

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Somers Board of Education

Appearing on behalf of the Student: Attorney George C. Schober, P.O. Box 597, Somers, CT 06071

Appearing on behalf of the Board: Attorney Michael McKeon, Sullivan, Schoen, Campana & Cannon, LLC, 646 Prospect Ave., Hartford, CT 06105

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student was denied a free appropriate public education [FAPE] and/or had a change in educational placement under IDEA in that she was bullied, harassed and/or intimidated by the dance team coach and forced to resign from the dance team as a result of her self-advocacy during her extracurricular dance team.
2. Whether the Student's removal as head captain of the Somers High School Dance constituted a change in educational placement under the IDEA and/or was in violation of her right to a free appropriate public education under the IDEA.
3. Whether the Student's IEP met the requirements of IDEA as to extracurricular activities.
4. Whether the Student's IEP as written was fully and properly implemented in that the Board denied the Student a free appropriate public education by failing to implement her IEP regarding self advocacy and/or extracurricular activities.
5. Whether the Student is entitled to compensatory education.

PROCEDURAL HISTORY:

The Student requested this hearing on June 16, 2010, and a prehearing conference was convened on June 29, 2010.

On July 8, the Student's attorney submitted a Motion to Amend the Due Process Hearing Complaint. The Motion to Amend was granted on July 13. The parties were notified that

pursuant to 34 CFR §300.508, if a party files an amended due process complaint, the timelines for the resolution meeting begin again with the filing of the amended due process complaint. Subsequently, counsel for both parties confirmed on the record on the first hearing date that they were waiving the resolution meeting.

After business hours on Friday, August 6, the Board's attorney submitted a Motion to Dismiss the due process hearing on the grounds that there was no subject matter jurisdiction over the issues submitted by the Student for adjudication.

The hearing convened on Tuesday, August 10. At the hearing, the Student's attorney requested additional time to respond to the Motion to Dismiss, as is provided in the Connecticut Regulations.

The Student's attorney filed an Objection to the Motion to Dismiss, and an Amended Hearing Request in accordance with Regs. Conn. State Agencies §10-76h-8(f)(2).

A Ruling was issued regarding the Motion to Dismiss, which was granted in part and denied in part.

The Student had brought this action, not the Parents. Therefore, the Motion to Dismiss on the grounds that the improper party has filed this request for hearing was denied.

The Student's claims of due process deprivation under the Fourteenth Amendment was not properly before this tribunal. Therefore, the Motion to Dismiss a portion of issue number 2 was granted. In accordance with this ruling, issue number 2 was modified to the following: "Whether the Student was removed as head captain of the Somers High School Dance in violation of her right to a free appropriate public education under the IDEA."

The hearing officer does not have the authority to award the Student's claims for remedies of compensatory damages and attorney's fees, or in the alternative, the equivalent of a right to sue letter. Therefore, the Motion to Dismiss this portion of the request for hearing was granted. The amended hearing request submitted with the Objection to the Motion to Dismiss outlines the proposed resolution of compensatory education, which remained as the requested remedy in this case. It was listed as an "issue" rather than a remedy so that the parties were clear as to all issues and requested remedies in this case.

The hearing continued for eight additional days in September, October and November. Requests for extension of the mailing date were granted at the parties' request so that additional hearing dates could be scheduled and so that briefs could be filed.

Briefs were filed by both parties on January 7, 2011.

The Student's witnesses were: the Mother; the Student; the Student's Sister; the Father; Patricia Collin, Board director of pupil services; Gary Cotzin, the Board high school principal; Melinda Ferry, the Board special education teacher; Anne Marie Rheault, the Board speech and language pathologist; Karen Regan, Board school counselor; Maynard Suffredini, the Board

superintendent; Meredith Kirkpatrick, the Board regular education teacher; Alan Walker, the Board athletic manager; and Robert Kapner, the Board high school vice principal.

The Board called no additional witnesses, but relied upon the testimony that was presented during the Student's presentation of her case.

The Student submitted a substantial number of exhibits all of which were thoroughly reviewed and considered in this decision. No exhibits were submitted by the Board

Any remaining pending motions are hereby denied.

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. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993).

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes ("CGS") §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

SUMMARY:

The Student, who has been eligible for special education under the designation Speech Language Impaired, had self advocacy as a goal and/or objective in her IEP throughout her years at the high school. During her senior year in high school in the 2009-10 school year, the Student participated in the extracurricular dance team. She was subject to demotion from her head captain position, as well as humiliation and ridicule by the dance team advisor. The Student brings this request for hearing to challenge the Board's actions, claiming denial of FAPE, alleging a change of placement and failure to implement her IEP and claiming that the Student's IEP failed to meet the requirement under IDEA for her extracurricular activity.

FINDINGS OF FACTS:

1. The Student is 19 years old and has graduated from the Board high school. [Testimony Student, Mother; Exhibits P-3, P-5, P-8, P-128, P-161, P-20]
2. It is undisputed that the Student was eligible for special education and related services when she was enrolled at the Board school. [Exhibit P-3, P-5, P-8, P-128, P-161]
3. The Student attended the Board High School from August 2006 until her graduation in June 2010. [Testimony Mother, Exhibit P-201]

4. The Student was never a disciplinary problem and was polite, respectful and well-liked by the Board staff. [Testimony Regular Education Teacher, Special Education Teacher, Principal, Vice Principal] It was noted that a behavior concern for the Student was her shyness or lack of confidence. [Exhibit P-3]
5. During her four years at Somers High School, the Student had “self advocacy” as either a goal or objective in her Individualized Education Program [IEP]. [Exhibits P-3, P-5, P-8, P-128] The Parents agreed with the need for the Student to continue to work on self advocacy skills. [Exhibit P-5]
6. The members of the Planning and Placement Team [PPT] were aware that the Student participated in the Board extracurricular activity with non-disabled peers in the dance team throughout her years at the Board high school, as evidenced by the Board staff checking the box on the IEP form. [Exhibit P-3, P-5, P-8, P-128] Board staff did not know why the box was present on the IEP form requesting information about extracurricular activities involvement, except that the State Department of Education requests this information. [Testimony Special Education Teacher, Speech Language Pathologist]
7. The PPT recommendations consistently noted that the Student should continue to improve self advocacy skills. [Exhibit P-5]
8. The Student’s IEP for the 2009-10 school year included an objective to “self advocate by seeking appropriate people to serve as resources.” [Exhibit P-8]
9. The Student’s IEP for the 2009-10 school year was amended on May 29, 2009 to include further details on transition planning as a result of a directive from the Connecticut State Department of Education. This included a revision of the goal for self advocacy, broadening it to include practicing of self advocacy skills “to transfer to college and or employment.” While the evaluation procedure was teacher/student observation, and percentage of frequency/trials, no data was provided to evidence that this goal was appropriately measured/tracked during the 2009-10 school year. [Exhibit P-8A]
10. The Student participated in the school’s extracurricular dance team for every year she was at the Board High School. [Testimony Student]
11. The Student was elected as one of the captains of the dance team by the members of the team at the conclusion of the dance team season during her junior year. [Testimony Student, Board Principal]
12. Subsequently, the Student was chosen as head captain of the dance team for her senior year by the two other captains. [Testimony Student]
13. The Student was friends with many of the girls on the dance team, and had good rapport with the dance team members. [Testimony Student]

14. The Student attempted to work with a teacher who could be an advisor for the dance team over the late spring and summer of 2009. [Exhibit P9] That teacher did not become the advisor for the dance team. [Testimony Student]
15. The Student also worked with the other captains to attempt to obtain funding from the school for a paid dance team coach, but they were ultimately unsuccessful. As no funding was available for a paid dance team coach, the principal for the high school appointed Alison Desrosiers as the new dance team coach. The athletic manager had known Ms. Desrosiers for years as she had been his daughter's friend. [Testimony Student, Principal, Athletic Manager]
16. From the outset, Ms. Desrosiers' tenure as dance team advisor was marked by immaturity, poor judgment, dishonesty and inappropriate behavior.
17. At the outset, Ms. Desrosiers misrepresented to the team members that they were completing an anonymous survey, although the survey was not anonymous. [Exhibit P-38]
18. The dance team advisor posted contact and other personal information about the dance team members on a website that was purported to be secure, but was not. [Exhibit P-50]
19. On Facebook, the advisor friended the dance team members so that they would be part of unauthorized "Official Somers High School Dance Team" group on Facebook. When doing so, the advisor did not have appropriate privacy controls and by clicking on the profile picture, the students were lead into the advisor's Facebook photos which included sexually provocative poses as well as partying photos of drinking shots, posing with liquor bottles and while drinking directly from liquor bottles, and engaging in alcohol drinking games. While perhaps these are run of the mill inappropriate photos on many Facebook pages of people in their 20s like the advisor, access to these photos to the students was wholly inappropriate for a dance team advisor and role model to the students. When brought to attention of the principal by the Parents, the advisor was told to remove the dance team group from Facebook. While saying she would do so, she continued to use the Facebook as a method of communication with the dance team members for the entire season. [Testimony Mother, Father, Principal; Exhibits P-36, P-204, P-G]
20. Later in the dance team season, the advisor misrepresented to the members of the team that they were to receive a trophy because a competition erroneously deducted points from their score. Then, the advisor also submitted an outrageous email to the competition chair complaining about the competition. When the competition chair brought her outrageous complaints to the attention of the Board, the Board staff asked that the advisor forward them the email. The advisor altered the email in an attempt to appear less offensive and forwarded the doctored email to the Board. [Testimony Athletic Manager, Principal; Exhibits P-119, P-121]

21. Throughout the dance team season, the Parents sent a substantial number of emails to the Board High School Principal, as well as communications to the Superintendent of Schools and the members of the Somers Board of Education of complaints regarding issues involving the dance team advisor, as well as concerns of the mistreatment of the Student by the advisor. [Testimony Mother, Principal, Exhibit P-22, P-32, P-SS]
22. The Principal informed the advisor on or about November 2009, that the Parents were the ones who were complaining about the advisor, her Facebook site and her coaching of the team. [Testimony Mother, Principal, Father; Exhibits P-57, P-58.] Some of the actions taken by the dance team advisor appear to be retaliation against the Student for the complaints filed by the Parents, although for at least a portion of the time the Student was unaware of the Parents' complaints. [Testimony Student]
23. Any interventions by the Parents were ineffective, to the point that the family was deemed "evil" by the Board staff. The Board animosity toward the Parents was apparent in the emails and correspondence which surround this case. The Principal concluded that the Mother "outright lies . . . [w]hat an evil person," in an email to the assistant principal informing him that he was handling the dance situation. [Testimony Principal, Exhibit P-139a] The Superintendent could not understand this "big brouhaha over the dance team, which was not even a sport." [Testimony Superintendent] The Superintendent also told the Parents that they were bullying the advisor. [Exhibit P-QQ] But, while the Parents' interventions were ineffective, what is most important in this matter is that the Student had demonstrated weaknesses that were not addressed, which inhibited her ability to have an equal opportunity to participate in the extracurricular activity.
24. The dance team advisor selected team uniforms in the color of the rival neighboring town. When these uniforms arrived, some team members were upset as they did not want to wear their rival's colors. The Student attempted to resolve the rancor about the uniforms and assuage the team members. [Testimony Student; Exhibits P-66, P-68]
25. Shortly thereafter, the advisor requested the Student's removal as head captain of the dance team. [Exhibit P-76]
26. The Principal was pivotal in the removal of the Student as head captain. While he requested that the advisor present him a list of reasons why the Student should not be head captain, in the same email he also said he supported the removal of the Student as head captain. [Exhibit P-87]
27. The Principal does not recall speaking to any of the Student's teachers or the guidance counselor regarding the Student at this time. [Testimony Principal]
28. Despite the overwhelming evidence of the inappropriateness, immaturity and dishonesty of the advisor, the superintendent supported the advisor's actions in removing the Student as head captain of the dance team at the request of the advisor. [Exhibit P-118a]

29. The Principal reiterated his decision that the Student be removed as head captain of the dance team per the advisor's request in a letter dated December 22, 2009, indicating that he hopes that the Student "can adjust and remain an integral part of the team," and noting in his decision that the dance team advisor "has constitutional rights under the law." [Exhibit P-95] It is puzzling which constitutional rights would afford protection to the dance team advisor in this situation.
30. Even though the Student had weaknesses in self advocacy, and the Board staff was aware of the communication problems that the Student was having with the dance team advisor, no one considered convening a PPT meeting and no one followed up with the Student to assist her with these difficulties.
31. After the Student's removal as head captain, the Student suffered retaliation by other team members including a vitriolic voice mail message, a letter from a team member stating that the Student lies and questioning why she would continue to be part of the dance team and a petition signed by dance team members against the Student. [Exhibits P-96a, P-99]
32. The dance team advisor told the dance team of the Student's removal as head captain at the next dance team practice, which humiliated the Student. [Testimony Student, Sister; Exhibit P-117]
33. The Student was removed as head captain. She remained a captain of the team in name only, as she was not treated like a captain and given no more responsibility. [Testimony Student]
34. The PPT convened on February 11, 2010 for the Student's annual review and to plan the Student's transition. The Student's objectives continued to include. "Develop self advocacy skills: learn to ask and when to ask for assistance. . ." Once again, the evaluation of this objective included staff observation, and listed the percent/trials as 8/10, although no data appears to have been taken as to this objective. [Exhibit P-128] During this time, the Student was having serious problems with the dance team and other dance team members which was known by the Board staff and was the rumor at school. No Board staff addressed these issues during the PPT meeting. [Testimony Special Education Teacher, Principal]
35. On February 26, 2010, the Board High School held a Senior Night ceremony at its gymnasium. [Testimony Student, Mother]
36. At Senior Night, which took place at a boys' varsity basketball game, all seniors on the dance team, the cheerleading squad and the boys' varsity basketball team are recognized in front of the crowd. During the Senior Night ceremony, each individual senior is called up by name and presented flowers by their coach or advisor. [Testimony Student, Mother; Exhibits P-137, P154]

37. Each senior member of the dance team, except for the Student was presented with a bouquet of flowers and a card by the dance team advisor. [Testimony Student, Exhibit P-139, P-157] At this Senior Night ceremony, the Student was presented with a bouquet of broken flowers and was given no card by the advisor. [Testimony Student, Mother; Exhibits P-157] The flowers were also different than the flowers given to the other dance team members. The Student received broken carnations only. The other dance team members received roses, carnations and babies' breath. [Testimony Mother, Principal]
38. While the Board was informed of this outrageous bullying behavior by the dance team advisor, the advisor was not appropriately reprimanded and the Student continued to be bullied by the advisor. [Exhibits P-158, P-163, P-164, P-168, P-170, P-185]
39. At the practice after Senior Night, the dance team began preparing for March Madness, an event that was to be held in the high school gym on March 26, 2010 during the school day in front of the entire school student body, faculty and staff. [Testimony Board Principal, Mother]
40. At the practice on March 5, 2010, the dance team advisor created a new routine and choreographed it so that all the dance team seniors, with the exception of the Student, were placed together in the middle of the formation. [Testimony Student]
41. The Student was placed in the back corner of the formation, and the Student's sister, a sophomore, was placed in the other back corner of the formation. [Testimony Student, Exhibit P-167]
42. After placing the dance team in this formation, the advisor stated, "look, all my seniors are together." [Testimony Student]
43. The Student did not speak out or make a complaint at that practice. The Student did not seek out any appropriate Board staff for assistance with this demeaning situation. [Testimony Student]
44. At the next dance team practice on March 8, 2010, the Student was again placed in the back corner of the formation. The Student questioned the advisor as to why she was not placed in the formation with the other seniors. [Testimony Student, Sister] The advisor responded to the questions by threatening to remove the Student from the practice. [Testimony Student]
45. On March 12, 2010, the principal, in the presence of the Student's school counselor, questioned the Student about what occurred at practice on March 8. [Testimony Student, Principal, School Counselor; Exhibits P-175, P-176]
46. While the principal sent an email to the advisor stating that the Student admitted that she had acted inappropriately at the practice, the Student did not believe, nor did she acknowledge, that she acted inappropriately at the March 8 practice. [Testimony Student]

47. The principal was under the impression that the advisor was going to change the position of the Student in the dance position in the March Madness dance formation, because placing her in the back away from the other seniors didn't look right to the principal. [Testimony Principal] Despite this, the Student's position was never changed. [Testimony Student]
48. On March 16, 2010, the Student quit the Dance Team as she could no longer tolerate the bullying by the dance team advisor and to avoid the humiliation of not dancing in the line with the other seniors in the dance team's final performance in front of the entire school body. [Testimony Student, Exhibits P-180, P-181] She did not ask for assistance or resources of the Board staff prior to submitting her resignation.
49. While the Principal purportedly investigated these complaints, he had no notes of any investigation and did not document any of the steps taken to rectify the situations. [Testimony Principal]
50. Although the Principal admitted that the negative behavior that the dance team advisor accused the Student of exhibiting would be unusual for the Student, the Principal never checked with any of the Student's teacher or her school counselor to determine whether the Student was exhibiting this alleged behavior in any of her classes. [Testimony Principal]
51. The Principal did not request a PPT meeting despite the issues surrounding the Student's dance team experience, although the principal had been a member of the PPT for the Student on more than one occasion, including the February 2010 meeting. [Exhibit P-5, P-128]

DISCUSSION/CONCLUSIONS OF LAW:

The Student brought this action in accordance with the Individuals with Disabilities Education Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21.

At first blush, this hearing could appear to be frivolous, based on complaints of a jilted head captain or her over-involved parents who want to get revenge against those who wronged the Student. Rather, it's more mundane. The Student had a known weakness and simply was not afforded the necessary supplementary aids and services to provide her equal opportunity to participate in the extracurricular activity as required by the IDEA.

The Student's first issue to be considered is whether the Student was denied a free appropriate public education [FAPE] and/or had a change in educational placement under IDEA in that she was bullied, harassed and/or intimidated by the dance team advisor and forced to resign from the dance team as a result of her self-advocacy during her extracurricular dance team.

No evidence presented supports a conclusion that the Student had a change in her educational placement as is contemplated by the IDEA. While the actions of the dance team advisor were some type of bullying, harassment and intimidation of the Student, the actions did not constitute a denial of FAPE as a result of her self-advocacy during her extracurricular dance team.

The Student's next issue is whether the Student's removal as head captain of the Somers High School Dance constituted a change in educational placement under the IDEA and/or was in violation of her right to a free appropriate public education under the IDEA. The Student's demotion from head captain to captain is not, on its own, a violation of her right to a free appropriate public education under the IDEA, nor did it constitute a change in educational placement under IDEA that would trigger the notice requirements for a change of placement under the IDEA.

The Student's third issue is whether the Student's IEP met the requirements of IDEA as to extracurricular activities. The regulations provide that "[e]ach public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities." 34 CFR §300.107

The regulations further note that an IEP must include a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child . “ . (ii) to be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, *and to participate in extracurricular and other nonacademic activities.*” 34 CFR §300.320(1)(4)(II)[Emphasis added]

School staff was well aware of the difficulties that the Student was having in participating in the extracurricular activity and with the dance team advisor. These are the same individuals who were aware that the Student was receiving special education and were members of the Student’s PPT. The response by the Board principal and other parties was inappropriate. The Student was punished for ineffectively communicating to parties about the dance team situation. It was readily apparent that the Student was not successfully self advocating. Rather than convening a PPT so that this deficiency could be addressed through counseling or other necessary supplementary aids and services that would be appropriate and necessary for the Student to have an equal opportunity to participate in the nonacademic setting of the extracurricular dance team, the principal demoted her. The Student continued to suffer the repercussions of the dance team situation throughout the season, resulting ultimately in her resignation from the team. The Board in this case violated the IDEA by failing to intervene to enable the Student to participate fully in this extracurricular activity. The Student was left vulnerable to the abuse from the advisor, ill-equipped to appropriately respond. The Board also failed to appropriately respond to the Student to help her with the tools necessary to address the situation. The Student should have been provided counseling services to help her better advocate

in the situation. She was provided nothing by the Board, and in fact, the Board acquiesced in the bullying by demoting the Student and supporting the advisor's outrageous behavior which resulted in the Student not seeking appropriate assistance, but rather giving up and resigning from the extracurricular activity.

The Student's fourth issue is whether the Student's IEP as written was fully and properly implemented in that the Board denied the Student a free appropriate public education by failing to implement her IEP regarding self advocacy and/or extracurricular activities. It is unclear whether the IEP was appropriately implemented regarding self advocacy since the self advocacy goal was not measurable as written. The IEP was also silent as to extracurricular activities, except for the checking of the box on the form, a step which Board staff took although they didn't know why. As noted supra, the IEP should have been revised based on the serious problems noted in the Student's failure to advocate in a successful manner with the dance team which resulted in her inability to have an equal opportunity to participate in this activity.

The Student is entitled to compensatory education as a remedy. Compensatory education although listed in the "issues" is a remedy. The Board's claim that the Student is not entitled to compensatory education because it was not listed in the initial issues is without merit. On the other hand, the Student is not entitled to the type of compensatory education advocated in her brief, which included a request for dance instruction and other services. The testimony presented confirms that the Student is an excellent dancer; additional dance instruction, therefore, would not be an appropriate remedy. The Student also asserted that a "more equitable" compensatory education award would be to require the Board to pay tuition for the next year of the Student's college education to compensate the Student for the loss of enjoyment of her senior year of high school. That remedy would be wholly inappropriate.

The Student was experiencing bullying and harassment, and having difficulties with self advocacy. This experience caused the Student sadness; the Student had fits of crying during this time. [Testimony Father] During the winter, the Student drew a self portrait in honors art. Her bleak self portrait was with a gray background and forlorn expression; the Student testified that this self portrait showed sadness and depression. [Testimony Student, Exhibit P-97] As compensatory education for the failure to meet the IDEA requirements for the extracurricular activity, the Board shall provide reimbursement for counseling services to the Student for a total of eight one hour sessions by a therapist/counselor of the Student's choice, which reimbursement shall not exceed \$175 per session.

FINAL DECISION AND ORDER:

1. The Student was not denied a free appropriate public education [FAPE] and/or had a change in educational placement under IDEA in that she was bullied, harassed and/or intimidated by the dance team advisor and forced to resign from the dance team as a result of her self-advocacy during her extracurricular dance team.
2. The Student's removal as head captain of the Somers High School Dance did not constitute a change in educational placement under the IDEA and was not in violation of her right to a free appropriate public education under the IDEA.
3. The Student's IEP did not meet the requirements of IDEA as to extracurricular activities in that it did not provide the Student with the supplementary aids and services that were appropriate and necessary for the Student to participate in the nonacademic setting.
4. The Student's IEP as written was fully implemented.
5. The Student is entitled to compensatory education of counseling services for a total of eight one hour sessions by a therapist/counselor of the Student's choice, which reimbursement shall not exceed \$175 per session.