

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Seymour Board of Education

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Appearing on behalf of the Board: Attorney Frederick L. Dorsey  
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Appearing before: Attorney Stacy M. Owens  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board has failed to offer or provide an appropriate program for the Student's 2003-2004 school year.
2. Whether the Board failed to properly evaluate the Student.
3. Whether the Board failed to provide the proper procedural safeguards to the Parents.
4. Whether the Board failed to convene a PPT in time to plan for the Student's 2003-2004 school year.
5. Whether the Board failed to hold a duly constituted PPT.
6. Whether the Board failed to develop goals and objectives for the Student's 2003-2004 school year IEP.
7. Whether the Board failed to provide appropriate related services in the 2003-2004 school year, including, but not limited to, speech and language services agreed to in the IEP, occupational therapy services, home services and discreet trial instruction.

**PROCEDURAL HISTORY:**

A request for hearing from the Parents in the above-referenced matter was received by the State of Connecticut Department of Education on December 19, 2003. On December 22, 2003 the undersigned was appointed to preside over the hearing. The Prehearing Conference in this matter was held on January 8, 2004. The first day of hearing took place on February 3, 2004, at which time, the parties attempted conciliation, but were unsuccessful. The parties subsequently made a request for postponement of the hearing to seek an advisory opinion. Such request was granted by the hearing officer. Results of the advisory opinion did not lead to resolution of the issues. Thus, the hearing continued on the following scheduled dates: March 31, 2004; April 26, 2004; May 6, 2004; May 18, 2004; and May 20, 2004.

**SUMMARY:**

The Parents filed a request for hearing alleging the Board has failed to provide the Student with an education to meet his special needs. The Parents seek to have the Board provide the Student an appropriate education and additional DTI services. The Board contends the program provided to the Student is appropriate and no additional DTI is necessary to meet the Student's special needs.

**FINDINGS OF FACT:**

1. The Student was born August 24, 2000. The Student developed typical skills and behavior during his first two years of age. However, by age 2 ½ the Student's Parents noticed that his skills and behavior began to regress. The Student suffered a loss of vocabulary and engaged in self-stimulatory behaviors. (Tr. 5/17/04, pp. 21-22).
2. The Student was referred to the Birth to Three Program where he underwent evaluations. The evaluations administered indicated the Student was developmentally delayed. (B-1)
3. The Student began to receive Birth to Three services in February 2003. The Student was provided Applied Behavior Analysis ("ABA") services in the form of Discreet Trial Instruction ("DTI"). While enrolled in Birth to Three, the Student commenced with 8 hours of DTI with one hour of playtime and eventually was provided a total of 12 hours per week of DTI. DTI services for the Student were delivered by Christine Rodier, program coordinator, special education teacher and supervisor of Birth to Three, coupled with additional hours of therapy by the Student's Parents, as they were trained.
4. During his time in Birth to Three, the Student showed progress in his behavior and skills. The Student began to regain some of the vocabulary he had lost. As testified by Ms. Rodier, "within a week or so, he was imitating words and within a couple of months . . . he had hundreds of words that he could label." (B-1, B-2, B-4; Tr. 4/26/04, pp. 110-114; Tr. 3/31/04, pp. 5-9)

5. While receiving Birth to Three services, the Student was also receiving 10 hours a week of DTI services from the Institute of Professional Practice (“IPP”). (Tr. 3/31/04, p. 80)
6. The Parents also received personalized training from IPP that they utilized to provide additional therapeutic services to the Student to help him practice his mastered skills at home. (Tr. 5/31/04, p. 80)
7. In February 2003, the Student underwent neurological evaluations. Dr. Francine M. Testa conducted the Student’s neurological evaluations and made findings consistent with the findings of Dr. Alok Bhargava who treated the Student for “PDD.” (P-1, P-2)
8. On March 6, 2003, notice was sent from the Birth to Three program on behalf of the Student to the Board for referral for special education services. (B-3)
9. A Planning and Placement Team (“PPT”) meeting was held on May 2, 2003, which included the attendance of Board staff, Birth to Three staff and the Parents. During such PPT meeting, the team members agreed to reconvene in June 2003, after having observed the programs at Birth to Three and in the school district. (B-8)
10. Jayne Bachyrycz, speech and language pathologist, and Ron Benner, school psychologist, both from the Board, observed the Student in the Birth to Three Program for one hour prior to the June 2003, PPT meeting. (Tr. 4/26/04 pp. 105, 106)
11. During the June 2003, PPT meeting, the Student was classified as “developmentally delayed”, and an individualized educational program (“IEP”) was developed for the 2003-2004 school year. The PPT developed a program in which the Student would receive 12 hours of special education services, which consisted of 10 hours of specialized instruction, one hour of speech and language therapy and one additional hour of ABA services.
12. The Parents and the Board agreed at the June 2003, PPT meeting that Birth to Three would draft the Student’s goals and objectives for the Student’s IEP, and that the Student would be placed at Chatfield Elementary because it could provide a structured environment in which the Student could receive intensive instruction in a setting specifically designed to meet the needs of students with needs similar to the Student’s needs. (B-11; Tr. 4/26/04 pp. 102, 161)
13. Though it seems likely based on the Father’s testimony that the Parents provided some information concerning the Student to Ron Benner, testimony and evidence in the record is insufficient to make a conclusive finding that such information was, in fact, the neurological evaluations of Drs. Bhargava and

- Testa. It is clear, however, that at some point the Board was equipped with information to label the Student as “developmentally delayed” in June 2003.<sup>1</sup> (B-11; Tr. 5/20/04, pp. 28-30)
14. Sherri Rothman, the Student’s classroom teacher, observed Birth to Three’s administration of DTI for the Student in a natural setting in his home a total of three times in July and August of 2003. (Tr. 5/18/04 pp. 93, 94)
  15. On August 15, 2003, Dr. Michael D. Powers, a licensed psychologist hired by the Parents to evaluate the Student, provided the Parents a letter to submit to the Board in which he diagnosed the Student as autistic and noted the purpose of the letter was “to highlight” key recommendations that were to be contained in his follow-up report. (B-14; Tr. 5/17/2000, pp. 45-46)
  16. At the Parents’ request, another PPT meeting was held on August 25, 2003. Persons in attendance at the meeting were the Parents, Dr. Castellucci, and Sheryl Rothman, the Special Education Teacher. The PPT reviewed the program developed for the Student at the June 2003, PPT meeting and accepted the goals and objectives provided by Birth to Three. The PPT agreed that “upon receipt of the written report from Dr. Powers, the district [would] consider the results for future educational planning.” (B-17)
  17. The PPT at the August 25, 2003, meeting further agreed to provide the Student a speech and language evaluation, an OT consultation to determine whether an OT evaluation and services would be appropriate, and one additional hour of ABA instruction on Fridays. (B-17; Tr. 4/26/04 pp. 165-169)
  18. The Parents, during the August 2003, PPT meeting requested 20-25 hours of ABA services for the Student, which was denied. The PPT cited the progress the Student was making with 12 hours of services provided by Birth to Three and an allowance of five to six weeks supposedly provided by the State to “get to know a child.” (Tr. 4/26/04, p. 171)
  19. The parties agreed at the August 2003, PPT meeting to meet again in October to review the Student’s progress and the results of the OT and speech and language evaluations. (B-17; Tr. 4/26/04, p. 171)
  20. The Student began his first day of school in the district on August 26, 2003 in accordance with the program provided in his June 2003 IEP. He continued to receive 10 hours per week of DTI services from IPP at home.

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<sup>1</sup> Testimony of both Dr. Castellucci and Ms. Bachyrycz, note that the Board may have become aware of the Student’s PDD diagnosis through a verbal representation made by someone at the June 2003, PPT meeting. Neither Dr. Castellucci nor Ms. Bachyrycz were able to say specifically who made the representation, and Ms. Bachyrycz, a speech and language pathologist with 22 years of experience in the school system agreed that short of being poor educational practice, it was “not typical” for the Board to provide a diagnosis based on a mere statement made during a PPT meeting without any documentation to support it.

21. During the August 25, 2003, PPT meeting discussions became contentious between the Parents and the Board in that the Parents felt the Board did not take into account Dr. Powers recommendations, and as testified by Dr. Renie Castellucci, the Director of Special Education for the Board, such recommendations did not need to be considered in planning the Student's program as Dr. Powers' letter did not constitute a final evaluation report. (B-17; Tr. 4/26/04 pp. 163-164)
22. In light of their disagreement regarding the Student's proposed program, the Father inquired about the Parents' procedural rights. Dr. Castellucci informed the Father they had the option of mediation or due process. She advised the Father that the notice of due process rights he had in his hand was outdated, and then provided him with a current set of rights. (Tr. 4/26/04 pp. 9-13)
23. The Parents filed a request for due process on September 3, 2003, but later withdrew said request to mediate the issues. Mediation was conducted on October 9, 2003, and the parties failed to reach an agreement. (Tr. 4/26/04 p. 173)
24. During the time of the Student's placement in the district, the Board's special education program was transitioning from a self-contained to a mainstream setting for students with autism. Board staff began receiving training from Area Community Educational Services ("ACES") on ABA strategies and principles, which included DTI and focus on working with autistic children. By December 2003, ACES tailored its training of Board staff to developing appropriate programs for individual students. (Tr. 4/26/04 pp. 71-80)
25. Mr. Jorge Garcia, ACES trainer, observed the Student, reviewed his IEP and helped staff maintain an improved data book. Mr. Garcia found the Student was able to progress in his skills and behaviors with the program ACES and the Board had in place at Chatfield. (Tr. 4/26/04 pp. 76-80)
26. In accordance with the recommendations of the August 2003, PPT meeting, Dr. Kaufman and Ms. Longley conducted a speech and language evaluation of the Student in his home. As a result of their testing, the Student was recommended to receive language therapy, but no articulation services. (B-29, B-45; Tr. 5/18/04, pp. 14-18)
27. On October 21, 2003, the Board received the final report from Dr. Powers. The report outlined the following recommendations:
  - a) 20-25 hours per week of discrete trial instruction plus five hours per week of integrated preschool programming;
  - b) extended school year for the summer of 2004;
  - c) development of a comprehensive curriculum scope and sequence to guide program planning and selection of IEP objectives;

- d) instructional objectives that teach the functions use of various age-appropriate toys, as well as objectives that teach the Student to negotiate use of materials through social bids and response to social bids;
  - e) undertake a comprehensive communication evaluation by a specialist in autism and development IEP objectives based on their data;
  - f) address strategies for developing communication objectives consistent with behavior analysis associated with verbal behavior;
  - g) develop toilet training strategies;
  - h) use visual strategies to support the Student's learning; and
  - i) close collaboration of school team members with parents in the development of direct instruction objectives. (B-30)
28. A PPT meeting was held on October 22, 2003. The PPT recommended a 28.75 hour program consisting of 26.75 hours of ABA services, inclusive of 5 hours of DTI, 1:1, behind a screen, 1.5 hours of speech and language and .5 hours of OT. The Parents requested IPP provide the DTI services to the Student and that the Student be transitioned into a full-day program. The Board rejected the Parents' request for IPP to provide DTI services, but agreed to transition the Student into a full-day program. Following bi-weekly meetings with the Parents, the Student was transitioned into a full-day program by December 2003. (B-38; Tr. 5/18/04, pp. 106, 107; Tr. 4/26/04 pp. 182-186)
29. In November 2003, the Parents requested the Institute for Educational Planning ("Institute") observe the Student's current program at Chatfield. Erica Roest, a Board Certified Behavior Analyst from the Institute, recommended an increase in the number of hours of discrete trial instruction offered to the Student to a minimum of 20 hours per week. Ms. Roest's reason for the increased hours of discrete trial instruction was that it "offers the most precise and efficient way of providing the number of learning opportunities necessary for [the Student] to make *appropriate* gains." (*emphasis added*) (P-3).
30. At the December 11, 2003, PPT meeting, the Student's DTI services, 1:1, behind the screen, were increased from 5 hours to 9 hours per week. The Parents requested articulation services and the DTI services be increased to 20 hours per week and provided by IPP. Again, the Board rejected these requests. (B-32; Tr. 4/26/04 pp. 186-189)
31. In December 2003, the Student continued to receive DTI from IPP at home. The Student's DTI from IPP was increased from 10 hours to 12 hours per week. (Tr. 3/3104, p. 80)
32. On December 14, 2004, the Parents filed for due process, for which this decision is rendered.

**CONCLUSIONS OF LAW:**

1. Under Connecticut General Statutes § 10-76a et seq. and The Individuals with Disabilities Education Act 20, U.S.C. § 1400 et seq., (“IDEA”), the Student is entitled to a free and appropriate public education (FAPE) as a child with a disability, that being autism.
2. In accordance with the IDEA, a child’s home school is regarded as the preferred school for placement. However, if services that adequately meet the special needs of the child cannot be provided at a home school, or in the current placement, the least restrictive environment is the next closest school in which the student’s IEP can properly be implemented. *See Kevin G. v. Cranston Sch. Committee*, 965 F.Supp. 261, 265 (D. R.I. 1997), aff’d, 130 F.3d 481 (1<sup>st</sup> Cir. 1997), cert. denied, 524 U.S. 956 (1998). Although Bungay Elementary is the Student’s home school, it is undisputed that Chatfield Elementary School provides the appropriate setting to meet the Student’s special needs.
3. To determine whether a Board has provided FAPE, a two-prong test must be applied. First, the Board must be in compliance with all procedural requirements and safeguards established under the IDEA. Second, the Board must have developed an IEP that is “reasonably calculated to enable the child to receive educational benefits.” *Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 at 206-207 (1982).
4. With respect to the first prong of the *Rowley* test, the Parents have raised several issues that question whether the Board complied with all procedural requirements and safeguards established under the IDEA. In accordance with the IDEA, “a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum . . . upon notification of an IEP meeting . . . and upon receipt of a request for due process.” 30 CFR 300.504 (1999).
5. As ruled in *W.G., B.G. v. Board of Trustees of Target Range School District No. 23* “procedural flaws do not automatically require a finding of denial of FAPE. However procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents’ opportunity to participate in the IEP formulation process, clearly result in a denial of FAPE.” *B.G.*, 960 F.2d 1479 (9<sup>th</sup> Cir. 1995).
6. In this particular case the Board failed to provide the Parents with the current procedural safeguards, the August 25, 2003 PPT meeting was conducted absent a regular education teacher only two days prior to the Student’s first day of school, and the Parents claim the goals and objectives, as provided by Birth to Three were not adequately reviewed before being accepted. In considering the impact of these procedural flaws, it is determined that the Board’s failure to

- follow the IDEA procedural requirements did not “seriously infringe the parents’ opportunity to participate in the development of the Student’s IEP.”
7. Following the August 2003, PPT meeting, the Father possessed an outdated set of procedural safeguards. Through testimony, the Father acknowledged receiving the proper procedural safeguards prior to other PPT meetings, and Dr. Castellucci immediately handed the Father the current procedural safeguards upon discovery of the outdated materials. The minor differences in the current set of procedural safeguards coupled with Dr. Castellucci’s immediate replacement of the outdated material does not amount to a deprivation or lack of notice of the Parent’s rights in violation of the IDEA.
  8. On August 25, 2003, the PPT team convened a meeting at the Parent’s request. At this point the IEP developed in June 2003 was in place, the Birth to Three goals and objectives were received and accepted and the Parents presented Dr. Powers’ recommendation highlights.
  9. In accordance with the IDEA, the Board shall ensure that the PPT team for each child with a disability includes: the parents; the regular education teacher; the special education teacher; a board representative; and an individual who can interpret the instructional implications of evaluation results. 34 CFR 300.344 (1999).
  10. Dr. Castellucci, the Parents and Sherri Rothman were present at the August 25, 2003, PPT meeting. Considering the Student was not receiving services in a regular education setting, but instead remained in a self-contained classroom with “reverse mainstreaming” under the direction of the special education teacher, the absence of a regular education teacher that would not have any level of participation with the Student’s program at this stage does not effectuate a violation of the IDEA.
  11. Inclusive in the requirements of a properly developed IEP are “a statement of measurable annual goals, including benchmarks or short-term objectives . . .” 30 CFR 300.347(a)(2) (1999). The Parents allege the Board failed to develop goals and objectives for the Student’s 2003-04 school year, but the facts show otherwise. As shown in the IEP developed in June 2003, for the Student’s 2003-04 school year, the Parents and the Board agreed to allow Birth to Three to develop the Student’s goals and objectives. Birth to Three did in fact develop the Student’s goals and objectives and they were accepted by the PPT during the August 2003 PPT meeting. Thus, the Student’s IEP included the goals and objectives the Parents and Board agreed to accept upon submission.
  12. Although it is found that the procedural deficiencies do not amount to a denial of FAPE, substantively, the Student’s IEP and its implementation warrant further scrutiny of the appropriateness of the program in place to meet the Student’s special needs.

13. In determining whether the second prong of the *Rowley* test has been satisfied, it must be decided whether the Student's IEP for the 2003-04 school year is reasonably calculated to confer an educational benefit. *Rowley* at 200. In order to achieve an educational benefit, the IEP must be tailored to meet the unique needs of a disabled child. *Rowley* at 181.
14. In light of the "educational benefit" requirement, such must be "meaningful" and "produce progress not regression." *Board of Educ. V. Rowley*, 458 U.S, 176 at 192, 102 S. Ct at 3043-44.
15. In this particular case, it is clear the Student has gained educational benefit from the program and services provided to him. However, it is impossible, to solely credit the program outlined in the Student's IEP for the Student's achievement of goals and objectives when he is receiving additional services not outlined in his IEP. The Board's insistence that the Student would progress absent the at-home services of IPP is not supported by the production of data or expert testimony, but rather, grounded in the beliefs shared by members of its own staff.
16. This hearing officer hesitates to think in what direction the Student's achievements would go absent the additional DTI services provided by IPP when evidence establishes that the Student is meeting his goals and objectives, not surpassing them. When questioned about a correlation between the number of DTI hours and the progress the Student was making, Jorge Garcia, the ACES trainer, explained he was unable to determine whether there, in fact, existed a correlation. As in the case highlighted by the Parent's Attorney, *Board of Education of the County of Kanawha v. Michael M.*, "neither party can provide a direct nexus between the benefits and its own program." Civil Action No. 2:99-0609, USDC for the Southern District of West Virginia (April 26, 2000).
17. The Board has presented the case of *Renner v. Board of Educ.*, which differs from the present case in a couple respects. First, in the *Renner* case the Student was receiving as much as 35 hour total in home and school-based DTI. Second, Michigan requires students to be educated to their "maximum potential." *Renner*, 185 F.3d 635 (6<sup>th</sup> Cir. 1999).
18. One can reasonably surmise that if the Student's program at Chatfield were appropriate, then *any additional DTI services* would lead to an education outside the scope of the IDEA requirements by providing an educational program "maximizing" the Student's educational potential rather than simply receiving educational benefit. Such is not the case in this instance. With the additional DTI services at home, the Student is meeting the threshold of educational benefit – evidence of a deficiency in the Student's IEP.

19. Concerns were raised by the Parents during the hearing regarding the experience and change in staff, particularly the hiring of a new special education teacher, in January 2004. In support of the Board's position, it is clear from the record, that "taken as a whole" the staff at Chatfield, like the team in the *Renner* case possesses adequate background, experience and training to assess the Student's particular needs and deliver appropriate services.
20. The staff at Chatfield Elementary have made commendable efforts to transition the special education program from a self-contained or out-of-district program to an in-district mainstream program. However, this does not eliminate the learning curve implicit in such transition that all personnel will phase through. The purpose of the ACES consultation services in the Chatfield program is clearly to alleviate some of those obstacles that staff will encounter. The Board is dedicated to making the program a success, but a child's progress is sometimes the inherent cost of unfortunate gaps in individual staff experience for which the Board is seeking to rectify through the services of ACES.
21. The Board's minimal efforts in the name of "getting to know the child first" and heavy reliance upon Birth to Three to develop and dictate the Student's initial goals and objectives, raises concerns that lead the undersigned to believe that an appropriate program for the Student was placed in abeyance at the start of the 2003-04 school year until the school "got to know the child" and the services of ACES were enlisted.
22. Ultimately, the same goals and objectives the Board used to define the Student's IEP for the 2003-04 school year were modified by October 2003, following the evaluation of Ms. Bachyrycz and Ms. Longley, and rendered unattainable. The evaluations that triggered the changes in the Student's program (that being the speech and language evaluations) should have been conducted prior to the commencement of the Student's first year in the district. Thus, for several months the Student was enrolled in a program that failed to appropriately meet his special needs.

#### **FINAL DECISION AND ORDER:**

The Board's failure to comply with the procedural requirements and safeguards do not amount to a denial of FAPE.

The Board failed to provide the Student a free and appropriate education for the Student's 2003-04 school year.

The Board failed to provide appropriate related services in the 2003-04 school year.

The Board shall reimburse the Parents for all DTI services provided by IPP at home during the 2003-04 school year.

The PPT team must convene immediately and must develop a program inclusive of at least 20 hours per week of DTI services (not necessarily behind a screen), taking into account the Student's gradual need to generalize his skills in various settings.