

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student v. Trumbull Board of Education

Case No. 03-193

Appearing on behalf of the Parent: The Parent proceeded *pro se*.

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

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board's 2003 extended school year program for the Student is appropriate.
2. If not, whether the Parent's proposed summer program to remain at ACES is appropriate.

**PROCEDURAL HISTORY:**

The Parents requested this hearing on June 24, 2003. After a prehearing conference on June 27, an Interim Ruling on Stay Put was issued so that the Student remained in the ACES placement through the hearing date of July 7, in accordance with 20 U.S.C. Sec. 1415(j) which provides that "during the pendency of any proceedings conducted pursuant to this section . . . the child shall remain in the then-current educational placement of such child." The hearing convened on July 7, and at the conclusion of evidence this Interim Ruling on Stay Put was continued until this final decision was issued.

The Parent's witnesses included the Mother, and Mr. P, who identified himself as a father figure to the Student.

The Board's witnesses included Lorraine DiNapoli, Board chair of middle school programs and Brenda McNeal, Board special education coordinator.

To the extent that the procedural history, 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)

### **SUMMARY:**

The 13-year-old student, who is Intellectually Disabled, had been placed out of district since moving to the Board's district in October 2002. The Parent indicated several times that the family intended to move out of district, and requested continued placement at the out of district placement until they moved. The move was delayed several times, and, after observation of the program, the Board recommended in-district placement of the Student for the Extended School Year Program. The Parent filed a request for a hearing so that the Student would remain in the out of district program until their move. An interim stay put order was entered during the pendency of this hearing, as the out of district program was the current placement pursuant to the Student's January 2003 IEP.

### **FINDINGS OF FACT:**

1. The Student is 13 years old, and currently attends Area Cooperative Education Services [ACES] Village School. She has been identified as eligible for special education as Intellectually Disabled. [Exhibit B-11]
2. The Student has been observed twice at the ACES program by the Board special education chair for middle school programs. The Student is described as a Student who has intellectual deficits, as well as deficits in gross and fine motor skills. She is at a functional level academically. [Testimony Ms. DiNapoli] The Student has intellectual disabilities, which affects communication and life skills to a significant degree, and affects socialization to less significant degree. The Student also has personal safety issues. The Student clearly likes people, and responds to peers and teachers. [Testimony Ms. McNeal]
3. In October 2002, the Student moved to the Board's district, and the Board initially accepted the prior Board's Individualized Education Program [IEP] goals and objectives, and continued placement at ACES for a two week diagnostic placement to allow the Board to observe the program. [Testimony Ms. DiNapoli, Exhibit B-11] The placement at ACES was continued through January 2003. [Exhibit B-13]
4. In January 2003, the PPT agreed to continue placement at ACES as it was expected that the Parent was planning to move out of the district to Derby in

- April. The Board continued the placement at ACES based on the Parent's representation that the family was planning to move out of district, so that there would be continuity to the program until the family moved. The PPT developed an IEP for the Student at the January 27, 2003. [Testimony Ms. DiNapoli, Ms. McNeal, Exhibit B-17] The PPT minutes also noted that the Extended School year program would continue at ACES in July. [Exhibit B-17]
5. In May 16, 2003, the PPT reconvened to consider the Student's programming. The Student and her family remained in the district past their anticipated move of April 2003, so the Board members of the PPT were concerned about continuing the program at ACES. The Board members of the PPT felt that an appropriate program could be offered to the Student in-district, so the PPT planned another observation of the Student at the ACES program. [Testimony Ms. McNeal, Ms. DiNapoli, Exhibit B-19]
  6. In May Board special education chair for middle school programs observed the Student at the ACES setting. At the program, there were 12 students in the classroom with a range of disabilities. Some of the students in the classroom were acting out, having behavioral problems. The Student appeared to not be on task during group activities. In the smaller group activities, an aide used the Student's hand to trace shapes and write names. The Student worked for approximately three minutes on this one-on-one activity with the aide, and then had to wait about 10 minutes for her turn. [Testimony Ms. DiNapoli]
  7. The Board's summer program would offer the Student a small class of eight students in an ungraded program. The staff for the program includes a special education teacher, two health aides and two paraprofessionals. All related services are also provided, including speech and language services, occupational therapy and physical therapy. The Student's goals and objectives from the January 2003 IEP could be met at the Board's in-district summer program. The program includes community activities, as well as activities within the school. The program would be a perfect match for the Student's skills, as the other students have similar vocational and functional needs. [Testimony Ms. DiNapoli]
  8. The Parent does not disagree with the appropriateness of the Board's program. Rather, her concern is that the Student may regress when she transitions into the Board's program. [Testimony Mother] Nothing in the record supports the Parent's concern for regression. The Board's special education chair of middle school programs indicated that she would be able to appropriately assist in the transition of the Student to the in-district program, and would be able to convey to the special education teacher the appropriate information to assist the Student in transitioning to the in-district program. [Testimony Ms. DiNapoli]
  9. The Parent was also concerned about continuity for the Student's program. [Testimony Mother, Mr. P] Since the Parent moved to the Board's district, she has indicated several times that she wanted the Student to remain at ACES as they

were moving in a matter of months, and did not want to transition the Student into the Board's program just before they were moving. For several reasons, this anticipated move has been postponed a few times over the past six months. The Parent is now awaiting construction of handicapped accessibility modifications to a property for Mr. P before the family moves out of district. As it is unclear when these construction modifications will be completed, after several postponements of the move, the Board's concern regarding moving the student in-district is reasonable. [Testimony Mother, Mr. P, Ms. DiNapoli, Ms. McNeal]

10. On June 20, 2003, the PPT convened after the second observation of the ACES program, and the Board members of the PPT recommended that the Student return to the district to the Student's home school for the Extended School Year program and for the 2003-2004 school year, as an appropriate program could be provided at Madison Middle School. [Exhibit B-24]
11. The Parent disagreed with the PPT recommendation, and requested this hearing. An interim stay put order was entered after the prehearing conference, staying the Student's placement at the ACES program pending the outcome of this hearing. As this final decision determines that the Board's program is appropriate, the interim stay put order is no longer in effect.

### **CONCLUSIONS OF LAW:**

1. The Student is 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 has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14. The Board has met its burden in this case.
3. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Plan is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.

4. As to the first inquiry, nothing in the record supports any claim for a violation of the Parents' procedural rights. Therefore, the Board complied with the procedural requirements of the Act.
5. The second inquiry is the determination of whether the IEP is reasonably calculated to enable the child to receive educational benefits. The Individuals with Disabilities Education Act (IDEA) does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2d Cir. 1998), citing *Rowley, supra*. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* The goal of IDEA is not to maximize a special education child's potential, but rather to provide access to public education for such children. *K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995).
6. The appropriate standard is whether the Student can derive meaningful educational benefit from the proposed program, not everything that might be thought desirable by loving parents. *Tucker v. Bay Shore Union Free School District*, 873 F. 2d 563, 567 (2d Cir. 1989) The Board's proposed program is carefully drafted so that the Student can derive such meaningful educational benefit. The Board's program considered the evaluations, and the observations of the child. [Testimony Ms. DiNapoli, Ms. McNeal, Exhibits B-1 through B-7] The Parent admitted that she had no concerns regarding the Board's program, only that she wanted continuity over the summer, as she intended to move by August. [Testimony Mother] The Mother's concern for continuity does not overcome the fact that the Board's program is appropriate.
7. In addition to the free appropriate public education requirement, IDEA's preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra*. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms. *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a disability can be educated in a regular classroom if provided with supplementary aids and services. *Oberti*, 995 F.2d at 1216, *Mavis v. Sobol*, 839 F. Supp. 968, 985-986. The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti*, 995 F. 2d at 1217 The Board's program for the Student will be provided in the least restrictive environment.
8. The program proposed by the Board is appropriate for the Student, considers her strengths and weaknesses, is developed so that the Student can derive meaningful educational benefit, and will be delivered in the least restrictive environment.

9. As the Board's program is appropriate, it is not necessary to determine the appropriateness of parent's proposed placement. *See, Burlington School Committee v. Dept. of Ed.*, 471 U.S. 359 (1985), *Florence Co. School District v. Carter*, 114 S.Ct. 361 (1993) (Reimbursement for private school placement is only awarded when the *district's program was not appropriate* and that the private placement could provide an appropriate educational program for the child).

**FINAL DECISION AND ORDER:**

The Board's program for the Student for the Extended School Year 2003 is appropriate. As the Board's program is appropriate it is not necessary to determine the appropriateness of the parent's proposed placement at ACES