

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student vs. Norwalk Board of Education

Appearing on behalf of the Parents: Pro-se

Appearing on behalf of the Board: Attorney Susan Scott  
Pullman & Comely, LLC  
90 State House Square  
Hartford, CT 06103

Appearing before: Robert Skelley, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

1. What does the term “review” mean in the context of RCSA §10-76d-15(d)?

**JURISDICTION:**

This matter was heard as a contested matter pursuant to Connecticut General Statutes (“CGS”) §10-76h, more specifically §10-76d-15(d) and related regulations; 20 United States Code §1415(f) and related regulations; and in accordance with the Uniform Administrative Procedure Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

**SUMMARY:**

The Parent filed this request for a due process hearing following the cessation of homebound instruction by the Board in December, 2014. The Student is a third grade student in the Norwalk Public Schools and is not identified as a student eligible for special education and related services. The Parent withdrew the Student from the Norwalk Public Schools in 2012 following what the Parent characterizes as being “kicked out of his school and also out of his school’s district by 8 years old”. This allegedly occurred as a result of the Parent and the school being unable to resolve an issue surrounding the process of bringing a late student to the school, which culminated with the involvement of the local police. The resolution sought by the Parent is to have the Student receive homebound instruction until the issue is resolved.

By agreement of the Parties, the sole issue for the hearing officer is to determine “what the term {review} means in the context of RCSA §10-76d-15(d).

**PROCEDURAL HISTORY:**

This matter was filed by the Parent on January 2, 2015. A prehearing conference was held on January 23, 2015 in which the issue listed above was identified. An initial hearing date of February 19, 2015 was set. On February 19, 2015 the due process hearing commenced, and was ended on that date. The Parties were instructed to have post-hearing briefs and proposed findings of fact to the Hearing Officer by March 11, 2015. The Board verbally requested an extension of the final decision and order date to allow the Parties time to prepare their briefs and proposed findings of fact. The request was granted and the final decision and order date was subsequently extended to March 21, 2015. The information regarding the post-hearing briefs and proposed findings of fact were mailed to the Parties as the Parent had left the hearing prior to the actual closing of the hearing.

The Parent presented to witnesses (Mother and Grandmother), but did not offer any exhibits. The Board presented three witnesses (Grace Vetter, RN, Coordinator of School Health Services ("Coordinator"), Dr. David Anderson (School Psychologist ("Psychologist")), and , Christina Fensore (Director of Pupil Personnel Services ("Director")) and 38 exhibits. The Parent objected to the relevancy of Board exhibits 1 through 10. The objection was overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude the other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S&H Computer Sytems, Inc.*, 605 F. Supp. 816 (M.D.Tenn. 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

**FINDINGS OF FACT:**

1. The Student is a third grade student residing in Norwalk, Connecticut. It is not disputed that Norwalk Public Schools is responsible for educating the Student. The Student has NOT been identified as a student with special needs as defined by the IDEIA and C.G.S. §10-76a. (Testimony of Mother)
2. In December, 2012, the Student's first grade year, the Parent and Board employees had an altercation regarding the proper process for dropping off a Student that arrives late. Following the altercation, Mother withdrew the Student from attending the first grade. (Mother Test. pp. 42-46)
3. After this incident the Parent provided the Board with letters from the Student's pediatrician and clinical therapist, diagnosing the Student with post traumatic stress disorder ("PTSD"). (B-8; B-12; B-13; Mother Test. p. 61)
4. The Board provided homebound tutoring for the remainder of the 2012-2013 academic years. (Mother Test. pp. 47-48)
5. The Board convened a PPT meetings on April 26, 2013, November 8, 2013, and January 16, 2014 to review a referral for special education and an initial evaluation. Despite

receiving proper notice, the Parent attended only the January, 2014 PPT but never gave consent for the proposed evaluation. (B-9; B-11; B-14)

6. The Student did not attend classes in a Norwalk Public School for the entirety of the second grade (2013-2014), instead receiving a total of 97.5 tutorial hours. Full attendance at the public school classes would have provided a total of 1,125 hours of schooling. (Director test., pp. 168-169)
7. The letters submitted by the Parent from the Student's pediatrician, Dr. Moraldo, and also from the Student's clinical therapist, Jason Spann, LCSW, both recommended homebound instruction. (B-12, B-13)
8. The Board's Coordinator of School Health Services met with Dr. Moraldo in February, 2014 regarding the recommendation for homebound services for the Student. (B-15; Coordinator test., p.86) Dr. Moraldo reported that the diagnosis of PTSD was based upon the report of the Parent, following one visit with the Student in December, 2012, and based upon that discussion with the Parent, supported homebound instruction for the Student. (B-15)
11. Coordinator met with the Student's therapist, Jason Spann, LCSW, in March 2014. Mr. Spann indicated that the Student had not been seen in over a month and that there were no current appointments to see the Student in the future. (B-16) Mr. Spann was unable to identify when the Student would be able to return to the school setting, nor recommend any processes to assist the Student in the school setting. (B-16, Coordinator test. pp. 94-95)
12. The Student cancelled 18 days of tutoring during the 2013-2014 academic years, many of the days being cancelled at the last moment. (B-17)
13. The Parent was notified in writing that the medical documentation on file with the Board was not sufficient to allow for homebound instruction, and was further notified that sufficient documentation was required prior to August 13, 2014. (B-19)
14. The Parent failed to provide the Student for a review by a qualified independent medical practitioner despite being informed that a failure to do so would terminate homebound instruction. (B-31)
15. The Parent failed to attend a November 18, 2014 meeting with the Board to address a transition plan back to school for the Student.
20. The Board has attempted to evaluate the Student to assess his need for special education services since 2012. (Mother test., p.56)
21. The Board believes that the Student would be eligible for special education services from the Norwalk Board of Education. (Director test., pp. 202-203)

#### **CONCLUSIONS OF LAW AND ARGUMENT:**

1. The Parent filed this request for due process in accordance with the provisions of RCSA Title 10, (Homebound Instruction Regulation) §10-76d-15(d) Resolution of disputes:

“In the event there is a dispute regarding the basis upon which the child’s treating physician has asserted the need for instruction, the child shall receive such instruction pending the review of the written statement provided by the child’s treating physician, pursuant to subsection (a) of this section, by the school medical advisor or other health professional employed by the board of education who is qualified to review the information submitted. The parent of such child shall provide consent for the school medical advisor or other qualified health professional employed by the board of education to consult with the child’s treating physician to assess the need for instruction. The board is not required to begin instruction until such consent is provided. Consultation with the child’s treating physician shall include review of educational and medical records and, if appropriate, accommodations and school health services that can be provided to the child so the child can attend school safely. If there continues to be disagreement regarding the provision of homebound instruction, the board may offer at the board’s expense, a review of the child’s case by a qualified independent medical practitioner. If the parent fails to make the child available for such review, the obligation of the board to provide homebound instruction shall end, and if the child continues to be absent from school, the board shall pursue school attendance interventions. The board and the parent have the right to request a hearing pursuant to section 10-76h-3 of the Regulations of Connecticut State Agencies, or in lieu of a hearing, may request mediation pursuant to section 10-76h-5 of the Regulations of Connecticut State Agencies, if the dispute regarding the provision of instruction pursuant to this section is not resolved.”

2. The sole issue in dispute is what the meaning of the term “review” means in the context of §10-76d-15(d). This specific section of the Homebound and hospitalized instruction regulation cannot be read in isolation to respond to the meaning of the term “review” however. The term must be derived from the “text of the statute itself and its relationship to other statutes.... If...the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” C.G.S. §1-2z This rule of statutory interpretation applies equally to the interpretation of administrative regulations. *See Sarrazln v. Coastal Inc.*, 311 Conn. 566-578 (2011) (“Administrative regulations have the full force and effect of statutory law and are interpreted using the same process as statutory construction, namely, under the well established principles of General Statutes §1-2z”). Reading the entire regulation is required to fully understand the plain text of any part of the regulation.
  
3. The first section of the regulation , §10-76d-15(a)(1) provision of instruction for verified medical reason, lays out the specific requirements for a student to be eligible to receive homebound and hospitalized instruction. The salient portion of this section requires:
  - “(A) the child’s treating physician has consulted with the school health supervisory personnel and has determined that attendance at school with reasonable accommodations is not feasible,
  
  - (B) the child is unable to attend school due to a verified medical reason,
  
  - (C) the child’s diagnosis with supporting documentation,
  
  - (D) the child will be absent from school for at least ten consecutive school days or the child’s condition is such that the child may be required to be absent from school for short, repeated periods of time during the school year and,
  
  - (E) the expected date the child will be able to return to school.”

4. There was a discussion between the treating physician (Dr. Moraldo) and the Coordinator of School Health Services (“Coordinator”) regarding the information Dr. Moraldo placed on the Physician form. Dr. Moraldo informed the Coordinator that based upon parent report and the letter written by a previous pediatrician (Dr. Moore), she was recommending homebound instruction. (Coordinator test. pp. 91, 92; B-15)
- i. There was no information provided about the effect of reasonable accommodations on the Student’s ability to attend school as required in §10-76d-15(a)(1)(A), (B).
  - ii. Dr. Moraldo also did not provide any verification of a medical reason as required in sub-section (C) of that regulation, relying upon information provided by the Parent and a licensed clinical social worker (J. Spann, (“Clinician”)).
  - iii. There was no expected date the Student would be able to return to school.

Anecdotally Dr. Moraldo also did not indicate that the Student was presented to her with any symptomatology of post traumatic stress disorder as they are delineated in the Diagnostic Statistical Manual V<sup>1</sup>.

I find that a “verified medical reason” has not as yet been presented to the Board as required by the Regulation.

5. No other physician<sup>2</sup> information was provided of a verified medical reason. There was no additional evidence provided by the Parent or the Board that satisfies the regulatory requirements in relation to homebound and hospitalized instruction, §10-76d-15(a)(1). The Parent did submit, and the Board did accept documentation from the licensed clinical social worker who is treating the Student and diagnosed the Student with PTSD, neither of those actions satisfy the regulation in question.
6. If one gives the Clinician the benefit of doubt as to his diagnosis and accept the documentation he provided, the documentation itself fails for not providing verification of the medical reason, it fails to provide documentation of the diagnosis, it fails to provide a date upon which the Student is expected to return to school, and it does not state why reasonable accommodations cannot be put into place in the school setting to allow the Student to return to school. (B-13; Coordinator test. pp. 93-95)
7. The Student has not been found eligible for special education and related services as set forth in IDEIA, 20 U.S.C. §1401, et seq. (Findings of Fact, 1)

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<sup>1</sup> DSM 5 (2013) expanded the psychiatric requirements for the diagnosis of post-traumatic stress disorder, the relevant part of which lists the symptomatology as “.re-experiencing the event; recurrent dreams related to it, flashbacks or other intense or prolonged psychological distress; Heightened arousal, reckless or self-destructive behavior, sleep disturbances, hyper vigilance or related problems; avoidance, negative thoughts or feelings (APS reference Grohol, J., 2013)

<sup>2</sup> American Heritage Medical Dictionary © 2007, 2004 by Houghton Mifflin Company defines “physician” as (1) a person licensed to practice medicine, a medical doctor; (2) a person who practices general medicine as distinct from surgery.”

8. §10-76d-15(a)(2) also contains specific instructions concerning individualized education programs that states “ In the case of a child not previously receiving special education and related services, the requirement of evaluation and an individualized education program shall apply if there is a reason for the planning and placement team to believe that the child will continue to require special education and related services.”
9. Taking the words of the regulation as plain and unambiguous, the requirement of the regulation is that if the planning and placement team has reason to believe that the Student will need special education and related services after the homebound instruction, “ then the *requirement of evaluation and an individualized education program shall apply.*” (emphasis added)
10. The School Psychologist stated that he believes the Student qualifies as a special education student (Psychologist test. p. 157) and the Director stated that she believes the Student qualifies as a special education student. (Director test. p. 202)
11. The plain relevant meaning of the word “review”, as defined by Webster Dictionary is :  
“an act of looking at or examining the quality of something or someone : examination or inspection.”  
“to look at or examine (something) carefully, especially before making a judgment or decision”
12. In the use of the term “review” as a noun or a verb in this instance would require that the requisite information be presented to the reviewer, which it has not been. It would also require the reviewer to view the information in the context of the entire regulation that the term is being applied to.
13. The Homebound and hospitalized instruction regulation also contemplate the need, or not, of an individualized education program. §10-76h-15(b) states, in relevant part, “ Homebound and hospitalized instruction shall be as specified in the child’s individualized education program, subject to the following...(2) ““ In the case of a child not previously receiving special education and related services, the requirement of evaluation and an individualized education program shall apply if there is reason for the planning and placement team to believe that the child will continue to require special education and related services.”
14. As previously determined in Conclusion of Law and Argument No.10, the Board had reason to believe that the Student would continue to need special education and related services past the homebound instruction, therefore it is required by this regulation to apply the “requirements of an evaluation and an individualized education program” to determine what the homebound instruction should consist of and how it should be delivered.
15. The Board did not have an individualized education program, nor did it have an evaluation to develop one (though not for lack of trying, but because the Parent refused to give consent) and thus could not have properly developed homebound instruction for this Student. The failure of the Parent to grant consent certainly contributed a great deal to

this fact, however, the fact that this Student did not attend school for two years, and the Board provided homebound instruction of a sort, does not belie the fact that the Board had an obligation to do everything it legally could to obtain that evaluation and not simply allow the Student (whom the Board acknowledges would qualify for special education and related services) to languish with instruction that may or may not have satisfied the requirements of an IEP for two years.

16. I find that the term “review” as used in the context of §10-76d-15(d) requires a “re-examination” of the information provided in the request for homebound instruction to see that all of the requirements of the regulation have been met, in terms of satisfying the plain and unambiguous specific requirements of 10-76d-15(a)(1) [which in this instance, have not been met] as well as 10-76d-15(b)(2) [which again in this instance, have not been met].

**FINAL DECISION AND ORDER:**

1. The Board shall cease providing homebound instruction to the Student until the Parent supplies the full and complete information and documentation required in 10-76d-15(a)(1), from the appropriate medical provider, to the Board.
2. The Parent has an obligation to make the Student available to the Board, at a reasonable time of day, to allow the Board to complete an appropriate psychoeducational evaluation of the Student if homebound instruction is sought by the Parent.
3. If the Parent makes the Student available to the Board, the Board shall arrange for and conduct an appropriate psychoeducational evaluation of the Student, at a time that is reasonable for the Parent, and then develop an appropriate individualized education program for the Student, within the next two weeks, said evaluation not to take more than one month to complete, of the date of that homebound instruction is sought by the Parent.
4. Should the Parent fail to make the Student available to the Board for the psychoeducational evaluation, the Board will utilize all legal means to address the lack of attendance by the Student.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).

  
Hearing Officer Signature

Robert L. Skelley, Esq.

Hearing Officer      Name in Print