

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Stamford Board of Education¹

Appearing on behalf of Student:	Student's Mother, <i>Pro Se</i>
Appearing on behalf of the Board of Education:	Attorney Marsha Moses Berchem Moses PC 75 Broad Street Milford, CT 06460
Appearing before:	Janis C. Jerman Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing in the above-captioned matter was requested by Student's Mother via Request for Impartial Special Education Hearing dated July 9, 2021.² The Board of Education ("BOE") received it on July 9. The 30-day resolution period ended August 8 and the original 45-day deadline to mail the final decision and order was September 22.

On July 19, BOE's Attorney filed a Motion to Consolidate this case with Case 21-0180, which was pending before another Hearing Officer. On July 20, Student's Mother filed an Objection to the Motion to Consolidate. On July 20, Attorney Stevenson, who represented Student in Case 21-0180, filed an Objection to the Motion to Consolidate.

On July 21, BOE's Attorney filed a Sufficiency Challenge. A prehearing conference convened via videoconference on July 22. Student's Mother appeared on behalf of Student and Attorney Moses appeared on behalf of BOE.

On July 23, the Request for Hearing was found to be insufficient and Student's Mother was given leave until August 12 to amend the Request for Hearing to meet the requirements of 34 CFR 300.508(b). After fully considering the positions of the parties and consulting with the Hearing Officer assigned to Case 21-0180, the Motion to Consolidate was denied.

Student's Mother filed an Amended Request for Hearing on August 12. The hearing timeline reset accordingly. The 30-day resolution period ended September 11 and the 45-day deadline to mail the final decision and order was October 26.

A telephonic prehearing conference was held on September 9. Student's Mother appeared on behalf of Student and Attorney Moses appeared on behalf of BOE.

The Amended Request for Hearing identifies the following issues:

1. Whether the district was responsible and offered FAPE (free appropriate public education) for the Student for the 2019-20 school year?

¹ To comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally identifiable information.

² All dates are 2021 unless otherwise indicated.

2. Was the IEP of July 11, 2019 reasonably calculated to provide FAPE at the Bridge School proposed by the district for Student for the school year 2019-2020?
3. If the district provided FAPE at Keswell School, then did the district fail to consider transportation as related services and the aide, when FAPE includes both “special education” and “related services” for the school year 2019-2020? If so, what remedy is appropriate?
4. Did the district fail to provide the Student with a FAPE for the extended school year (“ESY”) in the summer 2020? If so, what form should the compensatory education take?
5. Did the district fail to properly assess the neuropsychological assessment and psychiatric needs and other diagnoses of the Student made by the licensed physicians that impacted his education for the school year 2019-2020?
6. Did the district violate the Student’s rights under Section 504, Americans with Disabilities Act (ADA) and Title II for the school year 2019-2020? If so, what remedy is appropriate?

The final decision issued in Case 21-0180 between these same parties addressed the issue of transportation, which will not be relitigated in this case. In Case 21-0180, the final decision included a written conclusion of law that BOE offered Student a free appropriate public education for the 2019-20 school year and that issue will not be relitigated in this case. The Hearing Officer does not have jurisdiction over the Section 504 or ADA issues.

The following issues are identified to proceed to hearing in this case:

1. Did the Board of Education provide Student with a free appropriate public education during the 2020 extended school year?
2. If the answer to Issue One above is in the negative, what shall be the remedy?

On September 12, BOE’s Attorney requested an extension of the deadline to mail the final decision and orders to accommodate mutually available hearing dates. After fully considering the positions of the parties, the request for extension was granted and the deadline to mail the final decision and order extended to November 24.

The parties filed exhibits,³ witness lists, and two stipulated findings of fact. Hearing convened via videoconference on November 2. An interpreter was provided for Student’s Mother. Student’s Mother made an opening statement. BOE’s Attorney made an opening statement that culminated in a proposed stipulated judgement. After discussion, the parties stipulated to an order to fully resolve this matter. The November 3 hearing was cancelled.

To the extent that the procedural history, statement of jurisdiction, findings of fact, or discussion represent conclusions of law, they should be so considered, and vice versa.

Statement of Jurisdiction

This matter was heard as a contested case pursuant to Connecticut General Statutes (“CGS”) § 10-76h and related regulations, 20 United States Code (“USC”) § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (“UAPA”), CGS §§ 4-176e to 4-178, inclusive, and § 4-181a and § 4-186.

³ See Appendix A below for list of exhibits admitted in full and those not admitted into evidence.

Findings of Relevant Fact⁴

1. Student resides in Stamford, Connecticut and has a birthdate of January 14, 1999 (Stipulation of the Parties).
2. Student's Mother is the Student's Guardian by virtue of a certain Order of Probate dated April 17, 2017 which Student's Mother represents and warrants is in full force and effect and gives her full authority to act on behalf of Student in all educational matters, including in this Due Process Proceeding (Stipulation of the Parties).
3. On behalf of BOE, BOE's Attorney proposed a stipulated order for purposes of resolving the matter without making any concessions as to facts or law (Statement of BOE's Attorney).
4. Student's Mother made a counter proposal (Statement of Student's Mother).
5. The parties stipulate to the following order being entered in full and final resolution of this matter:
 - a. BOE will pay for the equivalent of three weeks and two days of Occupational Therapy and Speech and Language Therapy services for Student at the rate of three weekly sessions of each therapy for 45 minutes each;
 - b. BOE will pay for 142 hours of ABA program services for Student;
 - c. The services identified in paragraphs 5(a) and 5(b) above must be completed by December 31, 2021 to be eligible for payment by BOE;
 - d. Student's Mother will select the service providers and arrange for the provision of services identified in paragraphs 5(a) and 5(b) above;
 - e. Student's Mother will provide BOE with documentation evidencing delivery of the services, Student's participation in the services, and that the service providers hold the necessary credentials to provide the services;
 - f. If Student's Mother provides the documentation identified in paragraph 5(e) above, BOE will pay the service providers directly at rates that are customary in the community;
 - g. BOE will owe no other responsibilities to Student or Student's Parents with regard to the issues identified in this case.
 - h. An evidentiary hearing is moot in light of the stipulated order.
6. Student's Mother, BOE's Attorney, and BOE's Director of Special Education Services indicated their agreement with the stipulated order on the record (Statement of BOE's Attorney, Student's Mother).

Conclusions of Law

1. A Hearing Officer appointed under 34 CFR § 300.500 *et seq.* and Connecticut State Agency Regulations ("Conn.Regs.") § 10-76h-1 *et seq.* has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ("FAPE") to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the PPT, or (C) to prescribe alternate special educational programs for the child. CGS § 10-76h(d)(1).
2. The jurisdiction of a Hearing Officer appointed under 34 CFR § 300.500 *et seq.* and Conn.Regs. § 10-76h-1 *et seq.* does not include the determination of legal claims under Section 504 unless such determination is necessary to resolve the IDEA claims.

⁴ In the Discussion, Findings of Fact are cited as "FOF #."

3. Student has the burden of production in a special education due process hearing. Conn.Reg. § 10-76h-14.
4. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Conn.Reg. § 10-76h-14.

Discussion

In her opening statement, Student's Mother argued that BOE did not provide Student with the full services that he was entitled under the law relating to eligibility for special education students who have reached age 21 but not yet reached age 22. In her opening statement, BOE's Attorney argued that BOE provided services that Student was entitled to based on the law at the time of each planning and placement team meeting.

At the end of the opening statement, BOE's Attorney proposed a stipulated order to be entered by the Hearing Officer in full and final settlement of the case without BOE conceding any facts or law (FOF 3). Student's Mother made a counter proposal in response to the proposed stipulation (FOF 4). After discussion, the parties agreed to a stipulated order which made an evidentiary hearing moot (FOF 5, 6).

After fully considering the positions of the parties, the stipulated order was accepted and is so ordered below.

FINAL DECISION AND ORDERS

1. The Board of Education will pay for the equivalent of three weeks and two days of Occupational Therapy and Speech and Language Therapy services for Student at the rate of three weekly sessions of each therapy for 45 minutes each;
2. The Board of Education will pay for 142 hours of ABA program services for Student;
3. The services identified in paragraphs 1 and 2 above must be completed by December 31, 2021 to be eligible for payment by the Board of Education;
4. Student's Mother will select the service providers and arrange for the provision of services identified in paragraphs 1 and 2 above;
5. Student's Mother will provide BOE with documentation evidencing delivery of the services, Student's participation in the services, and that the service providers hold the necessary credentials to provide the services;
6. If Student's Mother provides the documentation identified in paragraph 5 above, the Board of Education will pay the service providers directly at rates that are customary in the community;
7. The Board of Education will owe no other responsibilities to Student or Student's Parents with regard to the issues identified in this case.

APPENDIX A: Exhibit List

HEARING OFFICER EXHIBITS

Exh #	Date	Description - # pages
HO1	7/9/21	Request for Impartial Special Education Hearing – 2 pages
HO2	8/12/21	Amended Request for Impartial Special Education Hearing – 9 pages

STUDENT EXHIBITS ADMITTED AS FULL EXHIBITS

Exh #	Date	Description - # pages
S1	various	Documents re: continuation of special education to age 22 – pages 1-3
S2	9/14/21	Fiduciary's Probate Certificate – 1 page
S3	various	School observation report; letter from Keswell School; letter from doctor; Letter from Student's Mother; Email from Student's Mother with Attachments – pages 1-8
S4	2019	Multidisciplinary Evaluation – 17 pages
S5	June 2020	Notice of PPT Meeting; Transcript of PPT Meeting; emails – pages 2-12
S6	June 2020	Emails; Notices of PPT Meetings – 11 pages
S7	various	Emails; Letter from Bridge School – pages 1-3, 5-7, 10
S8	7/29/20	Transcript of Annual Review Meeting – 66 pages
S9	Summer 2020	Student schedule and computation of compensatory education – 31 pages
S11	2018	Documents related to 2018 ESY – 27 pages
S12	2017	Documents related to 2017 ESY – 23 pages

BOE EXHIBITS ADMITTED AS FULL EXHIBITS

Exh #	Date	Description - # pages
B1	6/10/19	PPT Notice – 4 pages
B2	7/11/19	PPT/IEP – 75 pages
B3	6/4/20	PPT Notice – 2 pages
B4	6/9/20- 7/28/20	Email correspondence between BOE, Parent and Feldman – 37 pages
B6	6/30/20	PPT Notice – 4 pages
B8	7/24/20	Guidance from Bureau of Special Education – 1 page
B9	7/28/20	Email correspondence between Fenech and Parent – 4 pages
B10	7/28-29/20	Email correspondence from Laubin to Stevenson – 7 pages
B11	7/29/20	PPT/IEP – 70 pages
B12	7/30/20 & 8/19/20	Keswell ESY Attendance – 2 pages
B13		W. Holland Resume – 4 pages
B14		K. Quaglino Resume – 3 pages


EXHIBITS NOT ADMITTED

Exh #	Date	Description - # pages
S1	various	Documents re: continuation of special education to age 22 – pages 4-7
S3	various	School observation report; letter from Keswell School; letter from doctor; Letter from Student's Mother; Email from Student's Mother with Attachments – pages 9-19

S5	June 2020	Notice of PPT Meeting; PPT Meeting transcript; emails – pages 1,13-18
S7	various	Emails; Letter from Bridge School – pages 4, 8, 9, 11
S10	2019	Documents related to 2019 ESY – 15 pages
B5	6/24/20	Email correspondence from Benoit to Parent – 5 pages
B7	7/6-7/20	Email correspondence between Holland and Parent – 2 pages

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

JANIS C. JERZMAN

Hearing Officer

Name in Print