

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. East Haddam Board of Education

Appearing on behalf of the Student: Mother, *Pro Se*

Appearing on behalf of the Board: Attorney Frederick Dorsey  
Kainen, Escalera and McHale, P.C.  
21 Oak Street  
Hartford, CT 06106

Appearing before: Attorney Ann F. Bird  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Student ever have a one to one nurse at the East Haddam Elementary School?
2. Does the Student require a one to one nurse to receive a free appropriate public education?

**PROCEDURAL HISTORY:**

The Student initiated this special education due process case on October 8, 2017. This Impartial Hearing Officer was assigned to the case on October 9, 2017. A Prehearing Conference was convened on November 8, 2017. The Student's mother and father appeared *Pro Se* on behalf of the Student and Attorney Frederick Dorsey appeared on behalf of the Board of Education. It was established that the deadline for filing the final decision in this case is December 22, 2017. Evidentiary hearings were scheduled for December 1, 2017 and December 22, 2017.

An evidentiary hearing was conducted on December 1, 2017. The Student's mother represented the Student *Pro Se* and Attorney Dorsey represented the Board of Education.

The following witnesses testified:

Kelsey Burkhardt, Special Education Teacher  
Joshua Martin, Director of Pupil Services  
Monique Kananowicz, Nurse  
Martha Dexter, School Nurse

Hearing Officer Exhibits HO 1 through HO 7 were entered as full exhibits. Student Exhibits P 1 through P 8 and P 10 were entered as full exhibits. Proposed Exhibit P 9 was marked for

identification but not admitted. Finally, Board Exhibits B 1 through B 32 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

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. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

### **SUMMARY:**

The Student, a medically fragile child who suffers from a seizure disorder as well as food allergies and scoliosis, submits that a dedicated one to one nurse is necessary in order for her to attend school safely. The evidence demonstrated, however, that the Student's school health needs can be met by the school nurse and a dedicated one to one paraprofessional specially trained by the school nurse.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

### **FINDINGS OF FACT:**

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

1. The Student was born on June 1, 2012. She is now five years of age. She last attended school as part of a Pre-Kindergarten program at the Board's East Haddam Elementary School in June 2017. (Exhibit B 19 (B \_); Testimony of Burkhardt (T \_))
2. The Student was evaluated as eligible for services with the Birth to Three Program due to developmental delay on August 13, 2013. (B 20) She was identified as eligible for special education under IDEA due to developmental delay on May 15, 2015 at age two by the Meriden Public Schools. (B 28)
3. The Student has a complicated medical profile, including the following:  
  
Rett syndrome and a demonstrated mutation in the MECP2 gene, global development delay, partial complex epilepsy with secondary generalization, hypotonia, GI issues, nonambulatory, constant teeth grinding, repetitive hand movements, apraxia, sleep and abnormal breathing patterns.

(B 8, p. 4)

4. Rett Syndrome is severe neurological disorder that can cause seizures, gastrointestinal problems, developmental delays, repetitive movements, apraxia and gait issues. (B 16; B 29 p. 34)
5. The Student also experiences scoliosis and wears a spinal brace to correct her spine. (B 5 p. 5; P 4 p. 6) She is also allergic to peanuts and soy and has a rescue Epi-pen cartridge medication for administration in the event of exposure to foods containing peanuts or soy. She takes a nonprescription medication before eating to aid in digestion and uses an anti seizure medication that can cause a life threatening rash as a possible side effect. She also has eczema and is susceptible to overheating. (B 4; B 16; B 30).
6. At age three, the Student's Meriden Public Schools Planning and Placement Team (PPT) recommended that she attend a Pre-Kindergarten special education program five days each week. (B 27) The Student's mother, however, decided against sending the Student to school at that time, and the Meriden Public Schools provided a home tutor for a short time each week.
7. On April 6, 2016, just short of her fourth birthday, the Student's mother agreed to an in school Pre-Kindergarten program for two partial days per week. (B 24)
8. On May 3, 2016, the Meriden Public Schools PPT changed the Student's disability classification to multiple disabilities. The Student's individualized education program (IEP) at that time included special education instructional services as well as related services of Speech/Language Pathology, Occupational Therapy and Physical Therapy. (B 23; B 22)
9. No school nurse services or school health care services were listed in the Meriden Public Schools IEPs as either Related Services or as Program Accommodations and Modification. (B 23; B 22)
10. The Student's Meriden Public Schools IEPs did, however, state the following under *List of PPT Recommendations*: "Nursing services based on current medical information". There was no elaboration as to the meaning of this statement. (B 23; B 22)
11. The record does disclose, however, that by May 3, 2016, a series of letters had been written by the Student's physicians To Whom It May Concern and provided to the Meriden Public Schools. (B 29, pp. 29 - 35)
12. These letters gave repetitive and varying instructions for the Student's health care needs at school. On the one hand, Dr. Kaufmann from Boston Children's Hospital wrote on May 19, 2015:

I am writing this letter to provide an overview of [the Student's] disabilities and to ensure she receives 1:1 nursing care in school.

Seizures can occur when part of the brain over-fires, disrupting its normal electrical signals, certain seizures are easy to recognize . . . while others don't have any outward signs, which can [sic] happen at any time of day. . .

It is very difficult to predict how [the Student] will evolve over time, but it is very important that [she] has 1:1 nursing services in an intensive full-year basis, with no gap in services.

(B 29, p. 35)

13. On the other hand, another provider from the same institution wrote on February 8, 2016:

If [the Student] were to experience a seizure of any duration during school, the school nurse should be called immediately and vital signs should be monitored. The nurse is to stay with her at all times. She should be placed on the ground, and keep her head towards the side to keep any excess saliva or emesis out of her airway. She should be moved away from any sharp objects and hard surfaces that could injure her during the seizure. It is important to not attempt to stop the movements of the body during the seizure, or place anything in or near the mouth, as both of these can result in serious injury.

If the seizure persists for greater than five minutes the nurse should administer Diastat 7.5 mg rectal gel. . . . If there is no one on site that is capable of administering the Diastat then EMS should be called immediately.

(B 29, p. 31)

14. The February 8, 2016 letter does not mention dedicated one to one nursing care at school. To the contrary, it assumes the absence of a one to one nurse, since seizures will be handled by the school nurse, who will "be called immediately". (*Id.*)

15. As it turned out, the Student attended the Meriden Public Schools program through December 2016 with no occurrence of a seizure requiring the attention of a nurse. (P 6, p. 30; T Dexter)

16. The Student's family moved from Meriden to East Haddam and registered with the East Haddam Public Schools on December 7, 2016. (B 21)

17. The Student's mother believed that the Student was provided with a dedicated one to one nurse while she was attending the Meriden Pre-Kindergarten program. The record is not clear whether a one to one nurse was actually provided by the Meriden Public Schools. (T Dexter)

18. The Student's mother reported to the East Haddam Elementary School nurse that the Student required the services of a dedicated one to one nurse while at school. She provided correspondence from several of the Student's medical providers to the effect that the Student

“should continue to have a 1:1 nurse” at school and that it is “very important” that the Student have “1:1 nursing services”. (B 16; P 4)

19. The Student’s East Haddam PPT met on December 13, 2016 and decided to implement the IEP from the Meriden Public Schools in its Pre-Kindergarten program at East Haddam Elementary School. (B 19) The Student began attending school two days each week for about 1.5 hours per day in January 2017. As the year proceeded, her time in school extended to up to 2.0 hours on each of the two days she attended. (Testimony of Burkhardt)

20. The Student’s IEP for the period from January 2017 through the end of the 2016-2017 School Year included special education instructional services as well as the related services of Occupational Therapy, Physical Therapy and Speech Language Pathology. In addition, paraprofessional services were included “as needed” as a Program Accommodation and Modification. Neither school nurse nor school health services were included in the IEP as a Related Service or as a Program Accommodation and Modification. (B 19; B 10)

21. The Board temporarily assigned a dedicated nurse on a trial basis to accompany the Student and to assess her health needs as well as to perform paraprofessional duties while she was in school from January 2017 through the end of the 2016-2017 School Year. (T Martin; T Kananowicz)

22. Neither this temporary assessment service nor any other nurse or health service was included in the Student’s IEP with the East Haddam Public Schools. (T Martin; T Kananowicz; B 19; B 10)

23. The Nurse/Paraprofessional brought the Student to and from the classroom from her mother’s car in the parking lot. The nurse also observed the Student for signs of distress, took off her jacket, changed her diaper, gave her a non prescription medication before feeding, fed her, helped with the lesson, took her in and out of her wheelchair and supported her on the floor. In addition, when the Student seemed overheated, the nurse/paraprofessional cooled her with a damp cloth. (T Burkhardt; T Kananowicz)

24. During this time, the Student experienced several “absence” seizures, in which her otherwise habitual arm and hand movement stopped for approximately 30 seconds. There were no seizures or other incidents requiring medical care of any kind, including use of rescue seizure or allergy medications – except administration of a non prescription medication before feeding. (T Burkhardt; T Kananowicz; T Dexter; B 14)

25. At the conclusion of the school year, the Board completed its assessment of the Student’s need for health services at school and decided that the Student does not require a dedicated one to one nurse in order to attend school safely or to access her education. (T Martin; T Dexter; B 10)

26. The school nurse trained six paraprofessionals assigned to the East Haddam Elementary School on August 29, 2017 to meet the Student’s school health needs. The training focused on the following topics: 1) administration of the Student’s seizure rescue medication; 2) how to

recognize and time seizures; 3) when to notify the school nurse; and 4) how to recognize choking. (T Dexter; B 31; B 14)

27. In providing this training the school nurse followed, among other things, the Antiepileptic Medication Administration Training Program for Connecticut's Unlicensed School Personnel that was developed by the Connecticut Department of Education in consultation with the Connecticut School Nurse Advisory Council and the Association of School Nurses of Connecticut. (T Dexter; B 31)

28. In a letter dated October 17, 2017, one of the Student's physicians outlined the following as the Student's "nursing needs" in school:

- 1) Administer 1.5 ml of [non prescription] Simethicone before meals
- 2) Watch for eczema outbreaks and apply [non prescription] Eucerin and [prescription] Mometasone Fuorate as prescribed
- 3) Watch for hives, inability to swallow, gurgling associated with autonomic responses and please document them
- 4) Administer [prescription] Lamictal as prescribed (seizure medication) titrated with honey to avoid choking and aspiration
- 5) Watch for side effects associated with Lamictal that include a life threatening rash
- 6) Put scoliosis brace on when she is out of the wheelchair and place properly to avoid redness, irritation and breathing difficulty
- 7) If [Student] is wearing leg braces please look for skin irritation and remove if necessary
- 8) Also watch for breath holding episodes and record them
- 9) Administer Epi-pen as needed for soy and peanut allergies
- 10) Administer [prescription] Diazepam [seizure rescue medication] as prescribed for seizures longer than 5 minutes
- 11) Keep body temperature regulated with a cool rag around the neck if her body begins to overheat
- 12) Assist her in toileting in an appropriate and clean environment. May have severe constipation
- 13) Please remove her from any environments that can trigger seizures
- 14) Please document any seizures (absence, tonic clonic, partial complex seizure etc.) and follow seizure protocol

(P 4, p. 11)

29. Of the "nursing needs" identified by the Student's physician, only the first, part of the second and the fourth needs – those that involve routine administration of medications – must be met by a nurse in the educational setting. (T Dexter) These few needs for routine administration of medications can be met by the school nurse assigned to the East Haddam Elementary School in the same manner as such medications are administered to non-disabled students in the school. (T Dexter; T Martin; B 6)

30. Some of the other needs identified in the physician's letter call for "school health care" that can be provided by a one to one paraprofessional who is specially trained by the school nurse. (T Dexter) These needs include monitoring and recording seizure activity and breath holding, avoiding seizure triggers, watching for eczema outbreaks, hives, inability to swallow, gurgling, skin irritation and rashes, removing and replacing the scoliosis brace, monitoring and regulating body temperature, following the seizure protocol, and administering rescue seizure medication and Epi-pen if necessary. (T Dexter; T Martin; B 6)

31. Some needs, such as assisting with toileting, do not require specialized training and can be performed by any paraprofessional. (T Martin; T Burkhardt; B 6)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education (FAPE). *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982) (*Rowley*).

2. In *Rowley*, the United States Supreme Court held that FAPE "consists of educational instruction specially designed to meet the unique needs of the . . . child, supported by such services as are necessary to permit the child 'to benefit' from instruction." *Rowley* at 188-89. *See also Andrew F. v. Douglas City School District*, 580 U.S. \_\_\_, 137 S. Ct. 988, 999 (2017); *Oberti v Board of Education*, 995 F.2d 1204 (3d Cir. 1993).

3. Significantly, FAPE includes assurance that, to "the maximum extent appropriate" each disabled student is educated with children who are nondisabled; and that "separate schooling", or other removal from the regular educational environment "occurs only if the nature or severity of the [student's] disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. Section 1412(5)(B); 34 CFR Section 300.114 (a)(2); *Oberti v Board of Education*, 995 F.2d 1204 (3d Cir. 1993).

4. Boards of Education must provide an individualized educational program (IEP) for each disabled child. *Winkelman v. Parma City School District*, 550 U.S. 516, 524 (2007). Although the viewpoint of parents must be considered in the process of developing the IEP, final decisions regarding the selection of personnel, location of the school and the appropriate educational method rests with the school system. *Rowley* at 207; *Kevin G. v. Cranston School Committee*, 130 F.3d 481 (1st Cir. 1997); *Flour Bluff Independent School District v. Katherine M.*, 91 F.3d 689 (5th Cir. 1996); *Letter to Richards*, 55 I.D.E.L.R. 107 (January 7, 2010).

5. The propriety of a student's IEP is assessed in light of information available at the time the IEP is developed; it is not judged in hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). "An IEP is a snapshot, not a retrospective." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be viewed in terms of what was objectively reasonable when the IEP was developed. *Id.*

6. The Board here had the burden to prove by a preponderance of the evidence that the IEP it offered to the Student was substantively appropriate and in compliance with IDEA's

procedural requirements. Regulations of Connecticut State Agencies (R.S.C.A.) Section 10-76h-14(a); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).

7. Each IEP must include: (a) a statement of the student's present level of performance in each area of disability as determined through periodic assessments; (b) a statement of measurable annual goals, including academic and functional goals, that are designed to meet each of the student's educational needs resulting from the disability; and (c) a statement of the special education and related services to be provided in order to enable the student to attain his or her goals and to progress in the general education curriculum. 20 U.S.C. Section 1414(d)(1)(A); 34 C.F.R. Section 300.320.

8. An IEP must include related services when such services are necessary to assist a child to “benefit from special education”. 34 C.F.R. Section 300.34(a). As the Supreme Court elaborated, this mandate requires school systems to provide such “services that enable the child to reach, enter, or exit the school” or that “permit a child to remain at school during the day.” *Irving Independent School District v. Tatro*, 468 U.S. 883, 891 (1984). Only such related services as are “necessary to aid a handicapped child to benefit from special education must be provided.” *Id.* at 895. See also *Cedar Rapids Community School District v. Garrett*, 526 U.S. 66 (1999); *Voorhees Township Board of Education*, 66 IDELR 176 (SEA NJ 2015).

9. Related services include, among others, “school health services and school nurse services”. “School nurse services are services provided by a qualified school nurse”. 34 C.F.R. Section 300.34(c)(13). “School health services are services that may be provided by either a qualified school nurse or other qualified person.” *Id.*

10. The permissible scope of practice for nurses is determined by Connecticut State law. C.G.S. Sections 20-87a and 20-101.

11. Connecticut State law requires public school systems to appoint at least one school nurse or nurse practitioner who is qualified in accordance with applicable regulations. C.G.S. Section 10-212; R.C.S.A. Sections 10-212-1 *et seq.*

12. School nurses are legally authorized to administer medications to students enrolled in public schools in accordance with the written order of a physician or other authorized health professional and the written authorization of the student’s parent or guardian. C.G.S. Section 10-212a; R.C.S.A. Sections 10-212a-1 *et seq.*

13. Rescue medications for treatment of food allergies and seizures may also be administered in school settings by paraprofessionals and other staff members who are specifically trained for this purpose in accordance with regulations published by the Department of Education in consultation with the Department of Public Health. C.G.S. Section 10-212a; C.G.S. Section 10-121c; R.C.S.A. Sections 10-212a-1 *et seq.*

14. The Student’s school health needs can be met by a combination of: 1) “school nurse” services provided by a school nurse to administer her prescription medication before feeding as well as prescription seizure and eczema medications required to be taken at school and rescue seizure and allergy medications; and b) “school health services” provided by a paraprofessional



specially trained by the school nurse to monitor and record seizure activity and breath holding, avoid seizure triggers, watch for eczema outbreaks, hives, inability to swallow, gurgling, skin irritation and rashes, remove and replace the scoliosis brace, monitor and regulate body temperature, follow seizure protocol, and administer rescue seizure medication and Epi-pen if necessary.

**FINAL DECISION AND ORDER:**

1. The Student never had a dedicated one to one nurse as part of her IEP at the East Haddam Elementary School.
2. The Student does not require a dedicated one to one nurse as part of her IEP in order to receive FAPE.
3. The Student's IEP should be revised to include school health services as a related service to be performed by a dedicated one to one paraprofessional specially trained by the school nurse to monitor and record seizure activity and breath holding, avoid seizure triggers, watch for eczema outbreaks, hives, inability to swallow, gurgling, skin irritation and rashes, remove and replace the scoliosis brace, monitor and regulate body temperature, follow seizure protocol, and administer rescue seizure medication and Epi-pen if necessary.