

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Madison Board of Education

Appearing on behalf of the Parents:

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Appearing on behalf of the Board of Education:

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Appearing before: Attorney Mary H.B. Gelfman, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. What is the “stay-put” placement for Student pending the conclusion of this hearing, pursuant to 20 U.S.C. Section 1415(j) and Section 10-76h-17, Regulations of Connecticut State Agencies?
2. Are the program and placement offered by the Board for 2002-2003 appropriate to the Student’s special education needs in the least restrictive environment?
3. If not, is placement at Connecticut Center for Child Development (CCCD) appropriate for Student?
4. Is the Board responsible for funding Student’s placement at CCCD?

PROCEDURAL HISTORY:

Parent requested a hearing on November 22, 2002. The Hearing Officer was appointed on November 25 and a pre-hearing conference was held on December 3, 2002. The hearing was scheduled for December 11, 2002, and January 20 and 23, 2003. The parties requested an extension of the mailing date for the final decision and order, from January 6 to February 5, 2003. Because of the asserted need for additional hearing dates, the Hearing Officer granted the request. The December 11, 2002, hearing session was

cancelled due to the illness of the Parent's attorney. The January hearing dates were changed, by agreement of the parties, to January 14, 29 and 30, 2003. The hearing was completed on January 14, 2003.

SUMMARY:

The Board agreed to fund a placement of Student initiated by Parent at CCCD for the 2000-2001 school year. After a hearing, the Board was ordered to continue this placement for the 2001-2002 school year. When the Board's Planning and Placement Team (PPT) recommended an in-district program for Student for 2002-2003, Parent, preferring CCCD, requested a hearing.

FINDINGS OF FACT:

1. There is no dispute that Student has autism. The diagnosis was made when he was two years of age; he is now almost nine years old. (Exhibit B-1; Testimony, Parent; Finding of Fact #1, 7/27/01 Hearing Officer Decision)
2. The Board funded placement of Student at the Foundation School for the 1997-1998, 1998-1999, and 1999-2000 school years. The Parent unilaterally removed Student from Foundation School and placed him at CCCD in May, 2000, because of her concern about increasing behavior problems. The Board agreed to fund CCCD placement for the 2000-2001 school year. (Findings of Fact #2, 3, 4, 7/27/01 Hearing Officer Decision)
3. Parent reported that Student's behavior has improved since his placement at CCCD. His teachers require him to talk, and his language, both expressive and receptive, has improved. He is expected to follow the rules, and when he doesn't, the problem is addressed immediately. Parent has tried to implement CCCD's suggestions at home, and the results have been good. Student has begun to listen to his siblings and to participate in community athletic programs with his parents acting as shadows. (Testimony, Parent)
4. Observations in October, 2000, reported by two Board staff members confirm Parent's reports of Student's progress at CCCD. Improvements in length of utterances and eye contact were noted, as well as increased persistence with challenging tasks. (Exhibit B-2)
5. At a hearing concerning the 2001-2002 placement of Student, the Board acknowledged that it did not have an appropriate program for Student, and that the CCCD program was appropriate. The prior Hearing Officer confirmed Board responsibility for the 2001-2002 placement. (Findings of Fact #7, 8, and decision, 7/27/01 Hearing Officer's Decision)
6. The director of CCCD, who sees Student every day, reported that when he arrived in 2000, he was "extremely prompt dependent". He has been receiving instruction by

the method of Applied Behavior Analysis (ABA). Instruction takes place in a quiet room with one or two students and one or two instructors. She described his progress toward greater independence as “slow and steady”, but felt that he was not yet ready to transition into a public school program. (Testimony, Calabro)

7. A concern of the Board’s PPT is that CCCD has not yet achieved approval as a private school suitable for school district placement of students who require special education. Although CCCD has been in the approval process for several years and remains a candidate for state approval, there have been issues about the number of certified teachers, the role of behavior analysts who are not certified teachers, and the administrative structure of the school. CCCD has tried to accommodate suggestions from the State Department of Education, and approval has never been denied. (Testimony, Calabro)
8. When Parent visited the Board’s program for children with autism (April 4, 2002), she hoped to observe two children with autism within a class of 18-21, with typical peers and a few children with other disabilities. The PPT had agreed to the visit, but no staff member was assigned to accompany Parent, or to answer her questions after the observation. On the day of Parent’s observation, one student with autism was away on a field trip. The other student with autism was present, and for a portion of the time Parent observed, he was lying under a table with the paraprofessional assigned to him nearby. Parent did not see any effort to engage him in educational activities at that time, although he had participated in individualized ABA earlier, in a separate area. (Testimony of Parent)
9. At a PPT meeting on June 11, 2002, the Board adopted goals and objectives for 2002-2003 developed by CCCD staff. The goals covered communication, self-help, behavior and academics. ABA was to continue being used. Placement was to be in one of the Board’s schools. Parent objected and requested that placement continue at CCCD. The record of the June 11, 2002, PPT meeting includes:

[Assistant Superintendent] agreed that CCCD is a good placement for Student.
[Assistant Superintendent] will review the accreditation status and possible need for a due process hearing.

The record of this meeting closes with a PPT recommendation for Student to continue at CCCD, “with the implementation of updated goals and objectives and extended year services”. (Exhibit B-3)
10. When the PPT re-convened on August 27, 2002, the Assistant Superintendent reported that the State Department of Education had confirmed that CCCD was not an approved private special education school. The PPT recommended placement in an in-district program. Parent refused that placement and asked that the CCCD placement be continued. Parent stated that she would be requesting a special education hearing, and the record of the meeting notes that CCCD is the “stay put”

placement for Student pending completion of the hearing. (Exhibit B-4; Testimony, Parent, Assistant Superintendent)

11. Parent worries that the “chaos” of a class of 18-21 children would distract Student and lead to an increase in self-stimulating behavior. She questions whether students with autism are taught in the Board’s program, or merely contained. (Testimony, Parent)
12. The Board’s Assistant Superintendent for Educational Programs described the Board’s program for children with autism as individualized, with placements varying from a self-contained class to full inclusion in a regular class. She stated that placements were based on the individual needs of each student, and that the Board would provide whatever was needed. When a student enters the program from another school, the Board’s PPT usually uses the prior Individualized Education Program (IEP) for a few weeks. The PPT then re-convenes to discuss whether the program needs modification based on their observations of the student. She described the certification status and training of staff members and also the consultant who visits the program once or twice a week. She reported that Board staff had observed Student at CCCD, and had incorporated techniques observed at CCCD into their program. She also noted that the PPT may not place a student with special education needs in a private program that is not state-approved, and that the State Department of Education will not reimburse the district for such a placement. (Testimony, Assistant Superintendent)
13. The program and placement proposed by the PPT for Student is thirty hours a week in an integrated program. His summary of special education, related services and regular education lists 20 hours per week of ABA and 10 hours per week of special education. Speech and language therapy and occupational therapy would be included in the integrated program. Student would received individualized instruction by several different trained staff members, rotated to help him generalize his skills. (Exhibit B-3; Testimony, Assistant Superintendent)
14. This integrated program includes a few students with autism among students with other disabilities and non-disabled students. Most instruction takes place in the classroom with other students nearby. If necessary, ABA may be provided in a partially partitioned space at the back of the room, or in an office off the Resource Room. While the Assistant Superintendent described these options in detail, it was never stated whether Student would be assigned to a separate area on a regular basis (as he has been at CCCD) or whether these spaces were used “as needed”. (Testimony, Assistant Superintendent, Parent)

CONCLUSIONS OF LAW:

1. There is no dispute that Student is eligible for special education, as provided at 34 C.F.R. Section 300.7(c)(1)(i).

2. “Stay-put” is determined by 20 U.S.C. Section 1415(j). The policy enacted here is that changes of placement for students with special education needs should be minimized: therefore, the child remains in the prior placement until the dispute is resolved. In a case involving school district recommendation of an in-district program after several years of district-funded placement in a private school, a Pennsylvania Federal District Court held that stay-put was the private placement, funded by the district, until the appropriateness of the in-district program had been determined by the Hearing Officer (*Lauren W. v. Board of Education of the Radnor Township School District*, 37 IDELR 248 (E.D. PA 2002)). In the instant case, Parent gave notice at the August 27, 2002, PPT meeting that she disagreed with the proposed in-district placement and Student continued at CCCD. The August 27, 2002 PPT record confirms CCCD as Student’s “stay put” placement.
3. The case of *Florence County School District v. Shannon Carter*, 114 S.Ct. 361 (1993), established that parents, making a private school placement after determining that the public school program and placement offered their child was inappropriate to the child’s special education needs, were not bound to the same standard a public school district must meet. If the public school program was inappropriate, and the private school program was appropriate, a parental placement could be awarded public funding by a Hearing Officer.
4. The case of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176 (1982), provides a two-part test of the appropriateness of a special education program. If the procedures of IDEA have been followed and the resulting program is “reasonably calculated to enable the child to receive some educational benefit”, the program is appropriate. The Board’s procedural compliance is marred only by confusion over whether to continue the CCCD placement. The CCCD placement, endorsed by the June 11, 2002, PPT and then rejected by the August 27, 2002, PPT, is appropriate to Student’s needs.
5. The question remains whether the school district’s program is appropriate, and if so, whether it trumps CCCD. The PPT demonstrated some ambivalence about a placement for Student. It appears from the record that CCCD has been providing an appropriate program, but the PPT is barred from continuing that placement because CCCD is not a state-approved program. The program described by the Assistant Superintendent can accommodate Student: the real question is whether Student’s program, as proposed by the PPT, was specific enough to reassure Parent of the tight structure and ABA focus provided at CCCD. The additional concern, distractions from the presence of other students with differing needs, is a valid one.
6. As provided at 34 C.F.R. §300.550(b), special education students are to be placed with children who are not disabled, in the least restrictive environment for the student with disabilities. One of the many tests for inclusion is whether Student can learn effectively in an environment where other students will be doing other things, or whether such activities will distract him from his specialized program. In the opinion

of those who know him best, his Parent and the Director of CCCD, he is not ready to enter the more distracting and stimulating setting of the Board's integrated program.

DISCUSSION:

The first hearing, concerning placement for the 2001-2002 school year, was driven by CCCD's lack of state approval as a private school for students with special education needs. Both parties agreed that the Board's program was not appropriate for Student and that the CCCD program was appropriate to Student's needs. This hearing, concerning the 2002-2003 school year, arose because the Board's PPT decided that an appropriate program could now be provided in-district. CCCD continues in the process to obtain state approval, but is not yet approved. The core issue is when Student should transition into his local school.

The Board acknowledges that when a new student enters their special education program from another school, the usual practice is for the PPT to use the IEP developed for the former placement, spend a few weeks getting to know the child, and then hold another PPT meeting to discuss the child and to determine whether the IEP needs modification. This sounds like common sense. However, using a prior IEP implies a placement similar to that in which the prior IEP was delivered. In this case, CCCD delivered the ABA components of the IEP in "classes" of one or two students, with one or two instructors, in a small, quiet room. The PPT proposed ABA, with the same goals and objectives, within a classroom with other students. If needed, the PPT offered a semi-enclosed separate space, or an office. In this case, Parent's observation of the Board's program did not make her confident that the Board could provide the kind of tightly structured ABA program that has been successful for Student at CCCD.

The PPT has listened to Parent's suggestions, and has tried to address her pedagogically sound concerns. A praiseworthy example, which has not been welcomed by all other parents, is rotation of staff in the ABA program, to help students generalize skills. This change has been difficult for parents who consider having a dedicated aide the only way to insure individualized ABA instruction.

FINAL DECISION AND ORDER:

1. The "stay-put" placement for Student, from the August 27, 2003, disagreement over placement until implementation of this decision, is the CCCD program. The Board is responsible for funding this placement.
2. The Board's program, as described in the June 11, 2002, IEP, does not provide sufficient specificity concerning program elements and location of service delivery.
3. The CCCD program's appropriateness has been acknowledged by the PPT.
4. The Board is responsible for funding Student's placement at CCCD for the 2002-2003 school year.

COMMENT:

The attorneys for the parties are to be commended for cooperating in presenting this hearing in one day.