

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Waterbury Board of Education

Appearing on behalf of the Parents: Parent, pro se

Appearing on behalf of the Board of Education: Attorney Elaine Skoronski
Corporate Counsel
City of Waterbury
236 Grand Street
Waterbury, CT. 06702

Appearing before: Attorney, Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Parent requests one-to-one aide be assigned to the child.

PROCEDURAL HISTORY:

The parent requested hearing on March 25, 2001. The prehearing conference convened on April 2, 2002 and again on April 9, 2002. Hearings convened on April 22, 29, May 14, June 4, 5, 11, and 18. The parent requested postponement of the hearings that convened on April 22, 29, and June 4, 2002. Counsel for the district requested postponement of the hearing, which convened on May 14, 2002. The request was made because counsel was leaving her position at the Corporate Counsel's Office and new counsel needed time to become familiar with the case. The parent objected to the District's request for postponement. After testimony and argument the District's request was granted. On June 18, 2001, the parties agreed that transcripts would be ordered. Both parties agreed on the record that the decision could be delayed if the transcripts arrived during the Hearing Officer's scheduled vacation. The record closed September 3, 2002.

SUMMARY:

The student, an eight-year-old, was suspended six times in a four-month period. The parent requested a one-to-one aide to help the student with academic and behavior issues.

The Board provided an aide when the classroom teacher deemed it necessary. The Board modified a functional behavior plan with careful oversight by the Supervisor of Special Education. Counseling was added to the student's program.

FINDINGS OF FACT:

1. The parent seeks a one-to-one aide to assist the child with Attention Deficit Hyperactivity Disorder (ADHD), to assist the child in regaining composure when he becomes very angry and to assist him with classroom work completion. The parent has difficulty reading and is accompanied at the hearing by her DMR Case Worker. (Testimony, Parent, Exhibit B-1)
2. The child participated in a Birth to Three program because of developmental delays in movement. Next, he entered the Danbury Public Schools Special Education Preschool. He was not potty trained until he was five years old, he experienced speech delays and developmental delays. He transferred, to the Board's Primary Learning Center as a third grader in September 2001. In December 2001 he transferred, at the Parent's request, to the Primary Learning Center in another district elementary school. (Testimony Parent, Exhibit B-2)
3. A Psychological Evaluation dated March 4, 2002 finds the child's performance in the low average range, which may slightly underestimate his true cognitive potential. Distractibility, short attention span and impulsivity impact his performance. Other areas of delay or concern include visual-motor skills, articulation, expressive language and behavior as exacerbated by ADHD. Recommendations include small group setting which includes one-to-one attention, a clear behavior plan, speech and related services. Neither party called the author as a witness to elaborate on the recommendations contained in the report. (Exhibit B-4)
4. A speech evaluation recommends the child receive intervention for deficits in a small group language-based classroom. The speech evaluator was not called as a witness by either party to elaborate on the interventions most likely to result in progress in the student's areas of the speech deficits. The IEP provides .5 hour per week of therapy to address the identified deficits. Exhibit B-3.
5. The child struggles with his classwork and homework. Homework is returned incomplete, when neither the child nor the parent understand how to complete the assignments. The classroom teacher adapts assignments if the child cannot understand them. (Testimony, parent, Testimony, Teacher)
6. From December 2001 through April of 2002, the child was suspended from his current school six times. The parent requested a one-to-one aide to address behavior and academic concerns at an IEP meeting. The Board denied the request, however they agreed to make a building aide available whenever the classroom teacher determined it was necessary. (Testimony, Parent, Exhibit B-1)

7. In making the request for an aide the parent relies on several Board generated documents. Progress Reports for Reading dated 3/20/02 states “it is helpful to the child if the teacher or aide sits next to him.” (Exhibit, B-3). A Progress Report for Language Arts dated 3/20/02 describes his written expression level of function, as follows, “ is beginning to form his thoughts into a complete sentence”. The parent believes this shows the student’s academic delays. (Exhibit, B-3). The Progress Report for Behavior dated 3/20/02 states, “ the student takes a longer time to complete assigned paper work because of his distractions and, ... the student is disciplined for defiant behavior”. (Exhibit, B-3). The parent wants the aide to help refocus the student when he looks around the room and help him get back to his work. (Testimony, Parent)
8. The Educational Evaluation dated 3/19/02, states, “in Math the student requires word problems be read to him and the student needs adult encouragement to interact with peers and is generally content to be alone”. “The student remains on task more often when the teacher or aide sitting next to him, utilizes verbal prompts, redirection, and verbal praise are techniques used to keep the student on task”. (Testimony, Parent, Exhibit, B-3)
9. The parent is concerned about the Functional Behavior Plan, which addresses classroom assignment completion, but does not target problem behavior. (Testimony, Parent, Exhibit, B-1, B-8)
10. There was one incident in which an ambulance and police arrived at the school to remove the child. The police suggested they might handcuff the child and the mother reports he had nightmares about the event. (Testimony, Parent)
11. The child’s classroom teacher began working in the Board’s school in 1979. She is certified in Special Education has experience in the trainable, mentally retarded, preschool and primary learning center programs. The child’s classroom has twelve students, one teacher, a full time aide and the child’s IEP provides the teacher can request another aide any time it is necessary to assist with the child. (Testimony, Teacher, Special Education Supervisor, Exhibits B-1, B-12)
12. The Classroom teacher describes events that led to suspension this year. December 20, 2001, there was a one-day suspension for running in the classroom, tossing objects, grabbing the aide’s shirt, screaming at the Vice-Principal and refusing to follow adult direction. (Testimony, Teacher, Exhibit P-1)
13. January 18, 2001, there was a two-day suspension for punching another student, screaming and throwing milk, in the lunchroom. (Testimony, Teacher, Exhibit, P-1)
14. January 25, 2002, there was a written warning from the Vice-Principal, for behavior during transition from the gym back to the classroom. The child refused to line up as requested. (Testimony, Teacher, Exhibit P-1)

15. February 6, 2002, there was a three-day suspension when the child while transitioning back to the classroom, slammed a locker door, carried the mood into the classroom and hit another student. The student refused to leave the class when requested and had to be physically removed by the aide when he began standing on a table. (Testimony, Teacher, Exhibit P-1)
16. In March, there was a one-day suspension resulting from an incident in the library when the student was deliberately disruptive and belligerent with the aide and the librarian, he needed to be lifted from the chair and carried from the room. Later, the same day there was an additional incident with the lunchroom aide. He argued and threw a punch at the lunch aide then made a threat towards the staff. (Testimony, Teacher, Exhibit, P-1)
17. The classroom teacher describes the events of April 22, 2002, as follows: The student seemed "off" at the beginning of the day. The size of the classroom is a factor, when the children are fidgety, bumping occurs. The student was quite loud and disruptive requiring help from the teacher and aide from the adjacent classroom. The staff members were unfamiliar with the student's routine to get medication from the nurse's office, which upset the student. He refused to take the medication. He was brought to the principal's office. The aide placed the child in a sitting constraint. When he was not being restrained, he was going behind the door and kicking the aide. The special education teacher joined the student and the aide, trying to calm him. He must have felt cornered by the adults. He was working himself up and throwing things. The Principal was present in the classroom. After 40 minutes and attempts to reach Mom at home, there was concern he could have an asthma attack. An ambulance was called. There were two ambulance attendants and a police officer came as well. The police officer was able to soothe and calm the student. The parent took the student home. (Testimony, Teacher, Exhibit P-1)
18. On April 29th the child received a warning for behavior at dismissal time. (Testimony, Teacher)
19. The teacher follows a Functional Behavioral Assessment for a plan to modify, reinforce and shape the student's behavior in a positive way. (Testimony, Teacher)
20. The teacher attended a Planning and Placement Team meeting on February 6, 2002, to add counseling to his IEP. Also discussed at the meeting was the child's noncompliance with the school, mandated, dress code. In attendance at the meeting was the Director of Special Education, School Psychologist, the parent's Department of Mental Retardation case manager, the school Vice-Principal, the Special Education Teacher and the parent. (Testimony, Teacher, Exhibit B-5)
21. The student attends counseling, in a small group with the Social Worker, .5 hour per week. After several weeks of counseling the teacher observed some progress. The child can now tell another student how he is feeling in a calm way, report something to the teacher or when he is upset, request to go to the hallway, where it is quieter.

Since April, the teacher observes a positive turn in the child's behavior. (Testimony, Teacher)

22. Neat and clean uniforms were collected and sent home. The child's non-compliance with the dress code continued, despite nearly 100 percent compliance throughout out the student body. There is concern, whenever the child is out of compliance with the dress code that other students notice, and school personnel do not allow the child to participate in recess. To avoid problems for the child the teacher personally provided uniforms to him at her own cost. (Testimony, Teacher)
23. There are classroom strategies to help improve the child's behavior. No students sit in front of him to lessen visual distractions and help him tune out noise. He sits near some of the calmer children in the class. The child is showing a lot more effort and understands how to stay calm. The teacher believes the counseling has helped the child make this behavior improvement and the child has made a full transition into the class. (Testimony, Teacher)
24. The Special Education Teacher and the Social Worker developed the Functional Behavior Assessment, intervention work sheet. The plan began with a focus on finished work production not the student's emotional outbursts. The strategy was to address the behavior apart from the functional assessment to make him attend longer and focus on his work. The plan to help him avoid getting sidetracked and meet a goal of completing 4-5 work sheets in a day. Upon meeting the goal each day he can earn a star on a daily basis, which permits him to pick an activity for the 15-minute period at the end of the school day. Completing the work shows he has an understanding of the work. He likes the incentive, it is positive and he is proud of his accomplishments. The plan was implemented on March 21, 2002. (Testimony, Teacher)
25. The child is generally able to meet the established goal. Prior to implementing the plan the child's behavior interfered with his learning. The improved focusing improves how he behaves in class. When the student is not feeling upset and angry or just anxious then he is able to follow a routine and do his assignments. He feels good about himself. He responds positively to the stickers, earning time to do desired activities; and can be the teacher's helper. The result is improved behavior. (Testimony, Teacher)
26. There are times when most of the students in the class are out in mainstream classrooms. The Special Education teacher has a lot of individualized time with the four remaining students. During this time the teacher is able to observe that the child responds very positively to academic learning. To assist the child, the aide will observe, especially during workbook time, if the child is staying on task. Both the teacher and the aide float around the classroom. The ratio is good so we get to every child. During other parts of the day, the child receives individualized attention from the aide on a one-to-one basis as needed. The student has a Functional Behavior

Assessment Intervention Plan worksheet, which is the “behavior plan”. (Testimony, Teacher, Exhibit B-3)

27. The Student’s most recent report card indicates steady progress since the time the Student started his current program in December. Initially, the child performed at the lowest reading level. Now he is at level three, which is a high first grade to a beginning second grade level of reading. On the “The Peabody Individual Achievement Test”, dated 3/17/02, the student has progressed to as 1.5 grade level, approximately a year’s gain in less than a year. (Exhibit B-3, B-11 and B-11)
28. The classroom teacher clarified statements contained in a progress report. It was not intended that a teacher or aide should sit next to the child all day. The intent is to note the benefit of an aide being able to immediately respond to a student, so they can move on with their work. In this case, the child is able to raise his hand and to ask for help. (Testimony, Teacher)
29. The classroom teacher believes a one-to-one aide to assist with the student’s behavior is not necessary at this time. The behavior techniques are taking effect and the counseling assistance, increased maturity and his comfort level with the school, permit him to learn as needed. An aide is not necessary to keep the behavior from interfering with the child’s learning. (Testimony, Teacher)
30. The student experienced medication changes during the difficult times; the classroom teacher observed an improvement when the medication was administered earlier in the day. (Testimony, Teacher)
31. The aide is not necessary for the student to learn to read. The teacher believes that if the reading done in school is carried over to the home, there are other ways to keep the student improving and making progress. The teacher knows the mother is trying her best at home but it is a real legitimate concern. The student needs daily work and repetition. If it is done consistently in both home and school, a one-to-one aid will not be necessary. This is not a realistic expectation on the part of the classroom teacher. The parent testified as to her reading deficits and relies on her DMR Social Worker for help with the hearing process. (Testimony, Teacher, Testimony, Mother)
32. By comparing testing results the classroom teacher believes the child made 1.5 years of progress in reading level in less than a year. On cross-examination the teacher explained that notices the parent received about the Student’s poor performance on the Developmental Reading Assessments was a routine notice which most students in the Learning Center receive. Every student in the Learning Center is typically working below grade level. (Testimony, Teacher)
33. The Special Education Teacher’s progress report presented at the March 20, 2002, IEP meeting, states there is concern that the student took a longer time to complete work papers because of distractions. The Student’s behavior interferes with his learning.

34. The behavior plan adopted at the IEP meeting addressed the behaviors and learned coping skills which enabled the student to increase sitting attention and listening attention. He is less distracted and able to focus longer and better. The subsequent improvement in test scores is the result of the success of the plan. (Exhibit B-3)
35. Based on all the achievement testing and observation the classroom teacher believes the student is making steady progress. The teacher is concerned that unnecessarily assigning an aide could stigmatize the child and hinder normal maturation, therefore she advises against a one-to-one aide. (Testimony, Teacher)
36. The Supervisor of Special Education is responsible for all the Behavioral Disorder Learning Centers in the City, served as a special education classroom teacher and at the Yale Child Study Center, preschooler, in-patient unit. Past experience includes creating behavioral plans, teaching social workers, school psychologists and teachers through in-service training how to deal with kids who have high-maintenance or high profile behavioral issues. (Testimony, Supervisor Special Education)
37. The Supervisor first became involved with the student in March. The child's disability is ADHD and specific learning disability. (Testimony, Supervisor Special Education, Exhibit, B-8)
38. The Functional Behavior Plan looks at a child's behavior to analyze the triggers, concurrent events, and consequences. Critiquing the previous informal behavior plan of removing the child from the room when he needs to regain composure serves to reinforce negative behavior. The district began to reinforce positive behaviors, beginning with a simple plan that addressed both behavior and academic issues. The plan is one a child with a low-average, cognitive ability can understand and process. Given time for the child to stabilize, there can be a period where the behavior will actually get worse before it becomes better. He is now beginning to benefit from the plan. During the third marking period the student's grades dipped then improved in the fourth marking period. (Testimony, Supervisor of Special Education)
39. The Supervisor of Special Education witnessed the events of the April 22, 2002. An ambulance was called to the school because the student's behavior was erratic, his thinking was disorganized, and he was violent and unsafe to himself and others. A police officer automatically comes to a school when an ambulance is called. The student was not handcuffed; the supervisor was with the child the whole time. Since that time the student has not had any serious behavioral incidents. He is able to understand consequences and cause and effect. Since April 2002, the student is achieving in class and the future is good. If the child stays in a structured environment, and staff makes modifications to his behavior plan, he will be able to be mainstreamed. (Testimony, Supervisor of Special Education)
40. To address anger management issues the team added counseling to his schedule. Since counseling was added to the child's IEP, he is developing coping skills, verbalizing feelings in an appropriate manner and has new patterns of dealing with

anger and frustration. The school has taken a proactive stance to add components to the child's program. (Testimony, Supervisor of Special Education, Exhibit B-5)

41. The child's verbal I.Q. of 90 and the results of the Woodcock-Johnson shows the student increased his reading ability by one year within eight months of schooling. The witness is encouraged by the classroom teacher's report that the child is now able to follow direction in class. The mother is good with following up on homework and is very supportive of the student. With modification to the Functional Behavior Analysis ("FBA") the student will continue to improve. In response to the parent's concern that the FBA does not address behavior the testimony of the witness, states the over-all plan to manage the child's behavior includes the PPT decision to make an aide available to the classroom teacher when she determines it to be necessary. The behavior plan was modified to move the student in a direction to make both behavioral and academic progress. Planning for the child's behavioral needs includes the overall IEP package, not just the FBA. The program provides counseling to assist in developing appropriate strategies when the student is upset or angry. Not everything was reduced to writing. (Testimony, Supervisor of Special Education, Exhibit B-1)
42. The witness does not believe the child requires a one-to-one aide at this point in time, the child has improved academically. The belief is the one-to-one aide reinforces immaturity, the witness has never seen an aide be successful in helping a child with a behavioral issue. Placing a hand on the child can escalate the problem. (Testimony, Supervisor of Special Education)

CONCLUSIONS OF LAW:

1. Both parties agree the student is eligible for special education services pursuant to The Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et. seq. and the provisions of Connecticut General Statutes Section 10-76 et. seq., He is a student who is delayed in all academic areas, has Attention Deficit Hyperactivity Disorder (ADHD) and is educated primarily in self-contained classes.
2. The only issue identified for hearing is the parent's request for the student to have a one-to-one aide to assist the student with academic support, attention and behavior issues.
3. A child eligible to receive special education services is eligible to receive such other or supportive services as are required to assist the child to benefit from special education. Section 34 C.F.R. 300.24 (a).
4. There is no question the child experienced a very difficult year, with the transition into the district in the fall and a transition to another school within the district in December. In a four month period this eight year-old, child had six suspensions, and experienced other disciplinary actions. The classroom teacher outlined the details of the events that resulted in suspension. The majority of suspensions were for behavior

that occurred outside the classroom during transition time, time in library, hallways, line-up time, lunchroom and recess. Most of the incidents occurred when an aide was present. It is not at all clear how a fulltime one-to-one aide would be helpful to this student. (See Findings of Fact, Testimony of Teacher)

5. The plan to encourage work completion with a reward system has resulted in improved behavior. The child's progress is well documented by objective testing and both the parent and school staff should be pleased.
6. The Supervisor of Special Education began involvement with the case in March 2002. His experience in the field contributed to resolution of problems with managing the child's behavior. The child is able to focus on class work and improve academic performance. The child has had few, if any, incidents since April 2002 which required disciplinary intervention.
7. Several factors contributed to improved behavior. The student's medication adjustments helped. The child now complies with the dress code. Counseling was added to the child's IEP, the IEP authorizes the classroom teacher to request an additional aide when she deems it to be necessary. The Learning Center Program provides ample opportunity for the student to receive individual attention. The Behavior Plan was modified. The child appears to be responsive to positive reinforcement recognition of his appropriate behaviors and has an adverse reaction to punishment.
8. The Supervisor of Special Education was able to analyze how the behavior plan, as previously implemented, reinforced negative behavior. The child wanted to be with a preferred staff member and would engage in negative behavior to get removal to that preferred staff-person's care. The current plan encourages the child to engage in the activity of completing schoolwork, for which the student receives stickers. When the child accumulates enough stickers, he can exchange them for time in a favored activity. The result is an increase in the child's time doing schoolwork and improvement in learning as well. The child is now actively engaged in controlling his own behavior.
9. Techniques to control the child's behavior such as, sitting constraints and several adults cornering the child are not effective ways to manage the child's behavior. If the behaviors which triggered the actions occur in the future, the behavior plan should be modified to identify and plan for situations when the student is in transition, line-up time, lunch room, library, recess, time in the care of aides who are not as familiar with his needs. It appears the student will be better served with careful analysis of events that trigger negative behaviors and modifications to the behavior plan to address eliminating the negative behaviors with positive reinforcement. A one-to-one aide simply does not appear to be the solution to this child's problems in school. Both the classroom teacher and the Supervisor of Special Education testified that in addition to other changes to the student's program an aide could stigmatize the child and create unnecessary dependency. I agree with this sound reasoning.

FINAL DECISION AND ORDER:

The request to assign a one-to-one aide to the child is denied.