

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

**FINAL DECISION AND ORDER
GRANTING BOARD'S MOTION TO DISMISS**

This Hearing Request was originally brought on August 12, 2024 concerning a child who was a fifth grader who has been identified as a student in need of accommodations under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and parentally placed at a private school.¹ The original Hearing Request consisted of chronologies of correspondences between parents and parent counsel with school administrators and school counsel from 2021 to 2023 concerning mold, headaches, nosebleeds and air quality and meetings under Section 504. The Hearing Officer conducted a Prehearing Conference on August 30, 2024 in which the issues (or lack of special education issues implicating jurisdiction) for the hearing were discussed.²

On September 13, 2024, the Board filed a Sufficiency Challenge pursuant to 34 CFR §508(b). On September 18, 2024, the Hearing Officer granted the Sufficiency Challenge. The Hearing Officer ordered the Parents to file an Amended Complaint within ten (10) business days. The amended complaint should specifically actions the Board did or did not take with respect to the Individuals with Disabilities Education Act (“IDEA”) including the failure to provide a “free appropriate public education” (“FAPE”) and include facts about the Board’s action or lack of actions that led to a failure in the provision of “special education” to the student as the term is defined by 34 CFR §300.39, including what “specially designed instruction” was necessary to meet the unique needs of the student for the student to receive FAPE.

The Parents filed an Amended Complaint on October 21, 2024. The Amended Complaint generally alleged that Student qualified for special education. The Amended Complaint alleged that the school district failed to identify the student as a “Student with a Disability in need of Special Education” under the IDEA but did not otherwise specifically make allegations about what type of special education was necessary for Student to receive a FAPE. The parents failed to comply with the Hearing Officer’s order to include factual allegations.

The Hearing Officer conducted a second Prehearing Conference on October 29, 2024. The Board filed a motion to dismiss the Amended Complaint on November 15, 2024. The Board argued that Parents failed to comply with the Hearing Officer’s Order. The Parents filed a Memorandum in Opposition on December 2, 2024.

The Hearing Officer held oral argument on the Board’s Motion to Dismiss on February 5, 2025. At the oral argument Parent counsel claimed that the student had in fact received special education instruction at the private school he attended. Over the objection of the Board, the Hearing Officer deferred ruling on the Board’s motion to dismiss and ordered the parents the

¹ The Hearing Request incorrectly uses the term “unilateral placement” to suggest that the District is under an obligation to reimburse the parents for their unilateral decision to parentally place their child who had not been identified as being eligible for IDEA services. See 34 CFR §300.148 (a)

² In Connecticut, IDEA Hearing Officers’ jurisdiction is limited to IDEA claims and they may only consider Section 504/ADA issues as is necessary to resolve those claims.” *Doe v. Westport Bd. of Educ.*, 609 F. Supp. 3d 75, 84 (D. Conn. 2020)

amend the Amended Complaint within ten (10) calendar days to state what “special education” might Student have qualified for when he was in the public school. The Board was allowed ten (10) days thereafter to file a response or to renew its motion to dismiss.

The Parents filed a Second Amended Complaint dated February 18, 2025 and the Board filed a motion to dismiss Parents’ Second Amended Complaint on March 10, 2025. Having reviewed the Second Amended Complaint and the federal and state regulations, the Hearing Officer concludes that the Second Amended Complaint is insufficient in alleging that that Student qualifies as a Child with a Student with a Disability under the IDEA in need of “special education” and now grants the Board’s Motion to Dismiss.

The Second Amended Complaint makes a single allegation post facto that the student received some “specialized instruction” at the private school he had been attending in an effort to make the case that the student is a “Child with a Disability” who should have been identified as needing “special education” and whose private school tuition was a “unilateral placement” that should be paid by the school district. It should be noted that there were no other allegations added to the second amendment to support the claim that the student’s alleged suspected disability interfered with his academic performance in school.³ While the complaint makes many allegations about parental concerns about healthy classroom environment at Westport Public Schools during Student’s time at Long Lots Elementary, the complaint is devoid of information about the student’s lack of educational attainment. In fact, it seems despite Student’s disability of “Other Health Impairment” may have required student’s grades were superior at the private school he attended. His grades there were in the 90s to 100 range.

Turning to the issue “specially designed instruction”, the Second Amended Complaint in paragraph zzz states that the student received:

“individualized Executive Functioning instruction, which assisted him in understanding how to plan for and break down short and long term assignments, organizing his materials, time management and task initiation and completion. This instruction also provides [student] with strategies for focus and attention. Being these skills is particularly important for student who have an anxiety disorder, as does [Student] who can interfere with his ability to function in school. In addition to executive functioning instruction, [Student] has received instruction in social and emotional learning, including self-awareness, social skills, emotional regulation and effective decision making in order to learn and the instruction and environment at FCDS has been so successful that [Student] is ready to return to the public schools for the 2025-2026 school year.”

Whether or not organizing skills or social skills training is contemplated as “special education” or “related services” is a threshold question that must be decided. If such instruction can be categorized as “specially designed instruction” under 34 CFR §300.39, then it would be considered “special education”. If such “individualized executive functioning instruction” and

³ The only allegations about the student’s academic performance in complaint shows that he was capable and indeed above an above average or superior student, at least at the private school.

“social emotional Learning” can be categorized as “related services”, then such training, however helpful, cannot be considered “special education” or “specially designed instruction” within the meaning of 34 CFR §300.39.⁴ The framework of the federal regulations leaves to the state educational agencies to determine of what is specialized instruction and what is a related service. For example, while 34 CFR §300.39 (a)(2) includes speech and language instructional services as special education, the regulation defers to state agencies to determine what is special education and what is a “related service.

A review of the Connecticut IEP manual and a general review of the federal regulation at 34 CFR §300.39(a)(1) favors a conclusion that the “instruction” that the student was receiving was more “training” of the sort given by psychologists and coaches and not “special education” teachers that would normally be providing in a special education setting.

34 CFR §300.39 states that *specially designed instruction* means **adapting**, as appropriate to the needs of an eligible child under this part, the **content, methodology, or delivery of instruction** (i) to address the unique needs of the child that *result from the child's disability*; and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. .

Similarly, the Connecticut IEP Manual in Section 7 defines “Special Education Service and Related Services” as follows:

A special education service, sometimes referred to as “specially designed instruction,” is an instructional service (for example, language arts instruction or math instruction) **delivered by a certified teacher or someone under the direction of a certified teacher** (for example, *an instructional aide or paraprofessional*). **Special Education Services can be delivered through a variety of methods and settings.** [Emphasis supplied]

In the Connecticut IEP Manual, “Related services” includes “psychological services as well as “counseling services.... in schools... counseling and training .” See *Section 7, Connecticut IEP Manual 2022 Revised 2023*

Turning again the Second Amended Complaint, the student’s instruction addresses his “emotional regulation” and “anxiety disorder” and helps with “executive functioning” and “initiation” and “time management”. These techniques are more in line with psychological services than methodologies used by certified special education teachers in adapt delivery of math and English and reading to special students who are struggling with various disorders. The IDEA is designed to ensure that children with disabilities have access to FAPE tailored to their unique needs. This aligns with the requirement for access to the general education curriculum. A.R. v. Conn. State. Board of Ed., 5 F.4th 155 (2d. Cir. 2021) The Second Amended Complaint fails to provide allegations of grades such that the school district would have been aware that the

⁴ (1)Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including – instruction in the classroom, in the home, in hospitals and institutions, and in other settings; (2) Special education includes each of the following, if services otherwise meets the requirements of paragraph(a)(1) of this section- (1) Speech-language pathology services or any other related service, if service is considered special education *rather than related service under State standards*; [emphasis supplied]..

student might have qualified as a Child with a Disability in need of special education to access the general education curriculum. The Board's motion to dismiss is GRANTED.

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).



Sylvia
Hearing Officer Signature

Sylvia Ho
Hearing Officer Name in Print