

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Danbury Board of Education

Appearing on behalf of the Parents: Mother appeared pro se

Appearing on behalf of the Board: Attorney Christine Chinni and
Attorney Jill Cutler Hodgeman
Shipman & Goodwin
One American Row
Hartford, Connecticut 06103-2819

Appearing before: Attorney Deborah R. Kearns, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Whether a student the local educational agency (LEA) placed in a private special education facility should return to the district in a less restrictive environment for the 2001-2002 school year.

PROCEDURAL HISTORY:

On May 31, 2001, the Board of Education requested a due process hearing when the district proposed the student, who was placed by the district in a special education facility for the 1999-2000 and 2000-2001 school year, return to the district school for the 2001-2002 school year.

Hearing dates were July 20, August 16, August 17, September 5 and September 27. The parties requested transcripts and briefs were filed. The final reply brief was submitted to the hearing officer on December 10, 2001. On the record of the hearing, the LEA waived its right to a forty-five day written decision in order to accommodate Board witnesses and a mutually acceptable hearing schedule.

SUMMARY:

The student is a 15-year-old who was placed by the LEA in a private special education facility since 1999. The student's diagnosis includes dyslexia, ADD, processing disorders and learning disabilities. The private facility utilizes the Orton-Gillingham method to

address reading deficits. The LEA believes they can provide an appropriate educational program for the student and requested due process when the parties failed to agree to the student's placement for the 2001-2002 school year.

FINDINGS OF FACT:

1. The director of special education testified. The director oversees special education services for students within the district from birth to 21 years of age. There was no involvement with the student until after the student was in the out-of-district placement. The director describes the student's disability as a language based learning disability. The director describes the disability as less severe when compared to other student's disabilities, which have more impact on them, in terms of the academic achievement and progress in the general curriculum. (Testimony, 9/27/01, Tr. p.33.)
2. A PPT convened on May 23, 2001 to review the results of a neuropsychological evaluation, end of year test results, and the student's current IEP. (Testimony, 9/27/01 Tr. P. 36, Exhibit B-57).
3. The student's disabilities, needs, weaknesses and strengths are most clearly set out in a neuropsychological evaluation dated March 13 and 14, 2001. The procedures and instruments administered (Exhibit B-57) follow in:

- Review of clinical record
- Clinical interview with the student and the parent
- Wechsler Intelligence Scale for Children- Third Edition (WISC-III)
- Woodcock Johnson III Tests of Achievement
- Wide Range Achievement Test –3
- Wisconsin Card Sorting Test
- Trail Making Test A and B (intermediate version)
- Tests for Mental Control
- Cancellation Test
- Boston Naming Test
- Controlled Verbal Fluency Test
- Clock Drawing
- Repeating/Alternating
- Figure Drawing
- Rey-Osterreith Complex Figure Test
- Wechsler Memory Scale –Edition
- California Verbal Learning Test- Children's Version
- Behavior Assessment System for Children: Parent Rating
- Behavior Assessment System for Children: Self-Rating

4. The administering neuropsychologist has a doctorate degree in clinical psychology from Loyola, a pre-doctoral internship at Yale and a two-year postdoctoral fellowship in clinical neuropsychology from the Institute for Living and Hartford Hospital Departments of Rehabilitation and Neurosurgery. (Testimony 9/5/01, Tr. p. 131).

5. The neuropsychologist reports the evaluation is a standardized series of tests that help measure cognitive functions objectively. Measures are taken of attention, concentration, learning and memory, intellectual reasoning, problem solving skills, academic functioning, personality and coping style to gain data that provides a description of an individual's strengths and weaknesses. (Testimony 9/5/01, Tr. p.167).
6. The student is reported to have an average I.Q. with lagging academic performance, ADHD and Dyslexia. The evaluator reports the student is currently receiving instruction in a setting with a student teacher ration of 5:1 to 7:1 and forty-five minutes per day of individual tutorial. The student's strengths are his effort, motivation, enthusiasm, and respectful behavior. Academic achievement measured on the Woodcock Johnson III, is one basis for the evaluator to conclude the student's performance lags behind his intellectual ability. The WRAT-3 test scores are all below the 34th percentile and several of the grade scores are below ninth grade. The report of reading skills indicates word attack is low average; word identity is average, but inconsistent; reading is average, but slow. Fluency is average for simple brief sentences, but lengthier passages required the student to reread passages in a slow deliberate and somewhat cumbersome manner. (Exhibit B- 57, Tr. Pp. 6-7).
7. Written skills are generally within the low average range, with difficulty with letter formation and spacing which worsened in written composition as opposed to single word tasks. Spelling is in the low average range. Spelling difficulties are most evident in complicated written tasks causing the student to misspell words otherwise within his ability range. Punctuation and capitalization further impair the quality of written work. The student's math skills are low average. Attention and concentration indicate the student is vulnerable to distraction. Several of the subtest scores are in average to superior range, particularly brief, simple activities but the student's speed slowed significantly for him to perform accurately on the more challenging tasks. (Exhibit B-57, Testimony, Tr. Pp. 8-9).
8. The student's executive skills appeared to benefit from the one-to-one test environments with cues from the tester not to rush. The WISC III results indicate average to high average, verbal and language ability when measured in a quiet, highly structured, supportive, one-to-one context. (Exhibit B-57, Testimony, 8/16/01 p. 9).
9. Learning and memory indicate a benefit from repetition and structure a point that was emphasized in testimony throughout the course of the hearing. (Exhibit B-57, Testimony, Tr. p. 11).
10. Mood and behavior evaluation had no significant bearing on the student's academic performance. (Exhibit B-57, Testimony, Tr. p.12).

11. The neuropsychologist's testimony generally supports the written evaluation. He identifies test results which indicate the student has multiple weaknesses which impair his ability and which impacts on the student's accessing or applying skills in areas of relative strength. While learning and memory are quite good he requires repetition, organization, structure, and cueing to demonstrate fully his actual cognitive ability. The student exhibits inattentiveness during challenging instruction and ambiguous tasks. Dyslexia creates a substantial discrepancy between intellectual ability and reading ability. Many areas of written expression are problematic with awkward handwriting and misspellings, which breakdown as difficulty increases from work with single written words to essays. Written expression difficulties are due to visual/spatial and visual/motor coordination, integration, organization and planning. Taking notes in lectures will be exceedingly difficult for the student, which would impact on the student's ability to benefit from the class. As the student has to exert increased energy on written mechanics it makes it harder to pay attention in class. (Testimony, 9/5/01, Tr. p. 133-134).
12. The neuropsychologist concludes the combination of attention deficit disorder and the need for increased attention to written tasks is likely to produce a rather overwhelming task stating, " I honestly do not believe that the student is capable in a typical classroom setting of taking adequate notes in a mainstream class". Compensatory strategies need to be implemented. Test results indicate small class size is desirable. Testing which occurs in a structured supportive one-to-one setting reveals the student's optimal performance. (Testimony 9/5/01, Tr. p.138-138).
13. The student's processing speed declines significantly when the student reads lengthier passages. He rereads and efficiency goes down. The student is believed to be able to derive benefit from a classroom containing three or four students, and more depending on all the variables inherent in a classroom. As the class size increases, the neuropsychologist believes there is substantial risk that over time the student would get left behind. By the end of the class he would be completely bewildered. He requires opportunities throughout the course of the class for someone to check his concentration and comprehension. (Testimony, 9/5/01, Tr. p. 147-148.) .
14. The neuropsychologist believes the student demonstrates improvement in listening comprehension, reading skills, fund of information, by comparing test results measured prior to attending the private placement. It is difficult to causally connect the results, which could be due to a number of factors such as brain maturation, successful implementation of compensatory strategies, as a well as, benefit from teaching instruction. (Testimony, 9/5/01 p. 152).
15. To illustrate the benefit the student can derive from repetition and structure, he can experience success in a history class where the material is broken down into chunks and the overview is repeated.

16. It will be considerably more work for the student to find ways to repeat information on his own than in learning situations that don't allow for repetition. (Testimony, 9/5/01, Tr. p.156.)
17. The Academic Dean of the Kildonan School testified. His educational background is a B.A. from Vassar and a doctorate in communications sciences and disorders, specifically learning disabilities, with a concentration in reading and linguistics, from Northwestern University. The Dean is a certified member of the Orton-Gillingham Academy, currently serving as the academic dean at the Kildonan School. (Testimony 8/16/01, Tr. p.6).
18. The Kildonan School serves the needs of dyslexic students with average to above average intelligence, who were not getting an intensive enough program to remediate their language skills. The school uses the Orton-Gillingham approach in an intensive language-training tutorial, and employs a multi-sensory, project-based approach to service the needs of the student. (Testimony 8/16/01, Tr. p.7).
19. The Academic Dean who maintains close contact with the student's teachers reports the student is significantly weak in reading and writing skills, including spelling. The Dean establishes whether a student has a profile which tends to do well with the academic approach offered by the school. The student's progress is monitored to determine whether the student is ready to transition out to another type of program, or requires continued, intensive remediation. The student's status is reviewed on an ongoing basis to determine the need for the program. The Dean is an active participant along with the director of language training and the student's tutor who together decide who will be a participant in the student body. The director of language training is a fellow in the Orton-Gillingham Academy and supervises the language training program and language tutors who provide all students with a daily, one-to-one tutorial in language skills. (Testimony 8/16/01, Tr. p.12).
20. The Kildonan School team meets to determine the appropriateness of a student's continuation in the program and the need to return to the school or plan to transition to another school or program. (Testimony 8/16/01, Tr. p. 15).
21. The student is reported to be making excellent progress and characterized as dedicated and motivated. He received an academic effort award his decoding skills are improving dramatically but continue to have significant weakness in contextualized reading. The student has extremely weak writing and spelling skills. The student's problem area is inconsistency in the application of the rules of phoning and graphing. He still needs to gain automaticity in these areas and to address a weak vocabulary. The student still requires rereading to obtain the meaning of written passages. At the Kildonan School, writing skills are taught in a very systematic and rule-based, sequential method. Teaching the components of language builds from isolated skills, all the way through syllable division, to working out syllables and words, to larger units, to phrases. (Testimony 8/16/01, Tr. p.16).

22. The Dean's conclusion are supported by test results which indicate the student has average phoning and graphing skills but the student is inconsistent in application. Auditory processing test results reflect an improvement. The program, which consists of a spiral approach where the student continually reviews basic skills to assure they are solidified. The Dean testified that basic decoding skills have been accomplished, advanced skills are emerging but the student is still not applying them consistently. The student gets more confused in encoding than decoding, which is often the case. In terms of progress there are three levels, acquisition, application and automaticity. The student's test results report his level of progress is inconsistent application. The student remains a very immature writer, with little detail, simple sentences, poor organization and reliance on outside help for assistance. The student receives training both in the tutorial and in the subject matter classes, particularly literature and history. All of the teachers are trained in the same subject matter as the tutors. (Testimony 8/16/01, Tr. pp. 20, 28).
23. The Dean states the teacher's checking for mastery can happen at the school where the average class size is seven as compared to the experience the student may have in a class of twenty. The individualized attention is reduced. If the student misses five minutes of class he will be lost for the rest and possibly withdraw if he doesn't advocate for himself. (Testimony 8/16/01, Tr. p.32-34).
24. At Kildonan self-esteem and self-advocacy issues are addressed by the way the classes are taught and the advocacy skills are built into the goals of the classes. Students have advisors and the entire program is integrated with other students with similar experiences. After going through the program many students feel they are capable of achieving in a academic environment for the first time. In the Kildonan School the student has benefited from academic recognition he received for improved grades. (Testimony 8/16/01 Tr. P.37).
25. The Academic Dean believes the student still has significant needs and weaknesses warranting placement at Kildonan. He continues to need very direct, very intensive training, to solidify the skills he has learned and to continue to develop to a level I knowledge he is capable of achieving. He still requires a lot of individualized attention. He is not a go-getter in class, he needs to be kept directly engaged or he will recede into the background and not advocate for himself. He continues to require small classes to get attention and focus checks from the instructor. The student requires remediation on a daily basis. (Testimony 8/16/01, Tr. p.39-40, 44).
26. The Academic Dean testified that in areas of written expression the student would not be able to perform adequately without significant help. At Kildonan, the student is graded on class effort, participation in class and homework tests and quizzes. As compared to a public high school class Kildonan homework minimally includes extended essays and heavy reading. For written assignments, Kildonan students all have a systematic approach; they work out outlines and first paragraphs in class and with their tutors. The students are guided each step along the way. Tests include an

opportunity to add oral comments or dictation of answers to a scribe. (Testimony 8/16/01, Tr. Pp. 43, 44).

27. The student is definitely making progress, but is not ready to move to a less restrictive environment. Based on experience of what happens to students if there is a significant change in the intensity of the program, often students move to a less intense private school situation that offer significant support as an interim step. Based on the neuropsychological evaluation that the student's skills are not automatic, and the application of skills is inconsistent, the student will benefit from attending the Kildonan program in the fall to strengthen skills that he has shown he is capable of so that he can be more independent when the class is less intensive. (Testimony, 8/16/01 Tr.p.45-47).
28. The student needs to continue to develop subject matter skills in a way that doesn't compromise his intelligence skill level. (Testimony, 8/16/01, Tr. p.47).
29. The criteria Kildonan utilizes in moving students to a mainstream environment is whether the student's skills are at a level where the student can succeed in a larger environment, both classroom and school. The amount of support they will receive in the next environment is considered. (Testimony 8/16/01 Tr., p.47).
30. The student's progress at the Kildonan School is evidenced by progress records. The results of the reports are corroborated by the testimony of the Academic Dean. (Exhibit B-28, Testimony 8/16/01, Tr. p.59-61).
31. The Board's high school principal testified that there are approximately 300 learning disabled student in the high school. Upon reviewing the student's proposed IEP the principal stated there are many far more disabled students than the one in question. Based on the student's IEP it looks like the high school can offer an appropriate program. The student would be for the most part in the mainstream with some support or some special education assistance. The principal reports he has never met the student. (Testimony 8/17/01,Tr.Pp. 10-12).
32. The IEP does not identify the staff members who would serve the student should he attend the high school. (Testimony 8/17/01, Tr. 13).
33. The incoming freshman class is 625 students, with approximately 2,600 students in the high school. (Testimony 8/17/01, Tr. Pp.14-15).
34. There are a total of 23 special education teachers at the high school, part of a staff of 205 teachers. The witness was not able to identify the number staff members trained in the Orton-Gillingham Method. (Testimony 8/17/01, Tr. p.19).
35. Main steam classes consist of 20-24 students; special education classes tend to be smaller. (Testimony 8/17/01, Tr. p. 20).

36. The school psychologist testified she holds a doctorate in educational psychology from the American International College in Springfield, Massachusetts as well as two masters degrees in educational psychology earned while attending the school. Her focus of education was on the underlying issues for students with learning disabilities. (Testimony 8/17/01, Tr. p. 23).
37. The psychologist did a review of the neuropsychological report. In reviewing the recent auditory processing evaluation, the student is deemed to have remediated or compensated for earlier deficits. (Testimony 8/17/01, Tr. p. 27, Exhibit B-67).
38. The IEP proposes two months of counseling intervention at the start of the school-year to monitor whether the student is meeting self-advocacy objectives with reassessment for continued need of the service. (Testimony 8/17/01, Tr. p. 31)
39. Socialization recommendations are to be address by providing the student opportunities to socialize with non-disabled peers in woodworking, auto-body on computer class or classes for making comic strips and auto cad. (Testimony 8/17/01 Tr. p.31).
40. The mnemonics recommendation could be met by making a song out of vocabulary words for social studies test. An assignment pad is listed as a way to meet the organization recommendation and to avoid procrastination. The student is to look over his assignments. The student will utilize color folders for checking works in progress. Someone could check-in with the student when he is working on the computer, he would have pre-teaching of content, if the teacher perceives a concept would be challenging for the student. The student would utilize a word recognition program presumably to address compensation of writing skills. One recommendation is for a dictionary reading pen that reads for the student and helps to decode. Outlines from teachers and students and tape recordings of class will address writing deficits. The hearing officer finds, by comparing the LEA's proposed program with the Kildonan program, the strategies are largely compensatory in nature, not remedial. The student should check for clarification; and the student is generally responsible for accessing his own special education. (Testimony 8/17/01, Tr. Pp. 32-33, 36, 37, 49, Exhibit B-57 and B-58).
41. The student does not receive a course grade and credit for one period a day, for time spent in the special education resource room. The program is scheduled during study hall time. Math labs and computer labs can be accessed during before and after school and lunch. Contact with the psychologist also is scheduled to occur during free periods or lunch. Library time can occur during lunch (Testimony, 8/17/01, Tr. p. 95, 111, Exhibit P-6).
42. In response to questions about preferential seating to reduce distractibility the psychologist referred to the student's subtest score for distractibility: the score was in the low-average range. The psychologist stated that such scores do not qualify for special education services. There is concern the student is identified as requiring

accommodation for ADHD, by subtest but the testimony did not provide enough information to clarify what parts of the student's special education needs are intended to be addressed by the IEP. (Testimony 8/17/01, p.121, Exhibit B-57).

43. The school psychologist testified the mainstream classroom teachers monitor the student's attention to class content, largely through good classroom practice, of introducing a lesson by stating the objective, followed by a small lesson period and an activity in which the subject matter is reinforced. The teacher monitors students to notice if they understand and the class material is reviewed at the beginning of the next class, everyone must understand before the class moves on. There is contact between special education and the two Orton-Gillingham trained staff members. (Testimony 8/17/01, Tr. Pp.123-125.)

CONCLUSIONS OF LAW:

1. There is no dispute that the student is eligible to receive a free appropriate Public education (FAPE) in the least restrictive environment (LRE) pursuant to IDEA, the Individual with Education Disabilities Act, 20 U.S.C. Sections 1400 et seq., and Connecticut General Statute, Section 10-76d(a)(1).
2. The Board of Education has the burden of demonstrating by a preponderance of the evidence that it has complied with the requirements of IDEA, Regulations of Connecticut State Agencies ("Regulations"), Section, 10-76h-14.
3. The standard to determine if the LEA is providing a student with FAPE is determined by a two prong test as follows: (1) whether procedural requirements of IDEA have been met; and (2) whether the IEP is reasonably calculated to enable the student to receive an educational benefit, *Hendrick Hudson Cent Dist. v. Rowley*, 458 U.S. 176(1982).
4. To the extent that the findings of facts contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels. *Bonnie Ann F. v. Callahan Independent School Board*, 835 F. Supp. 340 (S. D. Tex. 1993).
5. The student's test results, progress reports, neuropsychological evaluation, and testimony provided in the hearing are the basis for the conclusions reached in this decision. Testimony of individuals who have never met the student is given less weight. As to the parent's witness, an educational consultant, who the moving party challenged as having a conflict of interest, it was not necessary to consider her testimony in reaching the decision.
6. The student is currently enrolled in a remedial program to address the student's learning needs primarily through the Orton-Gillingham method. The testimony presented states the program is comprehensive and provided in a small group setting by trained staff. The program carefully monitors the student's attention, comprehension and frustrations through most times during the academic day. The

program carefully addresses encoding and decoding deficits in all aspects of reading and writing in the subject-matter classes and in a daily, individual tutorial. The student is able to work without pullout sessions, except for the tutorial which is programmed for the entire school population. The student receives timely remediation for educational deficits in the classroom setting, a requirement for the appropriate programming for this student. The student receives teacher initiated monitoring for attentiveness and comprehension at the time subject material is presented. The private placement comprises the least restrictive environment for the student at this time. The placement is necessary to provide the student with FAPE. The Kildonan program permits the student, through intensive remediation to perform academic work more closely approximating his documented intellectual ability.

7. The neurological and central auditory test, testimony of the Academic Dean of the Kildonan School and the LEA support a belief that the student has progressed in the private special education program. The LEA disagrees that it is necessary for the student to continue in the program. The testimony of the Academic Dean provides the student's readiness to transition back to the LEA's program is determined by his progress through three levels of skill achievement. The student is successful in basic skills, is not consistent in the second level of applying the skills consistently and needs to get to the third level of automaticity of the skills. Continued remediation is necessary for the student to receive educational benefit from his program. Continued remediation is necessary if the student is to benefit from the reading, writing, note-taking, and testing demands of a high school freshman in a supported mainstream environment.
8. The IEP proposed by the LEA, and the explanations described by the school principal and the school psychologist, leave the student to self-implement many of the programs strategies and accommodations. Other than the programmed reading tutorial, the resource room, math and computer labs, and counseling are accessed during free periods, lunch and before and after school.
9. The student has partially progressed though a program designed to be very structured and sequential. The student's progress in the basic skills have been acquired since the time the student commenced the program at Kildonan, but the process is not sufficiently complete at this time to permit the student to benefit from the district's proposed IEP. The IEP requires a level of independence the student has not yet achieved.
10. The proposed IEP, so far as it requires the student to return to the LEAs program is not appropriate at this time.

FINAL DECISION AND ORDER:

The appropriate program for the student is to continue his placement at the Kildonan School.