

April 21, 2022

Case No. 22-0315

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Wilton Board of Education v. Student

Appearing on behalf of the Parents:

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Appearing before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Does the proposed placement at Glenholme School offered to the Student by the Wilton Board of Education offer a Free and Appropriate Public Education (“FAPE”) to the Student?
2. Will the Individualized Educational Program (“IEP”) provide him with FAPE during the 2021-22 school year when the proposed educational placement is at Glenholme School?
3. If the proposed placement is not at Glenholme School, what should be the remedy?

PROCEDURAL BACKGROUND:

The Wilton Board of Education filed this Request for Due Process Hearing on March 7, 2022. The undersigned Impartial Hearing Officer was assigned the case on March 8, 2022. A Prehearing Conference was held on March 15, 2022. The case was scheduled for the first day of hearing on April 6, 2022, and the hearing was held and concluded on that date.

The following witness was called by the Board:
Eileen Wheeler, Special Education Teacher, Wilton High School

One of the Parents also testified.

HO-1 and HO-2 were admitted as Exhibits.

The Board Exhibits B-1 to B-50 were admitted into evidence.

The non-testifying Parent submitted an Affidavit which was reviewed by the Hearing Officer and admitted as Exhibit P-1. Exhibit P-2 was admitted and is a duplicate of B-34.

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

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein are not meant to exclude other supported evidence in the record. All evidence presented was duly considered in deciding this matter. To the extent the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *Bonnie Ann F. v. Calallen Independent School Board*, 835 F. Supp. 340 (S. D. Tex., 1993)

SUMMARY:

The Board initiated this Due Process Request requesting residential placement for the Student. The Student has been and is enrolled in a program at the Wilton High School for special education students known as "Genesis" for the past two school years. The Genesis team has concluded that the Student is not advancing academically due in part to psychological issues which have severely impacted his ability to learn. The team recommended a residential placement for Student, which is opposed by one of the parents. This due process request was made by the Board in order to implement its recommendation.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, and in accordance with the Connecticut 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:

1. The Student is a sixteen and one-half year old boy currently enrolled in the Genesis program of the Wilton High School ("Genesis") for the 2021-22 school year. (Wheeler)
2. Eileen Wheeler is the Student's Case Manager and one of his special education teachers. (Wheeler)
3. The Genesis program has its own separate facility adjacent to the high school and provides small group, non-traditional instruction to about 25 special education students. (Wheeler)

4. The Student has been found eligible for Special Education services, under the classification of Emotional Disturbance (ED). (Wheeler)
5. The Student's latest Individualized Educational Program ("IEP") prior to the date of the Due Process Request is dated March 4, 2022. (B-34)
6. During Student's attendance in the Genesis program, he receives speech and language services, occupational therapy, behavioral support and counseling, in addition to his academic studies in STEM and humanities. (Wheeler)
7. The Genesis program is an eleven month program which incorporates the Extended School Year. (Wheeler)
8. When the Student first entered the Genesis program in early 2020, Ms. Wheeler described the Student as very energetic and excited about the program, but when the schools closed due to Covid-19, and he was required to stay home and use a computer for his learning, he became less enthusiastic. Over time, he stopped logging on to the computer every day as required. (Wheeler)
9. When schools reopened and Student returned in-person to Genesis, he was faced with additional goals and objectives that became overwhelming for him, and he began to backslide academically and emotionally. Critically, over this same period of time, he experienced several very significant traumatic and tragic events in his life that caused him to become more stressed and withdrawn. (Wheeler)
11. The Student's IEPs during 2020 and 2021 show a pattern of inconsistent learning and minimal progress. (B-5, B-12, B-18, B-26, B-27, B-31)
12. The Student was evaluated in June, 2021, by John Gelinas, M.D. who recommended Student remain in the Genesis program and attend intensive outpatient therapy. (B-17)
13. During the period from June to September, 2021, Ms. Wheeler reported that the Student would have occasional episodes of shutting down, crying, sleeping in class, and hiding under a desk at times. (Wheeler)
14. Despite short periods of improvement and sporadic signs of motivation at times, Student was unable to consistently make educational progress and became increasingly emotionally fragile and uncommunicative. (Wheeler)
15. The "limited (academic) progress" described in the September and October 2021 IEPs is attributed to his social emotional instability and the unpredictability of his home. "Student has been unavailable for learning since 6/2021." (Wheeler, B-26, B-27)
16. In the section describing the present levels of academic achievement and functional performance in the September 17, 2021 Annual Review IEP, the following was noted: "Student is actively engaged (when in person) during academic classes, he thrives within the project based learning environment which supports his attention deficit challenges due to the hands on learning approach and the frequent breaks during the day. The Genesis program fosters skill building for social emotional learning and Student enjoys being part of this group." However, Student's self-help skills, attention to detail, executive functioning and distractibility were areas of concern during this time. "His difficulty regulating his emotions and maintaining necessary levels of attention negatively impact his ability to

access his learning and necessitates specialized instruction.... (The)...designated areas of weakness impact Student's ability to access the general education curriculum and require special education support.” (Wheeler, B-26, p. 4,5)

17. Following the Annual Review, Student's social worker and Ms. Wheeler began to consider and evaluate whether Student required the support of a residential setting, due to the lack of progress in addressing academic goals, difficulty maintaining attention and comprehending school work, emotional dysregulation and dwindling interest in his well-being. (Wheeler)

18. The team became unable to adequately assess Student's progress on his goals and objectives because at that point in time (Fall 2021), Student was unable to sit and have one-on-one instruction for one hour. (Wheeler)

19. The October 8, 2021 IEP again references the Student's difficulties, particularly the ongoing emotional stressors continuing to cause limited progress with academics. The possibility of a residential placement was discussed with parents for the first time. The parents engaged in these discussions and reviewed potential schools. A visit was planned for Waterford Day School. (B-27)

20. The parents and Student did visit Waterford, and the Student somewhat begrudgingly agreed to attend. Plans were made for Student to enroll there. (Wheeler)

21. At the PPT held about six weeks later, on November 29, 2021, held to formalize the residential placement for Student, both parents attended and members of the Waterford staff. At the last minute, however, one parent revoked his consent and the enrollment was cancelled. (Wheeler, B-31)

22. This last-minute placement cancellation, according to Ms. Wheeler, caused distress to Student, who was confused and feeling intense pressure in these circumstances. (Wheeler)

23. During the following six months, the Student continued his enrollment at Genesis and, according to a February progress report, made sporadic, limited progress on some of his goals and objectives over the winter term. He received a grade of 84 on an eight paragraph research paper. He continued to work on improving his Dialectic Behavioral Therapy skills. (B-32)

24. There were no documented PPT meetings held from November 29, 2021 to March 4, 2022.

25. The March 4, 2022 IEP summarized an “extreme continuing decline in Student's emotional health and refusal of academic work, depression and anxiety, suicidal ideation and numerous calls to DCF and 211. This student needs a higher level of care as soon as possible.” (Wheeler, B-34)

26. Ms. Wheeler stated in her testimony that Student is presently unable to tolerate being in the school at times and still exhibits troubling behaviors. In response, the school has offered additional counseling and attempted to otherwise support Student. Ms. Wheeler did not currently see any improvement emotionally or academically, so the request for residential placement was renewed. (Wheeler).

27. One of Student's parents agreed with the residential placement, but the other parent did not agree and requested instead that the school provide additional counseling and a new psychological evaluation. All parties agreed to the evaluation and it was ordered. (Wheeler, Parent, P-1, B-34)

28. As of the most recent marking period to the hearing date, the Student has failing grades in every

academic area. (Wheeler, B-38)

29. Student's social/emotional concerns as stated on the March 4, 2022 IEP include:

- a) difficulty maintaining attention and comprehending school work;
- b) hyperactivity;
- c) symptoms of depression and anxiety;
- d) difficulty regulating emotions independently;
- e) can present as withdrawn;
- f) difficulty adapting to changing situations and consistently communicating needs effectively;
- g) executive functioning skills: initiation, planning and organizing assignments, inhibiting distractions, editing and revising work, holding information in memory;
- h) lack of consistent ability to grasp concepts, anxiety, depression. (B-34)

30. Testing in February, 2021 showed that the Student has the ability based on his scores to perform in the average to high average range. (B-8)

31. One of the parents testified that they informed the team, at the PPT in November 2021 and again in March, 2022, that they did not agree to residential placement and they felt strongly that the Student should remain living at his home. (Parent)

32. Ms. Wheeler described several incidents where Student's inability to keep his emotions under control caused her and his social worker to contact behavioral support agencies (the "211" line). (Wheeler)

33. Ms. Wheeler believes Student needs to have access to qualified support personnel at all times. (Wheeler)

34. Ms. Wheeler testified she believed the Glenholme School would provide Student with 24 hour supervision, counseling, emotional support and academic programs that will allow him to make appropriate educational progress. (Wheeler)

35. Neither Ms. Wheeler or any other witnesses or evidence testified as to the quality or suitability of any alternatives to the proposed placement, and no representatives of any other schools were present at the hearing. (Wheeler)

36. The other parent believes residential placement will benefit Student and concurs with the Board's request. (P-1)

37. The Student has expressed interest in attending college once he graduates, and has indicated he would like to explore a career in psychology or the mental health field, but the issues he has will impede his progress toward those goals unless they are addressed. (Wheeler)

CONCLUSIONS OF LAW:

Under the Individuals with Disabilities Education Act ("IDEA"), 20 U. S. C. 1412(a); see, 34 C.F.R. Sec. 300.1(a), Conn. Gen. Stat. 10-76, a school district must provide a Free Appropriate Public Education ("FAPE) to students with disabilities within their purview. In order to do so, a school district

will: 1) have to have complied with the procedural requirements of the IDEA; and 2) provided an IEP to the Student that is reasonably calculated to enable the Student to receive educational benefit. *Board of Education v. Rowley*, 458 U. S. 176 ((1982) The Supreme Court further defined the phrase “educational benefit” as “progress appropriate in light of the child's circumstances.” *Endrew F. v Douglas City School Dist.* 580 U. S. _____, 137 S. Ct. 988, 999 (2017) Parents have “independent, enforceable rights” regarding educational issues of their children. *Doe v. Westport Board of Educ.* 2020 WL869861, 76 IDELR 42 (D. Conn. 2020)

The local educational agency is responsible for providing FAPE to students residing within its borders and must provide and IEP for each disabled student. *Doe. v. East Lyme Bd. of Educ.*, 790 F. 3rd 440 (2nd Cir. 2005)

A hearing officer has the authority to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the student, to determine the appropriateness of a unilateral placement or to prescribe alternate special education programs for the student. R.C.S.A. 10-76h(a)(4)(d)(1)

This is an extremely unusual case. Here the Board of Education requests a Hearing Officer to order a residential placement *without both parents' consent*.

For such a finding, it is necessary to reach the conclusion that the Board's proposed educational placement is: 1) the most appropriate for the Student; and 2) in the least restrictive environment.

With respect to residential placements, the Second Circuit has stated that “[w]hile some children's disabilities may indeed be so acute as to require that they be educated in residential facilities, it is appropriate to proceed cautiously whenever considering such highly restrictive placements.... The norm in American public education is for children to be educated in day programs while they reside at home and receive the support of their families” *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 132 (2nd Cir. 1998). A residential placement is not appropriate unless it is required for a student to benefit from his or her educational program. *M.H. v. Monroe-Woodbury Cent. Sch. Dist.*, 296 Fed. App'x 126, 128 (2^d Cir., 2008), *see*, 34 CFR 300.104. In general, the Second Circuit has required objective evidence that a student cannot obtain educational benefit in a less restrictive setting before finding that a residential placement is required by the IDEA. *M.H.*, 296 Fed. App'x at 128; *Walczak*, 142 F.3d at 131-32.

The IDEA requires that a student's recommended program must be provided in the LRE (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.107, 300.114[a][2][i], 300.116[a][2], 300.117; *see Mr. P. v. Newington Board of Educ.*, 546 F.3d at 111 (2nd Cir. 2008); *Gagliardo v. Arlington Central School Dist.*, 489 F.3d 105 (2nd Cir. 2007); *Walczak*, 142 F.3d at 132. In determining an appropriate placement in the LRE, the IDEA requires that students with disabilities be educated to the maximum extent appropriate with students who are not disabled and that special classes, separate schooling, or other removal of students with disabilities from the general educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (20 U.S.C. § 1412[a][5][A]; *see* 34 CFR 300.114[a][2][i], 300.116[a][2]; *Newington*, 546 F.3d at 112, 120-21).

Where a single parent agreed to placement and requested payment by the Board, evidence in that case

included testimony from the Student's therapists and the Yale Child Study Center. *Mrs. B.* establishes that academic and emotional problems can often be intertwined and if the emotional problems prevent the Student from making meaningful educational progress, then the Board was obligated to place the Student in a residential program, provided that is the least restrictive environment ("LRE"). *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114 at 1121-22 (2nd. Cir. 1997)

In this case the testimony bears out that the Board made appropriate and concerted efforts to educate the Student in the LRE but the Student's social and emotional problems have become "so intertwined" with his educational problems that it has resulted in his being "unavailable for learning" in the Genesis program.

It is therefore clear from the evidence in this case that the residential placement is warranted. The Board made reasonable efforts to implement an IEP by means of the Genesis program, but that program was not successful in providing the Student with educational advancement. Student was not making progress appropriate to his ability.

Without the component of residential placement, the March 4, 2022 IEP was not likely to produce educational progress or confer any meaningful benefit on Student because it offered virtually the same plan as the September and October IEPs, which were not providing or showing improvement. Indeed, according to Ms. Wheeler, as the months went by, Student's social/emotional needs became more dire and he is in immediate need of residential placement.

It is contemplated that Glenholme, as an approved special education school in Connecticut, will be able to implement the Student's IEP with fidelity, and he will be provided a comprehensive program to enable him to make reasonable educational progress. Because it is a residential school, Glenholme can provide supervision and support for Student on a 24 hour basis. Glenholme has therapists and behavioral staff available to address Student's social and emotional needs which the evidence has shown are standing in the way of his educational progress.

FINAL DECISION AND ORDER:

1. Does the proposed placement at Glenholme School offered to the Student by the Wilton Board of Education offer a Free and Appropriate Public Education ("FAPE") to the Student?

Yes.

2. Will the Individualized Educational Program ("IEP") provide him with FAPE during the 2021-22 school year when the proposed educational placement is at Glenholme School?

Yes.

3. If the proposed placement is not at Glenholme School, what should be the remedy ?

Moot, in light of the above.

The Board is directed to place the Student at Glenholme School.

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).



Hearing Officer Signature

SUSAN DIXON

Hearing Officer Name in Print