

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Weston Board of Education¹

Appearing on behalf of Student:

Attorney Andrew Keller
Attorney Robin Keller
Law Office of Robin P. Keller, LLC
48 Calf Pasture Beach Road
Norwalk, CT 06855

Appearing on behalf of the Board of Education:

Attorney Michelle Laubin
Berchem Moses PC
75 Broad Street
Milford, CT 06460

Appearing before:

Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

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.

A special education hearing in case 25-0092 was requested by Student’s Attorney via letter dated August 23, 2024.² Board of Education (BOE) received the Request for Hearing on August 23, 2024. The 30-day resolution period ended September 22, 2024 and the original 45-day deadline to mail the final decision and order was November 6, 2024.

A prehearing conference was noticed for September 3, 2024 and rescheduled to August 30, 2024 at the parties’ request.

Student’s Attorney invoked Student’s Stay Put rights under 20 U.S.C. § 1415(j) in the Request for Hearing and requested a ruling on the issue from the Hearing Officer by August 30, 2024. The parties disagreed as to what constitutes Student’s Stay Put placement. The Hearing Officer offered to enter a scheduling order for the parties to submit briefs and/or oral argument on the issue. On August 28, 2024, Student’s Attorney filed for and was granted a Temporary Restraining Order and preliminary injunction in federal district court to address the disagreement over Student’s Stay Put placement, thereby removing the issue from this administrative hearing.

At the August 30, 2024 telephonic prehearing conference, Attorney Robin Keller and Attorney Andrew Keller appeared on behalf of Student and Attorney Laubin appeared on behalf of BOE. The following issues for hearing were identified at the prehearing conference:

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 2025 unless otherwise indicated.

1. For the 2024-25 school year, did the Board of Education fail to provide Student an Individualized Education Program, transition program, and/or placement that is reasonably calculated to meet Student's social-emotional, behavior, communication and/or transition needs when considering all the suspected areas of disabilities, in violation of 20 U.S.C. § 1414 and Conn. Regs. §§ 10-76d-11, 10-76d-14, and 10-76d-16?
2. Did the Board of Education fail to review and revise Student's May 2024 Individualized Education Program by not including detailed transition goals and objectives or social emotional goals considering the impact of a change in placement from his Home-Based Placement to any other placement, in violation of 20 U.S.C. § 1414(d)(4), 34 C.F.R. § 300.324(b), and Conn. Regs. §§ 10-76d-10, 10-76d-11?
3. Did the Board of Education fail to identify all of Student's disabilities under 34 C.F.R. § 300.8 that require special education and related services in violation of 20 U.S.C. § 1414(b-c), 34 C.F.R. §§ 300.304 and 300-305, and Conn. Regs. §§ 10-76d-6, 10-76d-7 and 10-76d-9?
4. Did the Board of Education, in proposing Student be placed at Hubbard School for the 2024-25 school year, fail to identify the social emotional and behavioral impact of Student's anxiety, OCD and trauma that would lead to regression in behavior and access to learning with a change in placement in violation of 34 C.F.R. § 300.8(c)(1)?
5. If the answer to Issues One, Two, Three, and/or Four above is in the affirmative, what shall be the remedy?
6. If the answer to Issues One, Two, Three, and/or Four above is in the affirmative, is Student's current Home-Based Program an appropriate placement for Student?
7. If the answer to Issue Six above is in the affirmative, should Student's current Home-Based Program be ordered as Student's 2024-25 placement with the level of related services recommended on the May 21, 2024 Individualized Education Program?
8. Should Student's 2024-25 Individualized Education Program specifically state that restraint and seclusion cannot be used with Student due to psychological reasons?

No party requested further clarification of the issues by the September 6, 2024 deadline. Hearings were scheduled for October 8, 10, 22, 25, and 31, 2024 at BOE's offices.

Hearing was held on October 8, 2024, at which BOE's Director of Pupil & Personnel Services testified under direct examination and cross-examination.

Following an evidentiary hearing, on October 9, 2024, the federal court issued its ruling stating that "[a] therapeutic day program such as Aspire was the last agreed upon educational placement, and no subsequent agreement has been implied by law" and "that [Student's] then-current educational placement for purposes of § 1415(j) is Aspire, or a comparable therapeutic day program, such as Hubbard."

Hearing was held on October 10, 2024 at which Student's Attorney requested that the parties be given time to discuss pendency placement in light of the court's order and potential settlement, followed by adjournment of the hearing to allow the parties to consider any proposed agreement. The parties were given one hour for discussions outside the presence of the Hearing Officer, after which the hearing was adjourned to allow the parties to continue settlement discussions.

On October 17, 2024, Student's Attorney filed a motion to postpone the remaining scheduled hearing dates and to extend the deadline to mail the final decision and order to allow

sufficient time for the parties to further move toward implementation of the pendency placement and possible settlement. Student's Attorney alternatively suggests that the Hearing Officer grant a withdrawal without prejudice to allow the parties to pursue the pendency placement. After fully considering the parties' positions, the motion was granted in part on October 20, 2024. The October 22 and 25, 2024 hearings were postponed and the deadline to mail the final decision and order extended 30 days to December 6, 2024. The request to withdraw without prejudice was denied.

On October 25, 2024 Student's Attorney requested postponement of the October 31, 2024 hearing to allow the parties to continue working on the court-ordered Stay Put placement and settlement of the hearing issues. After fully considering the parties' positions, the request was granted and the October 31 hearing postponed to December 4, 2024.

On November 11, 2024, Student's Attorney indicated an intent to file a motion to compel immediate pendency services with either the federal court or the Hearing Officer. The request to file a motion to compel in this administrative hearing was denied.

On November 25, 2024, BOE's Attorney requested that the scheduled December 4 hearing proceed via videoconference to accommodate her post-surgery limitations or, in the alternative, that the hearing be postponed to a later date in December when her medical limitations resolved. Student's Parents strongly objected to a videoconference hearing.³ The request to postpone was also treated as a request to extend the deadline to mail the final decision and order to accommodate additional hearing dates. After fully considering the parties' positions, the requests to postpone the December 4 hearing and to extend the deadline to mail the final decision and order were granted. The deadline to mail the final decision and order extended 30 days to January 5. Hearings were scheduled for January 2 and 3.

On December 11, 2024, BOE's Attorney requested a 30-day extension of the deadline to mail the final decision and order to accommodate scheduling additional hearing dates. After fully considering the parties' positions and the circumstances of this case, the request was granted. The deadline to mail the final decision and order was extended to March 25 to accommodate mutually available hearing dates, a short briefing period, and time for the Hearing Officer to render the final decision. Additional hearings were scheduled for January 10, 17, 21, 28; February 7, 11. The parties were put on notice that additional extensions and postponements will not be granted absent extraordinary circumstances.

On December 27, 2024, Student's Attorney filed a motion in federal court to reopen the Stay-Put case on the basis of newly discovered evidence - that being that there was no comparable therapeutic day program available and that at a December 17, 2024 Planning and Placement Team (PPT) meeting, BOE proposed residential placement for Student.

Hearing was held on January 2 at which BOE's Director of Pupil & Personnel Services testified on continued cross-examination and redirect. At the January 2 hearing, BOE's Attorney indicated that if Student's Attorney did not agree to amend the Request for Hearing to include issues relative to the December 2024 PPT meeting, BOE will file a Request for Hearing and move to consolidate the two cases. The parties were given until January 10 to either amend, or file an additional, Request for Hearing.

Hearing was held on January 3 at which BOE's Special Education Teacher testified on direct and cross-examination. Additional hearings were scheduled for February 26 and 28.

³ During the prehearing conference, the parties were informed that hearings can be in person or via videoconference and that if any party requests in person it will be honored.

On January 8, Student's Attorney filed a Motion to Preclude All Further Evidence and Testimony to Issues One Through Four and Motion to hold Issues One Through Four in the Affirmative (Motion to Preclude). The Motion to Preclude requests that "further evidence and testimony on Issues One through Four of this matter be heretofore excluded and precluded" and that the Hearing Officer find Issues One through Four in favor of Student and proceed to the remedy phase. Although state regulations permit BOE's Attorney seven days to file a written objection to the motion, BOE's Attorney objected orally on the record at the January 10 hearing. After fully considering the parties' positions, the Motion to Preclude was denied.

Student's Attorney did not agree to amend the Request for Hearing. On January 9, BOE's Attorney filed a Request for Hearing, which was assigned Case 25-0349, to include issues relative to the December 2024 PPT meeting and a Motion to Consolidate that case with the pending case 25-0092. Student's Attorney reserved the right to file an objection to the Motion to Consolidate and was given until January 16 to do so.

Hearing was held on January 10 at which BOE's Special Education Teacher testified on continued cross-examination and redirect, and Private Day School Director testified on direct and cross-examination.⁴

On January 16 Student's Attorney filed a response to the Motion to Consolidate indicating that they do not object to consolidation provided it does not result in delay of hearings or extension of the deadline to mail the final decision and order. After considering the parties' positions, the Motion to Consolidate was granted.

Hearing was held on January 17 at which both parties had an opportunity to state their positions before the following three issues were identified for hearing in Case 25-0349 and consolidated with the eight issues identified in Case 25-0092:

9. Shall the Board of Education be permitted to pursue and provide a residential placement for Student, inclusive of providing application packets to proposed residential placement settings in the absence of Student's Parents' consent?
10. If the answer to Issue Nine above is in the affirmative, should Student's Individualized Education Program placement be changed to a residential setting?
11. Pending identification of an appropriate placement for Student, is it appropriate for the Board of Education to provide interim services to Student in a non-school environment?

At the January 17 hearing, Student's Attorney requested that an additional hearing day be scheduled to allow the parties to argue the Stay-Put issue in this administrative hearing since the assigned federal court judge was going to be away for one month and they want a ruling on pendency placement. Student's Attorney indicated that she would withdraw the federal court motion if the matter is heard in this administrative hearing. BOE's Attorney objected to the request on the basis that Student's Attorney chose the federal court forum, the parties' briefs were due to the court that day by midnight, and moving the issue to this forum will delay the hearing. After fully considering the parties' positions, the request to move the Stay-Put to this forum was denied.

⁴ As the Motion to Consolidate was pending until Student's Attorney filed an objection on January 16, the parties agreed to permit testimony from Private Day School Director related to issues in both cases to avoid recalling her again later and agreed that the Hearing Officer will disregard any testimony relative to case 25-0349 if the Motion to Consolidate is denied.

At the January 17 hearing, BOE's Physical Therapist testified on direct and cross-examination and BOE's Speech and Language Pathologist testified on direct examination.

Hearing was scheduled for January 21. Prior to proceeding, the parties requested time to engage in settlement discussions. After one hour of discussion, the hearing was opened and the parties indicated that they reached an agreement in principle and requested that the hearing recess for the day to allow them to finalize and execute an agreement. They stated that it was their intention to have a signed settlement agreement by the end of the day. The request was granted and the hearing recessed for the day.

On January 21, Student's Attorney indicated that the parties executed a settlement agreement and requested to withdraw Case 25-0092 with prejudice. On January 22, BOE's Attorney indicated that the parties executed a settlement agreement and withdrew the Request for Hearing in Case 25-0349.

All disclosed exhibits were marked for identification. The following exhibits were admitted as full exhibits absent objection: Board 1 through 161; Student 1 through 10, 12, 15 through 17, 19 through 24, 27 through 37, 43, 57, 57A, 60, 61, 63, 63A, 64, 65, 65A, 69 through 74. The following exhibits were withdrawn: Student 11, 13, 14, 18, 25, 26.

Objections to the following exhibits were overruled and they were admitted as full exhibits: Student 39 through 42, 44 through 56, 66; Board 163.

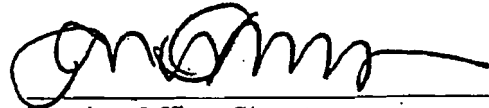
Objections to the following exhibits were outstanding at the time of the parties' withdrawal of the Requests for Hearing so the exhibits are marked only for identification: Student 38, 58, 59, 62, 62A, 67, 68; Board 162, 164-186.

FINAL DECISION AND ORDERS

Cases 25-0092 and 25-0349, consolidated for hearing, are dismissed with 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

JANIS C. JERMAN

Hearing Officer

Name in Print