

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on Behalf of the Parents: Mother, Pro se

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

Appearing Before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Parents present any issues in their amended complaints that satisfy the jurisdictional requirements of the Individuals with Disabilities Education Act (“IDEA”)?
2. If not, should the case be dismissed?

PROCEDURAL HISTORY:

The Parents (Mother) faxed a form to the State Department of Education on December 8, 2008 requesting a due process hearing. She sent the Board a copy of the request, which was received on December 10, 2008. This Hearing Officer was assigned to the case on December 10. On December 15, 2008, the Board’s attorney filed an appearance. On December 23, 2008 the Board’s attorney filed a Sufficiency Challenge and/or Motion to Dismiss the complaint. On December 26, 2008, the Parents filed an objection to the Sufficiency Challenge as untimely. On December 30, 2008, the Hearing Officer issued a ruling finding that the sufficiency challenge was timely and that the complaint was insufficient. The Parents were directed to resubmit a hearing request, which should specify the date of the PPT meeting where the issues were raised and the time period when a FAPE was not provided, directly to the hearing officer with a copy to the other party. The Motion to Dismiss was denied without prejudice. On January 5, 2009, the Parents submitted an amended complaint. Hearing Officer (“HO”) Exhibit 1. On January 12, 2009, the Parents filed a Motion to Amend Complaint. Exhibit HO-2. On January 15, the Board filed a Motion to Dismiss both the January 5, 2009 and January 12, 2009 complaints. Exhibit HO-3.

On January 16, 2009, a prehearing conference was held with the Board's attorney and the Mother, who had two parent advocates with her. A hearing was scheduled on the Motion to Dismiss on February 4, 2009. The Parties were to file witness lists and exhibits by January 28, 2009. The mailing date for the final decision was set at March 23, 2009. On January 22, 2009, the Parents filed a Response to the Board's Motion to Dismiss. Exhibit HO-4. On January 23, 2009, the Parents filed another Motion to Amend Complaint. Exhibit HO-5. On January 27, 2009, the Board filed an Objection to Parents' Response to Board's Motion to Dismiss. Exhibit HO-6. On January 30, 2009 the Parents filed a Response to Board's Objection. Exhibit HO-7. Both parties filed witness lists and extensive exhibits.

On February 4, 2009, the hearing convened following a lengthy discussion off the record in an attempt to define and narrow the issues for decision on the Motion to Dismiss. The Mother was accompanied by two parent advocates who assisted her throughout the day. The hearing then convened on the record. The Hearing Officer entered all relevant pleadings to the complaint amendments and Motion to Dismiss for clarity of the record. Exhibits HO-1 through HO-7. The Board objected to the Parent Exhibits P-1 through P-80. They were marked for identification only. The Parent was advised that each exhibit would have to be offered and specific Board objections would then be ruled on. She never offered any of the exhibits for admission into evidence at the hearing, therefore, they were not considered in this decision. The Parent had no objection to the Board's Exhibits B-1 through B-69, which were all entered into evidence as full exhibits. The parties presented opening statements in support of their positions on the Motion to Dismiss. The Parent agreed that her complaint was limited to the two-year period prior to filing the initial complaint on December 10, 2008 and to those issues raised at a Planning and Placement Team ("PPT") meeting in the relevant period.

The Mother began her January 5, 2009 amended complaint with the statement that the Student "is an honor student at Norwalk High School in the 10th grade." Exhibit HO-1. The Parent then recited the Student's history with the Norwalk Public Schools beginning in preschool. She complained that the Board ignored repeated requests over the years for the Student's exceptionality to be changed from OHI to autism and for evaluations and independent consultants including a music therapist and an autism consultant. Specifically, she complained about PPT meetings held in April, June, September and December 2008. In a January 12, 2009 amendment, the Parent added to her claim regarding the Parents not being treated as "members of our son's PPT." Exhibit HO-2. The Board filed a Motion to Dismiss both amended complaints because they failed to comply with the provisions of 34 C.F.R. Section 300.508. Exhibit HO-3. The Parent's response on January 22, 2009 raised an additional issue that the Student did not receive direct speech services provided in the February 28, 2007 IEP. Exhibit HO-4. On January 23, 2009, the Mother filed changes to her January 12, 2009 amended complaint to remedy "typos." Exhibit HO-5. On January 27, 2009, the Board filed an Objection to the Parent's January 22, 2009 response because it failed to address the claims in the Board's Motion to Dismiss. Exhibit HO-6. On January 30, 2009, the Parent filed a Response to the Board's objection in which she amended the requested relief to add a claim for financial assistance for the Student's participation in the band, including music lessons. She also renewed the request for an autism consultant to review the Student's IEP, assist in drafting appropriate goals and objectives and training school staff and the Parents. Exhibit HO-7.

At the hearing on February 4, 2009, the Board's relied on its legal arguments supported by its Exhibits. The Parent offered testimony from Seth Stevens, Ph.D., school psychologist, Norwalk public schools. The Parent did not take the oath and offer her own testimony, but relied on lengthy argument of her position. The parties were offered the opportunity to file additional briefs by February 18, 2009. The Parent filed a Post-Hearing Brief on February 18, 2009 but did not certify that she sent a copy to the Board's attorney. The Hearing Officer sent the Board's attorney a copy of the brief on February 19, 2009. The Board did not file any post-hearing brief.

While pro se parents are given latitude in complying with hearing procedures, their due process complaint must meet the basic requirements of IDEA. The original complaint filed December 10, 2008 was found insufficient because it failed to describe the nature of the problem of the child relating to the proposed initiation or change, including the facts relating to such problem. The Parents were specifically advised to give the dates of the PPT meetings where the Board refused their requests. The January 5, 2009 amended complaint added PPT meeting dates, but omitted any requests for relief. After the Board moved to dismiss the amended complaints of January 5, 2009 and January 12, 2009, the Parents added a request for relief in the January 22, 2009 response, seeking an autism consultant to review the Student's IEP. On January 30, 2009 after the Board's Objection was filed, the Parent added a second request for relief, seeking financial assistance for the Student's band participation, including music lessons. Nowhere in the pleadings has the Parent alleged that the Student was denied a Free Appropriate Public Education ("FAPE"), that any of his IEP goals and objectives were inappropriate, that the Student was not making progress on his IEPs or that the Board had not evaluated the Student appropriately.

The Parent claims that she raised issues regarding the 2006-07 school year. Because of the two-year statute of limitations in IDEA, only that portion of the school year from December 10, 2006 to June 2007 can be considered. The only issue articulated by the Parent was that the Student did not receive direct speech and language services between January and June 2007 as required by his IEP. This service was not added to his IEP until the February 28, 2007 PPT meeting. Compare Exhibits B-1 at 15 and B-11 at 10 and 14. He received the services as set forth in the speech language pathologist's report. Exhibit B-19. Any claims regarding the 2006-07 school year are dismissed.

The 2007-08 IEP for the Student's 9th grade year was developed at a PPT meeting on March 26, 2007. Exhibit B-20. The Student and his Mother attended the meeting. The Mother suggested that the Student might need a bus stop closer to home because of bullying, but the Student stated that there had not been any recent incidents at the bus stop and that he was not worried about bullying. The special education administrator, Ms. JoAnn Shippee, stated that special transportation could be given if needed. *Id.* at 2. Ms. Shippee followed up on the Mother's request by sending a memo to the school transportation department. Exhibit B-23. The PPT met on October 25, 2007 to review the Student's program and progress to date. Exhibit B-27. The PPT agreed to continue the March 26 IEP. *Id.* at 2. The PPT met on April 11, 2008 at the request of the Mother. Exhibit B-34. She presented a list of concerns about the Student's safety because of bullying and requested that the PPT do a Functional Behavior Assessment ("FBA") and develop a Behavior Intervention Plan ("BIP") for the Student.

Exhibit B-33. The Student attended the PPT meeting and stated that he felt safe at school and was not being bullied. Exhibit B-34 at 2. The team did not think an FBA was appropriate because there was no consistent behavior problem with the Student. Id. The Parents were offered counseling and training for parents of a special needs student, as well as the option of exploring placement at a private special education facility. Id. The Parent claims that the Board held a manifestation determination PPT meeting in February 2008 without the Parent's knowledge or participation. Exhibit HO-2. There is no support in the record for this claim. In any event, the Hearing Officer's jurisdiction over disciplinary matters is limited to situations where there is a decision to change the Student's placement because of a violation of the code of student conduct. 34 C.F.R, Sections 300.530 and 300.531. That was not the situation here. The Parents' claims regarding the 2007-08 school year are dismissed.

The remaining claims concern PPT meetings on June 4, 2008, September 17, 2008 and December 3, 2008, which all relate to the 2008-09 school year. Exhibits B-40, B-47 and B-56. The Parent changed the issues throughout this hearing. She withdrew the issue of whether the Board should have provided an independent evaluation. Her claim that the Board should provide music lessons to the Student to improve his performance on a musical instrument, which was raised in the January 30, 2009 letter (Exhibit HO-7), was not raised at a PPT meeting and cannot be considered in this due process hearing. Regs. of Conn. State Agencies, Section 10-76h-3(h). In any event, the Student participates in the high school marching band as an extracurricular activity. The activity is not part of his IEP. This claim is dismissed.

The only other issue raised by the Parent is whether the Student's eligibility classification should be changed from OHI to autism. She alleges that the PPT refused to change the classification at the December 3, 2008 PPT meeting. Exhibit B-56. She also alleges that she requested that the Board retain an autism consultant for the Student's IEP, which the PPT refused. Id. The Board does not dispute these allegations, but argues that the Parents have not put forth any facts to support their claims. The Parents argue that because the Student was diagnosed with Pervasive Developmental Disorder-Not Otherwise Specified ("PDD-NOS") and Attention Deficit Hyperactivity Disorder ("ADHD") in 2003 by Dr. Stubbe, a consultant retained by the Board, he qualifies for special education under the autism category. In support of this argument, she presented testimony from Dr. Stevens. His testimony revealed that Dr. Stubbe's report was reviewed at a PPT meeting on March 14, 2003 and that the Student was found eligible under the OHI category. Dr. Stevens conducted a psychological evaluation in September 2008 as part of the Student's triennial evaluation. Exhibit B-48. While he had no opinion on whether the Student's diagnosis of PDD-NOS was correct, the Student did not meet the IDEA criteria for autism and the classification of OHI was appropriate. The triennial evaluations were discussed at the December 3, 2008 PPT meeting and the Student's classification as OHI was continued. The PPT offered to have Dr. Rickler conduct a psychiatric evaluation to get another opinion on whether the Student was autistic. Exhibit B-48 at 2. The Parents refused. Id. The Mother insisted, as she did during the hearing on February 4, 2009 that the 2003 evaluation was sufficient. There is no basis to convene an evidentiary hearing on this issue.

None of the amended complaints sets forth sufficient facts to support any of the claims made therein. The Parents have been allowed time to file a sufficient amended complaint, but have not done so. The Board's Motion to Dismiss is granted.

FINAL DECISION AND ORDER:

It is ordered that this case shall be dismissed.