STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. West Haven Board of Education

Appearing on behalf of the Parent:	Pro se
Appearing on behalf of the Board:	Michelle Laubin, Esq. Berchem Moses, PC 75 Broad Street Milford, CT 06460
Appearing before:	Patrick L. Kennedy, Esq. Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the current placement of the Student be altered?

2. Should the Student be reevaluated for special education services?

3. Has the District engaged in any activity towards the Student or Parent which is retaliatory for the Parent's advocacy on behalf of the Student?

SUMMARY AND PROCEDURAL HISTORY:

Case 20-0338 was commenced by the Parent by request received by the Board on January 31, 2020. A prehearing conference was held on February 14, 2020. At the prehearing conference, a hearing date was set for March 25, 2020 and the decision date was determined to be April 15, 2020.

On March 2, 2020, the District filed a motion to dismiss the hearing request in its entirety. The Parent filed her response on March 4, 2020.

DISCUSSION:

ISSUE # 1:

The hearing request states: "According to Connecticut state laws…parent can invoke Student pendency placement. [Student] shall continue to receive the same amount of services (FAPE). The school district SHALL not remove my child from less restrictive settings to a more restrictive program without my written parental consent."

While the facts stated within the four corners of the hearing request are somewhat murky, it seems clear from the subsequent discussion at the prehearing conference and evidence furnished by the District in its Motion to Dismiss that, based on behavioral issues which were becoming an issue with the Student, the Student was referred for a special education determination and a PPT meeting took place on October 18, 2019. At that meeting, the Parent consented to a psychological evaluation and a functional behavioral assessment but did not consent to the other evaluations proposed by the PPT: a diagnostic placement in a therapeutic setting, academic achievement and speech-language evaluations and a file review. After the evaluations were done, the PPT reconvened on December 20, 2019 and determined that the student was eligible for special education based upon a primary disability classification of Emotional Disturbance. While the Parent did not dispute the determination of eligibility, she refused to provide consent for the provision of special education to the Student.

The District argues that the Parent cannot file a complaint asserting a denial of FAPE because she has not consented to the provision of special education. While this is true, it is not exactly what the Parent has asserted. The Parent has demanded that her child not be placed in special education; there seems to be no dispute that the Student has not been placed in special education and the District has acknowledged that it has no ability to place the Student in special education without the consent of the Parent. Therefore, the undersigned lacks jurisdiction over this issue for the fundamental reason that there is no issue: there is no proposed change in the placement of the Student.

Accordingly, Issue #1 is dismissed.

ISSUE #2:

The Parent alleges that the District has proposed reevaluation of the Student and that such reevaluation cannot be done within a year after the original evaluation without parental consent pursuant to 34 CFR §300.303. The District argues that because the Student has not been receiving special education services, the proposal to evaluate the Student is not a "reevaluation" within the meaning of the preceding regulation. Rather, the District made a new referral to special education and the Parent exercised her right to refuse to consent to any further evaluation.

The dispute between the parties concerning the nature of the proposed evaluation is not ripe for adjudication. As it stands, the parent has refused to consent to any further evaluation; therefore, the District would have to bring its own due process request in order to compel the evaluation. There is no such proceeding pending and therefore no evaluation is being performed. If the District initiates a due process request, the hearing officer in that case would adjudicate any issues concerning the nature or propriety of the evaluation. However, for now such questions are hypothetical in nature.

Accordingly, Issue #2 is dismissed.

ISSUE #3:

The Parent's hearing request does allege acts of retaliation including threats of reporting to DCF, "physical and mental abuse" of the Student by the school principal and suspension of the Student. However, as noted in the District's motion to dismiss, protection against retaliation is provided, not in the IDEA, but in Section 504 of the Rehabilitation Act. See 34 CFR §100.7. The consistent rule followed by hearing officers in Connecticut is that hearing officers do not have jurisdiction over Section 504 issues unless the determination of 504 issues is necessary to the determination of issues arising under the IDEA. *Student v. District Bd. of Ed.*, Final Decision and Order No. 09-0537 (CT SEA 2009).

In this case, as the other issues raised by the Parent are not issues over which the hearing officer has jurisdiction, this leaves this action as one claiming relief under Section 504 only. As hearing officers do not have subject-matter jurisdiction over stand-alone 504 claims, the undersigned is required to dismiss Issue #3.

Accordingly, Issue #3 is dismissed.

FINAL DECISION AND ORDER:

The matter is dismissed.