STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Stamford Board of Education

Appearing on behalf of the Parent: Deborah Stevenson, Esq.
P.O. Box 704
Southbury, CT 06488

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. Should the Board be required to reimburse the Guardian for transportation services?
2. Did the Board fail to provide assistive technology services that the Student required?

PROCEDURAL HISTORY:

The Parent filed the Due Process Complaint/Hearing Request on November 6, 2020. The Hearing Officer was appointed on November 12, 2020 and conducted a Prehearing Conference on December 3, 2020. The Board filed a Motion to Dismiss on the grounds of the Statute of Limitations. The motion was granted and claims prior to November 6, 2018 were dismissed. Hearings were conducted on the following dates: January 19, February 17, March 3, April 14, April 27 and June 2, 3, 21, 24 and 30, 2021. At the request of the parties, the mailing date of the Final Decision was extended to February 17, April 19, May 19, June 21 and August 19, 2021 to accommodate additional hearing days.

The Guardian presented herself and Dr. John Samanich, the Student's psychiatrist as witnesses. All of the Guardian's 31 exhibits were admitted except for P-1, 2, 7a, 9e-f, 10c, 11a-b, 12a (p. 1-4), 12b, 16, 17, 18, 23, 24, 27, 29. The Board presented Dr. Wayne Holland, Director of Special Education and Related Services and Ms. Kathy Quaglino, Assistant Director or Special Education and Related Services. The Board's exhibits B-1

to B-25 were admitted as full exhibits. The Due Process Complaint/Hearing Request was admitted as HO-1.

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 Guardian of a Student with Autism rejected the Board's proposed placements at State Approved Special Education Programs and would only consider placement at an out of state school recommended by the Student's psychiatrist. The Guardian had previously kept the Student at home. In order to ensure that the Student went to school, the Board agreed to pay for tuition but refused to pay for transportation costs. The Guardian seeks payment for mileage and her services in transporting the Student and for the cost of an iPad and MacBook Pro computer she purchased after filing the Due Process Complaint.

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 January 14, 1999, and was eligible for Special Education under the category of Autism during the relevant time period. At the time of the hearing, Student was 22 years old. Student's mother is his legal Guardian. (Testimony, Guardian)
2. At all relevant times, Student attended Keswell School ("Keswell") in New York City, which was the school the Guardian requested. The School Team paid for Student's tuition but did not pay for transportation costs from Stamford, Connecticut to New York City. The issue before this hearing concerns the Guardian's request to be compensated for driving the Student to Keswell and for purchase of an iPAD and MacBook Pro computer that occurred after the filing of the Due Process Complaint. (Testimony, Guardian, Testimony, Holland, Testimony Quaglino)

3. The parties have had a long history of litigation summarized in the public record in administrative and judicial decisions. At the time of this decision, the Guardian had filed for a Petition for Certiorari to the United States Supreme Court to review an adverse decision by the United States Circuit Court for the Second Circuit. *See Dervishi v. Dept of Special Education in Stamford Public School, Stamford Board of Education.* 846 F. App'x 10 (2021)
4. Student did not attend school for a significant portion of his educational career. Prior to 2016, the Student was at home. Beginning 2016, the Student attended Keswell School ("Keswell") in New York City. (Testimony, Guardian, Testimony, Holland)
5. The Guardian testified that she rejected all of the School Team's proposed placements from 2016 on because she believed that the School District did not know her son's needs and therefore could not offer appropriate placements for the Student. She testified that she could only rely on the recommendations of her own expert, Dr. Samanich, who was the Student's psychiatrist who recommended Keswell. Dr. Saminich testified that he was not familiar with Special Education programs in the State of Connecticut and that his office is in New York State. (Testimony, Guardian, Testimony Saminich)
6. The Planning and Placement Team meetings ("PPT") were adversarial in tone with the Guardian and the Board being represented by their respective attorneys. Board requests for consent to evaluation and to transmit educational records to proposed placements were denied by the Guardian. (Testimony, Guardian, Testimony, Holland, P-3, P-4 and P-22)
7. At the Annual Reviews of the Individualized Education Plan ("IEP") for the 2018-2019 and 2019-2020 school years, the School Team proposed State Approved Special Education programs within a short bus ride from Stamford and with transportation services to and from home. The IEPs proposed the same program being provided by Keswell. The School Team proposed placements at Connecticut Center for Child Development ("CCCD") or Giant Steps in Southport in the 2018-2019 school year and proposed the Bridge School in the 2019-2020 school year. Keswell is not a State Approved Special Education Program and is not a program that could or would be offered by the School District. (Testimony, Guardian, Testimony, Quaglino, Testimony, Holland, Exhibit P-33, B-19 and B-21)
8. At the Annual Reviews, the School Team expressed concerns about the travel time from Stamford to Keswell. They were concerned that the Student spent much of the day traveling, causing the Student to be fatigued and missing time for education. The members of the School Team also wanted the Student to be educated in the local community. (Testimony, Holland, Testimony, Quaglino)
9. Nevertheless, the Guardian rejected all of the School Team's proposed placements, dismissed their concerns and insisted on placement at Keswell. This led the School Team to continually agree to pay for tuition at Keswell to "accommodate" the Guardian's desire. However, the School Team refused to pay for transportation costs. (Testimony, Guardian, Testimony Holland, Exhibit P-33)

10. The School Team disagreed strongly with the placement of the Student at Keswell and felt they were being put into a bind. If they did not accede to the demands for placement at Keswell, they risked a situation wherein the Student could be kept home without education. The School Team chose to accede to the demands to pay for tuition to insure that the Student would attend school and receive some educational benefit. (Testimony, Holland)
11. The Director of Special Education and Related Services believed if the school didn't pay for Keswell, the Guardian would keep the Student at home and the Student would lose educational opportunity. He considered Keswell to be a unilateral placement by the Parent. He told the Guardian that Stamford would only pay for tuition and that she was welcome to file for a Due Process Hearing over the transportation costs. (Testimony, Holland)
12. The Guardian testified that she waited until the Student was no longer eligible for Special Education to file the present Due Process Complaint. The Guardian provided transportation to Keswell and seeks monetary compensation for driving the Student to Keswell. The Guardian prepared an exhibit for the mediation in this case outlining the daily pay rate she should have been compensated. (Testimony, Guardian, Exhibit P-12a, p.5-9)
13. Additionally, the Guardian requests reimbursement for the costs of an iPad and a MacBook Pro computer purchased on the day after the Due Process Complaint was filed. She testified that Keswell had provided the Student with an iPad while the Student was attending Keswell. She also testified that the Student had broken the family's iPad and that he needed a new one. She testified that the family did have a home computer but that she purchased the new MacBook for the Student to use the computer to remotely access online programs at Keswell. (Testimony, Guardian, Exhibit P-14)

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student was eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique needs" and "prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected…" 20 U.S.C. §1400(d)(1).
3. "Free appropriate public education or FAPE means special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) **Meet the standards of the SEA,** including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided with an

individualized education program (IEP) that meet the requirements of §§300.320 through 300.324." (emphasis added) *34 CFR §300.17. See 20 U.S.C. 1401(9).*

4. An LEA is not required to pay the cost of education, including special education and related services, of a child with a disability at a private placement or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. *34 CFR 148(a).*
5. The Guardian is not entitled to reimbursement for any transportation expenses associated with Keswell because the Board/s proposed placements in 2018-2019 and 2019-2020 offered free and appropriate public education. The proposed placements were in State Approved Special Education Programs that met the standards of the Connecticut State Department of Education. The Board did not propose Keswell in the IEP and therefore, Keswell was not the Board's placement. If the Board had proposed Keswell as a placement, that placement would not have conformed to state standards because it was not a State Approved Special Education Program and would not have provided FAPE. The IEPs proposed by the Board offered FAPE. The Board was neither required to fund the Student's private placement at Keswell nor transportation or related services, including assistive technology at Keswell. That the Board chose to pay for tuition does not obligate it to pay for transportation services. *See Findings of Fact No. 7.*
6. In a hearing before a hearing officer to require reimbursement under 34 CFR 148(c), reimbursement may be denied "upon a judicial finding of unreasonableness with respect to the actions taken by the parents." The Guardian's actions provide further grounds for denial of reimbursement. The Guardian's failure to provide consent to transmit records to the propose placements, lack of cooperation and insistence on a single school that did not conform to state standards was unreasonable behavior. *See 34 CFR 148(d)(3).*

<u>FINAL DECISION AND ORDER:</u>

1. The Board is not required to reimburse the Guardian for transportation services.
2. The Board did not fail to provide assistive technology services that the Student required.