



STATE OF CONNECTICUT

STATE BOARD OF EDUCATION

August 9, 2013



Mr. Wayne Holland
Director of Special Education Services
Stamford Public Schools
888 Washington Boulevard
P.O. Box 9310
Stamford, CT 06904-9319

Ms. Jill Chuckas
193 Minivale Road
Stamford, CT 06907

Re: [REDACTED]
[REDACTED]

Dear Mr. Holland and Ms. Chuckas:

The Bureau of Special Education is responding to the complaint filed on May 9, 2012 with this office by Jill Chuckas, Surrogate parent (the surrogate parent) on behalf of [REDACTED] (the student). This investigator reviewed the district's response to the inquiry letter as well as the related documentation provided.

The letter of inquiry framed the issue of the complaint as follows:

Issue: Pursuant to 34 C.F.R. § 300.106(a)(1), school districts must ensure that extended school year services (ESY) are available as necessary to provide a free and appropriate public education (FAPE). 34 C.F.R. § 300.106(a)(3) further stipulates that districts may not: limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

Neither federal nor state law requires that every disabled child receive extended school year services as part of a child's IEP. However, those laws do require that ESY be available in those cases in which it is deemed to be part of a particular child's free appropriate public education. The state standard in Connecticut includes both regression/recoupment criteria and nonregression criteria for determining if a child is eligible to receive ESY services.

These factors include:

- The nature or severity of the student's disability (nonregression);
- The likelihood that the student will lose critical skills or fail to recover those skills within a reasonable time as compared to typical students (regression/recoupment);
- The student's progress in the areas of learning crucial to attaining self-sufficiency and independence from caretakers (nonregression);

- The students stereotypic, ritualistic, aggressive or self-injurious behaviors that prevent the student from receiving some educational benefit from the program during the school year (nonregression);
- Other special circumstances identified by the IEP team such as: the ability of the student to interact with other non-disabled students; the areas of the student's curriculum that need continuous attention; the student's vocational needs; or the availability of alternative resources.

Questions: Did the Planning and Placement team consider ESY services for the student? If so, what was the team's determination? What criteria did the team utilize in making its determination? What data did the team utilize in making its determination? Was the surrogate parent's input considered in making the determination?

The following information was used in the preparation of this report:

1. The district's response to the letter of inquiry.
2. IEPs dated 5/1/13, 5/17/13, 6/14/13.
3. The following evaluations: Education evaluation dated 6/14/13 by Joanne D'Anna; Observation/Evaluation dated 6/14/13 by Christina DeBacco.
4. Extended School Year Criteria Sheet (blank form containing no student-specific information)
5. Copies of email communications between the surrogate parent and the district.

Findings of fact:

1. [REDACTED] is eleven years old and completed the fifth grade in June 2013 at Northeast Elementary School in Stamford. An IEP developed at a PPT on 6/14/13 indicates that [REDACTED] will be in the sixth grade next year at [REDACTED].
2. A PPT was convened on 6/14/13; the reason(s) for the meeting included: *review eval/reeval, determine eligibility, develop IEP, and other: Eligibility for ESY*. Among the PPT recommendations were: "[REDACTED] is identified as Other Health Impaired ADHD and is eligible for special education and related services" and "[REDACTED] is not eligible for Extended School Year." One *Prior Written Notice* page reflected the following *Actions Proposed*: "Eligibility for ESY" for the reason: "does not meet criteria" with the proposed action based on: "See the meeting summary for details of Eval Procedures 6/14/13." Another *Prior Written Notice* page reflected the following *Actions Proposed*: Surrogate parent has requested [REDACTED] receive Extended School Year based on the severity of need (below math 2 years) for the reason "does not meet the criteria for Extended School Year" with the proposed action based on "See the meeting summary for details of Eval Procedures 6/14/13."
3. An Education evaluation dated 6/14/13, completed by Joanne D'Anna, represents the student's level of functioning in math (as assessed by the KeyMath-3DA) as follows: Standard Score: 74; Percentile Rank: 4th percentile; Grade Equivalent: 3.8 (student's grade placement at the time of testing: 5.10); Age Equivalent: 8.4 (student's chronological age at the time of testing: 11.6).

4. The *Extended School Year Criteria Sheet* (which is presumed to be a district form, though it is not identified as such) contains no information; it was provided as a blank form with the district's response. The form includes the five factors identified above as criteria for the determination of ESY eligibility. The form includes the statement: * **ESY Criteria: A student must meet at least 3 of the 5 criteria factors to qualify for ESY services.**

Conclusions:

34 C.F.R. § 300.106(a)(3) stipulates that districts may not: limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services. In establishing an arbitrary standard of requiring the existence of 3 out of 5 criteria to be eligible for ESY services, the district is in violation of this regulation. Corrective action is required, see below.

Though it is the district's contention that it used the state standards as criteria for determining that the student was not eligible for ESY services, it has provided no documentation to describe how the student's needs were measured against those criteria. And while the district indicates that it included the ESY criteria worksheet with its response, the form was not completed. The district further indicates that it used the student's performance and evaluation results as the data used to make their determination, but there is no explanation as to how the student's level of performance in math does not meet the criteria: "severity of the disability" and/or "the areas of the student's curriculum that need continuous attention." The data under consideration at the time of the PPT placed the student's skill levels in math at the 4th percentile, and between two and three years below his same age/grade peers.

Required corrective actions:

The district must immediately cease its use of the "3 out of 5 criteria" for determining ESY eligibility. In its place, the district must establish a means of determining eligibility that is in compliance with 34 CFR § 300.106(a)(3) and Connecticut's state standard, which allows for a student to be deemed eligible regardless of disability and even if only one of the criteria is met. A written plan that includes an explanation of how professional development will be delivered to ensure that all appropriate PPT participants are prepared to determine ESY eligibility must be developed and forwarded to this office by October 4, 2013. Any accompanying paperwork that the district might develop as part of this process should be forwarded with the written plan.

Since the student's eligibility for ESY services was not adequately/appropriately considered, the district's actions serve as a denial of FAPE. The district must, prior to the start of the 2013-2014 school year convene a PPT, to consider the student's need for compensatory education. The purpose of compensatory education is to place a student in the position he would have obtained but for the LEA's failure to provide FAPE. The district will need to determine where he would be performing had he been provided FAPE for that period of time (summer 2013), and develop a plan accordingly. The district must provide the Bureau with

documentation that the team considered compensatory education and describe the determination made within five days of the PPT meeting.

Recommendation:

It is recommended that the district conduct a review of the manner in which it provides guidance relative to the completion of the Prior Written Notice page of the IEP. The State Department of Education's *IEP Manual and Forms* (available at the address below) provides guidance in that regard.

(<http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/IEPManual.pdf>)

I have been asked to serve as the Bureau's liaison to the district for the purpose of monitoring the implementation of the required corrective actions. If you have any questions concerning this report, feel free to contact me at 860-978-7272.

Sincerely,



Jim Moriarty, Education Consultant
Bureau of Special Education