

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Bloomfield Board of Education

Appearing for the Student: Mother and Grandmother, *pro se*

Appearing for the Board: Terence Gascoyne, Director of Pupil Services, *pro se*

Appearing Before: Scott Myers, J.D., M.A. (Clinical Psychology),
Hearing Officer

FINAL DECISION AND ORDER

(April 15, 2008)

ISSUES SET FOR HEARING

1. Whether the Student was denied a free appropriate public education (“FAPE”) as a result of the determinations of the November 8, 2007 IEP team meeting and, if so, to what relief is she entitled?
2. Whether the Student was denied a FAPE as the result of the determinations made at any IEP team meeting between November 8, 2007 and February 6, 2008 and, if so, to what relief is she entitled?

BACKGROUND

This matter was commenced by the Student’s mother (the “Parent”) by request for due process dated January 4, 2008 and received by the Department on January 9, 2008. Hearing Officer Owens was appointed in this matter and recused herself. The undersigned was appointed Hearing Officer on January 15, 2008. The request identifies a November 8, 2007 IEP team meeting as the meeting at which the parties failed to reach agreement on the issue in dispute. The request states that the Student is attending River Street School and seeks another placement because she has become increasingly distressed by the placement to the point at which she is at risk for having a seizure (a symptom apparently associated with her disability).

In contacting the Parent on January 18, 2008 to arrange the telephonic pre-hearing conference (“PHC”), the Parent represented that she is the guardian or conservator of the Student who is over age 18 years of age, that the Hearing Officer may discuss the case with the Parent’s mother (“Grandmother”) who is actively involved in assisting the Parent with the Student, and that she is not represented by counsel at this time. In contacting the Board on January 18, 2008 to arrange for the PHC, Mr. Gascoyne (Director of Pupil Services) advised that the Board is also not represented by counsel at this time. Both parties agreed to receive communications by e-mail.

On January 17, 2008, the Hearing Officer received a copy of a letter dated January 15, 2008 from Mr. Gascoyne to the Parent. That letter references an IEP team meeting held after the Parent commenced this due process proceeding at which the letter states in part that “[i]t was decided that [the Student] would be placed in a homebound program temporarily while another program is being pursued.” As of January 18, 2008, the Parent advised that she had not received that letter.

By agreement, the PHC in this matter took place on January 24, 2008 at 3:00 p.m. Mr. Gascoyne participated on behalf of the Board. The Grandmother participated on behalf of the Student. Both parties represented that the Grandmother had participated actively in management of the Student’s educational affairs, at times participating in discussions and meetings instead of the Parent and with the Parent’s consent.

The Grandmother reported that the family still had not received the January 15, 2008 letter and Mr. Gascoyne was asked to retransmit the letter. The parties reported that by agreement and pending identification of another placement, the Student has been removed from River Street School. Mr. Gascoyne reported that he had contacted HARC to arrange for homebound services for the Student during this interim period, but acknowledged that HARC has not yet begun providing the services. He reaffirmed the Board’s commitment to providing the Student with IDEIA services. The parties reported that the Student had been placed at River Street School for the 2007/2008 school year by an IEP team decision and that the Parent requested a different placement at the November 8, 2007 IEP team meeting because of the Student’s distress in that setting. It is not clear whether that request was actually denied at the IEP team meeting or whether the parties simply have not been able to identify a different placement. Mr. Gascoyne reaffirmed that he was working to identify another placement. It appeared to the Hearing Officer that the parties may be able to reach agreement on another placement, thereby obviating the need for a hearing.

In light of the above, options for proceeding with hearing were discussed at the January 24, 2008 PHC. The parties agreed to convene a second PHC on February 6, 2008 to ascertain whether a hearing was necessary and if so the issues to be resolved. Assuming that hearing would go forward, a preliminary scheduling order was entered for submission for records and exhibit lists, a hearing date was scheduled for February 28, 2008 and the date for mailing of the Final Decision and Order was established as March 24, 2008 (reflecting an assumption that the Board received the request for due process on January 10, 2008).

Mr. Gascoyne on behalf of the Board and the Grandmother on behalf of the Student participated in the second PHC on February 6, 2008. The parties reported that they were moving forward with arrangements for tutoring for the Student while a placement with HARC was being pursued. They reported that they had not yet finalized these matters. The Hearing Officer proposed, and the parties agreed, to extend the dates in the prior scheduling order and convene a third PHC to determine whether hearing was necessary.

The third PHC (scheduled for Wednesday February 13, 2008) was cancelled due to weather and was rescheduled for Thursday February 14, 2008. That PHC did not go forward as scheduled but did go forward on February 21, 2008. At that point the parties reported that efforts to secure interim tutoring had been disrupted by the fact that the Student had sustained a serious injury to her leg (a compound break). The Grandmother reported that she had visited the proposed placement at HARC and that a placement at HARC would be satisfactory to the Parent and resolve this matter if the District was offering the placement. The District indicated that it was offering HARC as a placement. After discussing various options for proceeding, the parties agreed to convene a fourth PHC on March 13, 2008 to determine whether this matter would proceed. All previously established dates for pre-hearing submissions and the initial hearing date were cancelled by order dated February 28, 2008. The date for mailing of the Final Decision and Order was left at March 24, 2008, subject to modification.

At the March 13, 2008 PHC, the parties confirmed that a placement at HARC would resolve the issue that prompted the hearing request. They reported that they were completing paperwork associated with a placement at HARC, and reported further that because of continued injury-related mobility impairments it was not clear when the Student could begin attending HARC. Homebound tutoring services for the Student had not yet begun. The parties agreed to convene another PHC on March 31, 2008. It was expected that the Student would have another doctor's appointment on March 27, 2008 at which point the Grandmother expected to have more information on when the Student's mobility will improve to the point at which she could begin attending HARC. The date for the mailing of the Final Decision and Order was extended to April 15, 2008 by an informal order issued on March 17, 2008.

A final PHC convened on March 31, 2008. The parties confirmed that they have reached agreement on a placement at HARC to resolve the disagreement that prompted the request for due process, but that the Student's medical condition has not improved sufficiently to permit her to begin to attend at this point. The Student's next doctor's appointment was scheduled for April 17, 2008. Homebound tutoring had not yet begun associated with difficulties the Board was having identifying a tutor to provide the service. After discussing procedural and other issues, it was agreed that this matter would be withdrawn without prejudice unless the Parent or Grandparent requested otherwise by or before April 10, 2008. On April 10, 2008, the Grandparent reported that tutoring had not yet started, that the Grandparent was hopeful that the Student would be sufficiently recovered to enroll at HARC shortly, and that in accordance with the discussions at the PHCs, she would withdraw this proceeding to recommence due process if the anticipated resolution was not implemented.

The above description reflects representations of the parties and should be understood at such. Based on the representations of the parties, and assuming that the Parent or Grandparent was provided a copy of the Department's written procedural safeguards in connection at or about the time of the November 8, 2007 IEP team meeting, the Parent and Grandparent should be aware that if they wish to pursue a due process

claim regarding that IEP team meeting, they should do so prior to the date on which the statute of limitations applicable to such a claim becomes effective to bar the claim. Under Connecticut law, and assuming that they were provided with the procedural safeguards on the date of the November 8, 2007 IEP team meeting, any such claim would need to be asserted before November 2009 to avoid being barred by the statute of limitations. To the extent that the Parent or Grandparent needs further clarification, they should contact counsel or contact the Department's Bureau of Special Education.

FINAL DECISION AND ORDER

This matter is hereby DISMISSED WITHOUT PREJUDICE to refile if necessary and as provided above.