

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Enfield Board of Education

Appearing on behalf of the Parents: The Parents, *Pro Se*

Appearing on behalf of the Board: Attorney Christine L. Chinni
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Appearing before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the program offered by the Board for the School Year 2002-2003 appropriate? If not;
2. Should the student, at the Board's expense, be placed at the Curtis Blake Day School and be provided with transportation in order to receive FAPE?

PROCEDURAL HISTORY:

The Parents requested the Due Process Hearing on August 18, 2002. The pre-hearing conference was convened on August 19, 2002. Hearing dates were scheduled for October 11, 16, 17 and 18, 2002 and a tentative hearing date of November 8, 2002. The date for the mailing of the decision was set for November 29, 2002 due to the tentative date. The hearing ended on October 18, 2002 and the Parents asked if the decision date could be set for November 4, 2002. This date was agreed to but due to a death in the immediate family of the hearing officer, the final order and decision date was again set for November 29, 2002.

Connecticut General Statute §10-76h(c)(2) requires disclosure of documentary evidence 5 business days prior to the hearing. The hearing officer requested, if possible, for the Board to provide the Parents with the exhibits earlier than the five-day rule in order to avoid duplicity of exhibits. The Board because of a miscommunication failed to comply with the request. The Parents raised this issue as a violation. The request by the

hearing officer was only a request not an order and Connecticut General Statute §10-76h(c)(2) requires exhibits to be provided only 5 business days prior to the hearing. Therefore, there was no procedural violation.

At the conclusion of the Parents' case the Board made an oral Motion to Dismiss the Due Process Hearing. The grounds for the dismissal were that the issues raised at this hearing were raised at a prior hearing at which a hearing officer issued a decision and therefore "res judicata" and that the Parents failed to prove that the program offered to the student by the Board was not appropriate. The oral Motion to Dismiss was denied because the issues raised at the prior hearing at which a hearing officer issued a decision involved the 2001-2002 school year and the current hearing's issues are for the 2002-2003 school year and therefore "res judicata" does not apply. The second ground for dismissal also does not apply because it is the Board's burden to prove that the program offered to the student is appropriate and will provide the student with "FAPE".

Testimony of the Chairperson of the Speech and Language Department be stricken since she was not on the Board's witness list and the parents did not have 5 days notice prior to her testimony. I asked that the objecting be submitted in writing. The parents did submit the objection in writing 10 days after the hearing closed. The Board simultaneously filled an answer. The objection is denied as the Parents failed to object in a timely manner. The witness had already concluded her testimony and the hearing was about ready to close when the objection was raised. The Parents should have objected at the beginning or during the witness testimony. The Parents conducted a cross examination of the witness and never objected during their cross of improper notice of the witness. The Parents were also provided, prior to the witness testimony, with her resume (Exhibit B-56) and they did not object to the resume and waived their right to 5-day prior notice. Connecticut General Statute §10-76h(c)(2).

SUMMARY:

The student is a 12 year-old young girl currently enrolled in the seventh grade of the Curtis Blake Day School a special education day school in Springfield, Massachusetts. The student was the subject of a prior due process hearing (¹ Board Exhibit # 53) at which the Board prevailed in part. At their own expense, the Parents continued the unilateral placement of the student at the Curtis Blake Day School for the year 2001-2002. The Parents are now seeking that the Board be responsible for the costs of the unilateral placement of the student at Curtis Blake Day School for the 2002-2003 school year. The PPT refused to support the unilateral placement.

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).

¹ "B" followed by their number will identify hereafter Board Exhibits.

FINDINGS OF FACT:

1. The student is a 12 year-old young girl who has been identified as being speech and language impaired and is currently attending the Curtis Blake Day School in Springfield, Massachusetts. (Testimony of Mother)
2. Curtis Blake Day School enrolls approximately eighty students from eight through sixteen years of age. Most of the students are diagnosed with dyslexia and language-based learning disabilities, all of the students at the school have some disability. Students receive a language-based program that is integrated throughout all classes. Physical education is provided once per week at a local community center. The school goes up to the eighth grade and students, depending on the severity of their needs, can remain there until they finish the program. (Testimony of Ms. McDonald, P-7²)
3. The student's educational weaknesses are that she is slow in processing language both written and oral. The student tends to leave gaps and has difficulty sequencing events. The student also has difficulties following steps in math and shows difficulty expressing anxiety. The student is organized, motivated, cooperative, and conscientious with satisfactory social skills. (Testimony Ms McDonald, P-3)
4. The student has a learning based disability, which affects broad academic learning and organizational skills. The student's needs would be met at Curtis Blake Day School. (Testimony of Dr. Bruce Ecker)
5. The Curtis Blake Day School uses the following programs to assist the student: presentations are supplemented by demonstrations, models or examples, and graphic organizers that assist the student in retelling, organization and comprehension. Lindamood Phoneme Sequencing Program and Thememaker maps are utilized. Student uses Benchmark, a program with key words in which the student learns to isolate spelling patterns. Applying this approach, the student will then be able to encode and decode multisyllabic words for spelling and reading. Lindamood Phoneme Sequencing Program is used for phonological skills. This program will assist the student to go from visualization to verbalization. The student will know how and where sounds are made. Pragmatics are integrated across curriculum verbal and non-verbal social settings. (P-3, Testimony Ms McDonald)
6. The student has made progress while at Curtis Blake Day School. The student is able to write one-paragraph essays of 4-6 sentences. On 9/2001 the student was administered the Houghton Mifflin Pupil Placement Test; she was reading at a beginning 4th grade level and oral comprehension was at a third grade level. The student was silent reading at 100 wpm. The test was readministered in April 2002 and the student was reading at the beginning of 5th grade level with a reading rate of 132 wpm. In the Botel Spelling Placement Test, on 9/2001 the student did not pass 3rd grade level. On retesting on 4/2002 the student starting 5th grade level. In

² "P" followed by their number will identify hereafter Parent's Exhibits.

mathematics, the student is now also at a 5th grade level. The student at the unilateral placement was learning to accept her disability and was showing signs of confidence. (Testimony Ms. McDonald, P-1, P-3)

7. On or about June 13, 2002 the Board conducted a PPT in order to bring the student back to the Board's school. The parents presented to the PPT, IEP and progress data from the student's unilateral placement. The Board set a new date for the PPT in order to have time to review the data. (Testimony of Mother, B-44)
8. On June 17, 2002, the PPT reconvened and the parents rejected the IEP for the student and they once again requested placement at Curtis Blake Day School. The Board rejected the parents' request because it did not provide services in the least restrictive environment. The mother did not approve of the methodology being offered to the student. (Mother's Testimony, B-45)
9. The Board sent the June 17, 2002 IEP and the information received from the parents from Curtis Blake Day School to Dr. Michael Fulco. Dr. Fulco had on prior occasions performed neuropsychological evaluations of the student. And therefore was familiar with the student. (B-1, B-40). The doctor made comments and suggestions to the June 17, 2002 IEP. (B-50). The parents were not informed of the Dr. Fulco's review of the 2002-2003 IEP. (Testimony of Mother). The doctor made 12 recommendations in his report which were used to enhance the student's IEP at the September 9, 2002 PPT meeting. (Testimony Special Education Chairperson, B-50). The parents, although notified, did not attend the September 9, 2002 IEP. (Testimony of Mother)
10. Parent wanted Lindamood Phoneme Sequencing Program used to assist the student in phonological skills. The mother was under the opinion that the Board did not have the program and did not want to use it to assist the student. (Testimony of Mother). Lindamood Phoneme Sequencing Program is available at the Board's central office and will be available at the school for the student. (Testimony of Principal)
11. Goal # 3 of the 9/9/2002 IEP was written to address student's phonological weaknesses. The goal will utilize Lindamood Phoneme Sequencing Program and other programs as a multisensory approach to help the student with her phonological disorder problem in reading and spelling. The regular education teacher in the mainstream program can use this program. Goal # 2 of the IEP will utilize the Story Grammar format in retelling stories using language to talk about language. Goal # 5 will use the auditory equipment as recommended by Dr. Fulco (Testimony of Chair of Speech and Language Services). Goal # 6 addresses the student's mathematical needs. (B-51)

CONCLUSIONS OF LAW:

1. There is no dispute that the student is qualified to receive a free and appropriate public education ("FAPE") as a language impaired student under the provisions of

Connecticut General Statutes section 10-76 *et seq.* and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §§1401 *et seq.*

2. In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 188-89, 102 S. Ct. 3034, 3042 (1982), the Supreme Court held that a "free appropriate public education" under the Act "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." The standard for determining whether FAPE has been provided begins with the two-prong test established in *Rowley*. First, the procedural requirements of the IDEA must have been met by the school district. Second, the individualized educational program must be reasonably calculated to enable the child to receive some educational benefit. The 3rd Circuit in turn interpreted *Rowley* to require the state to offer children with disabilities individualized education programs that provide more than a trivial or de minimis educational benefit. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 180-85 (3d Cir. 1988), *cert. denied* 488 U.S. 1030, 109 S. Ct. 838 (1989). In addition to the free appropriate education requirement, IDEA provides that states must establish procedures to assure that, "to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(5)(A)
3. The Board had presented the IEP of 6/17/2002 as appropriate but after having Dr. Fulco review the IEP the Board has added 3 additional goals with their objectives to the IEP. The Board had completely disregarded the student's mathematical needs in the June 17, 2002 IEP even though in that subject matter, the student is two grade levels behind. This has been rectified in the September 9, 2002 IEP by the addition of Goal # 6. The Board, in the June 17, 2002 IEP, also expanded the three speech and language goals to 5 goals in order to more clearly meet the student's reading, writing and expressive language deficiencies as stated in Dr. Fulco's report. The educational program offered by the Board at the September 9, 2002 IEP is appropriate.
4. The student's program at Curtis Blake Day School has provided the student with educational benefit, but "IDEA" requires, "to the maximum extent appropriate," children with disabilities should be "educated with children who are not disabled." 20 U.S.C. § 1412(5)(A) At Curtis Blake Day School all the students are disabled. If the Board were to allow the student to remain at the parents' unilateral placement, they would not be in compliance with "IDEA" unless it is necessary for the student to be there in order to receive FAPE. There has not been testimony from any professional that the student cannot learn in the Board's school. The parents' clinical and educational psychologist did not state in his testimony that the student required placement at the Curtis Blake Day School in order to have educational progress. He also did not state that the program offered by the Board was not appropriate. The witness from the Curtis Blake Day School did not testify nor state that the program

offered by the Board was not appropriate. There was also no testimony that the student would regress if she attended the Board's school and program. The program at Curtis Blake Day School would not provide the student with "FAPE" as required under "IDEA".

FINAL DECISION AND ORDER:

1. The program offered by the Board at the September 9, 2002 PPT for the 2002-2003 school year will provide the student with FAPE.
2. The unilateral placement at Curtis Blake Day School is not appropriate.
3. The Board shall have a PPT within two weeks in order to transition the student to the Board's school and implement the September 9, 2002 IEP.