STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Waterbury Board of Education

Appearing on Behalf of the Parents:	Pro Se
Appearing on Behalf of the Board:	Marsha B. Moses, Esq. Berchem, Moses & Devlin, P.C. 75 Broad Street Milford, Ct 06460
Appearing Before:	Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the program offered by the Board for the 2011-2012 school year appropriate and does it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE)? If not;
2. Does the program at Children's Home in Cromwell, Connecticut provide the Student with FAPE in the LRE?

SUMMARY:

The Student has been identified with Emotional Disturbance and is entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At an IEP meeting, the Parent rejected the District's recommended placement. The Parent requested placement at Children's Home in Cromwell. The Board refused the Parent's request and the Parent filed for due process.

PROCEDURAL HISTORY:

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

On or about November 9, 2011, the Board received notice of the Parent's request for due process. An impartial hearing officer was appointed on November 10, 2011. A prehearing conference was held on November 22, 2011. Hearing dates of January 17 and 26, 2012 were chosen by the parties. The Board submitted 25 exhibits and the Parent did not submit any exhibits. There were 4 Hearing Officer exhibits.

By agreement of the parties, at the last day of hearing, the mailing of the Final Decision

and Order was extended thirty days on the record. The mailing date of the Final Decision and Order is February 23, 2012.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The 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 that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so 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.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACTS:

1. The Student is diagnosed with Emotional Disturbance. The Student has been found eligible to receive special education and related services under the IDEA. (Testimony of Mother, Board's Exhibit[1] # 10a)

2. The Student was committed to the Connecticut Department of Children and Families (DCF) under a family with service needs petition (FWSN) until August 3, 2013. (Hearing Officer's Exhibit # 3)

3. The Student was admitted to Children's Home in Cromwell on March 8, 2011. The Student was displaying social and undesirable behaviors. The Student was diagnosed with Autism Disorder. The Student's progress at the placement was favorable and a discharge plan was created to return him to a less restrictive environment and be reunited with his mother. (B-21)

4. DCF is responsible for the cost of the Student's residential placement and the Board bears the educational expenses. (Testimony of Director of Children's Home in Cromwell)

5. On or about October 27, 2011, the Board held a PPT. The PPT team decided that upon discharge from The Children's Home, the Student's school placement would be in a District School. (B-20)

6. On or about November 13, 2011 DCF filed a Motion to Revoke Commitment with the Connecticut Superior Court. The petition was denied (Rubinow, J.). DCF cannot request another revocation until May 3, 2012 and the Student must remain in residential placement at the Children's Home. (B-3)

CONCLUSIONS OF LAW:

1. The Student qualifies for, and is entitled to receive, a free and appropriate public education with special education and related services under the provisions of state and

[1] Hereafter Parent's Exhibits will be noted as "P" followed by the exhibit number and Board Exhibits will be noted with a "B" followed by the exhibit number.

federal laws. CGS § 10-76, et seq. and the Individuals with Disabilities Education Improvement Act ("IDEA") 20 U.S.C. § 1401, et seq.

2. IDEA opens the door of public education to children with disabilities. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, 192 (1982). Under IDEA, a local education agency ("LEA"), such as the Board, must provide to each qualifying student a FAPE in the least restrictive environment, including special education and related services. 20 U.S.C. § 1401(18).

3. A parent or a public agency may file a due process complaint on any of the matters described in 34 C.F.R. §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section. 34 C.F.R. §300.507.

4. The exercise of judicial power depends upon the existence of a "case or controversy" under the United States Constitution Article III, Section 2. *DeFunis v. Odegaard,* 416 U.S. 312, 316 (1974). The following factors are to be considered in determining whether plaintiffs can meet the Constitutional requirements of standing: 1. The plaintiff must have suffered an injury in fact -- an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; 2. There must be a causal connection between the injury and the conduct complained of -- the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some party not before the court; and 3. It must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992); *Society Hill Towers Owners' Ass'n v. Rendell,* 210 F.3d 168, 176 (3d Cir. 2000). The Parent alleges an invasion of a legally protected interest of the Student in that the PPT of October 27, 2011 had decided not to continue the Student's placement at the Children's Home (Finding of Fact # 5), and that the new placement would not provide the Student with FAPE. This would seem to create a "case or controversy" and give the Parent standing.

5. In addition to standing, plaintiff's "case or controversy" must be ripe for adjudication. *Artway v. Attorney General of the State of N.J.,* 81 F.3d 1235, 1246-47 (3d Cir. 1996). "The basic rationale of the 'ripeness' requirement is 'to prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" *Id.(quoting Abbott Labs v. Gardner,* 387 U.S. 136, 148 (1967)). In its leading case on 'ripeness', the Supreme Court held that determining whether a dispute is ripe for review requires a two-pronged analysis of (1) whether the issues presented to the district court are fit for review, and (2) what hardship the parties will suffer in the absence of review. *See Abbott Labs. v. Gardner,* 387 U.S. 136, 148-49 (1967), *overruled*

on other grounds, Califano v. Sanders, 430 U.S. 99 (1977). Analyzing the first prong of the 'ripeness' inquiry, the matter is not fit for review.

6. The Student has been committed to the DCF under a FWSN (Findings of Fact #2) and as a committed child it is DCF's responsibility to provide placement for the child. A child under a FWSN commitment is committed to the care and custody, but not the guardianship, of the Commissioner of DCF for a period not to exceed eighteen (18) months, for placement in foster care or any licensed facility other than the Connecticut Juvenile Training School (CJTS). FSWN cases are not voluntary in that the child is under a court order to cooperate with the Department. *Connecticut Department of Children and Families Policy Manual Courts: 46-3-31.* As the Student is a committed child it is the responsibility of DCF to pay for the cost of the placement. (Finding of Fact # 4) As the Student is a committed child, the Board cannot change the placement of the Student. Only DCF, with permission of the Court, can change the Student's placement. The Court has already denied DCF's request to revoke commitment. (Finding of Fact # 6). The Parent's request to maintain the Student's placement at Children's Home is not ripe for review because the Board cannot place the Student at the Board's school without a revocation of commitment by the Court. There is no "case or controversy" since the Board cannot enforce the placement as recommended by the PPT. The Student continues to be placed at Children's Home under a FWSN commitment.

FINAL DECISION AND ORDER:

THE MATTER IS DISMISSED.