

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. North Branford Board of Education

Appearing on behalf of Student: Parents, *Pro Se*

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

Appearing before: Attorney Stacy M. Owens
Hearing Officer

ISSUES

1. Whether the Student's IEP for the 2004-2005 school year provides a free and appropriate education to meet the Student's special needs; and if not,
2. Whether the Student's enrollment in the Sylvan Learning Center is appropriate and the Parents are entitled to reimbursement.

PROCEDURAL HISTORY

By letter dated December 1, 2004, the Parents requested a hearing in the above-referenced matter. On December 6, 2004, this hearing officer was appointed by the State of Connecticut Department of Education to preside over the hearing, to rule on all motions, and to make findings of fact and conclusions of law.

A prehearing conference was conducted on December 22, 2004 via teleconference. The Mother appeared on behalf of the Student and Attorney Marsha Belman Moses appeared on behalf of the Board. During the prehearing conference, the issues were identified, procedural requirements were discussed, and hearing dates were scheduled. The Parties agreed that the dates selected and agreed upon for hearing required and extension of the timeframes. Thus, an extension of the deadline for release of the final decision and order was granted.

The hearing in this matter took place on February 2 and 11, 2005. At the close of the hearing on February 11, 2005, the Parties agreed to submit briefs postmarked for delivery by March 4, 2005, and submit reply briefs postmarked for delivery by March 14, 2005.

SUMMARY

The Parents seek reimbursement for the Student's enrollment in the Sylvan Learning Center. The Parents allege that the educational program provided by the Board lacks a "component" preventing the Student from achieving greater progress. The Board contends that the Student's educational program is appropriate.

FINDINGS OF FACT

1. The Student is enrolled in the 10th grade in the district's high school. He is identified as eligible to receive special education services and has been diagnosed with ADHD. The Student has a paraprofessional that helps him "sustain his focus and remain on task." Exh. B-52; Tr. 2/2/05, pp. 21, 62.
2. In March 2003, the Student underwent a psychological evaluation conducted by Joan Williams, the Board's psychologist. Ms. Williams administered the Wechsler Intelligence Scale for Children (WISC-III), Wechsler Individual Achievement Test (WIAT), Bender Gestalt, and the Beery-Buktenica Developmental Test of Visual-Motor Integration. Board Exh. B-34.
3. The Student's WISC-III scores were: Full Scale – 78; Verbal – 89; and, Performance – 71, ranking the Student in the borderline range with verbal skills in the lower average range. Exh. B-34, B-52.
4. The Student achieved scores in the Low Average range on the WIAT. He scored 70 for Math Reasoning and 78 for Numerical Operation. The Student's lowest scores were in Mathematics and Written Language Composites. Exh. B-34, B-52
5. On the visual-motor tests, the Student achieved an age equivalent of a 7-7 ½ year old student on the Bender Gestalt and a standard score of 71 on the Beery-Buktenica Developmental. Exh. B-34
6. During the Student's 2003-2004 school year, while in the 9th grade, the Student was enrolled in Mr. Craig Creller's Applied Math I class. The class was comprised of 13 students, an aide and the math teacher. Tr. 2/2/05, p. 47; Tr. 2/11/05, pp. 61, 62.
7. While in the 9th grade, the Student failed to complete his math homework assignments. Tr. 2/2/05, pp. 51, 52; Tr., 2/11/05, pp. 68, 69.
8. Mr. Creller was available each week to provide extra help to students for homework completion or quiz preparation. The Student sought extra help services from Mr. Creller a few times, but ceased after his enrollment in the Sylvan program. Tr. 2/2/05, pp. 67-69; Tr. 2/11/05, pp. 12, 51, 52 65, 69.

9. On February 24, 2004, while in the 9th grade, the Student underwent a two-hour test from the Sylvan Learning Center (“Sylvan”) for the purpose of determining his eligibility for enrollment. The Student was administered the California Aptitude Test (“CAT”). He achieved a 3rd grade, 2nd month level in Computation, and 5th grade, 5th month level in Concepts and Applications. In March 2004, the Student was accepted for enrollment into the Sylvan program. Tr. 2/2/05, pp. 21, 50; Tr. 2/11/05, pp. 16, 29.
10. Sylvan offers a program developed to identify students’ skill gaps and get them to or above grade level. The staff at Sylvan did not review any information relative to the Student’s educational placement and program, nor did they review any tests administered for the Student by the District. Tr. 2/11/05, pp. 15, 18, 31, 32, 45.
11. The instructional aspect of the Sylvan program utilized workbooks, Sylvan worksheets, and manipulatives (i.e. flashcards, fraction tiles). The Sylvan program reinforced the lessons the Student had in the District’s classroom. Tr. 2/11/05, pp. 47, 48.
12. While enrolled in the Sylvan program, the Student received services from five different tutors. All of the tutors are certified teachers. Three of the tutors are certified to teach on the high school level. Only one of the tutors is a certified special education teacher. The Student worked with different tutors each time he attended the Sylvan program. Tr. 2/11/05, pp. 44, 45.
13. The Student received four hours per week of services from Sylvan. Services were delivered at a desk with six other children. After every 36 hours of service, the Student was re-administered the CAT to determine his progress and his individual needs. Exh. B-45; Tr. 2/2/05, pp. 22, 55; Tr. 2/11/05, pp. 18, 33-38, 46.
14. The Student was re-administered the CAT on May 29, 2004, August 23, 2004, and December 20, 2004. According to the CAT, the Student’s progress was as follows:

	<u>5/29/04</u>	<u>8/23/04</u>	<u>12/20/04</u>
Computation	6 th gr., 1 st mo.	9 th gr., 2 nd mo.	9 th gr., 8 th mo.
Concepts & Applic.	11 th gr., 2 nd mo.	10 th gr., 2 nd mo.	11 th gr., 2 nd mo.
Total Math	8 th gr., 1 st mo.	9 th gr., 2 nd mo.	10 th gr., 6 th mo.

Thus, according to the CAT, the Student progressed from a 4th grade, 2nd month level in math on February 24, 2004 to a 10th grade, 6th month level in math on December 20, 2004. Exh. P-2; Tr. 2/11/05, pp. 33-38.
15. As noted on the CAT Progress Assessment Reports, “Results reported as grade equivalent are not expected to equal the classroom grade level.” Therefore, the 10th grade, 6th month grade equivalent reflected on the December 20, 2004 Progress Assessment Report does not reflect his functioning progress in the District’s class level

structure. The Student would not be able to function at the class average in a 10th or 11th grade math class in the District. Exh. P-2, Tr. 2/11/05, pp. 36-38, 49, 103, 107, 108.

16. Prior to his enrollment in the Sylvan program, the Student's first semester average in Applied Math I was a D+, and he earned a C- on his mid-term. After his enrollment in the Sylvan program, the Student's second semester average in Applied Math I dropped to a D- and he earned an F on the final exam. Exh. 46; Tr. 2/11/05, pp. 67, 70, 103.
17. After enrolling in the Sylvan program, the Student continued to not hand in his homework assignments. The Student's failure to hand in homework assignments negatively affected his grade average in Applied Math I. Tr. 2/11/05, pp. 72-74, 77.
18. On May 20, 2004, a PPT meeting convened to develop an IEP for the Student's 2004-2005 school year. The Mother attended the meeting and agreed with the goals and objectives, as well as the hours of services prescribed in the IEP. Exh. B-45; Tr. 2/2/05, pp. 43, 46.
19. Mr. Creller recommended enroll in Applied Math 2 class for the Student's 10th grade year, but the Mother requested the Student be placed in the Algebra I, level B class because she felt it would better prepare the Student for his PSAT and SAT exams for college admission. Exh. B-55; Tr. 2/2/05, pp. 48, 63, 64, 67; Tr. 2/11/05, pp. 11, 12, 71, 75, 76, 79, 80.
20. Algebra I, level B is a higher level Math class than Applied Math. Exh. B-55, Tr. 2/11/05, pp. 11, 12, 71, 75, 76, 79, 80.
21. Mr. Joseph Wisniewski is the Student's 10th grade Algebra teacher. The Student failed to avail himself of the after school services provided by Mr. Wisniewski. Tr. 2/2/05, pp. 68, 69; Tr. 2/11/05, pp. 12, 54, 104.
22. Ursula Pendziwater is the Student's special education teacher. The Student failed to avail himself of the after school services provided by Ms. Pendziwater. Tr. 2/11/05, pp. 104, 105.
23. In September 2004, the Sylvan program started a homework support group for the Student for one hour per week. The Student completes his homework at home and Sylvan staff reviews it. Tr. 2/2/05, pp. 65, 66; Tr. 2/11/05, pp. 50, 51.
24. Under the Student's current IEP, the Student has been making progress in his goals and objectives. Tr. 2/11/05, pp. 55-58, 62.
25. At the October 21, 2004, the Mother made no request for changes to the current IEP, and made no requests for additional services. The Mother believed the IEP was appropriate. Tr. 2/11/05, pp. 56, 57.

26. On December 3, 2004, the Student was administered the Key Math Diagnostic Arithmetic Test (“Key math Test”). The Student scored: Basic Concepts – 73; Operations – 86; Applications – 77. The Student’s overall score was 78, which falls in the borderline range. The Student’s Math skills rank between a 3rd and 4th grade level. His Key Math Test scores are “comparable to his WIAT scores” and “commensurate with his cognitive skills measured on the WISC-III in March 2003.” The Student’s Key Math Test scores were consistent with the performance reported by the Student’s math teachers. Exh. B-52; Tr. 2/11/05, pp. 59, 103, 104, 106, 107.
27. The Student’s scores from Key Math Diagnostic Arithmetic Test were not provided to the Sylvan Learning Center. Tr. 2/2/05, p. 63.
28. On January 13, 2005, the Planning and Placement Team met to revise the Student’s IEP and add additional Math goals and objectives. Exh. B-52.
29. On January 13, 2005, Mr. Wisniewski reported that the Student was producing average work in Algebra I, and fails to do his work for class. The Student was found to have difficulty focusing, and fidgeted with objects instead of taking notes; symptomatic of his ADHD, and ultimately impacting his progress. The Student was reported to rely on the teacher assistant for notes after failing to pay attention in lectures. Exh. B-52; Tr.2/11/05, pp. 81-83.
30. On January 13, 2005, the Planning and Placement Team recommended goals and objectives to aid the Student to increase his independence. The IEP prescribed the following additional goal and objectives:

Goal #4: To become a more independent learner in math class . . .

Objectives:

- a) The Student will identify sequential steps to solve math problems;
- b) The Student will complete math class work assignments during math class/resource room with the time extensions if needed; and,
- c) The Student will self-correct his math work before handing in assignments, tests and quizzes.

The Mother agreed to the addition of these goals and objectives. Exh. B-52; Tr. 2/11/05, pp. 108, 109.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (“IDEA”) mandates all school districts to provide students a free and appropriate public education (“FAPE”). FAPE is defined as:

Special education and related services that (a) have been provided at public expense, under public supervision and direction and without charge; (b) meet the standards of the State educational agency; (c) include an appropriate preschool,

elementary, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program (IEP) under [this Act]. 20 U.S.C. §1401(8).

The Supreme Court in the case of Hendrick Hudson Board of Education v. Rowley established a two-tier review to determine whether a student's education is "appropriate." The first tier of review is to analyze procedural compliance with the IDEA by the Board. The second tier of review is to analyze whether the IEP developed for the student is reasonably calculated to enable the child to receive educational benefit. Hendrick Hudson Board of Education v. Rowley, 458 U.S.176 (1982).

In this matter, procedural compliance by the Board is not an issue. However, a determination of whether the IEP developed for the Student on May 20, 2004, is sufficient to meet the Student's special needs is required.

The IEP is the written plan of specific special education and related services designed to meet the unique educational needs of a child with a disability. 20 U.S.C. §1414(d). The IEP must provide for personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Rowley at 203. In determining "educational benefits" the IEP should be reasonably calculated to enable the child to make educational progress according to the child's goals and objectives. Rowley at 203-204. Educational benefit is measured as the basic floor of opportunity, not a program maximizing a child's educational potential, which in this case, was the expressed intent of the Parents to achieve for the Student. *See* Tr. 2/11/05 at pp. 32, 37.

A preponderance of the evidence establishes that the Parents were comfortable with the IEP developed for the Student for his 2004-2005 school year, and acknowledged the progress he was achieving in his goals and objectives. The Parents' concern, however, manifested when they considered the Student's current math skills and the upcoming PSAT and SAT he was to undergo. As such, the Parents enrolled the Student in an Algebra I class, contrary to the Board's recommendations, and sought the services of Sylvan to "maximize" the Student's potential.

Mathematics is clearly an area of weakness for the Student. His ADHD symptoms of being easily distracted, less focused and "fidgety" were sufficiently addressed by the services of the special education teacher, the paraprofessional and the aide assigned to the math classroom. The record reflects that the Student was progressing in his math skills, but such progress was

deflected by his failure to do his homework assignments. As Mr. Creller explained, each homework assignment was worth 1.4 points. In the Student's case, he failed to turn in 10 or more homework assignments. Thus, the Student's overall grade dropped over 14 points from what he could have achieved. *See* Tr. 2/11/05, p. 77.

Consistently, testimony provided throughout the hearing established that the Student was afforded the services of Mr. Creller, Ms. Pendziwater, and Mr. Wisniewski for after-school help with homework assignments and preparation for quizzes. Yet, the Student failed to avail himself of such services. Rather than focusing on the Student's area of weakness, that being the completion of homework assignments, the Parents enrolled him in Sylvan. Ironically, the Student later used his evening sessions with Sylvan as an excuse for not completing his homework assignments, and subsequently received even lower grades in Math as a result of his failure to hand in his homework assignments.

The Parents have concentrated their focus on the progress the Student has made according to Sylvan's CAT-based testing and calculation methods, without recognizing that the progress recorded at Sylvan does not appropriately reflect the Student's actual abilities and achievement in the District's math classes. In fact, despite the results of several well-established and credible evaluations administered by the District, Sylvan's program seems to have provided the Parents a false sense of the Student's true level of capabilities, convincing them that a "component" was missing in the Student's educational program. However, a preponderance of the evidences establishes that the crucial "component" that was missing was the Student's homework assignments, which is an independent responsibility of the Student supported by the District.

As a result of the Student's classroom performance conflicting with the Parents' report to the school of the Student's progress in the Sylvan program, the District sought to resolve the disparity by administering the Key Math Test to the Student in December 2004. The results of the Key Math Test directly correlate with the Student's past evaluations and his classroom performance. At that point, the PPT convened to establish new goals and objectives to increase the Student's independence and "complete math class work assignments." Thus, on January 13, 2005, the PPT modified the Student's 2004-2005 IEP to address those areas that were impeding the Student from achieving grades reflective of his progress.

FINAL DECISION AND ORDER

1. The Board provided the Student with FAPE, and addressed the Student's deficiencies accordingly.
2. A review of the Sylvan program is not required, as the 2004-2005 IEP is adequate to meet the special needs of the Student. The Parents are not entitled to reimbursement for the Student's enrollment in the Sylvan Learning Center.