

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Greenwich Board of Education

Appearing on behalf of the Parents: Attorney John Flanders
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Appearing on behalf of the Board: Attorney Abby Wadler
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Appearing before: Kelly Moyher, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Was the transition evaluation dated May 8, 2024 appropriate?
2. If not, are the Parents entitled to an IEE in the area of transition at Board expense?

PROCEDURAL HISTORY:

The Board filed the Due Process Complaint/Hearing Request on July 2, 2024. The Hearing Officer was appointed on July 8, 2024. A Prehearing Conference took place on July 11, 2024 and hearing dates were scheduled for August 2nd and 12th, 2024. The August 12th date was cancelled, and due to scheduling issues and a family death, the second hearing date took place on October 1st. The parties were granted a joint 64-day extension of the mailing date from August 16th, 2024 to accommodate the 2nd hearing date and time for a rendering of the decision.

The Board submitted Exhibits B-1-B-37, adding additional Exhibits B-30-40 prior to the 2nd hearing date. The Board called four witnesses. They were Ms. Coordinator, Coordinator of Special Education and Student Supports, Greenwich Public Schools (“GPS”); Mr. Transition, Transition Coordinator, GPS; Ms. Counselor, Greenwich High School Counselor, GPS; and Ms. Pathologist, Speech and Language Pathologist, GPS.

The Parents submitted exhibits P-1-P-15, adding Exhibits P-16-P-21 prior to the 2nd day of hearing. Testifying on behalf of the Student were the Student’s mother, Mrs. Parent, and the Student. Counsel for the Parents also cross examined each of the Board witnesses.

The Hearing Officer submitted the Request for Due Process Hearing filed by the Board on July 2, 2024 as exhibit HO-1.

This Final Decision and Order sets forth the Hearing Officer's summary, 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. *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).

SUMMARY:

A Transition Evaluation was conducted in March and April, 2024 after the Student was referred for the assessment by the Planning and Placement Team (“PPT”) to assist in future planning by identifying the Student’s strengths, interests, preferences and challenges. The report is dated May 8, 2024 and was shared and discussed at a PPT on June 14, 2024. The PPT recommendation was for the Student to attend Project Search with a work plan and language services. The Parents asked for an academic program with direct language instruction and requested an IEE in the area of transition. On June 21, 2024, the Board denied the request for an IEE in the area of transition.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Sec. 10-76h and related regulations, 20 United States Code Sec. 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178, inclusive, Sections 4-181a and 4-186.

FINDINGS OF FACT:

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

1. The Student was born on October 16, 2005, and currently has enough credits to graduate from Greenwich High School. She is receiving continuing education services through GPS.
2. The Student was born and raised in South Asia between India and Nepal and arrived in the United States during her 8th grade year. Her native language is Hindi and she attended five months of English classes prior to her arrival and received some English language instruction during her education in India. She is considered to be a sequential bilingual learner. Her IQ has been determined to be 74 as of her most recent cognitive assessment. (B-29, B-31).
3. The Student was diagnosed with a profound hearing loss at one year of age. She was provided with hearing aids until the age of six and received speech and language therapy and

was taught to lip read. At the age of seven she received a cochlear implant in her right ear. (B-31).

4. The Student began receiving special education services at GPS in the fall of 2019 under the designation of hearing impairment. During her freshman year of high school, she was enrolled in the comprehensive special education program to address academic and social difficulties and attended academic lab, reading, math and activities of daily living class. She attended ESL courses with other non-native English speakers. She repeated her freshman year and improvements were realized in her social and academic skills through special education services. (B-29, B-30).
5. In the fall of 2022, the Student was moved to house-based special education and was enrolled in academic lab, ESL English and social studies, on-level math and sign language. She received modified content and was held to flexible requirements for her classes. Ms. Coordinator noted the Student was moved out of the daily living skills class because she met all of the requirements. (B-31, Testimony, Coordinator).
6. It is noted that most of the witnesses, including the Student, testified that the Student does have access to an FAM system to assist with her hearing needs, but that she rarely uses it. She has chosen not to use the system to engage in school, speech and language therapy and her internships for at least the least three years. The Student does not know why she doesn't use her FAM system. (Testimony, Student, Ms. Coordinator, Mr. Transition, Ms. Counselor).
7. The Student was using her FAM system for two years but as she got older she didn't want to use it. The FAM system assists the Student with her hearing issues with a microphone hooked up to a teacher which then amplifies language for the Student. (Testimony, Pathologist).
8. The Student was referred by PPT for a transition evaluation, as well as a language assessment and functional listening assessment, to assist in future planning as the Student would be receiving continuing special education services through the age of 22 with GPS. The transition assessment was sought to identify the Student's strengths, interests, preferences and challenges in order to plan for the Student's continuing services. (B-9, Testimony, Mr. Transition).
9. Mr. Transition is a Certified School Counselor and is the Transition Coordinator for GPS. Mr. Transition holds a B.A. in Liberal Arts, an M.S. in Counseling and his School Counselor Certification as of 1998. Mr. Transition has been the Transition Coordinator with GPS since 1998. Since 1998, Mr. Transition has coordinated staff development training seminars for GPS special education, guidance and pupil personnel staff on transition-related topics including transition law, IEP requirements, post-secondary planning for students with special needs and adult service resources with students and families with special needs. Since 1998 he has also coordinated and facilitated informational seminars for families related to adult services, personal centered planning, decision making rights and post-secondary options for students with special needs. He has also attended training activities in the areas of transition assessment, adult services agencies, legal aspects of transition planning, post-secondary

planning for students with special needs, job placement and assistive technology. As of 2003, Mr. Transition is also trained as a PATH facilitator. A “PATH” meeting, or Planning Alternative Tomorrow’s with Hope meeting, is a meeting facilitated by a trained facilitator whereby the Student and supporters identify future goals and concerns to come up with an action plan for the next year to move towards long-term goals. (B-9, Testimony, Mr. Transition).

10. Mr. Transition met the Student and her family two years ago and he is very familiar with the Student’s strengths and weaknesses, and has discussed her case with Ms. Counselor, Ms. Pathologist and her case monitor. The Student has a great personality, relates well to people and has a knack for working with children. The Student has been working at a summer camp over the summer and has particularly good abilities in art. In working with the Student during the transition assessment process, Mr. Transition has considered the whole person while focusing on the Student’s strengths so she can be a functional and contributing member of society. (Testimony, Mr. Transition).
11. On November 30, 2023, several members of the Student’s team met for a PATH planning meeting, after an initial meeting in spring of 2024, to discuss alternative planning for the Student for after graduation. Participants included the Student, her mother, the academic lab monitor, Ms. Pathologist, a private speech and language pathologist, Ms. Counselor and Mr. Transition. The team discussed the Student’s accomplishments, challenges, a 5 year vision plan for the Student reaching age 23 and an Action Plan for the year 2023-2024. Among many accomplishments from the 2022-2023 school year, several were noted including making more friends and becoming more social, more confidence when speaking English, improvement in self-advocacy and speaking more and asking more questions. Noted among the Students challenges were needing to work more on her speech and language, nerves about accessing the community, not knowing what to study in college and language barriers surrounding the driver’s test as she was not able to pass. For the 5-year vision for when the Student reaches the age of 23, the following were listed; out of college (graduated), employed, live with mom, driver’s license, have a hobby she enjoys doing, have a nice group of friends and more independence. In the Action Plan for 2023-2024, the following tasks were listed among others; prepare for employment, become a mentor, get a driver’s license, practice interviewing skills, senior internship participation, participation in senior year activities and post high school planning meeting. (B-19).
12. On February 9, 2024 a PPT was held to discuss the Student’s options for after graduation. Mrs. Parent shared concerns that the Student was not ready to graduate and needed support to be more independent. The team recommended transition assessments and Mrs. Parent agreed. Mr. Transition discussed transition program options including Community Connections and Project Search. It was noted that the Student was not using her FM hearing device. Consent was given in the meeting by Mrs. Parents for a speech and language evaluation. (B-15, pg. 2).
13. The Student’s post-graduation plans were in discussion throughout her senior year and the Student’s counselor was involved with the Student’s PPT meetings. The Student had come by Ms. Counselor’s office several times to talk about her schedule and senior activities. Ms.

Counselor and the Student discussed the Student working on making eye contact and her not using her FAM hearing device. The Student mostly understood their conversations and the Student would indicate when she didn't understand something. In early February of 2024, there was an informal meeting between Ms. Counselor and the Student, her mother and Mr. Transition to discuss the Student's post-secondary options. It was an emotional meeting and the Student cried. The Student found it difficult to talk about the future and Ms. Counselor shared that all of the Student's options were discussed including a four-year college, a two-year college and entering the workforce. The Student did not communicate what she wanted to do but, Ms. Parent shared concerns about the Student's readiness for college and the Student being out and about town on her own and not being able to count money. The concerns were also discussed at the February 9th PPT. It is important to note that the Student's mother, during her testimony talked about the Student's struggle and disappointment with her friends going away to college this summer and fall. A desire for the Student to receive some type of post secondary education, mainly college, has been expressed several times over the past year by the Student both formally and informally. (Testimony, Ms. Counselor and Mrs. Parent).

14. During March and April of 2024, the Transition Planning Inventory 3 ("TPI") was administered with rating forms completed by the Student, the Parent and the Student's Special Education Monitor, Ms. Monitor. Mr. Transition went beyond the rating forms of the assessment and had a one-to-one 20- minute meeting with the Student and sought teacher feedback regarding the Student in her classrooms. While meeting with the Student, Mr. Transition was within 5 feet of the Student due to her hearing impairment and Mr. Transition noted she was engaged, happy and cooperative during their meeting. He spoke with the Student's teacher for the deaf and hearing impaired on several occasions about the Student, and also spoke with the Student's speech and language pathologist and her special education teacher. He also reviewed the Student's most recent Speech and Language Evaluation. He did not utilize standardized testing during the transition assessment because he did not believe it would allow the Student to put her best foot forward. The assessment was not chosen on a racial or cultural basis, and Mr. Transition wanted to get information and feedback from all of the stakeholders. Mr. Transition uses the TPI 15-20 times per year and it is often used throughout the state and country. The TPI is very informed and looks at what the Student needs to work on and gives goals and objectives for transition and, the assessment also works well in combination with the PATH meetings from 2022-2023 and 2023-2024. Mr. Transition was comfortable that the Student understood their conversation and understood the TPI. (B-9, Testimony, Mr. Transition).
15. The results of the TPI were discussed at a PPT on June 14, 2024. The following areas were noted as areas of 'Need' on the TPI-3; Career Choice/Planning, Employment Knowledge/Skill, Further Education/Training, and Money Management. The following areas were noted as areas of 'Strength': Independent Living, Leisure Activities, Health and Interpersonal Relationships. The following areas were noted as areas of "Minimal Need", Functional Communication, Self Determination, and Community Involvement. Of the recommendations in the TPI, #5 is of note, stating; [The Student] "should familiarize herself with her most effective learning style. This will provide her with the ability to develop self-advocacy skills to seek and request support services in any future educational or employment

situation. The Team should continue to assess and evaluate effective communication strategies, assistive technology, etc. to assist [the Student] in future education, training, employment and community based experiences”. (B-9, Pg. 1).

16. Recommendation #2 of the TPI administered to the Student included the Student seeking “employment, internship and volunteer opportunities in her identified areas of interest as a means to gain valuable information to better define career interests”. Recommendation #3 states the Student should pursue programing through Project Search. The Project Search Training Program is a nine-month internship program for young adults with developmental disabilities. It is targeted at individuals whose goal is competitive employment. In the Student’s area, Project Search partners with Greenwich Hospital and the Darien YMCA. Project Search helps build independence and skills and would help the Student to move about the world independently. The program trains students in a specific job area, but also incorporates functional academics such as budgeting and skills for self-advocacy. (B-9, Pgs. 4-5, Testimony, Ms. Counselor).
17. In addition to the recommendation for Project Search, a Work Plan was developed for the Student to be successful at Project Search. The Work Plan was created in June 2024 by the Student’s teacher for the deaf and hearing impaired, Ms. Counselor, Mr. Transition and Ms. Pathologist. The Work Plan for the Student for Project Search included presenting information orally to the Student, facing the Student when speaking, reduction of extraneous noises and modeling among other recommendations. (B-1C, Pg. 1).
18. At the June 14, 2024 PPT the Parent requested an IEE in the area of transition.
19. The request was denied and on July 2, 2024 the Due Process Hearing was requested by the Board and was duly noticed to all parties. (HO-1).

CONCLUSIONS OF LAW AND DISCUSSION:

1. Under the IDEA and Connecticut state law, a school district must reevaluate a student who receives special education services at least once every three years. This triennial reevaluation's purpose is to evaluate a student's relevant functional, developmental, and academic skills to determine whether the student continues to be eligible for special education services and to provide any necessary updates to the student's IEP. 20 U.S.C. Sec. 1414(a)(2)(B)(ii); 34 C.F.R. Sec. 300.305(a)(2)(1)(B)(iv), R.C.S.A. Sec. 10-76d-9.
2. The purpose of reevaluation under the IDEA is to determine continuing eligibility and to provide necessary updates and modifications for the Student's IEP. A particular eligibility classification is immaterial to providing a free and appropriate public education so long as the IEP is tailored to the unique needs of the student. 20 U.S.C. Sec. 1414(a)(2)(B)(ii); 34 C.F.R. Sec. 300.305(a)(2)(1)(B)(iv), R.C.S.A. Sec. 10-76d-9; *Fort Osage R-1 School District v. Sims*, 56 IDELR 282 (8th Cir. 2011); see also *Torda v. Fairfax County School Board*, 61 IDELR 4 (4th Cir. 2013, unpublished), cert. denied, (U.S. 03/24/14) (No. 13-6908).
3. IDEA regulations provide standards for the manner in which evaluations are to be conducted. These standards are set forth in 34 C.F.R. Sec. 300.300 to 34 C.F.R. §300.311. Connecticut state regulations implement IDEA regulations in R.C.S.A. Sec. 10-76d-9(a).
4. The evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent. The tools used must be nondiscriminatory on a racial or cultural basis and be administered in a language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally and be geared to providing relevant information to assist in determining the educational needs of the child. 20 U.S.C. Sec. 1414(a)(2)(B)(ii), (3)(A)(i-ii); 34 C.F.R. Sec. 300.304; R.C.S.A. Sec. 10-76d-9(a)
5. No single measure or assessment may be used as the sole criterion for determining eligibility for special education services and for determining the appropriate program. Evaluators must be trained and knowledgeable and appropriately certified and/or licensed to administer assessments and measures and administer the assessments in accordance with the test producer's instructions. 34 C.F.R. Sec. 300.304(b)(1) and (2) and (c)(iv); R.C.S.A. Sec. 10-76d-9(a).
6. The instruments used for assessments must be technically sound and may be used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. See 34 C.F.R. §300.304(b)(3). "Technically sound instruments generally refers to assessments that have been shown through research to be valid and reliable." 34 C.F.R. Sec. 300.304 *Comments* (2006).
7. The chosen assessments must be tailored to assess specific areas of educational need of the child and not merely those that are designed to provide a single general intelligence quotient.

See 34 C.F.R. Sec. 300.304(b)(2).

8. Assessments must be selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). 34 C.F.R. Sec. 300.304(c)(3).
9. The child should be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 24 C.F.R. Sec. 300.304(4).
10. If a student receives an evaluation with which the parent disagrees, a parent has a right to an independent educational evaluation ("IEE") at public expense, which means at no cost to the parent. 34 C.F.R. Sec. 300.502, R.C.S.A Sec. 10-76d-9(c)(1) and (2). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure either an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria. If the impartial hearing officer finds that a school district's evaluation is appropriate, a parent may not obtain an IEE at public expense. 34 C.F.R. Sec. 300.502; R.C.S.A. Sec. 10-76d-9(a).
11. The evidence was undisputed in this case that the Board's Transition Assessment was appropriate and in compliance with applicable procedural requirements.
12. The TPI-3 is a non-standardized test for which the Parents, Student and GPS staff with substantial knowledge about the Student were able to give significant input. The Transition Assessment also drew from data from the PATH meetings, prior PPT's and an informal meeting with the Student and her mother.
13. The Student speaks English at school and at home with her family. After consulting with the Student's team as to which version of the TPI-3 to use, and consulting with the Student's counselor, special education teacher, and speech pathologist, Mr. Transition sat close to the Student, facing her and spoke slowly during his meeting with the Student to accommodate her hearing disability. There was no evidence presented that the assessment was in any way racially or culturally discriminatory.
14. The assessment administered to the Student for the area of transition was designed to address areas that the Parents, Student and the rest of the PPT needed to assess in order to draft an IEP for the Student's program which was to begin in July of 2024. The transition assessment explored both educational and vocational possibilities for the Student. The PPT determined from the information that was obtained, along with other information regarding the Student, that Project Search was an appropriate program for the Student for the *upcoming 2024-2025 school year*. There is nothing to suggest that any form of post-secondary education, mainly

college, whether a two-year or four-year program, has been ruled out for the Student, which seemed to be a concern of the Student. Additional speech and language and academics have also not been ruled out in any way based on the recommendations of the TPI, which seemed to be a concern of the Student's mother. Such programming requests and desires should be addressed by the Parties at the next PPT.

15. In compliance with the IDEA, the TPI_3 was administered by Mr. Transition, a certified professional and evaluator who is trained, knowledgeable and appropriately certified and highly experienced in the area of transition. He has conducted hundreds of transition assessments over his 27 years with GPS. The purpose of the transition assessment was not to determine a disability or intelligence quotient and Mr. Transition employed the assessment tool and other strategies to gather relevant functional, developmental and academic information about the Student, including information provided by the Student and her mother, to update Student's IEP. R.S.C.A. Sec 10-76-9(a) 34 C.F.R. Sec. 300.304(b)(4).
16. The testing instruments is widely recognized as technically sound, 34 C.F.R. Sec. 300.304 (b)(3) and 34 C.F.R. Sec. 300.304(c)(3). Mr. Transition adhered to the Guidance provided for the TPI-3 and consulted with the Student's team as to which form of the TPI-3 was most appropriate for the Student. He did not receive any information from the Parents that they had any issues completing the Parent portion of the TPI-3 or in assisting the Student with her portion and he reviewed the results with the Student and her mother. The transition assessment was designed to explore areas of strength and weakness for the Student and to recommend future vocational *and/or educational options*. The assessment results reflected home, school and Student input on the Student's skills and deficits in terms of future planning. The assessment considered all of the Student's options without being limited to those for students with hearing or cognitive impairment. The assessment provided sufficiently comprehensive information to the PPT so an IEP could be written for the Student which was presented at the June 14, 2024 PPT.
17. The Board's Transition Assessment was in compliance with 34 C.F.R. Sec. 300.301- 305 and R.C.S.A. Sec. 10-76d-9(a).

FINAL DECISION AND ORDER:

The Transition Assessment of the Student was appropriately designed and administered. The Student is not entitled to an IEE in the area of transition at public expense.

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



Hearing Officer Name in Print