



CONNECTICUT STATE DEPARTMENT OF EDUCATION

Bureau of Special Education  
**Connecticut Due Process  
Hearing Decisions**  
**Issued March 2014 through March 2015**

March 27, 2015

# Connecticut Dispute Resolution: July 1, 2013- June 30, 2014

197 State Complaints filed (2012-13: 218; 2011-12: 163; 2014-15 to date: 126)

103 Reports issued; 66 Reports with noncompliance

343 Mediations Requested (2012-13: 315; 2011-12: 287; 2014-15 to date: 220)

255 Mediations convened (42 pending on June 30, 2014)

175 Agreements reached on day of mediation

237 Hearing Requests (2012-13: 200; 2011-12: 194; 2014-2015 to date: 155)

Includes 11 expedited hearing requests

10 Fully Adjudicated Hearings (requested *and* completed within 2013-14)

Includes 2 fully adjudicated expedited hearing decisions

(2012-13: 6 full adjudicated decisions including 3 expedited

decisions)

71 Resolution Meetings resulting in 32 agreements

(2013-2014: 56 resolution meetings with 32 agreements)



# 17 Fully Adjudicated Hearing Decisions *Issued* Between March 27, 2014 and March 20, 2015

1 Split Decision

4 Hearing Decisions: Parent Prevailed

12 Hearing Decisions: School District Prevailed

8 Hearings with Pro Se Parents: 2: Parents Prevailed

1: Split Decision

5: School District Prevailed

2 Appeals (pending)



## 14-0284: Student v. Voluntown Board of Education (March 27, 2014) Robert Skelley

### *Split Decision/Pro Se Parent*

- Parent referred student to determine special education eligibility for 5 year old student entering kindergarten;
- PPT convened and recommended evaluations and a diagnostic placement; Parent provided consent but later revoked consent specifically for the diagnostic placement which was in a different building;
- Based upon the referral, student was placed in a classroom with students on the autism spectrum and received ABA therapy and related services.
- Parent revoked consent for all evaluations; District then informed Parent that student would be moved out of the current classroom as student was not eligible for special education;
- Parent requested hearing and maintenance of placement setting forth issues of stay put and child find violations.

### Hearing Officer Decision:

- District must conduct an evaluation; and
- Maintain student in the autism classroom with all services throughout the evaluation and identification process.



## 14-0262: Student v. Naugatuck Board of Education (April 14, 2014) Sylvia Ho *District Prevailed/Pro Se Parent*

- Seventh grade student with specific learning disability;
- Parent argued that student was not making progress and that the district was not implementing the recommendations of an independent evaluator;
- Parent sought guarantee that student would master goals and objectives;
- District provided data from state and district assessments showing steady progress in reading, writing and mathematics as well as testimony and exhibits supporting district's assertion that evaluator's recommendations were being implemented.

### Hearing Officer Decision:

- District was implementing independent evaluator's recommendations;
- Student was making progress; Student's mood, motivation and attentional issues affected results on some evaluations;
- IEP addressed student's dyslexia even though the term "dyslexia" had not been used in regard to student until independent evaluation;
- IEP goals and objectives were changed/special education services added each year as appropriate;
- Failure to master a goal did not mean student was not making progress;
- Parent misconstrued the meaning of results of some evaluations;
- District provided FAPE including appropriate IEPs during the years in question.



## 14-0464: West Haven Board of Education v. Student (May 12, 2014) Justino Rosado

### *Pro Se Parent Prevailed*

- Student has a 504 plan and is not eligible for special education;
- An outside psychiatrist diagnosed the student as being on the autism spectrum;
- Student participated in a counseling group in school due to behavioral issues;
- Student was suspended for 10 days after parent informed outside counselor and school that student wanted to bring a bat to school to harm the principal;
- Student was placed in an alternative placement during the suspension;
- District held a manifestation determination and determined the student's behavior was a manifestation of his disability; a PPT was held which recommended evaluations and a diagnostic placement; parents did not consent to the diagnostic placement; team decided to keep student in the alternative placement but student did not attend;
- At the time of the hearing, student had been out of school for almost two months;
- District requested a 45 day Interim Alternative Educational Setting.

### Hearing Officer Decision:

- Maintenance of student's placement is not substantially likely to result in injury to student or others;
- Student's behavioral episodes are mainly in unstructured settings (cafeteria and school bus);
- Behaviors do not rise to the level that would require an IAES;
- Behavior in classroom is not an issue as teachers control and maintain a structured environment;
- District shall perform evaluations including a behavior assessment and create a behavior intervention plan.

## 14-0452: East Windsor Board of Education v. Student (May 15, 2014) Brette Fitton

### *District Prevailed/Pro Se Parent*

- In December 2013, student was identified as eligible for special education under the classification of OHI/ADD/ADHD; student was then attending a self-contained in-district program as a diagnostic placement; this became his permanent placement;
- In February and April 2014, behaviors led to manifestation determinations in which it was determined that student's behaviors were not manifestations of his disability;
- In both MD, the PPT recommended out of district diagnostic placement to conduct a clinical psychological evaluation; Parent refused consent;
- Student's behaviors continued to deteriorate and district filed for hearing to override Parent's refusal to consent to diagnostic placement.

### Hearing Officer Decision:

- In current placement, student is available for learning only about 50% of the time despite significant and sustained interventions and student's abilities;
- Additional data is needed to develop an appropriate IEP;
- The District's recommendation is appropriate and the student is to be placed in the diagnostic placement.



# 14-0296: Student v. Greenwich Board of Education (June 10, 2014) Justino Rosado

## *Parent Prevailed*

- During 2011-12 and 12-13 school years, student absent 34 and 40 times respectively; absences excused by parents/accepted by school counselor due to physician letters re: student had mononucleosis;
- Student's grades declined in high school; hearing testimony indicated a computer game addiction;
- February 2013, counselor met with parents but no referral made to special education;
- April 2013, student experienced suicidal ideation and student diagnosed with major depression; found eligible for a 504 plan but not special education; homebound recommended; student did not access homebound instruction;
- May 2013: Without notice to district, parents placed student in wilderness program;
- Student evaluated; found eligible for special education due to emotional disturbance; diagnostic placement at John Dewey Academy (JDA) recommended; student observed at JDA as focused and attentive in class; student did not require academic supports or tutoring at JDA;
- 2013-14: PPT recommends placement at district alternative high school; parents seek JDA placement.

## Hearing Officer Decision:

- Due to student's absences, declining grades, depression diagnosis, failure to access homebound instruction, district should have evaluated student for special education; child find requirements were violated and FAPE denied;
- District not responsible for wilderness program; program did not provide educational benefit and appropriate notice not provided;
- JDA provides appropriate educational program; district must pay JDA educational cost for 2013-14; student does not require residential placement/24/7 supervision; District is not responsible for the residential cost of JDA;

## 14-0346: Student v. Voluntown Board of Education (June 27, 2014) Ann Bird *District Prevailed*

- Student with disability of emotional disturbance sought continued transition services after graduating from high school with regular high school diploma ;
- Student was administered transition assessments, had detailed transition goals and objectives including acquisition of daily living skills, and several different work-study positions; student also successfully took two community college courses;
- There was no record of anyone claiming the PPT did not sufficient information about the student's transition strengths, weaknesses or that there was a need to develop more appropriate goals and objectives;
- The last finding of fact states that during 2013-2014, Student experienced memory difficulties, became extremely anxious and was unable to drive, enter a retail store, or follow up on job applications; at the time of the hearing, student was unemployed.

### Hearing Officer Decision:

- Requirements of transition planning were met;
- Student's graduation was discussed at three PPT meetings during the 2013-14 school year; Student and parents were heard and represented: DMHAS accompanied student at two of the PPTs and student's attorney was at another PPT meeting;
- Age appropriate assessments were performed as well as informal assessments at job sites;
- Appropriate transition services were provided;
- Goals/objectives covered required areas: training/education, employment, independent living;
- Transition services met basic Rowley standard: reasonably calculated to enable student to receive educational benefit.



## 14-0473: Fairfield Board of Education v. Student (June 30, 2014) Sylvia Ho *District Prevailed*

- In 2011, student's full scale score on the Stanford-Binet, 5th edition was 91; in the current triennial, the student's full scale score on the WISC-IV was 56; to confirm this result, school psychologist then administered the Stanford-Binet, 5<sup>th</sup> edition on which student also scored 56;
- Parent disagreed with results of this cognitive assessment and requested an IEE;
- Hearing Officer found that the student's mood, fine motor control issues and facial rash on the first day of the assessment did not impact the score;
- Student's results on both cognitive assessments and their subtests were consistent with each other as well as with other assessments performed during the triennial;
- School psychologist is experienced, trained, knowledgeable and appropriately certified;
- Test Producer's instructions were followed.

### Hearing Officer Decision:

The district's evaluation was appropriate; parents are not entitled to an IEE at public expense.



## 14-0082: Student v. Shelton Board of Education (July 3, 2014) Brette Fitton *District Prevailed*

- Guardian alleged district's program and evaluations were not appropriate and that guardian's evaluations were appropriate; placement at Villa Maria was requested;
- Student has complex educational, emotional, developmental and medical needs and is identified as having multiple disabilities;
- After two episodes in which the student threatened the school and another student, district required student's guardian to have a mental health professional determine if student was safe in school before student could return to school; Student returned to school with signed safe return form; there were no other incidents; a PPT meeting was not called to address the threats;
- As assessment and performance information were presented to the PPT, IEPs were reviewed; goals and objectives were revised and special education and related service hours were increased; in the spring 2013, the guardian refused the increase in hours;
- Guardian requested hearing alleging numerous procedural violations and seeking Villa Maria placement, ESY and compensatory education.

### Hearing Officer Decision:

- Any procedural error did not result in a denial of FAPE;
- District evaluations were appropriate and met all requirements; in fact, guardian's evaluators relied on these evaluations;
- District provided appropriate programs for the years in question.



## 14-0276: Student v. Region 14 Board of Education (July 15, 2014) Sylvia Ho *Parent Prevailed*

- Student is medically complex, has multiple disabilities and fell twice in school;
- Parent alleged paraprofessional inadequately trained to guard against falls; student's PT and toilet training programs not appropriate; district did not create/implement feeding/swallowing program;
- District was notified student has hemophilia, discovered during major hip surgery; student requires PT in school and assistance with ambulation;
- Parent observed student in school and noted student not appropriately monitored by paraprofessional; post-operative recovery could be impeded by falls and falls complicated by hemophilia;
- Student's physicians notified school that the risk of falls must be minimized;
- Hearing Officer: district minimized the danger of falls and did not develop appropriate PT program: physical therapist developed program without consulting student's physicians; PT was, in part, delegated to a paraprofessional supervised by certified staff when the physical therapist was not available; paraprofessionals were not adequately trained;
- District was presented with oral-motor evaluation by parent but did not conduct a feeding/swallowing evaluation; district did not develop menu or provide food for student.

### Hearing Officer Decision:

- District did not provide FAPE for years in question;
- District shall hire a qualified, experienced PT consultant, acceptable to parent;
- District shall maintain licensed PT on premises at all times student is in school;
- District shall provide two paraprofessionals to serve as backup for each other; paraprofessionals working

with student must receive safety course equivalent to what a nurse's aide or

## 14-0433: Monroe Board of Education v. Student (July 28, 2014) Justino Rosado District Prevailed (Pro Se Parent)

- Parent requested IEE (functional behavior assessment);
- First grade student with a speech and language disability was noncompliant in school and had difficulty on the school bus;
- FBA was performed by consultant who has conducted over 100 FBAs, has graduate certification in applied behavioral analysis and a master's degree in education;
- School psychologist who led FBA team has conducted over 30 FBAs;
- Consultant conducted two clinical observations of student, collected data on 30 episodes, interviewed student's teachers and service providers;
- Parents refused to participate in FBA;
- As part of FBA, attendance, discipline, academic performance, prior assessments and health records were reviewed;
- Consultant drafted a report and a Behavioral Intervention Plan;
- District FBA met all IDEA requirements for an appropriate evaluation.

### Hearing Officer Decision:

- District's evaluation was appropriate;
- District does not have to fund an IEE.



**14-0443: Ledyard Board of Education v. Student (August 25, 2014) Justino Rosado**

*District Prevailed (Pro Se Parent)*

- District requested hearing to override parents' refusal to consent to triennial evaluation of student with autism; parents seek IEE;
- Escalating behaviors led to district placing student in out of district program (RESC);
- Student now back in district but district sought triennial evaluations to be performed by RESC personnel; parents refused consent and requested an IEE.

**Hearing Officer Decision:**

- District has a right to conduct its own evaluation utilizing evaluators of their own choosing prior to being obligated to respond to a request for an IEE;
- The district may conduct its own evaluations;
- Parents' request for IEE is denied.



## 14-0602:Student v. Connecticut Technical High School System (August 29, 2014)

Sylvia Ho

*District Prevailed*

- Parent of 18 year old student with autism sought independent psychoeducational evaluation, evaluation of student's plumbing competencies to confirm student's credentials as an advanced apprentice and community college at district expense;
- Parent alleged student's program lacked measurable post secondary goals and student was not prepared to exit from special education;
- Student's regular education plumbing teacher testified student performed well on tests, had grades similar to non-disabled peers without using accommodations and was able to perform plumbing work on a hands-on basis at skill level similar to non-disabled peers;
- Teacher testified student should get driver's license and apprenticeship with a plumber;
- Evidence did not support parent's testimony that student could not read, write or do math.

### Hearing Officer Decision:

- Parent's concerns were not about special education but a general concern about post-high school life;
- Parent did not claim that student's special education program was inappropriate;
- Parent's attorney withdrew after first day of hearing; knowing parent attorney could not continue after the first day, parent was informed hearing request could be withdrawn without prejudice before testimony began and the

# 14-0440:Student v. West Hartford Board of Education (October 2, 2014) Brette Fitton

## *District Prevailed (Appealed)*

- 18 year old student with diagnoses of ADHD, autism, processing disorder and psychotic disorder;
- 2011-12: Student expressed suicidal ideation and was briefly hospitalized; student received 504 plan;
- Spring 2012: Student's grades declined, school attendance became sporadic; homebound instruction was begun; student was referred to special education and identified with emotional disturbance;
- In therapy, student expressed desire to kill former psychiatrist, attack people and blow up a hospital; therapist testified that without appropriate clinical interventions and supervision, student at high risk of hurting/killing someone and at risk of being triggered for rage and violent fantasies;
- PPT recommended district alternative high school; Student attended for 2012-13 school year, receiving good grades; student successfully took CAPT;
- 2013-2014: Student attended and graduated from alternative high school despite two hospitalizations;
- PPT proposed 2014 ESY program and district's post-secondary transition program for 2014-15 that provides vocational experiences, independent living skills, travel training, counseling and community based experience; parents requested private special education transition program that provides one to one therapy and support in job and educational settings, and transports students to these sites.

## Hearing Officer Decision:

- District provided appropriate programs for 2011-12, 2012-13 and 2013-14 school years;
- Proposed 2014 ESY program was not appropriate as transportation as a related service was not "specified sufficiently to take into account Student's safety in the community";

## 14-0510: Student v. Greenwich Board of Education (December 30, 2014) Sylvia

Ho

*District Prevailed (Appealed)*

- District offered diagnostic placement to student identified with emotional disturbance, transferring from New York; Parents alleged that district had sufficient information to develop an IEP; Parents sought reimbursement for private day placement;
- Parents registered student in district June 2013 stating on enrollment form that student would be attending district school in September;
- PPT convened in June and reviewed two IEPs from student's New York approved private special education school (which described student as having superior academic abilities but requiring support services) and a neuropsychological evaluation;
- PPT felt district school had clinical resources to meet student's needs including school psychologist, three guidance counselors and a social worker and counselor, and proposed diagnostic placement in district school; team would match services and goals in student's last IEP from New York private placement;
- Testimony revealed parent contractually committed to full year tuition at Eagle Hill prior to registering student in district; Hearing Officer did not find parent credible and found that parent never intended for student to attend district school.

### Hearing Officer Decision:

- Diagnostic placement was appropriate;
- District had insufficient information to develop IEP for student in



## **14-0358: Student v. Norwalk Board of Education and Bridgeport Board of Education**

**(January 16, 2015) Justino Rosado** *District Prevailed*

- Student is diagnosed with emotional disturbance and was committed to DCF; at eighteenth birthday, student agreed to voluntary DCF commitment and agreed to have surrogate parent continue to advocate on student's behalf;
- At the end of the 2012-13 school year, student had earned enough credits to graduate;
- In June 2013, DMHAS placed student at out of state facility for psychiatric, not educational, reasons; both student and principal of facility thought student graduated;
- Surrogate parent contested student's graduation stating student required transition services;
- Surrogate alleged that he was not informed of student's pending graduation although surrogate attended two PPT meetings in 2013 where graduation was recommended.

### **Hearing Officer Decision:**

- Student was properly graduated at end of 2012-13 school year;
- Since student was properly graduated, district is not required to pay for student's current placement, or provide an educational program or transition plan for ESY summer 2013 or the 2013-14 school year.

**15-0094: Fairfield Board of Education v. Student (February 18, 2015) Justino Rosado**

*Pro se Parent Prevailed*

- District filed for due process hearing after parents requested IEE for student with autism;
- District had a neuropsychological evaluation performed by independent neuropsychologist who also observed student in school;
- Student was very difficult to evaluate; neuropsychologist determined that the results from three of the assessment instruments were invalid; neuropsychologist prepared a report and made general recommendations;
- Parents obtained an independent neuropsychological evaluation; their neuropsychologist coaxed the student to respond by motivating him (the “Boston Method”).

**Hearing Officer Decision:**

- District evaluation was not appropriate; current academic abilities were not addressed and three of the assessments did not yield valid responses; recommendations were general and the evaluation did not provide guidance for Student’s educational program;
- However, Parent’s evaluation was obtained after the “window” of this hearing; the evaluation was not assessed to determine its appropriateness; the hearing is not intended as a comparison of evaluations to determine which assessment is better;
- District shall pay for the independent neuropsychological evaluation

## 15-0281: Student v. Norwalk Board of Education (March 19, 2015) Robert Skelley *District Prevailed*

- Parent withdrew student from school December 2012 allegedly due to parent/district issue around tardiness; Parent provided physician letter diagnosing student with PTSD; homebound instruction was provided through remainder of school year; special education referral was made in 2012-13, 2013-14 school years; parent refused consent for evaluation;
- Student received homebound instruction for 2013-14 school year;
- 2014-15: Parent was notified that current medical documentation was insufficient for homebound; parent failed to make student available for review by independent medical provider although parent was told that without review, homebound instruction would end;
- District believes student would be eligible for special education if parent consented to evaluation.

### Hearing Officer Decision:

- District shall cease providing homebound instruction until parent provides information and documentation required by state regulation;
- Parent must make student available for evaluation;
- If parent fails to make student available for evaluation, district shall use all legal means to address student's attendance.



# Lessons Learned

1. Expect more requests for IEEs; respond promptly to these requests;
2. Appropriate evaluations should yield usable, valid results that will further appropriate educational planning and programs;
3. Expect there will be requests for homebound instruction that you will want to challenge;
4. Take child find requirements seriously; extensive absences and marginal progress or behaviors cannot be ignored; PPTs must be convened to consider whether there may be special education eligibility even if eligibility seems unlikely;
5. At the same time, carefully consider whether a student's behavior(s) is substantially likely to result in injury to the student or others; do not underestimate - or overestimate - dangerousness;
6. Ensure that transition planning/implementation of the plan meets all of the requirements of the IDEA including that the plan is reasonably calculated to provide educational benefit;
7. Recommendations of medical personnel must be taken seriously, especially when grave medical issues are involved;
8. Make sure that paraprofessionals are not being asked to do things they should not be doing or are not sufficiently trained to do;
9. Even the most difficult parents who request seemingly ridiculous services or make outrageous allegations may be right; ignore them at your peril;
10. Do not punish students for having demanding and difficult parents.

