

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Students v. West Haven Board of Education

Appearing on behalf of the Parents: Attorney Jennifer Laviano
77 Danbury Road, Suite C-6
Ridgefield, CT 06877

Appearing on behalf of the Board: Attorney Michelle Laubin
Berchem, Moses & Devlin
75 Broad Street
Milford, CT 06460

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

ISSUE:

Whether the placement of the Students at Connecticut Center for Child Development for the 2001-2002 and 2002-2003 school years is appropriate.

PROCEDURAL SUMMARY:

This hearing was requested on February 19, 2002. The prehearing conference was held on February 25. The hearing was held on March 25.

This hearing proceeded as a consolidated action at the request of the Parents on behalf of their twins. Absent objection from the Board, and because this was the most efficient manner for the matter to proceed as the witnesses were identical for both of the Students, the matter was heard as a consolidated case.

The Mother and Janet Calabro of Connecticut Center for Child Development appeared as witnesses on behalf of the Parents. Billie Ladd, the Board's Director of Pupil Services was the sole witness on behalf of the Board.

To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Students are three-year-old fraternal twins [identified as “F” and “M” whenever the findings refer to one of the Students], who have been identified as eligible for special education services under the classification of Autism. [Testimony Mother, Ms. Ladd]
2. The Students entered the Birth to Three program a few months before their third birthday. The delay in the Students referral to Birth to Three was due, at least in part, to the Students’ former pediatrician, who assuaged the Parents worries about their development for a period of time. The Parents were concerned about the Students’ development since they were about one year old. [Testimony Mother; Exhibits FB-1¹, FB-2, MB-1, MB-2]
3. The Students were referred by Birth to Three to the Board in October 2001. [Testimony Mother, Ms. Ladd; Exhibits FB-3, MB-3]
4. At the time of the referral to the Board and as a result of the Planning and Placement Team [hereinafter PPT] meetings for each Student, the Board evaluated the Students during Developmental Play Observations. The observations done in November and December confirmed that the Students required educational support in all developmental areas. [Testimony Mother, Ms. Ladd; Exhibits FB-9, FB-10, MB-10, MB-10]
5. At the subsequent PPT meetings for each of the Students on December 18, the Board recommended, and the Parents agreed to a Diagnostic Placement of the Students at the Board’s program at Pagels School. [Testimony Mother, Ms. Ladd; Exhibits FB-13, MB-13,]
6. In late December 2001, the Parents had the Students evaluated by Adrienne Smaller, Ph.D. These evaluations included parental consultation, testing on two different dates for each of the Students, and a school observation of the program at Pagels. [Testimony Mother; Exhibits FB-14, MB-14]
7. Dr. Smaller’s testing concluded that both of the Students yielded a standard score of 49, corresponding to a 1 percentile in the Mullen Scales of Early Learning. Both of the Students also scored Low on the Vineland Adaptive Behavior Scales-Expanded Edition. The pattern of the Students’ deficits and developmental history met the criteria for Autism Spectrum Disorder.

Given both of the Students’ delays and difficulties in the areas of social and communicative development, as well as their difficulties in learning and interacting with others, Dr. Smaller recommended that it is necessary for the Students to be in a full day center based program that is comprised of a very intrusive and intensive intervention using an Applied Behavior Analysis approach with a view to foster the acquisition of skills, particularly with language, but with careful consideration of the Student’s complicated sensory profile. [Exhibits FB-14, MB-14]

¹ The Board submitted two exhibit books for this consolidated case. The specific references to the exhibit book for each twin is identified by each of the Students’ first initial, followed by “B” and the exhibit number.

8. Dr. Smaller recommended the programs at Connecticut Center for Child Development [hereinafter CCCD] or the Locust Street School as two programs that meet the needs of the Students, who are delayed in all areas of cognitive and adaptive functioning. [Exhibits FB-14, MB-14]
9. CCCD is 10 to 15 minutes from the Students' home; Locust Street School is approximately 45 minutes from the Students' home. [Testimony Mother]
10. The Parents are seeking placement of the Students at CCCD. The Board agrees that the placement would be appropriate, and believes that, for this type of program to be successful, the Parents must support the program. While the Students were in their diagnostic placement, there were concerns that the Board staff and Parents were not able to work well together. [Testimony Mother, Ms. Ladd, Exhibits FB-23, MB-23]
11. CCCD is currently not listed on the list of Approved Private Special Education Programs maintained by the State of Connecticut, Department of Education, Bureau of Special Education and Pupil Services, although CCCD is in the process of submitting its application for approval. [Testimony Mother, Ms. Ladd, Ms. Calabro]
12. CCCD's program for the Students would include a one to one student/staff ratio in the classroom, with an additional supervisor in each classroom. The program provides the intensive program necessary for each of the Students' individual needs. CCCD is skilled in addressing children with significant needs, and has had good success in the past with children who were significantly delayed, as these Students are. The classroom supervisor is a certified special educator, as is the Director at CCCD. CCCD also has a speech and language pathologist, as well as occupational therapist and physical therapist consultants who would be available to implement the Individualized Educational Program [hereinafter IEP] for each Student. CCCD would cooperate with West Haven to develop an appropriate IEP for each Student if the Students were placed at CCCD.

CONCLUSIONS OF LAW:

1. The Students are eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Board must provide the Students with a free appropriate public education which is "reasonably calculated to enable the child[ren] to receive educational benefits." *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982).
3. Although CCCD is not currently on the list of approved private schools, a private school placement is proper under the Act if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits." *Florence County School District Four v. Carter*, 501 U.S. 7, quoting *Board of Education. v. Rowley*, supra.

4. The evidence supports the conclusion that CCCD is an appropriate placement for the Students.

FINAL DECISION AND ORDER:

1. The placement of the Students for the 2001-2002 and 2002-2003 school years at Connecticut Center for Child Development is appropriate.
2. The Board is responsible for the cost of the Students' placement at CCCD for the 2001-2002 and 2002-2003 school years.
3. The Board and CCCD shall work cooperatively to design and implement IEPs for each Student forthwith.