STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Manchester Board of Education

Appearing on Behalf of the Parent:	Mother, appearing *pro se*
Appearing on Behalf of the Board:	Craig Meuser Shipman & Goodwin LLP One American Row Hartford, CT 06103-2819
Appearing Before:	Attorney Scott P. Myers, Hearing Officer

FINAL DECISION AND ORDER

ISSUES

1. Whether the Board complied with its obligations under the IDEA to provide the Student with a free and appropriate public education ("FAPE") in the least restrictive environment ("LRE") in the period through October 10, 2001?

2. If not, what remedy, if any, should be provided?

SUMMARY

The Parent commenced this action on October 3, 2001 seeking a determination as to whether the Manchester Board of Education (the "Board") properly discharged its obligations under the IDEA to provide the Student with a FAPE in the LRE. The Student moved into the district (the "District") shortly after the 2001-2002 academic year began. The Student's transition to the District has been problematic as a result of two independent events, the combined result of which has led to an atmosphere of tension and distrust between the parties: (1) District staff members failed to follow through in responding to an invitation to the District to participate in a transitional PPT prior to the move; and, (2) the Student was arrested on September 26, 2001, the day before his first scheduled PPT with the District. In light of the arrest, and the lack of information available regarding the Student, the District offered an interim tutoring program and reasonably deferred making a placement decision until October 10, 2001, by which time additional information had become available and the parties were able to reach an agreement on how to proceed. Hopefully, the parties will be able to move beyond the

rough start of their relationship and continue to cooperate to assure that the Student's educational needs are being met.

PROCEDURAL HISTORY

At the October 11, 2001 Pre-Hearing Conference, the parties reported that at a PPT convened on October 10, 2001 they had reached an agreement as to the Student's placement on a going forward basis. Accordingly, the Parent's request for hearing was limited to the period through October 10, 2001.

The request for due process was marked as Exhibit HO-1. Parent exhibits P-1 through P-4 and Board exhibits B-1 through B-5 and B-7 through B-12 were admitted into evidence by agreement. Parent exhibits P-6 (a copy of the notice for the October 10, 2001 PPT and an excerpt from the minutes of that PPT) and P-7 (a two page set of handwritten notes made by the Parent outlining the events which were the subject of this hearing) were marked for identification only, since they contained materials prepared by the Parent for hearing. Parent exhibit P-5 was described as a note given to the Parent at a PPT by a District staff member. Exhibit P-5 also had handwritten notes on it made by the Parent for hearing. Those handwritten notes (the text "School Bring . . . request hearing") were disregarded by the Hearing Officer. The rest of the document was admitted as an exhibit. Board exhibits B-1 through B-5 and B-7 through B-12 inclusive were admitted into evidence by agreement. Board exhibit B-6 (a one page newspaper article concerning the Student's arrest on September 26, 2001) was marked for identification only, subject to the Board linking the article to events at issue in this proceeding. The Board subsequently elected not to move the document into evidence.

The Board moved at several points during the October 26, 2001 hearing to dismiss this matter. The Hearing Officer denied that motion as set forth more fully herein.

Testimony was elicited from the Mother, the Student's 21 year old sister ("Sister"), the Student, and the Board's Director of Pupil Personnel Services, Martha Hartranft, Ph.D. ("Dr. Hartranft"). The hearing was concluded and evidentiary record closed on October 26, 2001.

FINDINGS OF FACT

To the extent that the procedural summary includes findings of fact or conclusions of law, that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. *See, e.g., Bonnie Ann F. v. Callahen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993). The factual findings stated herein are based on the Hearing Officer's assessment of the credibility of witnesses. Citations to testimony or documentary exhibits are for illustrative purposes and not meant to exclude other admissible evidence in the record supporting that finding.

1. The Student, currently 16 years of age, began residing in Manchester on September 13, 2001 and registered as a student in the Board's public school

system on September 24, 2001. (Parent Test.; Exhibit B-3)

2. In the 2000-2001 academic year, the Student and his family resided in another Connecticut town (the "Prior District"). The Student had been identified as eligible to receive special education services based on a classification of severely emotionally disturbed and specific learning disability. (Parent Test.; Hartranft Test.; Exhibit P-2)

3. There is no dispute between the parties that the Student is eligible to receive special education services under the IDEA and applicable Connecticut law. (Exhibit B-5; B-7)

4. During the 2000-2001 academic year, the Student had been placed by the Prior District at the Woodstock Academy in West Hartford. Woodstock Academy is a day hospital setting. (Parent Test.; Hartranft Test.) During the course of that year the Student had been arrested for possession of illegal drugs on the grounds of that school. (Parent Test.)

5. During the summer of 2001, the Student and his family purchased a home in Manchester. In anticipation of the move, the Parent requested a PPT with the Prior District to address transitional planning. (Parent Test.)

6. By notice dated August 20, 2001, the Prior District scheduled a PPT for August 28, 2001 to plan for an interim placement in the Prior District pending the move (which was scheduled for sometime in September 2001) and to plan for the transition to Manchester. Representatives of the District were invited to participate in that PPT. (Parent Test.; Hartranft Test.; Exhibit P-1)

7. The PPT was convened in the Prior District on August 28, 2001. Pending the move to Manchester, the PPT team developed an IEP providing for placement of the Student in a public high school within the Prior District's system. Under that IEP, the Student would receive 18.75 hours/week of special education services in a self-contained classroom and participate in activities with typically developing peers for 3.75 hours/week. (Exhibit P-2) Although the IEP provided only for 22.50 hours/week of educational programming, the program was a full day program. (Parent Test.; Student Test.)

8. No representative of the District attended the August 28, 2001 PPT. (Parent Test.; Hartranft Test.)

9. The family had lived in another town prior to the 2000-2001 academic year ("Town E") and the Student had been receiving special education services through Town E in that academic year. When the family moved to the Prior District shortly before the 2000-2001 academic year, the special education staffs of Town E and the Prior District had coordinated the arrangements for the Student such that the Student did not experience any disruption of his educational

programming as a result of that move. (Parent Test.) The Parent anticipated that following her request for a PPT in August 2001 that the same type of transitional arrangements would occur again with the move to Manchester. (Parent Test.)

10. Shortly before the Prior District issued the August 20, 2001 notice of a PPT, Dr. Hartranft's office was contacted by the Prior District's pupil personnel services director who indicated that the Student would be moving to Manchester in late September 2001 and requesting contact with the District for purposes of planning that transition. The District received the August 20, 2001 notice shortly thereafter. In light of the fact that the District's 2001-2002 academic year was to commence on August 29, 2001, Dr. Hartranft and her staff decided not to send a representative to the August 28, 2001 PPT. Instead, Dr. Hartranft requested that a member of her staff ("M") contact the Prior District and the Parent to discuss such matters as obtaining records and procedures for the Parent to follow once the family had moved into the Board's jurisdiction. Dr. Hartranft did not learn until later in September 2001 that "M" had failed to follow through and had not contacted either the Prior District or the Parent. (Hartranft Test.)

11. The Board typically does not participate in transition PPTs convened by a referring district for a child who is receiving special education services through the referring district and moving into the Board's jurisdiction. The Board has participated in such PPTs on some occasions, however. (Hartranft Test.)

12. The Parent had no contact with any Board or District representative between August 20, 2001 and September 23, 2001. (Parent Test.)

13. Although the Student had moved to Manchester on September 13, 2001, he continued to attend the program provided by the Prior District until September 19, 2001 or September 21, 2001. (Parent Test.; Student Test.)

14. The Parent did not formally withdraw the Student from the Prior District in September 2001. Rather, the Student stopped attending the Prior District's placement at some point between September 19 and 21, 2001 because the Parent was unable to continue to transport him to that placement given that the family was now residing in Manchester. (Parent Test.)

15. On September 24, 2001, the Student registered with the Board and a PPT was scheduled for September 27, 2001. (Parent Test.; Hartranft Test.) The Parent waived the 5 day notice requirement. (Exhibit P-4) On September 24, 2001, the District received a packet of information from the Prior District. (Parent Test.; Hartranft Test.) The information included PPT minutes and IEPs prepared by Woodstock Academy, but did not contain any evaluation reports. (Hartranft Test.)

16. On September 26, 2001, the Student was arrested for an incident occurring on approximately September 11, 2001 in which he allegedly verbally harassed a

female teacher from the Woodstock Academy by making threatening telephone calls. (Student Test.; Parent Test.)

17. Due to his incarceration and a Court appearance scheduled for September 27, 2001, the Student was not able to attend the September 27, 2001 PPT. The Parent and the Sister did attend that PPT. (Parent Test.; Sister Test.) The Parent was provided with a copy of *Procedural Safeguards in Special Education* at the PPT. (Exhibit B-5)

18. At the September 27, 2001 PPT, the District inquired as to the events leading to the Student's arrest and his disposition. The Parent was unable to provide information regarding either topic because she herself did not have the details. (Parent Test.)

19. The PPT team recommended that the PPT reconvene when the Student could be present, recommended a psychiatric evaluation with Dr. Black (who had previously evaluated the Student), and approved tutoring for the Student until more permanent longer term programming could be developed. (Exhibit B-5; Parent Test.) Potential placement options were discussed, including placement at the Manchester Regional Academy ("MRA"). (Parent Test.; Hartranft Test.; Sister Test.) MRA is the District's program that is comparable to the Student's placement at Woodstock Academy. (Hartranft Test.)

20. The Parent agreed to the evaluation by Dr. Black, but misunderstood the nature of the tutoring services being offered and had the impression that the District was suggesting that the Student be placed on homebound tutoring for the entire year. She was strongly opposed to any such plan because it would not provide sufficient structure for the Student. She also came away from the September 27, 2001 PPT with the impression that the Student might not be eligible or qualify for MRA. Accordingly, the Parent requested that some consideration be given to continuing the Student's placement at the Prior District's program. (Parent Test.) That request was "put on hold" until the next PPT meeting. (Exhibit B-5)

21. On September 27, 2001, the Student was ordered by the Court to reside at the Alternative Incarceration Center ("AIC") for an unspecified period of time pending further Court proceedings. The Student would be able to leave AIC to attend school. (Parent Test.)

22. The tutoring plan developed at the September 27, 2001 PPT was implemented on September 27 or September 28, 2001. An attempt to have the tutoring done at AIC was rejected by AIC. The Parent requested that AIC permit the Student to receive tutoring at a local library, but permission for that arrangement was denied by AIC as well. (Parent Test.)

23. The Board made a good faith effort to commence the provision of tutoring services on September 27 and September 28, 2001 but, due to circumstances

beyond its control, was unable to deliver those services at any time prior to October 10, 2001.

24. A PPT was convened on October 2, 2001. The Parent, the Student and the Sister attended that PPT. (Exhibit B-5; Hartranft Test.) At that time, the Student was still residing at AIC by Court order and it was unclear what his disposition would be. (Parent Test.) The PPT team recommended continuing the program developed at the September 27, 2001 PPT and to reconvene the PPT on October 10, 2001 to ascertain the Student's status at that time. The PPT team again recommended MRA and the Parent and Student agreed to visit MRA to determine whether it would be a suitable placement for the Student. (Exhibit B-5)

25. Notwithstanding the agreement of the Parent and the Student to visit the MRA program, the Parent again requested "an immediate full day placement" for the Student. (Exhibit B-5)

26. Between the September 27, 2001 and October 2, 2001 PPTs, Dr. Hartranft contacted the Prior District to ascertain whether it would be possible for the Student to be placed in the self-contained setting described in the August 28, 2001 IEP. Dr. Hartranft advised the Prior District that the Board would pay for such a placement. Dr. Hartranft was advised by the Prior District that such a placement would not be possible, and advised the Parent. (Hartranft Test.)

27. At the October 2, 2001 PPT, the District requested that the Parent complete several releases of information which would enable the District to obtain additional records regarding the Student. The request was made primarily because the Student had been placed in a day hospital for the 2000-2001 academic year in part for behavioral problems and because there were no current evaluation reports in the materials received to date by the District. The District concluded that it could not make an appropriate placement recommendation absent receipt of additional information about the Student's history, and did not want to make a precipitous placement decision. The District's request was also driven, to a more limited extent, by knowledge that the Student had been arrested while at Woodstock Academy in the 2000-2001 academic year due to an incident that had occurred on campus and knowledge of the circumstances leading up to the Student's arrest on September 26, 2001 which had by that time been reported in the local newspapers. (Hartranft Test.)

28. The Parent refused to sign the authorizations at the October 2, 2001 PPT, but eventually agreed to sign some of them at the October 10, 2001 PPT. (Hartranft Test.)

29. The Parent was provided a copy of *Procedural Safeguards in Special Education* with the minutes from the October 2, 2001 PPT. (Exhibit B-7)

30. The parties reached an agreement at the October 10, 2001 PPT that a

comprehensive set of evaluations of the Student would be undertaken and that the Student would attend MRA on a diagnostic placement basis pending the results of those evaluations and the development of a longer term IEP for the 2001-2002 academic year. (Parent. Test.; Hartranft Test.; Exhibit B-8)

31. Part of the agreement reached at the October 10, 2001 PPT, was that the District would provide additional tutoring services to the Student following his release from AIC to cover instruction that he did not receive from September 19, 2001 to October 12, 2001 which was his scheduled release date from AIC. (Exhibit B-8) Assuming that the Student participated in the tutoring and at MRA, he would receive sufficient credits to satisfy his first quarter requirements under the Board's curriculum. (Hartranft Test.)

32. The Parent was frustrated and distressed by the District's handling of the Student's situation through October 10, 2001. (Parent Test.; Sister Test.) The Student was angered at the disruption in his educational programming which he perceives to have been caused by the District. (Student Test.)

33. The Parent's understanding of a local educational agency's ("LEA's") legal obligations with respect to the provision of special education services under the IDEA is incomplete and, in certain aspects, incorrect. The Parent's misunderstanding of the District's obligations, her expectations based on past experiences of transitioning between two districts, the stress of the move and the stress of the Student's arrest, coupled with the failure of "M" to follow through and contact either the Parent or the Prior District in response to the August 20, 2001 PPT notice, have all contributed to an atmosphere of mistrust and tension between the parties.

CONCLUSIONS OF LAW

1. Pursuant to the IDEA, the Board has an obligation to provide the Student with a free and appropriate public education ("FAPE"), including related services, in the least restrictive environment ("LRE"). *See, e.g.,* IDEA, 20 U.S.C. §§ 1401(b), 1402(8), (22), (25) and (29), 1412(a)-(b), 1414(d); 34 C.F.R. §§ 300.340-349, 300.4, 300.550(b); *Hendrick Hudson Cent. School Dist. v. Rowley*, 458 U.S. 176 (1982); *Burlington School Committee v. Dept. of Ed. Of Massachusetts*, 471 U.S. 359 (1980).

2. Regardless of who commenced the due process proceeding, the Board ultimately has the burden of demonstrating by a preponderance of the evidence that it has complied with the requirements of the IDEA. *See* Regulations of Connecticut State Agencies ("Regulations"), Section 10-76h-14.

3. Under *Rowley's* two prong standard for determining whether an LEA has provided a FAPE, the first inquiry is whether the procedural requirements of the IDEA have been met and the second is whether the IEP is "reasonably calculated

to enable the child to receive educational benefits."

4. "Procedural flaws do not automatically require a finding of denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in a denial of FAPE." *W.G., B.G. v. Board of Trustees of Target Range School District No. 23*, 960 F.2d 1479 (9th Cir. 1995).

5. The Board moved at hearing that the Hearing Officer dismiss this matter on the grounds that because the parties had reached an agreement by which the Board would provide compensatory tutoring, the Hearing Officer could grant no relief to the Parent. As a preliminary matter, the Department's Regulations require that motions to dismiss challenging subject matter jurisdiction be in writing and filed. *See* Regulations, Section 10-76h-8(f)(2). Although the Board raised this issue at the Pre-Hearing Conference, the Board did not file a written motion. In any event, the Parent was quite clearly seeking a determination as to whether the Board had fulfilled its obligations under the IDEA in a past period well within the applicable statute of limitations. Whether or not the Hearing Officer can grant any relief is not dispositive – for example, the Hearing Officer is authorized under the applicable governing statutes to ***confirm*** the provision of a free appropriate public education to the Student. Further, that the Board has offered to provide, and the Parent has accepted, compensatory tutoring to the Student to address the period of instruction that he missed after moving into Manchester does not preclude the Hearing Officer from determining whether additional remedies are warranted. The Board moved in the alternative to dismiss on the ground that the essence of the Parent's complaint was that the Board had not complied with the applicable Federal and state regulations and that the Parent should have filed a complaint with the Department of Education. The *Rowley* standard specifically includes an evaluation of whether an LEA has complied with the procedural requirements of the IDEA. Accordingly, even if the Parent has an alternative or additional forum available to her, she is entitled to present her grievances in a due process hearing as well.

6. Both the IDEA and Connecticut law provide that an LEA, such as the Board, is only obligated to provide special education services to students eligible to receive those services who are residing within the LEA's jurisdiction. *See, e.g.* IDEA, 20 U.S.C. Sec. 1413(a)(1) and (a)(2)(B); Conn. Gen. Stat. Sec. 10-76d(a)(1). There is no specific Federal or State statute or regulation which would obligate the District to participate in a PPT convened by the Prior District to plan for the transition of the Student into the Board's jurisdiction. However, participation in such a PPT may be warranted as a matter of professionalism and courtesy in working with a potential new taxpayer in its jurisdiction whose child was in need of special education services the Board is mandated to provide (and receives funding to provide) under the applicable Federal and State laws.

7. Having elected not to participate in a transitional PPT, however, the Board is

nonetheless obligated to timely provide FAPE in the LRE to a student eligible to receive special education services once that Student begins to reside in the Board's jurisdiction.

8. Once the Student registered in the Board's jurisdiction, the Board in this case acted promptly to schedule a PPT for the Student. However, the Student was arrested on the day before that PPT and was incarcerated at all relevant times thereafter. Given the lack of clarity as to the circumstances leading to that arrest, and given the limited information that the Board had about the Student's placement in the 2000-2001 academic year and in the period immediately prior to the transfer, the Board acted reasonably in requesting additional records and an evaluation of the Student prior to the determination of an IEP for the 2001-2002 academic year. In light of the uncertainty regarding the Student's availability because of his arrest and incarceration, the Board appropriately offered tutoring to the Student as an interim means of providing educational instruction to him. The plan to schedule another PPT less than one week later to review his status was appropriate and reasonable, as was the Board's preliminary assessment that a placement at MRA may be appropriate upon the Student's release and also for the 2001-2002 academic year.

9. The decision at the October 2, 2001 PPT to continue the plan developed at the September 27, 2001 PPT was also appropriate and reasonable in light of the continued uncertainty surrounding the Student's legal status and additional information that had been developed since September 27, 2001 about his arrest and prior educational history.

10. The IDEA requires that the District undertake an individualized assessment of the Student's circumstances, disabilities and needs in making placement determinations. *See, e.g.,* IDEA, 20 U.S.C. Secs. 1414(d)(1)(A) and 1414(d)(4); 34 C.F.R. Secs. 300.343; 300.347; 300.522(b). Given developments since the August 28, 2001 PPT in the Prior District, it was appropriate and reasonable for the District to seek additional evaluation and information before making a placement decision.

11. The District's failure to participate in the August 28, 2001 transitional PPT, in the circumstances of this case, was not the cause of any loss of educational benefits to which the Student was entitled under the IDEA and applicable Connecticut law.

12. The October 10, 2001 PPT is not at issue in this due process proceeding and the Hearing Officer makes no findings or conclusions regarding the adequacy of the IEP developed at that PPT or the Board's compliance with the procedural requirements of the IDEA in connection with that PPT. The parties have reported that they reached an agreement at that PPT to proceed on a going forward basis and that one component of that agreement is that the Student will receive "compensatory tutoring" as set forth in the PPT minutes in Exhibit B-8. Accordingly, even assuming that the Board had failed to discharge its obligations

to the Student under the IDEA in the period through October 10, 2001, the appropriate remedy in the circumstances would be compensatory tutoring, which the Board has agreed to provide.

FINAL DECISION AND ORDER

1. The Board complied with its obligations to the Student under the IDEA and applicable state law with respect to the September 27, 2001 and October 2, 2001 PPTs. No further action by the Board is required with respect to the issues raised by the Parent in this proceeding. The Board may wish, however, to reassess its procedures and practices for responding to invitations to transitional PPTs to assure that, regardless of whether the District attends such a PPT, the referring district and the parent of the transferring student understand before the move into the District what they must to do begin securing services from the District for the child once the child is within the District's jurisdiction. The District may also wish to implement in this particular case additional measures on a going forward basis to assure that communications between the parties are clear and misunderstandings by both parties are corrected expeditiously.