

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS SPECIAL
EDUCATION DUE PROCESS HEARING**

S.C.	:	
v.	:	DUE PROCESS
	:	COMPLAINT # LL15-12
TIVERTON SCHOOL DEPT.,	:	
& NEWPORT REGIONAL	:	
SPECIAL EDUCATION PROGRAM	:	

DECISION

TRAVEL

The Parents of S.C. (Parents) filed the above captioned Due Process Complaint (Complaint) on May 13, 2015 with the RI Department of Education (RIDE) and the Tiverton School Dept., and Newport Regional Special Education Program (District) filed a timely response. On April 28, 2015 a resolution session was held but concluded without the parties reaching an agreement which subsequently led to the undersigned's appointment as the Hearing Officer.

A pre-hearing conference was held on June 18, 2015 the result of which led to a full hearing on the matter which took place over nine (9) non-consecutive days. The dates of hearing included: September 17, 2015; December 4, 2015; December 10, 2015; December 17, 2015; January 8, 2016; January 27, 2016; February 12, 2016; February 27, 2016; and February 29, 2016.

Of significant note, a motion hearing was held on November 16, 2015 on Parents claim that there should be a finding of exceptions to the Statute of Limitations and their request that the exception would allow alleged violations dating back to January of 2011. This matter argued with an Order issued on or around the 8th day on December 2015. The Order was as follows: Petitioner's request to extend the allegations of his complaint beyond the two year statute of limitations is hereby denied and the operative date for purpose of tolling the statute of limitations is the date of filing, May 14, 2015.

Respective counsel herein, post the final hearing date of February 29, 2016, presented briefs in support of their respective positions to the undersigned and it is from this posture that the within Decision emanates.

BACKGROUND

1. [REDACTED] Parents) are the natural parents of student S.C. and filed this due process complaint on her behalf. They live separately sharing joint custody of S.C. with primary placement resting in Mr. [REDACTED]
2. S.C. is a student in the Tiverton School Department receiving services through Newport Regional Special Education Program as a child with a disability who qualifies for an IEP under the *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities*. She has qualified for said IEP since 2011 when she was third grade student. Parents describe a history of abuse endured by S.C. at the hands of an extended family member which led to future difficulties for S.C.
3. S.C. underwent a psychological and social history evaluation in February of 2011 which she was referred to for “predominately for emotional/behavioral issues” with academic concerns also being noted (Pet. Exhibit 2).
4. On April 11, 2011 the District implemented the first IEP for S.C. Also at this time Parents authorized a “psychiatric evaluation” to be conducted by Bradley Hospital (Pet. Exhibit 9). Said evaluation was completed on or around June 15, 2011 and was referred throughout as the “2011 Bradley report”.
5. On April 4, 2012 the next IEP was created and implemented for S.C.
6. In February of 2013 Parents began to receive letter from District that S.C.’s academic performance was suffering (Pet. Exhibit 14).
7. On March 26, 2013 the next annual IEP was created and implemented.
8. In or around the end of April 2013, shortly after the IEP was created, a Functional Behavioral Assessment was authorized and conducted (Pet. Exhibit 19). Of the note was a conclusion that S.C. had a history of “academic, social and emotional difficulties (Pet. Exhibit 19).
9. It was identified that on or around October 22, 2013 the IEP team began to meet quarterly to address reports that S.C. was falling behind in her work and slow to begin work (Pet. Exhibit) 23.
10. In March of 2014 a quarterly meeting was held which indicated that S.C.’s “behavior has been significantly better that last year” that “she has been increasing friendships” that S.C. does seem to have emotional difficulties” and “task avoidance” (Pet. Exhibit 27).
11. On or around the end of April 2014 the District Psychologist administered a Psychological Evaluation indicating “behavioral concerns” and “failure to complete work , failure to complete homework, avoidance of tasks, avoidance of attending class, inattention, and wandering around school” (Pet.

Exhibit 31).

12. On May 5, 2015 the next quarterly meeting was held to discuss the results of evaluations and recommendations including: "caring, firm approach" and classroom breaks when appropriate" and "counseling (outside)". The behaviors of concern noted were: "distractibility", "attention seeking", and "improved social skills" (Pet. Exhibit 35).
13. On June 14, 2014 a meeting was held with a purpose to review the IEP and make a change in placement to BSP (Pet. Exhibit 41). S.C. was subsequently placed in a BSP program.
14. On February 23, 2015 there were reports of an incident including statements made by S.C. to the affect that she "feeling like killing" apparently directed towards teachers. The reports of the same event appear contradictory in nature (Pet. Exhibit 60).
15. On February 25, 2015 it was reported that S.C. "exhibited noncompliant and insubordinate behavior and was directed to go to the In School Restriction Room to serve a consequence and refused" (Pet. Exhibit 62). It was said that S.C. "continued to escalate her behavior" and "threw two chairs" and "made a move towards the large television. These actions led to restraint with a "basket hold" (Pet Exhibit 62).
16. On February 27, 2015, a meeting was held wherein the team recommended S.C. be placed in Bradley for a 45 day evaluation with noted indicating the reason being "many incidents" and "now the team has met and made changes to her plan in the behavior support program to promote success, however, the last behavioral incident really warranted more emotional support at the clinical level (Pet. Exhibit 59).

ISSUES PRESENTED

As a result of the above complaint, testimony and argument ensuing thereafter the following issues are presented:

1. Should there be and exception to the Statue of Limitation and should parents be allowed to enter evidence back in time to January of 2011?

As noted this issue was argued resulting in an Order dated December 8, 2015 denying parents request for exception to the Statute of Limitations and as such that argument will not be repeated hereunder.

2. Did the District violate S.C.'s rights under the IDEA (including the

pertinent state and federal regulatory requirements such violation resulting in a deprivation of S.C.'s rights to receive a free appropriate education (FAPE)?

More specifically and in keeping with Parent's Complaint, such deprivation caused by procedural violations; inappropriate placement; inappropriate identification and inappropriate evaluation as identified under the IDEA.

BURDEN OF PROOF

The U.S. Supreme Court has held that in cases involving the IDEA, "[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." Schaffer v. Weast, 126 S.Ct 528, 537 (2005).

It is the Petitioner, in this case, the Parents who carry the burden to prove that the District has not provided an education adequate for the child. This position is clearly supported by the law.

The person who seeks court action should justify the request, which means that the plaintiff bears the burden on the elements in their claims. Weast Id. at 534.

The court has further held that the Weast holding applies not only to issue of FAPE, but to any challenge to the IEP including LRE issues. L.E. v. Ramsey Board of Education, 435 F.3d 384.

Parents must in turn carry their burden by producing evidence at hearing that proves, by a preponderance that S.C. was deprived of FAPE inclusive of the state and federal statutory and regulatory provisions and supported by case law.

WITNESSES AND SUMMARY OF TESTIMONY

Petitioner's Witness:

1. [REDACTED] the father of S.C. who has primary placement of S.C, and is the primary contact with school personnel.

He testified over the course of five (5) days first indicating that he had difficulties memory (Tr. Volume 1 page 11). Significantly he admitted to problems remembering dates and numbers. His testimony included concerns related to episodes

of bullying negatively affecting S.C.; concerns about placement specifically as it related to the BSP program; and concerns that this wrong placement was not working for S.C. causing her grades to decline and her behavior to get worse (Tr. Volume 3 page 336-38).

He also testified that many teachers and or administrators picked on and/or targeted his daughter. (Tr. Volume 5 page 555).

██████████ testimony also verified through document identification that he was present at the IEP meetings, quarterly reviews and placement meetings including BSP placement meeting and the placement meeting which led to the 45-day evaluation at Bradley.

While he admits to being present at these meetings he states that his concerns were not always heard by the team, accurately recorded, and not acted upon. This was particularly true about his repeated testimony that he advised the school of problems with S.C. being bullied which was not further supported by documentary evidence at hearing.

As pointed out by the District, Mr. ██████████ “testified that he told the school at every meeting that his daughter was being bullied there is no record of bullying in any of the meeting minutes. (Pet. Exhibits 20; 25; 27; 35; 58).”

Significantly and most germane to parents argument is Mr. ██████████ testimony about his memory of the 45 day evaluation meeting on February 27, 2015 and that he believed there was no other alternative but to agree to the 45 day Bradley evaluation and no other options were presented (Tr. Volume 6, page 841).

While Mr. ██████████ has a breadth of experience with S.C. he testified initially that he had memory problems and his testimony throughout demonstrated various times where is memory was admittedly not clear. This is especially problematic when he made statements such as he read everything the school sent home but then did not recall seeing documents related to prior written notice which Sarah Kraeger, Director testified to as being part of a District wide protocol. It was also apparent that Mr. ██████████ did not have a good understanding of the BSP program. Additionally, he testified to be present at the decision making meetings and put forth no credible evidence that he objected to the placement, in fact, he agreed with the Bradley placement. This led me to give less weight to her testimony as related to the appropriateness of the placement in BSP and further related to the subsequent decision place S.C. in the Bradley program.

2. Dr. Bennet Hirsch (Parent's witness)

Dr. Bennett Hirsch was called by the petitioner as an "expert" in the case and the Respondent School District objected to his ability to be an "expert" (Tr. Volume 5). Dr. Hirsch's testimony and resume indicated that he is a Licensed School Psychologist, Licensed Clinical Psychologist and neuropsychologist. The District elicited testimony that he never completed a post doctorate in neuropsychology, nor was he Board certified. (Tr. Volume 7, page 985).

He further testified to his experience working with children who have similar learning disabilities and social histories to that of S.C. (Tr. Volume 5).

Dr. Hirsch premised his testimony and provided an opinion on S.C. by completing a record's review (Tr. Volume 7, page 986). The District elicited that he did not speak to any of the staff at Tiverton Middle School; he did not speak to the School Psychologist in Newport County Regional; he did not observe the Behavior Support Program at Tiverton Middle School; nor did he have any firsthand knowledge of the Behavior Support Program (BSP) (Volume 7, page 987). It was clear that Dr. Hirsch's opinion of the BSP program was based on information he was inferring about the program but that may not have been accurate.

His opinion of the program differed greatly from that of Celeste Urban, School Psychologist for the District whose testimony on the BSP program is contained below.

Finally Dr. Hirsch concluded that placement of S.C. in the BSP was not supported by the record and in his opinion was something that he would not have recommended "I wouldn't even be thinking about a behavioral program..... and I don't even know why the recommendation for BSP would be given" (Tr. Volume page 895,898-99). While he had positive comments to make about the Bradley program on whole he testified that this would not be an appropriate ongoing placement for S.C. and in fact he recommended that S.C. go to the East Bay Collaborative. The District elicited testimony that Dr. Hirsch made this recommendation without ever going to or observing the East Bay Collaborative. (Tr. Volume 7, page 1012).

With respect to Dr. Hirsch the recorded indicated that he testified to be a school psychologist for 26 years but when challenged there were noted gaps in the time he spent in public education as a school psychologist and his experience was years removed from the current date. Additionally he testified to other relevant experience working with kids and adults with disabilities and backgrounds similar to those of S.C. but as prior stated

had not met S.C. While this is not dispositive to the weight of his testimony and some of his experience is relevant. I would not assign him the same weight as the two witnesses for the District below (Ms. Urban and Dr. Kaltenstein). This is especially true as it relates to his testimony of the BSP program. On page 87 of transcript volume 7 he testified as having no firsthand knowledge of the District's BSP program which being challenged by parents.

Then further on page 989 of volume 7 Dr. Hirsch testified that the BSP program was a self-contained program comprised of mostly behavior disordered students who needed self-contained classes. This testimony was directly controverted by Ms. Urban – school psychologist.

3. Ms. [REDACTED] the mother of S.C. who has joint custody, lives in [REDACTED] and sees S.C. through a parenting schedule.

Ms. [REDACTED] testified about her concerns regarding the BSP program and stated that she had seen a worsening in her daughter since BSP characterized as depression a “downward spiral”. She also testified that S.C. was being “watched like a hawk” and that this made her feel different and “bad” (Tr. Volume 6 page 848-850). Ms. [REDACTED] also stated that her daughter changed mentally and developed physical symptoms that intensified and were terrible (Tr. Volume 6 page 811-813). Most notably she testified that S.C. told her she “felt like a prisoner”. (Tr. Volume 6 page 814).

The District argues that Ms. [REDACTED] testified to what the child told her inferring that she had no first-hand knowledge about the happenings in the BSP program or how teachers/other students perceived S.C.

While Ms. [REDACTED] has a breadth of experience with S.C. she testified mainly to what she heard from S.C. and assumptions made regarding the BSP program. This led me to give less weight to her testimony as related to the appropriateness of the placement in BSP and further related to the subsequent decision place S.C. in the Bradley program.

4. Celeste Urban, School Psychologist (District witness)

Ms. Urban testified that she has been a School Psychologist for the District for ten years. And has known S.C. since the fall of 2012 when S.C. was in the fifth grade. (Tr. Volume 8, page 1072). She further testified that she attended all of S.C.'s IEP meetings and recalled no instance where parents told school personnel that S.C. was being bullied at school (Tr. Volume 8 pages 1072-1079).

Ms. Urban's testimony further included her opinion that S.C. was doing better in October 2013 in her sixth grade g better. Even though she was doing better, according to Ms. Urban, she still needed support getting her work done, reminders about school protocols and rules, and support with social interactions. (Tr. Volume 8 page 1079).

Next Ms. Urban stated that S.C. was doing okay in and around October of 2014 however she was receiving a considerable amount of support. Ms. Urban noted that S.C. would wander the building and seek out people she perceived as caring adults, and she was really seeking out the nurturance and care that she was craving. Ms. Urban relayed that while S.C. was wandering in the building she would become unaccounted for during certain time periods and this would be a safety concern.

According to Ms. Urban S.C.'s behavior had significantly deteriorated. Ms. Urban stated that "She was doing little work on her own. She needed to, basically, her case manager to sit with her one-on-one to produce any work. She was having more outbursts. It seemed like her anxiety had increased tremendously" (Tr. Volume 8 page 1081).

As a result of her concerns, Ms. Urban recommended, on a number of occasions, outside counseling for S.C. because S.C. was related to her concerns she had with issues that were occurring outside of school. (Tr. Volume 8 page 1082). She testified that S.C. spoke to her about her home environment saying that her dad's house was "pretty bleak" and her mom's house was "chaotic and unpredictable" (Tr. Volume 8 1088).

Finally and most significantly the District points out that Ms. Urban testified to the following relative to the BSP program:

The behavior support program was recommended for a number of reasons. "The behavior support program provided a lot of supports. First, S.C. really needed almost one-to-one support to complete any work and what the BSP was going to provide was a special education teacher, a behavior specialist and paraprofessionals to support her through her school day in terms of getting her work done; secondly she needed a tremendous amount of social/emotional support, and the BSP program provided group counseling opportunities on a weekly basis as well as opportunities to see myself (Urban) or the school social worker individually, again, on a regular basis, and because she was not receiving outside counseling, we really needed to provide quite a bit of service to her and support. And thirdly, there was a concern about her safety in the school building because S.C. had the tendency to wander the building, at times she was unaccounted for, which is a huge safety concern in a public school

building, and this program was going to provide the staff and supervision that would ensure that she was accounted for and safe."(Volume 8, page 1084).

Furthermore, it was testified to that the BSP program provides intensive positive behavioral supports to students who are considered at risk and that the program is staffed with a special education teacher, a behavior specialist and two paraprofessionals (Volume 8, page 1085). She related this risk to concerns regarding S.C.'s safety in the building and "at times she was unaccounted for, which is a huge safety concern". Ms. Urban stated that it was her opinion that the BSP program would provide staff and supervision that would ensure that she was accounted for and safe (Tr. Volume 8 page 1084).

When asked to describe BSP, Ms. Urban related that there was special education teacher, a behavior specialist and two paraprofessionals for no more than nine to ten students. She stated that the students attended regular education classes and the only time they were in a "behavior support classroom" was one period which consisted of the resource class. Ms. Urban said "It is not a self-contained program by any stretch...the students had access to a highly qualified regular education teacher in all content areas." (Tr. Volume 8 page 1085)

I find Ms. Urban to be a credible witness based upon her years of experience as a School Psychologist, her direct knowledge of S.C. and her knowledge of the BSP program.

5. Dr. Amber Kaltenstein Psychologist at the Bradley School testified for District.

Dr. Kaltenstein is a Ph. D. Psychologist at the Bradley school who concentrates her practice on child, family, and adolescent issues. It was testified to that she has worked at Bradley School of Portsmouth for the last three years and has known S.C. since S.C. started in the Bradley School. (Tr. Volume 8 page 1270). She further testified that she has known S.C. personally for about one year and that she was the leader for the classroom that S.C. is in. (Tr. Volume 8 page 1270)

Essentially, Dr. Kaltenstein testified that when S.C. first started attending Bradley she was having some issues in the classroom. S.C. sought attention from others and she "thrives off attention (Tr. Volume 8, page 1274). She also testified to problems with following directions, work avoidance, difficulties with peers and needing a lot of guidance as to how to make friends. "She would tease people or make fun of people or kind of joke back and forth, which would lead to not so good interactions" (Tr. Volume 8 page 1271). Dr. Kaltenstein also related that it was necessary to physically manage S.C. as a result of her behavior (pushing staff or trying to leave school) about four times. (Tr.

Volume 8 page 1271)

Significantly, Dr. Kaltenstein said that "all throughout her time at Bradley I would call and check in about if she had incidents through the day, definitely physical management I always called, but even little things that came up that I thought that dad needed to know about I would call dad as well. So we had regular contact." (Tr. Volume 8 page 1273). I find this testimony to be very credible and powerful as it relates to not only parents understanding of what was happening in the placement but also as to Dr. Kaltenstein's personal/professional direct knowledge of S.C. This lends a great deal of credence to her opinion and testimony of S.C.'s attention seeking behavior, inattention, distractibility and problems on the bus (Tr. Volume 8 page 1275) and to her ultimate conclusions regarding her placement as stated below.

In the opinion of Dr. Kaltenstein, Bradley is the appropriate placement for S.C. because her present needs are:

"definitely social skills, coaching all throughout the day, supervision, constant supervision because of her tendency to kind of wander or stay in the bathroom or have negative interactions with peers if she's not. Definitely access to a therapist and behavior management in the classroom." (Tr. Volume 8, page 1278-79).

Last, and most importantly, according to Dr. Kaltenstein, S.C. would not be successful in a less restrictive placement at this time. She testified that S.C. needs a therapeutic school based upon the amount of therapy she kind of pulled when she is there (Tr. Volume 8, page 1279).

I find Dr. Kaltenstein to be a credible witness based upon her knowledge and experience within the Bradley school, her educational background and her first-hand experience with S.C. and S.C.'s father.

DISCUSSION

Parents brought this complaint against the District in response to issues they had with the District related to events that led up to the District's placement of S.C. in Bradley for a 45 day period. It is their position that the evidence was produced at hearing that proved, by a preponderance of the evidence that S.C. was deprived of FAPE as defined by statutory and regulatory provisions. Essentially they claim that the District did not provide an IEP that was reasonably calculated to achieve effective results and demonstrable improvement in various educational and personal skills.

This included failure to consider parental concerns regarding goals and services in

relation to S.C.'s functional areas of need; failure to consider evaluations of the child when designing the IEP, pointing specifically to the 2011 Bradley evaluation, so called; and failure to "align" the IEP with S.C.'s functional needs, including among other things: lack of social skills goal, lack of goal for attention and organization, failure to address emotional challenges, and failure to recognize and accommodate for memory, executive functioning and processing speed issues.

Parents make these complaints against the backdrop of the IDEA referencing both federal and state statutory provisions requiring the District to provide FAPE through design and implementation of an IEP that provides the child with educational and related services which meet the disabled child's specific needs. 20 U.S.C. §§ 1412(a)(1) ; 1412(a)(4); R.I. Reg. § 300.111. They also reference R.I. Reg. §§ 300.320 through §§ 300.324 for support of their theory that the District failed to meet certain requirements of related to the IEP, the IEP process and the IEP team which violation would lead to a violation of FAPE.

As appropriately stated by the District, the standard of review for FAPE can be found in the U.S. Supreme Court case of *Board of Education of the Hendrick Hudson School District v. Rowley*, 553 IDELR 656(1982). The Rowley decision established a two part test to determine the appropriateness of a student's education: 1. Has the state complied with the procedures set forth in the IDEA, and 2. Is the IEP developed to reasonably calculated to enable the child to receive educational benefits.

The IDEA further provides that a proper IEP is one that is reasonably calculated to provide benefit in all of the disabled child's areas of needs and that FAPE through the IEP includes addressing all of the child's special needs including academic, physical, emotional, social, and behavioral. See Rowley, pages 176, 2017. Parents find broad support for this in two First Circuit case cited, *Mr. I. ex rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 12, 127, 19 (1st Cir. 2007) and *Timothy W. v. Rochester, N.H. Sch. Dist.*, 875 F.2d 954, 970 (1st Cir. 1989). Respectively these cases stand for the proposition that educational performance is broadly defined to include non-academic deficits.

Parents also state that the LEA is under an obligation to afford them the opportunity to participate in the decision making process including those decisions about evaluation, IEP development and most significantly herein placement of the child. These decisions cannot be pre-determined by the *LEA. T.B. ex rel. N.B.*, 2003 WL 22069432 at *10.

Most significant to parent's argument and perhaps the crux of the matter in sum is

the argument relates the placement of S.C. and whether or not the placement in the BSP program and then later at the Bradley school was proper in they met all of the child's needs. Parents argue that the District did not ensure that the placements did meet all of S.C. needs. They reference RI reg. §300.116(b)(2), §300.116(a)(1), and §300.116(e) which provide that placement must be based on the child's IEP, must be based on evaluation data and consider various placement options and the input of the parents and must ensure that the child is not removed from age appropriate regular classroom education solely because of needed modifications in the general educational curriculum.

Specifically, in parents complaint allegation 31 points to their contention that the placement in BSP was without sufficient basis and did not support the restrictiveness of the environment. According to their complaint, it was their belief that BSP was as self-contained classroom that included just a handful of kids, all boys with behavioral issues. However, District, through the course of the hearing proved this contention to not be the case with respect to the BSP program. (See, generally the conflicting testimony of Dr. Hirsch and M. Urban cited herein.)

This is significant not only as it relates to parents perception of the BSP program but also as to Parent's witness Dr. Hirsch whose testimony regarding the BSP program was based upon his belief that the program was a self-contained program. Whether or not his testimony was credible as to his belief of how S.C. would respond to a self-contained classroom is mute as that was not the model for the BSP classroom that S.C. was placed in.

Further and in line with the second placement decision, Parents allege, within allegation 48 of their complaint, that father attended a meeting to place S.C. in Bradley for a 45 day evaluation. The allegations further states that "father and S.C. welcomed it (the placement) to be away from Tiverton. S.C.' grades have been better at Bradley and she is, generally, happier there. But it is not believed to be a long-term placement and S.C.'s time at Bradley, pending a meeting scheduled for May 14, 2015, could end and her placement is believed to be under the control of Bradley and/or Tiverton." (Parent Complaint allegation 48).

Again this is significant but not supportive of Parents' contentions regarding their input into the placement process and in fact sounds contrary in that Father was satisfied with the placement determination -- with the idea that it would be short term. It appears his primary concern was more about what would happen next for S.C. and whether or not a future placement determination would be made without parental input/participation.

Parent argues and, I think appropriately, that Bradley is a clinical day program

and is considered to be a restrictive and serious program for children that cannot be educated in other setting because of psychiatric or behavioral conditions See Alex A. ex rel. Pamela A. 201 WL 653015 at *6, 12.

In the same respect, Bradley is a placement that does not preclude FAPE in the least restrictive environment if there are no other viable less restrictive options Id at *7, 8.

Parents contend that they proved by a preponderance of the evidence that S.C.'s placement in BSP and at Bradley were not placements that would assist S.C.'s functional performance as required by RI reg. §300.115(A)(2).

Throughout the course of hearing, Parents through Dr. Hirsch attempted to show that the District missed, early and often, opportunities to appropriately identify S.C.'s needs particularly as related to her emotional needs related to her early history of abuse and mistreatment which led to persistent what was termed persistent struggles with low self-concept, social and learning related academic challenges (Tr. Volume 5 page 656). It is important to note once again that Dr. Hirsch's testimony was based upon his review of the records provided to him and that he had no little to no actual, first-hand knowledge of S.C. or her family. He was also not familiar with her school program as related to BSP and for all intent and purpose is not an expert in the area of special education. While all of this weighs against the credibility of his testimony it, in and of itself does not dispose of the issues in favor of the District.

In fact, Dr. Hirsch did point out some of the inconsistencies between the 2013 IEP meeting notes and the IEP itself in that the notes painted a different picture of S.C. as defiant, disturbing to others and lacking social skills, etc. as compared to the IEP strengths and needs section that describes S.C. as enthusiastic, putting forth effort and participating appropriately. (Tr. Volume 5 page 677). Understandably this could lead Parents to confused conclusions as to what was happening for S.C. and how she was presenting.

It is clear that there were concerns that were being identified by the District as testified to by Ms. Urban, District psychologist when she was asked about the psychological evaluation she administered in 2014. This evaluation reference behavioral concerns including failure to complete work, failure to complete homework, avoidance of tasks, avoidance of attending class, inattention and wandering around the school (Pet Exhibit 32). Within the same report, Ms. Urban states that S.C. is "well liked", engaging and intelligent". This appears to be in line with Dr. Hirsch's inconsistencies stated above and perhaps points to a fact that S.C. could have the positive characteristics and

tendencies while at the same time be exhibiting interfering and problematic behavior. Lastly this same report did conclude, based upon teacher reports that S.C. was in the "At Risk" range for Aggression and Conduct. (Pet. Exhibit 32). With this backdrop, the report went on to recommend outside counseling for S.C. to deal with emotional issues related to her history of abuse.

Father attended a meeting on May 5, 2014 during which time the results of the above psychological evaluation and were discussed with the team meeting minutes reflecting "recommendations" including outside counseling, the use of a caring, firm approach; and classroom breaks when appropriate. The minutes also included a list of "behaviors" including: distractibility, attention seeking and improved social skills (Pet. Exhibit 35).

Ms. Urban further offered testimony that also focused on S.C. behaviors which she described as "significantly deteriorated" and stated that S.C. needed one to one assistance to produce work and that she was "having more outbursts" and her "anxiety had increased" (Tr. Volume 8). While there was contradictory testimony between the parents and Ms. Urban as to the genesis of the increased anxiety and behavior concerns (Ms. Urban testified that there was concerns at home related to S.C. spending more time with her mother – from S.C.'s reports to Ms. Urban, while parents denied any change in the frequency of visits with mother and attributed many of the difficulties to problems at school with bullying, negative peer interactions and negative staff interactions) there appears to be no controversy to the opinion that S.C. was experiencing increased difficulties at school.

In Ms. [REDACTED] opinion, the District never properly addressed what parents could easily identify as an anxiety condition, attention and distractibility deficits, memory deficits, and social deficits. (Tr. Volume 6). When pressed on some of these issues, Ms. Urban stated that she thought attention deficits and impulsivity were both present in S.C. and that the presentation of these types of behaviors did impede S.C.'s ability to be educated and further followed up by testifying that she believed these concerns were being addresses in the IEP. (Tr. Volume 7).

After placement in BSP and in or around November 25, 2014 parents were made aware that S.C. was failing all four listed areas of her academic classed (Pet. Exhibit 50). From this point there were noted increases in concerns being reported to parents included concerns on the bus and in school involving S.C. allegedly hitting another student, using unacceptable language, having her feet up on the seat on the bus, allegedly making a statement that she was thinking about killing herself and wearing a hat in the cafeteria and refusing to take it off. Notably, S.C. was interviewed about the killing herself

statements and was not seen as a suicide risk (Pet. Exhibit 56). In response to these concerns. Ms. [REDACTED] testified that her concerns about S.C. were in fact being realized as S.C. was depressed and on a downward spiral while in BSP and that S.C. had changed for the worse (TR. Volume 6 page 848, 849).

Subsequently there were the two incidents leading to placement at Bradley, the first occurring on February 23, 2015 and the second two days later on February 25th. The first involved allegations of pushing a desk over, and allegations that S.C. was making statements about killing teachers (2 write ups in same day about these killing teachers allegations). (Pet. Exhibit 60). The second on February 25th was described as S.C. exhibiting noncompliant and insubordinate behavior with refusal to go to In School Restriction Room at which time she was guided leading to an allegation of throwing chairs and making a motion towards large TV leading to a "basket hold". (Pet. Exhibit 62).

On February 27, 2015 with these two incidents as backdrop the team met and recommended a 45 day placement at Bradley for an evaluation (Pet. Exhibit 59). Parents point out that at this meeting there were no other options presented such as modifications to IEP, BIP, BSP, or return to regular education (Tr. Volume 6 page 841-843). As mentioned earlier however, father attended the meeting and made no objection to placement at Bradley offering that he was glad to have her out of Tiverton.

Significantly in a 2006 Rhode Island case with similar circumstances, the hearing officer made a finding the 45 day placement in Bradley Hospital was appropriate stating that "Removal from the present placement is not a punishment but is required to maintain a safe learning environment for all students and to allow the school district time to evaluate A. in order to provide the proper IEP and placement that will allow A. to achieve educational benefit." *Westerly School Dept.*, 109 LRP 72016. This seems instructive in this case given the school's position that student's behavior was escalating and becoming dangerous to others around the student and the student themselves. This is analogous to the team's decision in this case as testified to by Ms. Urban.

CONCLUSION

As such I make the following findings and conclusions:

1. Parents failed to prove by a preponderance of the evidence that the District violated S.C.'s rights to a free appropriate education (FAPE) under the IDEA;
2. Parents failed to show that any such allegation of FAPE occurred including the

failure to show any violation resulting in a deprivation of FAPE caused by:

- a. procedural violations;
- b. inappropriate placement in the BSP program and subsequently the Bradley placement which includes no proven violation as related to Least Restrictive Environment; and
- c. no violation as it relates to inappropriate identification and/or inappropriate evaluation as identified under the IDEA.

3. I do find, however, that the placement at Bradley as agreed upon at the February IEP team meeting was agreed upon as a 45 day evaluation placement. The team subsequently met and with parent's agreement concurred that S.C. should remain at Bradley for the remainder of the 2015-16 school year. I am ordering that the IEP team convene prior to the end of this school year to discuss the issue of placement for the next school year (2016-17).

4. All of parent's allegations and claims for relief as set forth in their complaint LL 15-12 should therefore be denied.

RESPECTFULLY ORDERED:

/s/ S. Colantuono
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