

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing on behalf of the Parent: *Pro Se*

Appearing on behalf of the Board: Marsha Moses, Esq.
Berchem Moses, P.C.
75 Broad Street
Milford, CT 06460

Appearing before: Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the student eligible for special education under the IDEA?
2. If the student is eligible for special education, did the Board fail to promptly the student as a student eligible for special education?
3. Does the Student require a private placement?
4. If the student is eligible for special education, is Eagle Hill School appropriate?
5. If so, should the Board be required to financially support the Student's placement at Eagle Hill School?

PROCEDURAL HISTORY:

The Parent filed the Due Process Complaint/Hearing Request on July 2, 2018. The Hearing Officer was appointed the same day and conducted a Prehearing Conference on July 20, 2018. Hearings were conducted on the following dates: August 23, September 21, October 1 and October 3, 2018. At Board request, the mailing date of the Final Decision was extended from September 15, 2018 to October 15, 2018 to accommodate additional hearing days.

The Parent presented herself as a witness. The Board presented two witnesses. They were: Theresa Rangel, Principal Tracey Elementary School, Norwalk Public Schools and Christopher Velez, School Psychologist. The Board's exhibits B-1 to B-29 were admitted as full exhibits. The Parent presented Exhibits P-1. The Due Process Complaint/Hearing Request was admitted as HO-1. The hearing proceeded with testimony until the Parent emailed on October 2, 2018 that she was withdrawing the

hearing request due to her belief that the placement at Eagle Hill would not be appropriate.

The hearing convened on October 3, 2018 and the Parent did not attend. The Parent e-mails withdrawing the issue in the Hearing Request were admitted as HO-2. The Board submitted the evidence as presented and asked for an adjudication of Issue #1 above.

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

SUMMARY:

The hearing concerns the eligibility for special education of a kindergarten student who had been receiving Scientifically Based Research Intervention (“SRBI”) services in Kindergarten. Prior to being enrolled in Kindergarten, Student had been attending a play-based preschool and had not received academic instruction. At the beginning of the school year, Student had a large number of absences and engaged in certain behaviors in the Kindergarten classroom that resulted in the creation of a behavioral intervention plan.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on February 12, 2012 and lives with his Mother. He attended a play-based preschool where he did not receive academic instruction, such as letter recognition, sight word reading and writing his name. He was enrolled as a Kindergartener at Tracey Elementary School in the 2017-2018 school year. (Testimony, Mother; Testimony, Rangel)

2. At the beginning of the school year, Student was below academic benchmarks. He was absent or tardy for school. By October 23, 2017, Student had 7 unexcused absences and 10 tardies. (B-4)
3. Student was placed into SRBI for the purpose of additional academic tutoring. (Testimony, Mother; Testimony, Rangel; Exhibit B-4).
4. The School Team made a referral for Special Education services and a Planning and Placement Team Meeting (“PPT”) was held on October 31, 2017. The Parent reported that the Student complained about stomachaches, cough and cold and she kept the Student home from school. The school team discussed the attendance policy. The Parent requested placement at a private school at public expense. The PPT denied the parent request, stating that the only academic concern was truancy. (B-5).
5. The Student continued to receive SRBI services and progressed in the areas of reading, writing and basic arithmetic. (Testimony, Rangel). The Student had certain behaviors in the classroom that interfered with his learning. (Testimony, Rangel; Testimony, Velez)
6. The Parent made a referral for special education on April 17, 2018. (B-7) A PPT was convened on April 23, 2018. The Parent presented a letter outlining what she believed to be the Student’s academic needs. The letter also stated that the Student could have ADHD and requested placement at Eagle Hill School. This letter was reviewed at the PPT. (Testimony, Mother; Exhibit B-9; B-10) The PPT reviewed school records and teacher reports and determined that that the Student was making academic progress and was not in need of Special Education. (Testimony, Velez; B-10)
7. The Parent filed a Due Process Hearing Request. As Resolution, the District agreed to conduct evaluations to determine the Student’s eligibility for Special Education and related services. The Parent withdrew the Hearing Request on May 10, 2018. (B-13).
8. The District conducted the following assessments: Interview, observation, Cognitive/Psychological testing; Academic testing; Speech and Language evaluation; Rating Scales; review of health records. The school psychologist also conducted a functional behavioral assessment. The results were reported at a PPT on June 13, 2018. In addition to the assessments, the PPT also reviewed school records and teacher reports of academic progress. (B-14, 15, 16, 17, 19, 20, 21, 22)
9. The Parent also retained a private School Psychologist, Dr. Jane Brooks. (B-11; Testimony, Mother; Testimony, Velez.) Dr. Brooks’ evaluations consisted of cognitive; behavioral rating scales; academic functioning and interviews with Parent, Teacher and Student.) (B-11)

10. Both Parent's private and District evaluations obtained similar results. Testing revealed that Student was of average to high average intelligence and did not determine deficits in functioning to warrant special education. Significantly, the private evaluator did not make recommendation for Special Education. The private evaluator advised the school psychologist that her testing revealed that the Student performed within an average to high average range academically. She did not express any concerns. (B-11; B6,17, 19, 20, 21, 22; Testimony, Velez)
11. There was evidence that the Student was impulsive in the classroom, engaging in off task behavior and calling out inappropriately. The School Team developed a Behavior Intervention Plan to address these behaviors over the course of 7 weeks, which included a card/point system and redirecting the Student to desired behavior. The behavioral plan was successful and some of Student's off task behaviors were eliminated and others were significantly reduced. The behavior did not impede the Student's ability to learn. (Testimony, Velez).
12. The Student was at or exceeded academic benchmarks at the end of the Kindergarten year. He could perform all the academic tasks expected of a Kindergartener and progressed to the First Grade. (B-25).

CONCLUSIONS OF LAW AND DISCUSSION:

1. Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1414 et seq. provides that a "student with a disability" is eligible to receive special education and related services from school districts. See 34 CFR 300.101 and 34 CFR 300.8.
2. In order to qualify as a "student with a disability" under the IDEA, the student must:
1) meet the definition of one or more of the categories of disabilities which include: intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities; *and* 2) need special education and related services to receive educational benefit as a result of his disability or disabilities. 34 CFR 300.8 (a)(1).
3. School districts are responsible for conducting child find and identifying all IDEA-eligible students who reside in their jurisdiction. Parents may also request an evaluation. 34 CFR 300.301 (b)
4. IDEA regulations at 34 CFR 300.306 provides that an eligibility determination is made by a group of qualified professionals and a parent after reviewing a variety of assessments and other evaluation measures at a PPT meeting.
5. Academic progress may indicate a child's need for special education services but academic progress alone is not the determinative factor. Districts should draw upon information from a variety of sources and evaluation measures in order to make an eligibility determination. 34 CFR 300.306 (c)(1)

6. A child cannot be deemed to be “a child with a disability” if the child does not otherwise meet the eligibility criteria under §300.8(a).
7. The Parent referred the Student to determine eligibility for special education and related services. (Finding of Fact No. 6).
8. In response to the Parent’s referral to Special Education, the PPT convened to consider the referral and later the School Team conducted a number of assessments and other evaluation measures. (Findings of Fact No. 6 and 8).
9. The PPT consisted of a group of qualified professionals, including Special Education Teacher and School Psychologist and Parent. The PPT convened to review the results of the evaluation, which employed a variety of assessments and evaluation measures. The PPT also considered teacher reports; academic progress as well as Parent input and properly made the determination that the Student was not eligible for Special Education and Related Services Under the IDEA. The evidence does not support a determination that the Student was in need of Special Education and Related Services in order to obtain educational benefit. (Findings of Fact No. 8 and 9)

FINAL DECISION AND ORDER:

1. The Student is not eligible for Special Education under the IDEA.
2. Since the Student is not eligible, there is no need to determine any further issues.