The University of the State of New York

The State Education Department
State Review Officer
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Nos. 09-008 & 09-010

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:
The Law Offices of Skyer, Castro, Foley and Gersten, attorneys for petitioners, Gregory Cangiano, Esq., of counsel

Michael Best, Special Assistant Corporation Counsel, attorney for respondent, Solange Captan, Esq., of counsel

DECISION

Petitioners (the parents) appeal from a portion of a decision of an impartial hearing officer which denied their request for home-based applied behavioral analysis (ABA) services for the 2008-09 school year. Respondent (the district) cross-appeals from a portion of the impartial hearing officer's decision which denied the district's request that the parents reimburse the district for the cost of home-based ABA services provided to the student during the 2008-09 school year pursuant to pendency.[1] The appeal must be dismissed. The cross-appeal must be dismissed.

At the time of the impartial hearing in June 2008, the student was attending a 6:1+2 special class at the Hawthorne Country Day School (Hawthorne) (see Dist. Ex. 5 at p. 1; Parent Ex. E at p. 1). Hawthorne is a nonpublic school approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d],

[1] Although the district's affidavit of service accompanying its petition for review notes that the parties' counsel communicated prior to the expiration of the period for initiating an appeal and the parent duly filed a notice of intention to seek review approximately one week later, the parties nevertheless created a procedural irregularity by initiating separate appeals from the same impartial hearing decision. State regulations governing the procedures for review of the decision of an impartial hearing officer provide for an appeal and a cross-appeal (8 NYCRR 279.4). Upon notice and an opportunity for the parties to be heard, and as a matter of discretion, the two appeals were consolidated by a State Review Officer. Since the parents served a notice of their intention to seek review first, for purposes of this decision, their request for review will be treated as the initiating appeal and the district's request for review shall be deemed a cross-appeal. I encourage counsel for the parties to avoid such unnecessary irregularities in the future.

200.7). The student's eligibility for special education and related services as a student with autism is not in dispute in this appeal (see 34 C.F.R. § 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

With regard to the student's educational history, the student's mother reported that the student's pediatrician recommended that he undergo a neurological evaluation when the student was 18 months of age because he was not speaking or making eye contact (Tr. p. 68). On May 25, 2000, the student was evaluated by a neurologist and received a diagnosis of autism (id.). The neurologist recommended a half-day school setting, 20 hours of ABA per week, occupational therapy (OT), physical therapy (PT), and speech-language therapy (id.). In July 2000, the student received early intervention program (EIP) services through a center-based program for two-year-old children with severe autism, as well as home-based services that included 20 hours of ABA services per week, speech-language therapy, and OT (Tr. pp. 76-77). Upon aging out of the EIP, the student transitioned to the Committee on Preschool Special Education (CPSE) and he began attending a full-day center-based program and received 15 hours of home-based ABA services per week (Tr. p. 77).

In 2003, the student transitioned to services recommended by the district's Committee on Special Education (CSE) and was enrolled at Hawthorne upon the recommendation of the district (Tr. p. 78). The CSE also recommended that the student continue to receive speech-language therapy, OT, and 15 hours of home-based ABA services per week (Tr. pp. 78-79).

On July 6, 2006, an independent psychoeducational evaluation of the student was conducted by a psychologist, who attempted to administer selected subtests of the Weschler Intelligence Scale for Children – Fourth Edition (Dist. Ex. 7 at pp. 1, 3). Due to the student's lack of expressive language skills, a full scale IQ score could not be determined by the psychologist; however, individual subtest scores indicated that the student's intellectual functioning was in the deficient range (id. at p. 3). The student reportedly exhibited severe delays in cognitive, language, visual motor, and academic development, and also exhibited severe behavioral dysfunction to the extent that he posed a danger to himself, his peers, and significant others (id. at p. 4). The psychologist recommended continued placement in special education classes with a highly structured classroom setting, speech-language therapy, OT, and behavioral management (id.).

In an undated progress report, the student's occupational therapist reported that the student had made progress in graphomotor skills, needed prompts to use fasteners, and sought oral gratification throughout his OT sessions (Dist. Ex. 11). The occupational therapist reported that the student was exhibiting a "success rate" of 50 percent on his short-term objectives, recommended that the student continue to receive OT services at the same frequency, and added four new short-term objectives (id.).[2]

On April 10, 2008, the student's speech-language therapist reported on the student's progress from January through March 2008 (Dist. Ex. 9 at pp. 1-2). The report indicated that the student had met 90 percent of the criteria required for mastery of one objective, and was functioning between 50 percent and 70 percent accuracy on all other objectives (id. at p. 2). The

[2] The OT progress report contained in the hearing record identified the short-term objectives corresponding to the student's goals as "short-term goals" (Dist. Ex. 11).

speech-language therapist recommended that the student continue to receive speech-language services as mandated on his IEP in order to meet his communication needs (id.).

In a progress report dated April 10, 2008, the student's teacher noted that the student was doing well in all academic areas (Dist. Ex. 8 at p. 6). The report delineated domains being addressed in the classroom including communication skills, school self-sufficiency, academics/readiness, expanded community of reinforcers (social/emotional/leisure skills), and physical development (id. at pp. 1-8). The teacher reported that the student's progress was steady with a "low" rate of instructional trials per criterion and that the student mastered programs with a "relatively low" amount of instructional trials (id. at p. 6). She further reported that the student's aggressive behavior had increased and opined that this may have been a result of staff changes within the classroom (id.). The teacher described strategies used to decrease the student's aggression, including continued use of the student's behavior plan, increased verbal "mand" training, and implementation of a checklist schedule outlining work time and break times (id.).

In a progress report dated April 21, 2008, the student's physical therapist indicated that the student had achieved eight, and partially achieved three, out of his 14 short-term objectives (Dist. Ex. 10 at pp. 1-2). The physical therapist recommended that the student continue receiving his mandate of two 30-minute individual sessions of PT per week to further improve the student's motor planning and gross motor skills, balance and coordination including his gait pattern, and his proximal control and stability, to a more age appropriate level (id. at p. 2). The physical therapist further stated that PT was necessary to improve the student's upper and lower body muscle strength and flexibility, endurance and voluntary movement control, and provided thirteen new short-term objectives (id. at pp. 2-3).

The CSE convened on May 13, 2008 for the student's annual review and to develop the student's individualized education program (IEP) for the 2008-09 school year (Parent Ex. C at p. 1). The May 2008 CSE meeting was attended by a district representative who was also a regular education teacher, the student's special education teacher, the student's home-based ABA therapist, and the student's mother (id. at p. 2).[3] The resultant IEP contained a recommendation to continue the student's placement at Hawthorne in a 12-month 6:1+2 classroom with a full-time crisis management paraprofessional and related services of OT, PT, and speech-language therapy (id. at pp. 1, 20). A behavior intervention plan (BIP) addressing the student's aggressive behaviors was also included in the May 2008 IEP (id. at p. 21). The May 2008 CSE did not recommend home-based ABA services.

On May 21, 2008, the parents, through their counsel, filed a due process complaint notice challenging the May 2008 IEP and seeking funding for 15 hours per week of ABA services (Parent Ex. A). However, as noted below, an amended due process complaint notice was filed following a subsequent CSE meeting (Dist. Ex. 3).

On June 16, 2008, the CSE reconvened by district request to address parental concerns (Dist. Ex. 6 at p. 1). The meeting was attended by a district school psychologist who also participated as the district representative, a district regular education teacher, a district speech-

[3] The student's mother testified that the program coordinator at the student's school was present at the May 13, 2008 CSE meeting, although the IEP did not reflect that she had signed the attendance sheet (Tr. p. 85; see Parent Ex. C at p. 2).

language pathologist, an additional parent member, the student's special education teacher, the student's mother and the parents' counsel (Dist. Ex. 5 at p. 2). The resultant IEP indicated that there was no change in the CSE's recommended special education or related services as a result of the meeting (id.). The "other programs/services considered" portion of the June 2008 IEP indicated that the student's teacher reported that Hawthorne was meeting his needs during the school day and the student's mother reported that she was happy with the program at Hawthorne (id. at p. 17). The June 2008 IEP and CSE meeting minutes also reflected that the student's mother requested 15 hours of ABA services at home, that the team discussed what the ABA services were addressing in the home, and that the ABA services were "ruled out" because the team felt that the student's academic, social/emotional, fine and gross motor delays were being addressed within the school day (id. at p. 17; Dist. Ex. 6 at p. 2).

The parents, through their counsel, filed an amended due process complaint notice dated June 17, 2008, alleging that: (1) the student required home-based ABA services to generalize the skills he learned in school; (2) "all professionals who work with the student believe that he requires the additional [home-based] services;" (3) the district representative at the May 2008 CSE meeting indicated that he was "not authorized" to recommend home-based services for the student; and (4) the parents were informed at the June 2008 CSE meeting that home-based services could not be offered although "all members of the review team" recommended that the student required such services in order to derive educational benefit from his program (Dist. Ex. 2 at pp. 1-2). The parents also requested that the district continue to provide the student with 15 hours of home-based ABA services per week pursuant to the pendency provisions of State and federal law (id. at pp. 2-3).

In its response to the parents' due process complaint notice, the district described the options it considered at the June 2008 CSE meeting and its reasons for rejecting the parents' request for home-based ABA services (Dist. Ex. 3). The district also asserted that, if the impartial hearing officer determined that the student was offered a free appropriate public education (FAPE) for the 2008-09 school year, it would seek reimbursement for "all moneys issued during the pendency of the proceeding" (id. at p. 4).

An impartial hearing convened on June 25, 2008. In an interim order dated July 10, 2008, the impartial hearing officer determined that the student was entitled to 15 hours of home-based ABA services for the duration of the proceedings by virtue of pendency (IHO Ex. V at p. 5). The impartial hearing concluded on October 6, 2008. In a decision dated December 9, 2008, the impartial hearing officer described the student's background, the procedural history of the case, and the parties' positions with respect to the parents' claim for home-based ABA services (IHO Decision at pp. 2-5). The impartial hearing officer marshaled the evidence presented, including testimony by the district's psychologist, a program coordinator for Hawthorne, one of the student's home-based ABA service providers, the student's teacher at Hawthorne, and the student's mother (id. at pp. 5-11). The impartial hearing officer concluded that the district established that the recommended program was reasonably calculated to enable the student to receive educational benefits and that the district offered the student a FAPE (id. at pp. 12-15). With respect to the district's request for reimbursement for the cost of the home-based ABA services provided to the student pursuant to pendency, the impartial hearing officer denied the district's request, finding, among other things, that the stability and consistency purposes of the pendency provision would be undermined by requiring reimbursement (id. at p. 15).

The parents appeal, and assert that the impartial hearing officer erred in denying their claim for home-based ABA services. The parents allege that: (1) the CSE's determination not to recommend home-based ABA services was predetermined; (2) the CSE refused to listen to the parents; (3) the CSE did not have documentation to support the denial of home-based ABA services; (4) parent training and counseling was not provided by the district consistent with State regulations; (5) home-based ABA services were necessary to ensure the student's progress; (6) the staff at Hawthorne believes that the student needs the home-based ABA services; (7) the provision of 15 hours of home-based ABA services is appropriate for the student; (8) the impartial hearing officer acknowledged that the student needs support in the home; (9) the school program at Hawthorne and the home-based ABA program are "inextricably intertwined;" (10) the district's obligation to provide for generalization of skills from one learning environment to another is necessary under the Individuals with Disabilities Education Act (IDEA); (11) the student would not progress at school without the home-based ABA services; (12) the June 2008 IEP noted that the student does not make bowel movements during the day and this need cannot be met during the school day without the home-based ABA services; and (13) the student regresses without home-based ABA services.

In its answer, the district argues that the parents' procedural claims are waived because the parents' counsel stipulated at the impartial hearing that no procedural claims were being asserted. The district also contends that it properly considered input from the staff at Hawthorne and the parents and that the program at Hawthorne with related services and a crisis paraprofessional was appropriate for the student. The district further asserts that home-based ABA services are not required for the student to progress toward his IEP goals. Among other things, the district also asserts that the IDEA does not require the district to provide generalization of skills across settings.

In its cross-appeal, the district claims that the impartial hearing officer was correct in determining that the district offered a student a FAPE, but erred in failing to order the parents to reimburse the district for the cost of the home-based ABA services provided to the student during the 2008-09 school year in accordance with the pendency provisions. The parents answer the cross-appeal, alleging that the impartial hearing officer's decision should only be upheld insofar as it denied the district's request for reimbursement and arguing that the district is not entitled to such relief because it would undermine the purpose of the pendency provisions.

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if a procedural violation is alleged, an administrative officer may find that a student did not receive

a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an impartial hearing officer's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998]; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 C.F.R. §§ 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see P. v. Newington Bd. of Educ., 546 F.3d 111, 114 [2d Cir. 2008]; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (34 C.F.R. § 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals related to those needs (34 C.F.R. § 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (34 C.F.R. § 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9). Subsequent to its development, an IEP must be properly implemented (8 NYCRR 200.4[e][7]; Application of a Child with a Disability, Appeal No. 08-087).

The New York State Legislature amended the Education Law to place the burden of production and persuasion upon the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of production and persuasion regarding the appropriateness of such placement (Educ. Law § 4404[1][c], as amended by Ch. 583 of the Laws of 2007). The amended statute took effect for impartial hearings

commenced on or after October 14, 2007; therefore, it applies to the instant case (see Application of the Bd. of Educ., Appeal No. 08-016).

At the outset, the parties' dispute with regard to the parents' procedural claims and claim regarding the provision of parent training and counseling must be addressed. I note that these claims were not raised in either the parents' due process complaint notice or amended due process complaint notice (Dist. Ex. 2; Parent Ex. A). Furthermore, as noted by the impartial hearing officer in her decision, the parents' counsel expressly stipulated in the hearing record that the only issue to be decided on the merits at the impartial hearing was the parents' claim that the district should have provided the student with 15 hours of home-based ABA services (Tr. pp. 324-25; IHO Decision at p. 12).[4] Consequently, I find that the parents' procedural claims and allegations regarding the provision of parent training and counseling are not properly before me as they were not identified in the parents' due process complaint notice, are raised for the first time on appeal, and are thus beyond the scope of review (see A.B. v. San Francisco Unified Sch. Dist., 2008 WL 4773417, at *9 [N.D. Cal. Oct. 30, 2008]; Saki v. Hawaii, 2008 WL 1912442, at *6-*7 [D. Hawaii April 30, 2008]; Application of a Student with a Disability, Appeal No. 08-158; Application of a Student Suspected of Having a Disability, Appeal No. 08-100; Application of the Bd. of Educ., Appeal No. 08-026; Application of a Student with a Disability, Appeal No. 08-020; Application of the Dep't of Educ., Appeal No. 08-009; Application of a Child with a Disability, Appeal No. 07-122; Application of a Child with a Disability, Appeal No. 07-072; Application of a Child with a Disability, Appeal No. 07-051; Application of a Child with a Disability, Appeal No. 06-139).

Turning next to the parents' claim that the district should have provided the student with 15 hours of home-based ABA services in addition to the educational program and services recommended in the student's June 2008 IEP, after carefully reviewing the entire hearing record, I find that the impartial hearing officer, in a thorough and well-supported 16-page decision, correctly determined that the district's recommended program and placement for the 2008-09 school year was reasonably calculated to confer educational benefits to the student and thus, offered the student a FAPE in the LRE (IHO Decision at pp. 11-15). I further agree with the impartial hearing officer that the district was not required to offer the student home-based ABA services in addition to the educational program and related services recommended in the student's June 2008 IEP (see Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *17-*18 [E.D.N.Y. Oct. 30, 2008]). The impartial hearing officer appropriately determined that the student was offered a FAPE in the LRE, and that the recommended special education programs and services were reasonably calculated to confer educational benefits (IHO Decision at pp. 11-15). Accordingly, I will dismiss the parents' claim that the district failed to offer the student a FAPE.

Turning next to the parties' arguments with regard to reimbursement of the district for the cost of the student's home-based ABA services provided under pendency for the 2008-09 school year, I also agree with the impartial hearing officer's conclusion that the district's request should be denied (IHO Decision at p. 15). In addition to the analysis set forth by the impartial hearing officer, it is well established that the IDEA and the New York State Education Law require that a student remain in his or her then current educational placement, unless the student's parents and the district otherwise agree, during the pendency of any proceedings relating to the identification, evaluation, or placement of the student (20 U.S.C. § 1415[j]; Educ. Law §§ 4404[4], 4410[7][c];

[4] The impartial hearing officer determined that allegations of a procedural violation raised in the parents' closing brief had been waived pursuant to the parties' stipulation (IHO Decision at p. 12).

see 34 C.F.R. § 300.518; 8 NYCRR 200.5[m]). In addition, during the pendency of administrative and judicial proceedings, a student remains at his current educational placement, "unless the State or local educational agency and the parents or guardian otherwise agree" (20 U.S.C. § 1415[e][3]; Educ. Law § 4404[4]; 34 C.F.R. § 300.518[a]; 8 NYCRR 200.5[m]). Furthermore, in order to comply with State and federal law pendency provisions, a district's responsibility to maintain a student's pendency placement includes funding that placement (see Murphy v. Arlington Cent Sch. Dist., 297 F.3d 195 [2d Cir. 2002]; Bd. of Educ. v. Schutz, 290 F.3d 476 [2d Cir. 2002], cert. denied, 537 U.S. 1227 [2003]; see also 20 U.S.C. § 1415[j]; 34 C.F.R. § 300.518; Educ. Law § 4404[4][a]; 8 NYCRR 200.5[m]).

In two appeals previously litigated by the district, Application of the Dep't of Educ., Appeal No. 08-061 and Application of the Dep't of Educ., Appeal No. 08-134, the district argued for recoupment of payments made pursuant to pendency in light of a determination that the district offered a FAPE to the student.[5] In those appeals, a State Review Officer did not find the district's arguments persuasive and denied the district's request to be reimbursed for the pendency payments (id.). In the instant appeal, the district makes the same arguments offered in the previous appeals and fails to offer any new or compelling facts or legal authority to distinguish the present case to warrant a change from the prior holding (see Application of the Dep't of Educ., Appeal No. 08-061; Application of a Child with a Disability, Appeal No. 05-091).

I have examined the parties' remaining contentions and find that it is unnecessary to address them in light of my decisions herein.

THE APPEAL IS DISMISSED.

THE CROSS-APPEAL IS DISMISSED.

Dated: **Albany, New York**
March 12, 2009

PAUL F. KELLY
STATE REVIEW OFFICER

[5] The district argues that the Second Circuit has not "squarely" addressed the issue of recovery of payments made pursuant to pendency, and again argues that I should adopt the reasoning of the First Circuit Court of Appeals (see Doe v. Brookline Sch. Comm., 722 F.2d 910 [1st Cir. 1983]; see also Dale M. v. Bd. of Educ. of Bradley-Bourbonnais High Sch. Dist. No. 307, 237 F.3d 813 [7th Cir. 2001]; Dale Mayo v. Baltimore City Pub. Sch., 40 F. Supp. 2d 331 [D. Md. 1999]). Although the district asserts that the discussions of the recoupment of pendency costs in court decisions in this circuit are "inapplicable" (see Bd. of Educ. v. Schutz, 137 F. Supp. 2d 83, 92 at n.15, aff'd 290 F.3d 476 [2d Cir 2002]; Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 86 F. Supp. 2d 354, 367 at n.9, aff'd 297 F.3d 195 [2d. Cir 2002]), I find its arguments favoring the approaches taken by the courts in Brookline and Dale M. to be unpersuasive.