school year, sixth grade, the parent requested that the paraprofessional assistance in the classroom be discontinued and that the student not be removed from the class for instruction in the resource room. A consultation model was adopted. (Exhibits P-3, p. 3; B-9.) The student received no pull-put direct service with the special education teacher during sixth grade but, instead, received language arts instruction in the Success for All reading program within the regular education setting. (Exhibit B-7, p.1.) The student took the Connecticut Mastery Test in September 2000, the scores of which were reported in spring 2001. The CMT report indicated that the student had scored in the band just below the mathematics goal (Level 3, 218), scored within the reading intervention level (Level 1, 197), and scored in the band just below the writing goal (Level 3, 222).
9. The PPT met on April 27, 2001, and agreed that the student’s program should remain unchanged and that the triennial evaluation should be undertaken as soon as possible. The student’s sixth grade report card shows that except for spelling in all four marking periods and science in the second marking period, in which periods the student received “N” for “needs improvement,” the student received only “S” for “satisfactory,” “G” for “good,” and “E” for “excellent” in all marking periods for all other subject areas. (Exhibit B-6.) In all four marking periods, the sixth grade teacher commented that although the student continues to have spelling difficulties, there was continued improvement and progress in reading and academics. (Exhibit B-6, p. 4)
10. On August 14, 2001, the student was once again tested by Dr. Klein. The student’s WJR Letter word identification score had improved from 71 in 1998, to 80 in 2000, to 87 in August 2001, and the student demonstrated approximately a three-year increase in reading achievement since spring 1999. Dr. Klein noted a “significant improvement since the last assessment” which took place in February 2000, and “slow but gradual progress since 1998” in the area of spelling. In the response to the sixth grade writing prompt, the student “demonstrated a good understanding of the process that is required.” Dr. Klein also noted that while there were still some areas of concern, the student demonstrated “a decrease in the discrepancy” between the student’s ability and achievement in the area of reading. “Reading fluency does not appear to be interfering with reading comprehension.” (Exhibit B-7) (Note: Exhibit P-11 is not an accurate copy of Dr. Klein’s report of the August 2001 evaluation.) There was no testimony as to whether Dr. Klein has ever observed the student in the school setting. The student’s purported current deficiencies were not credibly explained in the course of Dr. Klein’s testimony. (Testimony, April 9 and 26, 2002)
11. At the beginning of the 2001-2002 school year, the student was referred for evaluation by Marjorie Loughlin, the certified school psychologist at Naylor and one other Board school, for the purpose of determining whether the student continues to have a disability which requires the provision of special education and related services. Testing took place on four dates in early September 2001. The student’s level of cognitive functioning was found to be in the average range on both the WISC-III (Wechsler Intelligence Scale for Children – Third Edition) and TONI-3 (Test of Nonverbal Intelligence-3), demonstrating a real strength on a task of nonverbal reasoning and a weakness on a subtest requiring visual discrimination. As measured on the VMI (Visual-Motor Integration), the student’s visual skills were found to be age appropriate. Ms. Loughlin concluded that there did not appear to be a processing deficit. (Exhibit B-8, Testimony, April 15, 2002)

12. As part of the triennial evaluation, the Woodcock Johnson Test of Achievement and the Wechsler Individual Achievement Test (WIAT) were administered by Lucia Martin, who has been a Board special education teacher for 27 years. On the WIAT, the student performed on grade level or above in reading comprehension, listening comprehension, oral expression, written expression, and mathematical reasoning, and performed below grade level in spelling. The student received a standard score of 77 on the WIAT, placing the student at a grade four equivalency. The student performed at or above grade level on the Woodcock Johnson letter identification, passage comprehension, social studies, reading vocabulary, and quantitative concepts subtests. The student's spelling subtest indicated a fourth grade performance level, but knowledge of alphabetic principles was at a sixth grade level. Spelling errors were random and the low science score may be explained by the fact that no students received formal science instruction in the sixth grade. (Exhibit B-9, Testimony, April 24, 2002)
13. The Connecticut Mastery Test Grade 7 was administered in October 2001. The CMT reports indicate that the student scored in the band just below the mathematics goal (Level 3, 91, one point below goal Level 4), scored in the band just below the reading goal (Level 3, 89, solid middle, significantly improved from 6th grade performance), and scored at the writing goal (Level 4, 67). (Exhibit B-10)
14. The student is currently in a regular education placement with no paraprofessional or other special education related services. Testimony from the student's current science teacher and the student's current reading/literacy teacher credibly supported their contention and that of other Board personnel that the student is making appropriate educational progress and can succeed without special education related services at this time. (Testimony, April 24, 2002)
15. On October 12, 2001, the PPT met to discuss the Loughlin evaluation (Exhibit B-8), the Martin assessment (B-9), and Dr. Klein's August 2001 evaluation (Exhibit B-7). The parent and the student's advocate disagreed with the conclusion of Board personnel that the student no longer qualified as a student with a learning disability entitled to special education and related services.
16. Since Dr. Klein is not an employee of the Board, she must be considered an independent evaluator in this case. Compensation for Dr. Klein's independent evaluations has not been raised as an issue here.
17. The Multidisciplinary Evaluation report was not completed by the Board until March 15, 2002. (Exhibit B-13)

CONCLUSIONS OF LAW:

1. Pursuant to 34 C.F.R. Section 300.541, in order for a student to be identified as having a learning disability by the PPT and eligible for special education, "all of the following criteria *must* [sic] be met: a.) There must be evidence that the student's level of functioning is not due to lack of appropriate instruction in reading and math; b.) there must be evidence that the student does not achieve commensurate with his or her age and ability, and there is a severe discrepancy between educational performance and measured intellectual ability; c.) there

must be evidence that the student has a disorder in one or more of the basic psychological processes that impacts the areas of educational weakness; d.) there must be evidence that the student's learning problems are not due primarily to visual, hearing or motor impairments, mental retardation, emotional disturbance, environmental, cultural, or economic disadvantage, limited English proficiency, motivational factors, or situational traumas; and e.) there must be evidence that the student requires special education and related services due to the severity of the disability." Guidelines for Identifying Children with Learning Disabilities, Connecticut State Department of Education, 2d Edition, 1999, p. 19.

2. Based on the documents and testimony in this case, there is insufficient evidence to conclude that any of the above described criteria are met. Therefore, the Board properly concluded that the student was no longer eligible for special education.
3. The parents of a child with a disability have the right under the IDEA to obtain an independent educational evaluation of the child at public expense if the parent disagrees with an evaluation obtained by the public agency. 34 C.F.R. Section 300.502. In this case, there is insufficient evidence to establish that the parent disagreed with the Board evaluations. Additionally, the parent did, in fact, obtain independent educational evaluations of the student but has not sought compensation for such evaluations.
4. "At the end of the evaluation process, the PPT *must* [sic] complete a Multidisciplinary Evaluation Report to indicate whether or not a student is eligible for special education and related services due to a learning disability." 34 C.F.R. Sections 300.534(a)(2) and 300.543; Guidelines for Identifying Children with Learning Disabilities, *supra*, p. 18. The Board failed to meet this obligation in a timely fashion. The State of Connecticut, Department of Education has imposed a corrective action order upon the Board. (Exhibit P-20)

FINAL DECISION AND ORDER:

1. The Board properly concluded that the student was no longer eligible for special education.
2. The parent is not entitled to an independent educational evaluation.