

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Danbury Board of Education

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Appearing before: Attorney Stacey M. Owens, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

7. Whether a ski trip should be made part of the Student's individualized education program (IEP).
8. 2. Whether the Board is responsible for the cost of the ski trip.

SUMMARY:

The Student suffers from dyslexia and attention deficit disorder. He is enrolled at the Kildonen School in Amenia, New York, in accordance with his IEP. His education at the Kildonen School is funded by the Board. A part of the program devised by the Kildonen School to meet the special needs of its students includes an annual ski trip for a fee that must be tendered for students to participate. The Parent claims the ski trip is a mandatory part of the student's special education program with Kildonen, and thus, should be paid for by the Board as part of the student's IEP to address the areas of social skills and self-esteem. The Board, however, does not regard the ski trip as mandatory, nor does it deem the ski trip to be a required part of the Student's IEP to address the Student's social skills and self-esteem.

FINDINGS OF FACT:

1. The Student has attended the Kildonen School since 1997 – his sixth grade year. The Board has provided the funding for his special education at Kildonen since he first enrolled in the school. As part of its curriculum, Kildonen offers a week-long ski trip. (Exhibit P-9) As testified by Ron Wilson, Headmaster of the Kildonen School, the ski program is designed to address the self-esteem and confidence of the students. (also Exhibits P-5 & P-19) Mr. Wilson regards the program as “mandatory” for grades 7th through 12th, and has stated that during the interview process, “if parents indicated that they did not want or would not, for good reason. . . have their children participate in the program, [they] would probably not accept [the student] into the Kildonen program.” (Exhibit P-11)
2. Kildonen’s physical education program includes basketball, skiing, tennis, lacrosse and horseback riding. Mr. Wilson added in his testimony that there are, “two aspects to the ski program. An interscholastic team that meets. . .and an intensive instruction part of the program for skiing where all students participate in grade 7 through 12.” “There’s a culmination to the ski season at the end of the six or seven weeks . . . a week-long ski trip to Killington, Vermont.”
3. Mr. Wilson testified that during the instructive part of the ski program the students practice their skills on a small mountain located near the school in Great Barrington, Massachusetts. He specifically stated that, “on any mountains in the United States, that [he is] aware of, the trails are designated according to difficulty, from green circles for the simplest trails, to blue square for the medium type trails, and the black diamond for the difficult. . . and students will progress up through the system. They have to learn certain maneuvers and skills before they’re allowed to advance to the next level.” Every student that is skiing wears an arm-band, indicating their level of achievement. (Exhibits P-5 and P-19)
4. Thus, students are able to learn and practice on the mountain located in Great Barrington, Massachusetts near the school and demonstrate the progress reflected in their reports without participation in the ski trip. (Exhibits P-5 and P-19) As testified by Dr. Ruggiero, “its possible to have a very good evaluation if a student is unable to participate in the ski trip.”
5. A review of the student’s Alpine Skiing and Snowboarding progress reports from years 1999 and 2000, the Student’s 8th and 9th grade years, respectively, reveals that the Student exhibited levels of improvement and mastered those skills necessary to progress to the next level. Despite the Student’s lack of participation in the ski trip in 1999, the March 1999 report, like the March 2000 report provides, a marked improvement of the Student’s motor skills and social skills. In fact, absent his participation in the ski trip in 1999, the Student still progressed from the novice level to the beginner level as represented by his earning of a green armband. (Exhibits P-5 and P-19) As such, it is clear the Student’s participation in the ski trip is not a

requirement to meeting his social goals nor has there been sufficient evidence provided to show that it is a mandatory program.

6. Mr. Wilson testified that, “for illness or injury, [he] may excuse students” from participating in the ski trip. He further testified that he has excused other students who were in their senior year, if they were visiting colleges and have experienced the ski program in the past.
7. On May 24, 2000 a PPT meeting was held to discuss the Student’s IEP. During the PPT meeting Katherine Schanz of the Kildonen School reported that the Student had, “become more animated and involved”, “has many friend”, and “has developed self-advocacy skills. . .” (Exhibit P-6) In accordance with the IDEA, the Parent requested the PPT minutes for May 24, 2000 be amended. Although the Parent expressed the minutes did not reflect the fact that they felt the Student’s self-advocacy skills were weak, the Parent did not express a desire to change or correct the social goals. (Exhibit P-7)
8. As testified by Joyce Emmett, Director of Special Education, and Patricia Doyle, Director of Pupil Services, on December 8, 2000 a PPT meeting was held to discuss reevaluations for the Student, but during such meeting the Parent requested the inclusion of the week-long ski trip in the Student’s IEP and payment by the Board of the \$750.00 cost. As the ski trip was not agreed to be discussed during the December 8, 2000 PPT meeting, Mrs. Doyle who sat to discuss the reevaluation issue in Ms. Emmett’s absence, subsequently referred the ski trip issue to Ms. Emmett for her consideration and/or approval. Ultimately, Ms. Emmett denied payment for the ski trip by the Board. (Exhibit P-15)
9. The Parent claims that the Student’s due process rights have been violated in that his request to include the ski trip as a part of the Student’s IEP was not discussed or considered in any fashion during the PPT. However, the facts show otherwise. (Exhibit P-12)
10. Testimony from the Mother reveals that during the December 8, 2000 PPT meeting the ski trip was discussed and that Dr. Ruggiero participated. The Mother testified that Dr. Ruggiero, “explained about the ski program being mandatory and how it fit into Kildonen’s program. She added that, “[they] stated [their] concerns, that [the Student] had social emotional needs, that is was important that he participate in the program.
11. Clearly, Ms. Emmett not only considered the inclusion of the ski trip as part of the IEP and payment for cost as requested by the Parent during the PPT meeting, she further inquired into the matter as noted by her letter dated December 12, 2000 to the Parents. In her discussion with the Headmaster of the Kildonen School, Ms. Emmett revealed that she learned, “that not all students participate in the ski trip and no student will be asked to leave if he or she does not go skiing in February. In addition, he informed [her] that the ski trip is generally paid for by the parent/guardian.” (Exhibit P-15) This is a discussion to which Mr. Wilson recalls having with Ms.

Emmett without recalling specific details. As such, it is clear that Ms. Emmett, as a representative for the Board, gave due consideration to the Parent's request.

12. The facts further show that unlike the ski trip issue that was raised during the December 8, 2000 PPT meeting even though it was not originally agreed upon for discussion, the Parent did not attempt to raise any issues concerning the Student's social goals. (Exhibit P-12)
13. Although representatives from the Kildonen School have testified in support of the Parent's position that the ski trip is mandatory and should be made a part of the Student's IEP, evidence and testimony has been provided to the contrary.
14. First, it is clear that the Kildonen School inconsistently excused students from the ski program. In addition to the reasons provided by Mr. Wilson, further testimony revealed that a young girl was excused based on her Parent's objection to her participation in a coed trip. Also, the Student, himself, had been excused to attend colleges for his sibling (*not for himself*), and was also excused when he suffered a broken arm. In the instances provided, neither the Student nor the young girl, were subjected to any negative report or disciplinary action. Thereby, negating the Kildonen School's claim that the ski trip is a mandatory program.
15. Dr. Joseph Ruggiero testified that roughly 80% of the students participate in the ski trip. No testimony or evidence was offered, whatsoever, that showed a student's grades progress reports or continued enrollment with the Kildonen School was negatively affected as a result of their non-participation in the ski trip.
16. A review of the Kildonen School student handbook does not state the ski trip is a *mandatory* part of the program offered by Kildonen. (Exhibit P-9, page 4)
17. Mr. Wilson has testified the cost of the ski trip is not included in the tuition bill so as to not assess fees against students in lower grades that are not required to participate and because the cost varies from year-to-year. Dr. Ruggiero testified that the ski program, but not the ski trip is made a part of the tuition. Since the ski trip is not included in the cost of the tuition for a program that meets the specialized needs of the Student, the Board is not obligated to pay. Exhibits P-10, P-15)
18. The lack of negative consequences for failure to participate in the ski trip; absence of the "mandatory" language in the student handbook; the Kildonen School's billing practices; inconsistent approval of excused absences from the ski trip; and no distinguishing difference in the written progress reports defy the credibility of the claim that the ski trip is mandatory.

CONCLUSIONS OF LAW:

7. The "free appropriate public education" mandated by the IDEA must include special education and related services tailored to meet the unique needs of a particular child,

20 U.S.C. Section 140(a)(16), and be “reasonably calculated to enable the child to receive educational benefits.” Board of Educ. v. Rowley, 458 U.S. at 207, 102 S.Ct. at 3051 (1982). The unique needs of a disabled child and the services required to fulfill them must be set forth at least annually in a written Individualized Education Program (IEP), 20 U.S.C. Section 1414(a)(5). The evidence provided shows that an IEP was written on May 24, 2000.

2. The Supreme Court held in Rowley, that the “free appropriate public education” mandate of the IDEA is satisfied when a student is provided personalized instruction with sufficient support services to permit the student to gain educational benefit. Rowley supra at 207.
3. The Parent has expressed that he has personally witnessed a more significant level of growth in the Student’s social skills as a result of his participation in the ski trip. Despite the fact his son initially did not want to participate in the ski trip, it proved to be socially beneficial to the Student. Much like the parents in the Walczak v. Florida Union case, the parent wishes to include the ski trip as a part of his IEP so the Student can “reach [his] true potential.” Walczak v. Florida Union Free School District, 142 F.3d 119 (1998). However, in reviewing the legislative intent of the IDEA the Court in Tucker v. Bayshore found that the IDEA guarantees an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” Tucker v. Bayshore Union Free School District, 873 F.2d at 567 (2d Cir. 1989)
4. In this particular case, the student still developed and progressed absent his participation in the ski program. Although the Parent bears witness to a wider margin of improvement in his son’s social skills, confidence and self-esteem, the Board is only obligated to provide a free and appropriate public education that meets the specific needs of the Student – “the basic floor of opportunity.” Rowley, supra at 201. The Board is not obligated to provide a program that fulfills the Student’s maximum potential. P.J. v. Connecticut Board of Education, 788 F. Supp. 673, 679 (D. Conn. 1992).
5. The Student has benefited from the ski program and has shown progression in accordance with his IEP goals as reflected in his progress reports. However, he has not necessarily benefited from the ski trip itself.
6. The ski trip is not a part of the Student’s IEP, nor is there anything offered to suggest that it should be a part of the IEP to assist the Student in meeting his goals and objectives.
7. The record shows that the Student has made improvement in his social and learning skills. The Supreme Court in Rowley found the District Court’s finding that the student in that case received an “adequate” education since she performed better than the average child in her class and was advancing easily from grade to grade was indicative that the student did not need additional services. Rowley supra at 209. Similarly, the Student in this case has advanced from grade to grade and has remained

on a consistent path of educational success with and without participation in the ski trip. Therefore, the education that the Student has received, absent the ski trip is sufficient to address his special education needs.

FINAL DECISION AND ORDER:

1. The ski trip is not required to be a part of the student's IEP.
2. The Board is not responsible for the cost of the Student's ski trip.