

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Region 19 Board of Education v. Student

Appearing on behalf of the Parent: Parents *Pro se*

Appearing on behalf of the Board: Alyce Alfano  
Shipman & Goodwin, LLP  
One Constitution Plaza  
Hartford, CT 06103

Appearing before: Kelly Moyher, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

What is the appropriate placement for the Student for the remainder of the 2021-2022 school year?

**PROCEDURAL HISTORY:**

The Parent filed the Due Process Complaint/Hearing Request on December 15, 2021. The Hearing Officer was appointed on December 20, 2021. A Prehearing Conference took place on December 30, 2022 and a hearing dates were scheduled for February 4 and 7, 2022 and an additional date of February 28, 2022.

The first date of hearing convened on February 7, 2022. The Parent submitted his due process hearing request as his only exhibit. The witness was the Student.

The Board presented the testimony of three witnesses. They were Steve Bayne, Director of Special Services, Regional School District 19, Karen Paruolo, Assistant Principal at E.O. Smith High School, and Bruce Thorndike, Principal at Manchester Regional Academy. The Board entered Exhibits B-1-B-6.

This Final Decision and Order sets forth the Hearing Officer's summary, 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. *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).

**SUMMARY:**

The Parent filed a Due Process Complaint stemming from the Student's interim alternative placement at Manchester Regional Academy. The Student was involved in an altercation on October 15, 2021. The Student was suspended on October 18, 2021 and a manifestation determination PPT was held on October 22, 2021. The team agreed that the Student's behavior was a result of the Student's disability and that the Student inflicted serious bodily injury to another person while at school. The team recommended a 45-school day interim alternative placement at Manchester Regional Academy, which began on November 10, 2021. The team met on December 2, 2021 to review the Student's progress, and again on January 11, 2022 where the team recommended the Student continue at Manchester Academy and rejected the parent request for the Student to return to E.O. Smith High School.

**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, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student was born on September 25, 2005, and is a 10<sup>th</sup> grade student currently attending Manchester Regional Academy. The Student was receiving special education services while attending E.O. Smith High School for the 2020-2021 and into the 2021-2022 school year. The primary disability listed in the Student's IEP is Emotional Disturbance. Her diagnoses from a neuropsychological evaluation of 2017 include ADHD, Bipolar Disorder and Post Traumatic Stress Disorder. (B-1, B-3, B-4, B-5, B-6).
2. Toward the end of the 2020-2021 school year, several incidents occurred while the Student was attending E.O. Smith High school. These incidents were logged in E.O. Smith's Powerschool Discipline Alert.
3. The first incident occurred on April 28, 2021 when the Student was supposed to be in her social studies class but was found in the unisex bathroom. The Student refused to leave the bathroom and provided a false name when asked to identify herself. The Parent was called to come to school to pick up the Student. (B-2).
4. Another incident occurred on June 4, 2021 when the Student was located in the atrium where she was noticed by a school social worker and was observed to be very agitated. She was asked to move to a more private location, but the Student refused and used profanity. The

Student refused to move from her location for 40 minutes. Assistant Principal Paruolo testified that supervision of all students at the high school is hard, and the school did not have the resources or support to help Brooke during the June 7<sup>th</sup> incident. She also testified that the Student would not share what was wrong when asked and repeatedly refused the direction of the social worker while using profanity. The Student was suspended for two days. (B-2, Testimony K. Paruolo).

5. During the beginning of the 2021-2022 school year, the Student was having attendance issues and was struggling academically. Dr. Steve Bayne testified the Student was failing in certain subjects, was not attending classes regularly and had bad attendance throughout the beginning of the school year. (Testimony S. Bayne).
6. On September 24, 2021 the Student was involved in an incident where she shared a nude picture of a student on her phone. A state trooper was called and the Student's phone was taken. The Student was suspended from school for two days for sexual harassment and lying to the administration, as well as disruption to the school day. (B-2, Testimony K. Paruolo).
7. On September 28, 2021 the Student was not where she was supposed to be for in-school suspension and attended two lunch periods. When directed to report to the office the Student would not comply with the request. The Student was also found in the hallway when she was supposed to be in her last class of the day, and would not report to the resource room when asked. The Student was suspended for two days. (B-2, Testimony K. Paruolo).
8. On October 8, 2021 the Student was found in a staff bathroom with a male student during her lunch period. The Student was reminded she was only allowed in the atrium and cafeteria during her lunch time. (B-2, Testimony K. Paruolo).
9. On October 8, 2021 the Student initiated a physical attack on another student. Injuries to the other student included head injuries, neck injuries, contusion to the nose, nose bleeding, contusion to the lower right leg and headache. The student was treated in a hospital emergency room and was reported to have a concussion. The Student was recommended for expulsion due to physically assaulting another student which resulted in serious bodily injury (B-2, Testimony K. Paruolo, S. Bayne)
10. A manifestation PPT was held on October 22, 2021 to determine if the Student's behavior was a manifestation of her disability. The team agreed that the behavior was a manifestation of the Student's disability. The agreed to a 45-school day interim alternative placement and multidisciplinary evaluation. (B-3, Testimony S. Bayne, Testimony K. Paruolo).
11. The Student began an interim alternative placement at Manchester Regional Academy on November 10th of 2021. Manchester Regional Academy is a small, highly structured secondary school for at risk students. The school has 60-75 students and has a behavior management program, a highly skilled counselling component and a student to teacher ration of anywhere from 6-8 to 1. The school has a mediation center for serious behavioral difficulties that cannot be resolved quickly in the classroom. The program is designed to manage student behavior and concurrently teach strategies of self-control. The school

employs two social workers and five behavior technicians who work with students throughout the day. (Testimony B. Thorndike).

12. At a PPT on December 2, 2021, staff from Manchester Academy reported that the Student was doing very well. No behavioral issue were reported, the Student was reported to be participating in all activities and there were no concerns regarding the Student's cognitive or academic abilities. The Student was attending her classes and no attendance issues were reported. (B-5).
13. The Principal of Manchester Academy, Bruce Thorndike, gave testimony regarding the Student's experience at the school. Mr. Thorndike stated that the Student has done very well and has had a successful experience with the program. She is doing well in her classes and has not had attendance issues. The Student has been moved into some 11<sup>th</sup>-grade classes due to her success academically. Mr. Thorndike stated that the Student is very bright and has had great behavior while at the school. The Student has not needed any assistance with anger management, has many friends and has been conducting herself in an independent and self-sufficient manner. (Testimony, B. Thorndike).
14. The Student also testified to having a good experience at Manchester Regional Academy. She testified that she has been attending her classes and has not had any attendance issues. She reported having made friends at school and doing very well her classes and testified she was moved into 11<sup>th</sup>-grade classes in several subjects. She also reported to have just learned that she made the honor roll at Manchester Regional Academy. She stated that she wished to return to E.O. Smith. (Testimony, Student).
15. On January 11, 2022 the team met again to review the Student's progress and decide next steps for the Student. It was reported that the Student continued to do well at Manchester Academy and had no attendance issues. The team expressed concern about the Student returning to E.O. Smith at that time, and stated that they did not have the staff or resources to support the Student and her needs. The Student's placement was changed to Manchester Regional Academy. The Parent expressed his desire for the Student to return to E.O. Smith and the request was denied. (B-6, Testimony B. Thorndike).
16. The Due Process Hearing was requested by the Parent and was duly noticed to all parties.

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

1. There is no dispute that Student is 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. The Act defines FAPE as special education and related services which “(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. §1401 (8).
4. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14
5. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v Rowley*, 458 U S 176(1982). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207.
6. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in Rowley, Congress’s emphasis in the IDEA “upon the full participation of concerned parties throughout the development of the IEP,” together with the requirement for federal approval of state and local plans, reflects a “conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP.” 458 US at 206. " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child’s unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5<sup>th</sup> Cir. 1989). Compliance with the IDEA’s procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273. 285 (2001). However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child’s educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the “loss of educational opportunities or seriously infringed upon the parent’s opportunity to participate in formulating the [IEP]...” Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267

F.3d 877 (9<sup>th</sup> Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child's needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoening v. Doe* 484 US 305, 311 (1988).

7. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* As the Second Circuit has recently described it, this means "an education that 'afford[s] the student with an opportunity greater than mere trivial advancement.'" (T.K. v. N.Y.C. Dep't of Educ., 810F.3d 869, 875 (2d Cir. 2016) quoting M.O. v. N.Y. City Dep't of Educ., 793 F.3d 236, 239 (2d Cir. 2015)); accord *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001, 197 L. Ed. 2d 335 (2017) ("a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all").
8. There is evidence to suggest that the Student was struggling to be educated at E.O. Smith at the end of the 2020-2021 school year and throughout the beginning of the 2021-2022 school year. The Board has submitted evidence that it was not able to provide the Student with FAPE at E.O. Smith High School and was struggling to implement the Student's IEP due to lack of staff and resources and due to the high student population at the high school and the size of the building. The Director of Special Services and the assistant principal at E.O. Smith High School both testified that school staff were finding it difficult managing the Student's behavior. They also testified to the Student's non-compliance with directives used by staff to help the Student de-escalate during times of stress and misconduct. The staff were also having difficulty locating the Student at certain times throughout the school day, and the Student was often times tardy, absent or skipping classes to attend additional lunch periods. The Board has also submitted evidence that the Student has been successful during both the interim alternative placement at Manchester Regional Academy and at her placement there since January. Both the Student and staff have testified that the Student has been attending classes and has had success academically. The Student's success with attendance and classwork was also noted in the PPT notes in December of 2021 and January of 2022. The Student also testified that she was managing her behavior well and has made friends. The Parent noted that he was not aware of any behavior incidents, nor was he aware that the Student was having any difficulty attending classes or with her classwork. The principal of Manchester Regional Academy has testified that the Student's attendance has been very good, she is participating in all of her classes and all activities at the school. The Student's placement at Manchester Regional Academy is allowing the Student to benefit from FAPE to the maximum extent possible. The Student's IEP and placement at Manchester Regional Academy is reasonably calculated to enable the child to receive educational benefits. The Student's IEP and program at E.O. Smith did not meet the burden as laid out in *Rowley*. The Board has met its burden of proving the appropriateness of the Student's continued placement and program at Manchester Regional Academy.

**FINAL DECISION AND ORDER:**


Manchester Regional Academy is the appropriate placement for the Student for the remainder of the 2021-2022 school year.

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).



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Hearing Officer Signature



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Hearing Officer      Name in Print