

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. North Haven Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the Student remain at Ridge Road Elementary with his pull-out services for Reading, Writing and Math being implemented by the special education teacher in the regular resource room until the dispute is resolved?
2. Should the Hearing Officer issue an order providing for an Independent Educational Evaluation since the initial evaluation and order the Planning and Placement Team to determine programming for Student only after considering the Independent Educational Evaluation?
3. Is the RISE program the appropriate program in the Least Restrictive Environment for the Student?

PROCEDURAL HISTORY:

The self-represented Parents filed a Due Process Complaint on June 2, 2024. The Hearing Officer was appointed on June 5, 2024, and conducted a Prehearing Conference

on June 21, 2024. The Parents filed an Amended Due Process Complaint on June 28, 2024. The Hearing Officer conducted a second Prehearing Conference on July 25, 2024.

On August 8, 2024, the Board file a Motion for Interim Order regarding Stay Put pursuant to 34 CFR §300.518. The Parents filed a Response and Memorandum on August 15, 2024. The Hearing Officer conducted a hearing to consider the Board's motion on August 23, 2024 and issued an order granting the Board's motion which resolved Issue #1 on August 26, 2024.

Additional hearing dates of September 23, October 24, October 28, October 30, 2024, November 14 and November 21, 2024 were added to consider Issue #2 and Issue #3.

The Parents made several requests for extension of the Decision Date. Parents requested that the original decision date of August 18, 2024 be extended to accommodate the additional hearing dates. The Hearing Officer granted the parties' requests. The decision date was extended from August 18, 2024 to October 11, 2024 and then from October 11, 2024 to December 11, 2024. The September 23, 2024 hearing date was canceled.

At the beginning of the second hearing day, Parents withdrew Issue #2 for consideration. The parties settled on a compromise concerning an Independent Educational Evaluation. Having settled Issue #2, the only remaining issue for hearing was Issue #3.

The original and Amended Due Process Complaints were marked as Hearing Officer Exhibit H.O.-1. The Parent's exhibits P-1, P-4 to P-6, P-10 to P-11 and P-13 were admitted as full exhibits. The Board's exhibits B-1 to B-75 were admitted as full exhibits.

The Hearing Officer heard testimony from two Board witnesses: Student's special education teacher and a consulting Board Certified Behavioral Analyst.

Subsequently, on Saturday October 26, 2024, Parents' counsel sent the Hearing Officer a copy of a letter from the Parents to the Board's Superintendent withdrawing Student's enrollment from the school district and asked that the hearing be dismissed.

The hearing reconvened a third day. The Board requested that the Parents' Amended Due Process Complaint be dismissed as moot since the Parents' withdrew Student from the school district. The Board's motion to dismiss was granted as outlined in the Final Decision and Order below.

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 parents of an incoming third grader filed a Due Process Complaint after the program and services which were being provided by the student's Individualized Education Program changed location to a different district elementary school. The parents argued that the student "stay-put placement" under 34 CFR §300.518 was the former school and that the Board should deliver services to Student there.

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. At the time of the filing of the Due Process Complaint, the student was nine (9) years of age and entering the third grade in the North Haven Public Schools. In the 2023-2024 school year, Student attended Ridge Road Elementary School which was the student's neighborhood school. He has been identified as a Student with a Disability under the Individuals with Disabilities Education Act, 20 USC §1400 et seq. and is eligible to receive Special Education and Related Services under the disability category of "Autism".
2. At a Planning and Placement Team ("PPT") meeting on August 1, 2023, the PPT recommended that student be diagnostically placed in the "ILS program" which was described as a "non-self contained for resource /special education service hours.) "ILS" is an acronym for "Intensive Learning Service". The proposed program included pullout services in the ILS classroom along with social work, Speech and Language and Occupational Therapy pullout out services as well as access to consult with a Board-Certified Behavioral Analyst to assist in the implementation of behavioral strategies in all settings. The students team also would receive consult services of an Occupational Therapist each month for sensory strategies. Instructional service delivery of Math, Writing and Reading was provided in an individual/small group in resource setting. Related services of language/communication, counseling and fine

motor skills services were to be delivered in individual or in a small group in a Related Service setting. (See 8/7/2023 IEP)

3. On November 8, 2023, the PPT met to review and revise the student's Individualized Education Program ("IEP"). The PPT recommended at that the student remain in the ILS program. The PPT proposed that Student receive services in a "Separate Setting/Program" for individual/small group instruction for Math, Writing and Reading and Related Services for Fine Motor Skills, Counseling and Language/Communication in individual/small group in a "Related Service Setting." Mother disagreed with the student's placement in the ILS program but did not file a Due Process Complaint/Hearing Request. The IEP was being implemented through the ILS program. (See 11/8/23 IEP)
4. The ILS program is a district-wide program for elementary students that was being implemented at the Ridge Road Elementary location which also happened to be the Student's neighborhood school. As the program was growing, the school district decided to move the program to Clintonville Elementary School. Subsequently, the program has been renamed the "RISE" program in 2024. "RISE" is an acronym for "Reaching Independence through Supportive Services."
5. On May 17, 2024, the PPT met and conducted an annual review. The PPT recommended that the student remain in the RISE program for the 2024-2025 school year. Mother disagreed with both the proposed IEP and the requirement that the student participate in the program at Clintonville Elementary.
6. Student has not attended school in the North Haven school district in the 2024-2025 school year.

CONCLUSIONS OF LAW AND DISCUSSION:

1. Issue #2 was resolved through settlement. Issue #3 was never fully adjudicated because the Parents withdrew Student from the school district. The only fully adjudicated issue is Issue #1: "Should the Student remain at Ridge Road Elementary with his pull-out services for Reading, Writing and Math being implemented by the special education teacher in the regular resource room until the dispute is resolved?"
2. Under 20 USC §1415(j) (otherwise known as the "stay-put" provision of the IDEA), "during the pendency of any proceedings pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child." Pursuant to IDEA regulations at 34 CFR §300.518 entitled "Child status during proceedings", the child involved in the complaint must remain in his or her current educational placement during the pendency of a due process hearing under 34 CFR §300.507. See 34 CFR §300.518(a) and 20 USC §1415(j) (enabling statute referring to "current placement" as "then-current placement").

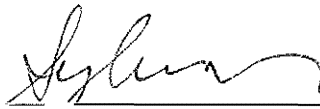
3. “The Second Circuit has interpreted the term ‘then-current education placement’ to mean (1) typically the placement described in the child’s most recently implemented IEP; (2) the operative placement actually functioning at the time...when the stay put provision of the IDEA was invoked; and (3) [the placement at the time of] the previously implemented IEP.” *Doe v. East Lyme Board of Education*, 112 LRP 47179 (D.Conn 2012) citing *Mackey ex rel. Thomas M. v. Board of Educ. Fr Arlington Central School Dist.* 386 F.3d 158, 163 (2d Cir. 2004).
4. “The purpose of this provision is ‘to maintain the [child’s] educational status quo while the parties’ dispute is being resolved.” *Abrams v. Porter*, No. 20-3899, 2021 WL 5829762 (2d Cir. Dec. 9, 2021) (quoting *T.M. ex rel. A.M. v Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 152 (2d Cir. 2014)). A school district is required ‘to continue funding whatever educational placement last agreed upon for the child until the relevant administrative and judicial proceedings are complete.” *Doe v. East Lyme Bd. of Educ.*, 962 F.3d 649, 659 (2d Cir. 2020) (quoting *T.M.*, 752 F.3d at 171). (emphasis added).
5. A placement is a set of instructional and related services rather than a physical location where they are being delivered. See *Letter to Fisher, Office of Special Education Programs* 21 IDELR 992(1994).
6. Except for the change in physical location, the November 2023 IEP, the “then-current placement” provided specialized education instruction and related services through the ILS (now “RISE”) program which has relocated to Clintonville Elementary School.

FINAL DECISION AND ORDER:

1. Issue #1: The “Stay Put Placement” under the 34 CFR §300.518 is the services provided at the RISE Program at Clintonville Elementary. The Student should not remain at Ridge Road Elementary.
2. Issue # 2 was withdrawn and thus dismissed.
3. Issue #3: As a result of the Parents’ withdrawal of Student from enrollment in the School District, the Board’s motion to dismiss Issue #3 above is GRANTED. This issue has not been fully adjudicated and thus is dismissed without prejudice.

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

Sylvia Ho
Hearing Officer Name in Print