

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

ADMINISTRATIVE IMPARTIAL
DUE PROCESS HEARING

CASE NO. LL 14-17

In Re: JOHN DOE, et al

v

CRANSTON SCHOOL DISTRICT

DECISION

Held: Nineteen year old Student has completed academic requirements for a regular education high school diploma and finished a year of transitory and vocational services and shall receive such diploma and no longer receive Special Education services from LEA

Dated: August 27, 2014

LEXICON

For the purposes of the decision in the within hearing and to ensure confidentiality of the student, the following Lexicon shall be used in this decision:

Student:	
Mother:	
Father:	
LEA:	Cranston School District
Asst. Director of Transition & Vocational Services for the West Bay Collaborative	Kerri Lynn Collins
Clinical Supervisor in PASS Program For J. Arthur Trudeau Center	Julie O'Connor
PASS Coordinator for J. Arthur Trudeau Center	Melissa Michelle Murphy
LEA's Administrator of Secondary Education	Sandra Matorian-Heard
LEA's Attorney Petitioner's Attorneys	Mary Ann Carroll, Esq. Alexander N. Spigelman, Esq. & Elisabeth Hubbard, Esq.
Rhode Island Regs	Rhode Island Board of Regents For Elementary and Secondary Education Regulations Governing The Education of Children with Disabilities
IDEA	Individuals with Disabilities Education Act
Hearing Officer:	Roderick A. J. Cavanagh

TRAVEL OF THE CASE

This Due Process hearing was commenced by the filing of a Request for an Impartial Due Process Hearing on May 20, 2014, (see Complaint) with the Rhode Island Department of Education. The parties then entered into the mandated Resolution process, which concluded without a resolution as of June 19, 2014. (See Hearing Officers Exhibit #1).

The appointment of this Hearing Officer was made on June 19, 2014, pursuant to R.I. Regs., Section 300.511. (See Hearing Officers Exhibit #1) Notice was sent to the Petitioners and the Respondent by letter dated June 23, 2014. (See Hearing Officers Exhibit #2). The pre-trial hearing was scheduled for June 30, 2014 at 2:00 p.m. (See Hearing Officers Exhibit #2). This pre-trial hearing was rescheduled for June 30, 2014 at 2:45 p.m. to accommodate one of the parties. (See Hearing Officers Exhibit #3). At that pre-trial hearing, (see Hearing Officers Exhibit #4) the Petitioners informed the Hearing Officer that they were meeting the following day with an attorney for representation. Accordingly, the pre-trial hearing was continued one week to July 7, 2014 with written notice to all parties. (See Hearing Officers Exhibit #5). At that pre-hearing conference (See Hearing Officers Exhibit #6 - list of attendees), a motion was made by the Respondent to continue the Hearing as its attorney was court excused from July 7, 2014 to and including July 25, 2014 for her vacation. (See Motion). New counsel not objecting to same, this Hearing Officer continued the Decision Due Date to August 28, 2014. (See Order of July 8, 2014). The Respondent also filed a Motion to Dismiss,

which was denied. (See Order of July 8, 2014) The case was then set down for hearing for July 30, 2014 and July 31, 2014. (See Order of July 8, 2014).

Counsel for the Petitioners entered his appearance on July 3, 2014. Associate counsel for Petitioners entered her appearance on July 24, 2014.

The counsel for the Petitioners filed a Motion to Amend the Complaint for Due Process on July 23, 2014 (See Motion to Amend) which was denied. (See Order of July 25, 2014).

Both parties exchanged lists of their proposed witnesses and copies of proposed documents to be presented well within the time structures.

The hearings took place on July 30th and 31st, 2014 and on August 14, 2014 (See Hearing Officers Exhibit #7). A court reporter from Allied Court Reporters transcribed a full transcript of all three hearings. (See Transcripts). All witnesses were sworn in prior to their respective testimony.

The Petitioners presented four witnesses and seven documents which were admitted as full exhibits (#2, 4, 5, 6, 7, 8 & 10) and three documents which remained as exhibits for identification only (#1, 3, & 9).

The Respondent presented two witnesses and three documents which were admitted as full exhibits.

The first witness was the Student who was born on November 2, 1994; and, as such, is a 19 year old adult with disabilities (See Complaint) who has been diagnosed as having Asperger, Mood Disorder and ADHD (see Respondent's Exhibit #1). The Student has completed his academic course studies for high school under the strictures of the LEA having been completed at the Bradley Day School. (See Respondent's Exhibit

#2-High School Transcript). Such high school transcript demonstrates that this Student completed the proficiency-based graduation requirements and the NECAP testing. (See Respondent's Exhibit #2).

The Student is an unemancipated adult who lives with his parents. The Student, while having completed his academic studies satisfactorily, had a transition IEP for the period of 10/7/2013 to 6/13/2014 (see Petitioner's Exhibit #2) at the West Bay Collaborative-RI Transition Academy at CCRI under the auspices of the LEA pursuant to the IDEA and the R.I. Regs. The Student, together with both of his parents and the Assistant Director of Transition and Vocational Services for the West Bay Collaborative (hereinafter called Asst. Director) attended such IEP session. (Petitioner's Exhibit #2, page 2 of 15). Such IEP listed the assessment tools and the "Post-School Goals" (see page 3 of 15 of Petitioners' Exhibit #2). The Student's "level of functional performance" as of the date of the IEP showed him performing at a mastery level on subtests of "occupational possibilities" and "Securing Employment" whereas the score for "Occupational Choices" and "Work Behavior" only reached 70%. The levels of "Independent Living" were successful in eight (8) of the nine (9) sub-competencies with the only area not successfully completed was "clothing". It was this Hearing Officer's observation of the Student throughout the first pre-hearing conference and the three (3) days of trial that the Student, though shy, was neat and clean about his appearance and appropriately dressed at all times.

The IEP noted that the Student needed improvement in various skills for future employment, managing his own money, being able to independently use public transportation and utilize kitchen appliances and perform household duties. (See

Petitioner's Exhibit #2, page 4 of 15). The IEP addressed post-secondary education needs and the need to following directions. (Petitioner's Exhibit #2, page 5 of 15). The IEP directed that all these needs would be addressed at the R. I. Transition Academy at CCRI during the period of October 7, 2013 through June 13, 2014. There was no notation of extending such life and vocational skill training beyond that date. See Petitioner's Exhibit #2, page 6 and 7 of 15). The Petitioners did not present any testimony or documentary evidence that this IEP was deficient in any respect.

The Petitioner's second witness was the Student's father, a very concerned individual who demonstrated a great deal of attention toward the Student. While the Student's Mother was present throughout the hearings, the Father testified for both of them. The Father testified that the Student had encountered a bullying incident early in high school (See 7/30/14 Transcript, pages 97 & 98) and, as a result, the Student had reacted in a threatening, self-destructive manner, which lead to hospitalization at Butler Hospital for ten (10) days (See 7/30/14 Transcript, page 100). The Student then had home tutoring for the remainder of the school year. (See 7/30/14 Transcript, pages 100 and 103). The Student then spent his junior and senior years of high school at the Bradley Day School at Bradley Hospital (a psychiatric hospital for children and youth). Subsequent to the Bradley Day School, the Student, having finished his academic studies, went to the Transitional Academy. (See 7/30/14 Transcript, pages 105-107)

The Father testified that, in his opinion, the goals set forth in the IEP (Petitioners; Exhibit #2) were not met. It was his opinion that the Student was unable to attend to personal grooming and hygiene, unable to self-administer medications and continued to struggle in the area of cooking and use of kitchen appliances. (See 7/30/14 Transcript,

pages 120, 122-124). The Father set up a debit card for the Student to enable him to handle finances due to the Student's difficulties in making change and difficulty in purchasing items at stores (See 7/30/14 Transcript, pages 128-130). The Father testified that the Student was taking adaptive driving lessons through the Office of Rehabilitative Services (hereafter called ORS) for the past eighteen (18) months as the Student does not take public transportation. It should be noted that the Student was taught through the Transition Academy and the PASS Program, utilizing the RIPTA training program on how to utilize the bus system. The Father and the Student both described the difficulty in learning this system.

The Father testified that the Student has access for further help through the Trudeau Center, ORS and the Autism Project (7/30/14 Transcript, pages 139-142) and has applied for acceptance by the Rhode Island Department of Behavioral Health, Development Disabilities and Hospitals (hereinafter called BHDDH).

The Father, under cross-examination, agreed that the Student will most likely never be able to live totally independently. (7/30/14 Transcript, pages 144-145).

The third witness proffered by the Petitioners was the Clinical Supervisor of the PASS Program (Personal Assistance Services and Support) at the J. Arthur Trudeau Memorial Center, who is an independent clinical social worker licensed by the Rhode Island Department of Health. (7/30/14 Transcript, pages 165-166). The PASS Program services individuals from birth through age 21. The program works to make individuals become as independent as possible focusing on "...life skills, safety and self-preservation decision making, and, also, community-based skills."... (7/30/14 Transcript, pages 167-168). This witness testified that such program did not deal with academic services. The

program provides a maximum of 20 hours of service per week for individuals having a DSM diagnosis which this Student has. (7/30/14 Transcripts, page 169 and see Petitioner's Exhibit #7). The criteria for continuance in this program is "...needs to making progress on the goal. They need to maintain that diagnosis. ...or if they meet all the goals with full independence, they would be discharged, as well." (7/30/14 Transcript, pages 169-170). It was her testimony that her duties include providing clinical oversight and meeting bi-monthly with the Student's family, developing a treatment plan as to life skills, safety and community based activities for the Student (7/30/14 Transcript, pages 170 and 172). The Student has been in this program, receiving the maximum 20 hours per week services. (7/30/14 Transcript, page 175). This witness was accepted as an expert witness in the area of social work practices and PASS services. Interestingly, this witness testified that if the LEA ceased providing services, the Student would still have the PASS services. If the Student was accepted for adult services by DDD services, then the PASS services would terminate. (7/30/14 Transcript, page 183). This witness does not work directly with the Student. She only provides the oversight to his family. (7/30/14 Transcript, page 187).

It was this witness' testimony that she believes the Transition Academy has benefitted the Student by exploring vocational opportunities and practicing financial skills. However, she opined that the Student could not live independently presently.

On cross examination she testified that the PASS program provides service four (4) hours per day for five (5) days per week in the areas of time management skills, hygiene and physical health, and preparing simple meals. (7/31/14 Transcript, pages 4 and 5). This witness again testified that she does not work directly with the Student

(7/31/14 Transcript, page 6). The PASS program for the Student was described as teaching personal hygiene and weekly meal preparation. The PASS program had weekly sessions with the Student as to handling financial matters. The witness testified that this program has been going on for at least two years. This PASS program will continue for the Student whether or not the Student graduates from high school until he turns the age of 21 or until BHDDH provides adult services. (7/31/14 Transcript, pages 13 & 15). While the witness voiced concern that the Student might regress without PASS services, she admitted that there wasn't any data to support such concern. (7/31/14 Transcript, page 18). Again the witness had no data to show regression on the part of the Student despite the fact that no PASS services were provided during the months of June and July, 2014. She admitted that her opinion of possible regression was not based upon data dealing with the Student, but rather experience with other individuals. Accordingly, I reject this witness' opinion as to possible regression of this Student as it is wholly unsubstantiated by any data and therefore is merely speculative. Finally, this witness did testify that the Student has made progress and is capable of making further progress. (7/31/14 Transcript, page 25).

The Petitioners' fourth and final witness was the PASS coordinator for the J. Arthur Trudeau Memorial Center, as the case manager under the supervision of the prior witness. Together with the prior witness, this witness wrote up the PASS plan for the Student. (7/31/14 Transcript, page 27). This witness has worked directly with the Student, but not on a regular basis as there is a staff member that works with the Student "...as his one-on-one staff, ...". (7/31/14 Transcript, page 29). Her contact with the Student was sporadic, i.e. contact "...its not regular" and in a month "...I might see him

three times”... And then a month might go by, and I don’t see him one-on-one at all...” (7/31/14 Transcript, page 30).

This witness referred to Petitioners’ Exhibit #7 at pages 3-6 as to three goals described in same. She stated that these goals are practiced weekly. (7/31/14 Transcript, page 36). She further stated that there was progress in Domain A as to hygiene, making “...healthy snack choices...” and “...making purchases...”. As to Domain C, the Student is making progress in some areas and some regression. (7/31/14 Transcript, pages 41, 44, 45 & 48). However, this witness is not as familiar with PASS standards as her supervisor. (7/31/14 Transcript, page 49). The questions posed to this witness have a fundamental weakness as the witness admitted to not fully knowing the standards that the PASS program entails to measure progress or regression. Under cross examination it was evident that this witness has spent a very small amount of time observing the Student; i.e., one hour in June, 2014 at a car wash and before that in March, 2014 at a bowling activity. Clearly, this witness has spent a paucity of time observing the Student, much less working with the Student. (7/31/14 Transcript, page 53). This witness noted that the PASS plan was not updated as the Parents and the Student did not want any changes to the current PASS plan. (7/31/14 Transcript, page 61).

After this testimony, the Petitioners rested and the Respondent presented two witnesses.

The first witness for the Respondent was the Assistant Director of Transition & Vocational Services for the West Bay Collaborative (hereinafter called “Asst. Director”). This witness works as the coordinator of the Rhode Island Transition Academy at CCRI

(7/31/14 Transcript, page 73). She was qualified as an expert witness in the field of transition and vocation services based upon work experience.

This Asst. Director testified that she worked with the Student from the last week in August, 2013 through June of 2014 and was part of the IEP team for transition. (7/31/14 Transcript, pages 80 & 81; see Petitioners' Exhibit 2 at page 2). The Asst. Director testified the transitional IEP (See Petitioners' Exhibit #2) was developed "...based upon functional skills and functional needs." (7/31/14 Transcript, page 81). The areas of focus were community, post-secondary education, daily living and employment. The Student participated in this IEP (7/31/14 Transcript, pages 82 & 83). The Student participated in preparation for this IEP through a process called MAPS (making action plans) and he then presented a power point presentation for the IEP team in the development of this IEP. (7/31/14 Transcript, pages 82 – 84). It should be noted that nowhere during the presentation of this matter was there any objection to nor testimony presented against the appropriateness of this IEP (Petitioners' Exhibit #2) nor the plans for implementation of this IEP. Further, all the testimony focused upon the quality of the implementation of this IEP and not the lack of such implementation.

The Asst. Director testified how the Transition Academy had implemented the IEP in the area of career choices and also in the area of financial ability and how that was accomplished. (7/31/14 Transcript, pages 84-88). As to the use of public transportation, she testified that the Transition Academy has a RIPTA (Rhode Island Public Transit Authority) travel training program that was run by one of the Academy's facilitators. (7/31/14 Transcript, pages 88 & 89). Public transportation training was also done for the Student through ORS. (7/31/14 Transcript, page 89). In addition to the above training in

daily living, skills were provided through the Academy in the areas of "...cooking, cleaning, laundry, familiarizing themselves with the grocery store, how to come up with a menu." (7/31/14 Transcript, page 90). The Asst. Director also testified that the Student participated in a "...17 hour curriculum about providing healthy lifestyle, and remaining healthy, and a balance life as an adult with a disability." This program is in conjunction with the Department of Health. (7/31/14 Transcript, pages 90 & 91).

As the Student was on the campus of CCRI for the period he was at the Transition Academy (9 months) and because of the Student's expressed interest in postsecondary education at CCRI, the Asst. Director testified that the Student agreed in May to take the Accuplacer Test for CCRI. The Student did take this test, but did not meet with the Disability Coordinator at CCRI (7/31/14 Transcript, page 97). She further testified that preparation for this test was a struggle for the Student. (7/31/14 Transcript, page 92). She testified that the Student went on tours of several training programs at MTTI, New England Tech and New Horizons (which is a computer training program). (7/31/14 Transcript, page 93).

As to the issue of financial literacy, the Asst. Director testified this was done through the use of a prepaid debit card. (7/31/14 Transcript, pages 95 & 96).

Per her testimony, the Student met all three of his goals. The Asst. Director testified that the Student was "...given him the skills, almost that toolbox, per se, of employment skills that he would need.... So I believe we've given him the experiences to now start to pursue employment." (7/31/14 Transcript, page 99).

The Asst. Director opined that the Student would never be totally independent because he would rely upon support staff as to living conditions in apartment. (7/31/14

Transcript, page 100 – 104). This witness also testified that there are adult based programs available through BHDDH and group home situations. (7/31/14 Transcript, pages 103-104). On cross-examination, the Asst. Director testified that the Academy has a special education teacher providing financial literacy classes with whom the Student worked one on one with said teacher and via FaceTime with such teacher going over his IEP goals. (7/31/14 Transcript, pages 113-114).

The final witness presented by the Respondent LEA was the LEA's Administrator of Secondary Education (hereinafter called "Administrator"), which means the administrator for middle and high schools for this LEA (7th thru 12th grade). (8/14/14 Transcript, page 6). This witness testified to her extensive education and years of work experience. She also testified that she is licensed by the State of Rhode Island, Department of Education, as a Special Education Administrator and as a middle school and high school principal. As such, I find her an expert witness in the areas of special education and transition services.

The Administrator testified that the Student, following some confrontational issue with another student and physical altercation with two of the Student's peers during his sophomore year of high school, was hospitalized at Butler Hospital. (8/14/14 Transcript, page 11). Thereafter the Student, through an IEP determination, went to Bradley Day School for a 45 day placement. This initial placement lead to the Student completing his high school education at Bradley Day School. (8/14/14 Transcript, pages 10-12). She testified that the Student received additional transitional services under the Student's IEP at Bradley Day School and vocational evaluation through ORS and a summer vocational assessment for four (4) weeks as well as vocational assessments through the West Bay

Collaborative during the summer of 2012. During the 2012-2013 school year while at the Bradley Day School, the Student also received services from Perspectives in transition skills doing career exploration. (8/14/14 Transcript, Pages 12-13 and 16-17).

The Respondent then introduced the Perspectives Corporation Vocational Evaluation Report dated May 8, 2012 as Respondent's full Exhibit #1. This was a testing of interest and abilities to perform certain work experiences. (8/14/14 Transcript, pages 13-16).

As to meeting graduation requirements for a regular education diploma, the Administrator reviewed the requirements. (8/14/14 Transcript, pages 18-19). The Administrator testified that the Student had met all the

“...credit, the proficiency-based graduation requirements, looking at what course work was taken in each area, the requirement for the class of 2013, where, that the NECAPS were taken, as well, this Student has completed all the requirements of the high school diploma.” (8/14/14 Transcript, page 19)

The LEA High School transcript was then entered as the Respondent's full Exhibit #2. Thereafter the Respondent proffered the proposed regular education High School Diploma for the Student dated June 15, 2013. It was accepted as Respondent's full Exhibit #3. (8/14/14 Transcript, pages 21-22).

The Administrator thereafter testified that she was a member of the IEP team in October, 2013 regarding the Student. (8/14/14 Transcript, page 25; Petitioners Exhibit #2, page 2). The Administrator then described what the transition services were to be a group of activities

“...to support a student in accessing academic and functionally postsecondary future activities. So that could include things like furthering his postsecondary education, employment, activities of daily living, those kinds of things.” (8/14/14 Transcript, page 26).

The Administrator then described her knowledge of the transitional activities for the Student. It was the expert opinion of this witness that the Student has successfully completed the transition services.

It was the opinion of the Administrator that having successfully completed the transition services that the Student should continue with the Office of Rehabilitative Services (ORS) to assist in further vocational training and job development experiences. It was also her opinion that a referral be made to BHDDH for eligibility. (8/14/14 Transcript, page 28).

The Administrator opined that the transition services are not to make a student independent, rather her opinion was to assist a student “...in being independent as possible to be able to access post-secondary activities.” (8/14/14 Transcript, page 29).

It is notable that the three expert witnesses presented by the Petitioners and the Respondent have all come to the same conclusion that due to the disabilities and the impairments that the Student has, he will not become fully independent.

The Petitioners’ counsel then cross-examined the Administrator. The Administrator acknowledged that if the Student receives the regular education diploma he would no longer be eligible for special education services. (8/14/14 Transcript, pages 33-34). She testified in making the decision to terminate a student’s eligibility, the educational district has to have a summary of performance. (8/14/14 Transcript, pages

33-34). See Petitioners full Exhibit #10 – the Summary of Performance of the Student dated June 6, 2014. (8/14/14 Transcript, pages 64-65).

Both sides then rested. There was no rebuttal testimony or exhibits proffered.

ISSUE

Whether the Student should receive a Regular Education Diploma now; and, as such, end special education services pursuant to the Rhode Island Regulations and to the IDEA?

FINDINGS OF FACT

1. I find that the Student has completed satisfactorily all academic requirements to receive a regular education high school diploma.
2. I find that the Petitioners failed to meet their burden of proof that the Student did not meet all the academic requirements to receive a regular education diploma from high school (See Schaffer v. Weast, 126 S.Ct. 528 (2005)).
3. I find that the Respondent LEA met and formulated an IEP for transitional and vocational services prior to the awarding of a regular education high school diploma with the Student and Parents participating in such IEP which was appropriate.
4. I find that the Petitioners, including the Student and the Parents, agreed to the IEP for transitional and vocational services.
5. I find that the Respondent LEA proffered all the transitional and vocational services in accordance with the IEP for such services pursuant to R. I. Regulation, Section 300.43.

6. I find that the Student completed the services called for under the IEP for transitional and vocational services.
7. I find that the Student has received FAPE per R. I. Regulations, Section 300.61. See also Board of Education of Hendrick Hudson Central School District, Westchester County et al v. Rowley et al, 102 S.Ct 3034, 45845176 (1982).
8. I find that the Respondent LEA shall award the Student the regular education high school diploma and cease to provide special education services under the Rhode Island Board of Regents for Elementary and Secondary Education Regulations Governing the Education of Children with Disabilities, Section 300.1 et seq. and under the IDEA.
9. I find that the Student received reasonable and beneficial education from the LEA together with appropriate transitional and vocational services.

DECISION

Based upon a review of the testimony, the full exhibits presented and the law under the Rhode Island Regs. and the IDEA, and my findings of facts, I hereby deny the Petitioners' Petition for Due Process and ORDER and direct that the LEA shall grant and award the Student a regular education diploma as shown in Respondent's Exhibit #3 and cease to provide further special education services to the Student pursuant to the R. I. Regs and the IDEA.

Roderick A. J. Cavanagh, Hearing Officer

Dated: August 27, 2014

I hereby certify that on the 27th day of August, 2014, I mailed and e-mailed a copy of the within Decision to Alexander N. Spigelman and Elisabeth Hubbard, attorneys for the Petitioners at the Rhode Island Disability Law Center, 275 Westminster Street, Suite 401, Providence, Rhode Island 02903 and to Mary Ann Carroll, attorney for the Respondent at Brennan, Recupero, Cascione, Scungio & McAllister, LLP, 362 Broadway, Providence, Rhode Island 02909.
