

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Bolton Board of Education

Appearing on behalf of the Student:

Parents, pro se

Appearing on behalf of the Board:

Attorney Linda Yoder
Shipman & Goodwin PC
1 Constitution Plaza
Hartford, CT 06103

Appearing Before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Bolton Board of Education offer a Free and Appropriate Public Education (“FAPE”) to the Student for the school year 2021-22?
2. If not, should the goals and objectives of Student's current Individualized Educational Program (“IEP”) be revised?
3. If not, should the Student's IEP additionally be revised to provide additional services and supports?
4. If the Board was unable to provide FAPE, should the Board have placed Student at Board expense at a school that can appropriately address his educational needs?
5. If the Board is unable to provide FAPE, should the Board place Student at a school that can appropriately address his educational needs?

SUMMARY:

The Student, who has been identified as eligible for special education services, and his Parents brought this Request for Due Process Hearing in order to determine whether the Bolton Board of Education offered Student a Free Appropriate Public Education (“FAPE”) for the 2021-22 school year, and if not, what the remedy should be.

PROCEDURAL HISTORY:

The Student initiated this special education due process case on March 22, 2022. The Hearing Officer was assigned to the case on March 22, 2022. A Prehearing Conference was convened on March 29, 2022 which was attended by the Parents and the Board's attorney. An initial hearing date was set for April 25, 2022 with the deadline for filing the final decision set for May 30, 2022. The hearing began on April 25, 2022 and concluded on May 12, 2022. On the last day of the hearing, by agreement, the parties waived the filing of briefs and the mailing date of the final decision was extended to June 10, 2022.

The following witnesses testified at the evidentiary hearing:

Parent of Student

Grandmother of Student

Rhonda C. Thorington, MA, LPC

Stephen Merwin, LCSW, Bolton Public Schools

Beth Goldsnider, Director of Special Education, Bolton Public Schools

Present:

Beth Goldsnider, as representative of Bolton Public Schools was present at the hearings.

Both Parents were present at the hearings.

Hearing Officer Exhibit HO-1 was entered as a full exhibit.

The Board's Exhibits B-1 through B-28 were admitted as full exhibits.

Student Exhibit S-1 was admitted as a full exhibit.

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, which reference certain exhibits and witness testimony, and 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 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)

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:

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

1. The Student was a 16 year old boy when he enrolled in eleventh grade in the Bolton High School (“BHS”) for the 2021-22 school year. (B-8, Parent)
2. The Student is presently eligible for Special Education Services due to a primary disability of Emotional Disturbance. (B-8)
3. The Student has been diagnosed with post-traumatic stress disorder (PTSD), Unspecified Bipolar and related disorder, attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD) (B-1)
4. Student has been seen by Ronda Thorington, M.A. , a private counselor and therapist, for these conditions continuously since 2018. (Parent)
5. Ms. Thorington testified at the hearing that since she has treated him, Student has exhibited symptoms of these conditions, such as anxiety, impulsivity and distractibility, and can be disruptive, non-compliant and aggressive when placed in stressful situations. (B-1)
6. Ms. Thorington stated that these conditions have led to educational and social skills difficulties and have generally adversely affected his ability to learn, despite his academic strengths. (P-1, Thorington)
7. The Student attended public schools until mid-second grade when he was placed in a day program at Adelbrook School for two years, then transitioned back to the Bolton Center School until midway through seventh grade. (B-1)
8. From mid-seventh grade (February, 2018) to the end of the Student's tenth grade year (June 2021), Student was enrolled at EastConn clinical day school due to the recurrence of the behaviors noted previously. (B-1, Parent)
9. In the 2019-20 EastConn school year, Student received 5 hours a day of academic/behavioral support, 2 hours a week of transition/vocational support, 5 hours of transition/job coaching, and 45 minutes of weekly counseling (plus Extended School Year (“ESY”)). (B-16)
10. For 2020-2021, Student received 4 hours, 39 minutes of academic/behavioral support, 4 hours per week of transition/vocational support and 45 minutes per week of counseling. (B-22)
11. In addition to the academic curriculum, EastConn provides multi-tiered behavioral support to all students. (B-1)
12. In January, 2020, Student received a Psycho-educational Evaluation and an Educational Evaluation from EastConn as part of his triennial IEP review. (B-1)
13. At EastConn, universal proactive supports included: school-wide expectations for each setting are taught, modified and practiced; 3:1 student-staff ratio; small group counseling; home-school collaboration; access to food and drink during the day; regularly scheduled movement breaks; behavior-specific praise and tokens provided for appropriate behavior; break system and brief, positive feedback provided at least four times per day using a daily behavior sheet. (B-1)
14. Universal responsive supports included: planned-ignoring with praising other students; non-verbal cueing; positively stating the expectation; cue to take a break; prompt to work/take a break in another classroom (Time-Aside); prompt to de-escalate in a support room (Time-Out) (B-1)
15. While attending EastConn from 2018 to June, 2021, Student made good progress and met or mastered his goals. (B-1, B-2, B-16, Parent)
16. Although the Student did well at EastConn, the Parents expressed concern he was not being provided with sufficient appropriate challenges and skills he would need as he transitions to adulthood. (Parent)
17. For the triennial educational evaluation, the Student was given the Weschler Intelligence Scale for Children (WISC-V), on which he scored a 92, or Average overall. He scored below average in Verbal Comprehension and Working Memory, but high average in visual-spatial area. He was average over the other tested areas of Fluid Reasoning and Processing Speed. (B-1).
18. The Student also was given the Kaufman Test of Educational Achievement (Brief) (KTEA-2),

which measures academic skills. He scored an overall composite score of 86 (Average), exhibiting strengths in reading, spelling, but showed weaknesses in math and written expression. (B-2)

19. The Student remained at EastConn until the end of the tenth grade in June, 2021. (B-18, B-23)
20. In January and February, 2021, the IEP team members met and had discussions about various alternatives to EastConn, including returning the Student to BHS. (B-23, Parent)
21. The January 7, 2021 IEP stated: "Team will re-meet to discuss what needs to be in place to determine if a transition back to public school is appropriate ." BHS staff were to be invited to participate. It is not stated that a definite decision was made to return Student to BHS. (B-22)
22. The next IEP, February 19, 2021, documents a PPT held by BHS staff and Parents "Begin transition plan for Student to return to BHS" and contemplated a "meeting in March" and setting up meetings with Student and the Special Education teacher and the counselor. (B-23)
23. Student was still attending EastConn at the time of the February IEP. This IEP does not show that there were any provisions made for modifications to the Goals and Objectives, or any behavioral supports to be put into place at BHS. (B-23)
24. No PPTs were held from February to May 13, 2021.
25. Although in support of the transition back to BHS, the Parent testified that they wanted a period of adjustment starting with school visits and conversations with staff, then a partial school day, in an effort to reduce the stress and emotional triggers of the transition. (Parent)
26. The next PPT was held on May 13, 2021 ("the May PPT") to formulate transitioning Student to BHS for the 2021-22 school year. (B-24)
27. Neither the February nor the May IEPs outline any specific types of support Student would receive. (B-23, B-24)
28. Neither the February nor the May IEPs document the proposed change in placement in the Prior Written Notice sections. (B-23, B-24)
29. The Recommendations section of the May PPT included: "Continue with the transition plan for [Student] to return to BPS at the beginning of the 2021-2022 school year." Student was to "continue auditing a Contemporary Issues class remotely." A meeting for course selection was planned, as were several school visits. Summer school options were also discussed "A second meeting will be set up with Ms. Raevis in order for [Student] to get to know her." "Once [Student's] classes are set, a team meeting will be held (prior to the end of the school year) with all teachers and administration to review the transition back to public schools." (B-24)
30. Although there were several references to a transition plan, there is no specific description of such a plan and no specific provisions for behavioral support were outlined. (B-24)
31. The Student was enrolled in the eleventh grade at BHS for the 2021-22 school year but it was unclear what transition assistance he actually received prior to the start of the year. (B-25)
32. The September 28, 2021 IEP adjusted the service hours so that Student was to receive 10.45 hours of special education services per week, consisting of Math instruction, 43 min/3x/wk and 80 min. 1x/wk., academic support/transition 43 min/3x/wk and 80 min. 1x/wk; co-taught English 43 min/3x/wk and 80 min. 1x/wk., and counseling 2 x20 min/wk while at BHS. (B-25)
33. For the September 28, 2021 IEP, to be implemented at BHS, Student's Goal #3 was changed from "Student will demonstrate the ability to maintain socially acceptable behaviors within the academic environment" to "Demonstrate successful, positive engagement in the school environment."
34. Otherwise, the Student was given substantially the same goals as at EastConn, to wit:
 1. Demonstrate an improvement in written language skills necessary to write for information, understanding and written expression;
 2. Demonstrate an improvement in mathematical concepts, reasoning and computation necessary to develop problem-solving skills and to utilize mathematics to address everyday

problems.

4. Complete a series of activities in order to prepare him to transition to competitive or supported employment.
5. Explore a variety of careers and vocations in relation to his interests and skills. (B-25)
35. Ms. Thorington's March 24, 2022 report details some of Student's difficulties since he was returned to BHS; increased anxiety (which manifests, at times in challenging behavior), difficulty relating to his peers and at times he lacking age-appropriate conflict resolution skills. (S-1, Thorington)
36. According to Ms. Thorington's report, the environment where Student would have the greatest probability for success would be one where he can learn age-appropriate conflict resolution skills, social skills building and strategies that he can use in vivo to manage his social anxiety and is also robust academically. (S-1)
37. During the 2021-22 school year, BHS staff reported a number of incidents that occurred which caused serious concern. In September, 2021, Student received multiple disciplinary actions regarding foul language. In November, 2021, Student was questioned about an incident involving a small amount of marijuana. During this time, Student also was reportedly eloping from his classes, wandering into other classrooms and behaving inappropriately. In December, Student had a physical fight with another student and was suspended for five days. (Parent, Goldsnider) (B-3, B-10)
38. After the suspension he received, Student often avoided coming to class, causing him to miss even more school days. (B-9)
39. A PPT was convened on December 21, 2021, to conduct a Manifestation Determination and to review the IEP, which was attended by BHS personnel, the Student's therapist Ms Thorington, and the Parents. The team concluded the behavior is related to Student's disability. Alternative placements for Student were discussed, including residential and therapeutic and clinical day treatment programs. (B-3)
40. Mr. Merwin stated that the Student regressed academically following the incidents at BHS, and is now failing English. (Merwin)
41. Based on their personal observations, the Student's behavior at home has also deteriorated since he returned to BPS. (Parent, Grandmother)
42. In March, 2022, the Student pushed a door onto the arm of a staff member, causing injury, for which he received another suspension. (B-10, Goldsnider)
43. On March 10, 2022, a PPT meeting was held to discuss Student's "presentation" and functioning on his new medication, and "the plan moving forward." (B-8)
44. At this March PPT, the Student's IEP was modified to "homebound instruction" while a placement is being considered, and that is where he has remained for the remainder of the school year. (B-8)
45. Prior Written Notice in the March IEP specified a change in placement. (B-8)
46. The PPT team stated in its recommendations: "[Student] needs a therapeutic, clinical day program to meet his educational needs. The parents are only interested in pursuing the in-take at Manchester Clinical Day. Packets have also been sent to GraceWebb and Natchaug and parents are encouraged to to complete in-takes at these schools as well." (B-8)
47. The Meeting Summary stated: "...the team also discussed Student's recent suspension and the plan moving forward. Bolton High School's team recommended an alternative placement at a clinical day program. While intakes are being done to determine that placement, [Student] will be engaged in Home Bound Instruction and will remotely join classes based on a schedule created by school staff to meet Student's educational and counseling needs. [Parent] agreed to waive the 10 day implementation period so that Student could begin the remote instruction tomorrow. Friday 3/11." (B-8)

48. The Student's therapist, Ms. Thorington, testified that in March, 2022 she recommended a therapeutic boarding school which would have a primary emphasis on education, treatment and social skills building. (Thorington, P-1)
49. Ms. Thorington testified that since September 2021, the Student was no longer receiving the supports he had at EastConn, and the trained adults that would have been available to intervene at EastConn were not present at BHS. (Thorington)
50. Ms. Thorington explained that anxiety can manifest itself as aggression and individuals with PTSD often behave in different ways. (Thorington)
51. The Parent testified that he believes that the best educational placement for student is a therapeutic day school, or a residential treatment program where he will receive academic support in addition to treatment programs. (Parent)
52. The Parent, a licensed Clinical Social Worker, explained the difference between a "therapeutic" and a "clinical" program; a therapeutic program combines academic supports with therapy and a clinical program concentrates on the maladaptive behavior in lieu of the academic component. (Parent)
53. The Parent believes Student should be treated with trauma-informed practices. (Parent)
54. The Parent testified that after looking into the Manchester Clinical Day school program he felt the Student would be best served by a program that was less restrictive and had a "therapeutic" as opposed to a "clinical" modality. (Parent)
55. Ms. Goldsnider did not believe there was a distinction between a therapeutic day school and clinical day school. (Goldsnider)
56. Ms. Goldsnider said she was continuing to contact any program she felt would work for Student. (Goldsnider)
57. Mr. Merwin testified a clinical day school could break down Student's maladaptive behaviors. (Merwin)
58. Mr. Merwin recommended the Manchester Hospital program; in discussions he had with staff, they felt that their program would work for Student, (Merwin)
59. Student needs to build conflict resolution skills, social skill building and lessen social anxiety. (Merwin)
60. Student's academics were "average" but the stressors limit his ability to deal with issues. (Merwin)
61. BHS personnel had made inquiries to several proposed placements prior to the PPT on December 21, 2021 and continuing thereafter, in consultation with Parents. (Goldsnider)
62. In her trial testimony, Ms. Thorington changed her recommendation from boarding to day school, as she now feels he has developed social and coping skills sufficient that he does not need a residential facility for support. (Thorington)
63. Ms. Goldsnider contacted a number of other possible alternative placements for Student and said she would continue to research them after the hearing concluded. (Goldsnider)

CONCLUSIONS OF LAW AND DISCUSSION:

CONCLUSIONS OF LAW:

1. There is no dispute that the Student, as a student identified with Emotional Disturbance ("ED") is entitled to special education and related services in order to receive a free and appropriate public education ("FAPE") pursuant to 20 U.S.C. §1400 et. seq., the Individuals with Disabilities Education Act ("IDEA", also "the Act"), 34 C.F.R §300.7(a) and Section 10-76a-1 *et seq* of the Regulations of Connecticut State Agencies ("RCSA").

2. 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. Section 1401(8); 34 C. F. R. §300.13

3. The IDEA directs that, in general, an Impartial Hearing Officer's decision must be made on substantive grounds based on a determination of whether the student received a FAPE. 20 U.S.C. § 1415[f][3][E][i]). The benchmark case on the definition of FAPE is provided in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U. S. 176 (1982) In 2017, the U.S. Supreme Court clarified that, in order to provide FAPE, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction," however, "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998-9 (2017) The *Endrew* decision goes on to say that the child's educational program must be appropriately ambitious in light of his or her circumstances and every child should have the chance to meet challenging objectives. *Endrew*, at 1000-1

4. A school district must provide "an IEP that is "reasonably calculated to enable the child to receive educational benefits and likely to produce progress, not regression." *Mr. P. v. West Hartford Bd. of Educ.*, 885 F. 3d 735, 757 (2nd Cir. 2018).

5. Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2nd Cir. 2002) (*citing M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 226 F. 3d 60, 66 (2nd Cir. 2000).

6. The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 C.F.R. §300.521. R.C.S.A. §10-76h-14(a)

7. The Least Restrictive Environment ("LRE") requirement is one of the central concepts of appropriate placement under the IDEA. A fact-specific test requires courts to consider: 1) whether the student can be satisfactorily educated in the general education environment with the use of supplemental aids and services; and, if not, 2) whether the student was mainstreamed to the maximum extent appropriate. *Oberti v. Clementon Sch. Dist.*, 19 IDELR 908 (3d Cir. 1993).

DISCUSSION:

A review of the Student's IEPs and standardized test results from EastConn show the satisfactory progress made by Student during the time there. Services provided at EastConn included universal

proactive and responsive supports, individualized daily behavioral monitoring, counseling, and consistent school-wide expectations. (FF-13, FF-14, FF-15) At that facility, according to the data collected in Exhibit B-1 and the consensus of the witnesses, the Student made average grades, had a good attendance record, and otherwise benefited from the school's methodology and supports. No major behavioral incidents were reported. The team, including the Parents, all were encouraged that the good progress made at EastConn would allow the Student to make a successful transition back to BHS. The Student benefited from the social skills and academic supports provided at EastConn and he was making reasonable academic progress, then the consensus decision was made to change Student's placement.

For the February 19, 2021 PPT, the Board's IEP provided that Student would return to BHS at the beginning of the 2021-2022 school year. This IEP proposed that the Student and his parents would meet the BHS counselor and special education teacher virtually and that the school counselor would meet to discuss course selection and possible class audit, and the team will re-meet in March to determine the next steps. (FF-20) In May, 2021, these plans were further solidified by arranging dates, meetings with specific school personnel and in-school visits.

The February 19, 2021, and the May 2021 IEP do not provide for any specific individualized behavior monitoring, proactive supports, or the kind of services Student received at EastConn.

The September 28, 2021 IEP adjusted Student's service hours and slightly modified the goals and objectives "to reflect change in school setting," but no behavioral plan was proposed. (FF-26, FF-27, FF-28)

For the above reasons, BHS failed to provide an IEP reasonably calculated to enable the Student to receive educational benefit, and therefore failed to provide FAPE.

When Student transitioned to BHS, he almost immediately regressed academically and ran afoul of school rules. His grades declined, and his latest English grade was an F. His anxiety, particularly in social settings, began to increase and he began to have significant disciplinary issues. Family members testified as to the intensifying difficulties at home. While the BHS staff recognized the problem by the December 21, 2021 PPT, there were insufficient steps proposed by the BHS staff at that time to modify Student's goals and objectives, adjust the plan of study, increase counseling or provide behavioral supports, in order to stabilize the situation and provide FAPE.

Ms. Thorington wrote a report that recommends that a residential therapeutic boarding school would be the best placement to serve the Student's needs at this time. (At the hearing, she revised her opinion and now believes Student would benefit from a therapeutic day educational program). Ms. Thorington testified that her opinion was based on the facts that Student was no longer receiving the supports he formerly had at EastConn, and the professionals that would have been available to intervene at EastConn were not present at BHS. Parents would prefer the Student remains at home but there is a scarcity of special education schools that offer a therapeutic as opposed to clinical day educational program within reasonable distance of their home.

Most of the testimony in this case was focused on what the Student's present needs are and what would be an appropriate future placement for the Student. The Student's eleventh grade year at BHS failed to provide him with FAPE, and the current placement at BHS, with Student being tutored at home, is unacceptable.

The Student requires a specialized educational setting similar to what was formerly provided to him at EastConn. Therefore, the Student should be placed at Board expense in an appropriate special education school that can address Student's educational and emotional challenges.

FINAL DECISION AND ORDER:

1. The Bolton Board of Education did not offer a Free and Appropriate Public Education (“FAPE”) to the Student for the school year 2021-22.
2. The Student's IEP should be revised to include a placement at a therapeutic day school program at Board expense. This may include EastConn or such other comparable educational facility that provides appropriate personnel and treatment programs for Student.

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