

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Connecticut Technical High School System

Appearing on behalf of the Parents: Mother, pro se

Appearing on behalf of the Connecticut Technical High School System:
Attorney Beatrice Tinty
Connecticut Technical High School System
25 Industrial Park Road
Middletown, CT 06457

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

This hearing request was received at the State Department of Education (SDE) on March 10, 2006. This hearing officer was assigned to the case on March 13. The Connecticut Technical High School System (“CTHSS”) received the request for hearing on March 15, 2006. Counsel appeared for CTHSS on March 21. On that date a copy of the CTHSS response to the complaint was sent by Ms. Jill M. Dymczyk, Special Education Consultant, CTHSS. A prehearing conference was held on March 23, 2006 with the Mother. The attorney for CTHSS could not be reached and two messages were left with her office. A hearing date was scheduled for April 26 and the decision deadline was set at May 25, 2006. The decision deadline was set based on the receipt date by the SDE. The decision deadline was amended to May 30, 2006, which reflects the receipt date by the CTHSS. Following the conference, Ms. Dymczyk contacted the Hearing Officer and stated that she had been waiting for the prehearing conference telephone call. She was advised that once an attorney appears for a party, the attorney would be the contact person. On March 24, the CTHSS attorney wrote a letter explaining the mix-up and asked to add an issue to the hearing. The parties were directed to file witness lists and exhibits by April 19. The Parents did not file any. The CTHSS filed Exhibits B-1 through B-13 and a witness list.

The hearing convened on April 26, 2006. The Mother presented her case. She offered no exhibits and stated that she would be the only witness. The hearing request was marked as Hearing Officer Exhibit 1 (HO-1). The March 24 letter from the CTHSS attorney was marked as HO-2. The first matter heard was objections to exhibits. The Mother did not bring her copy of the CTHSS exhibit book to the hearing. After being given an opportunity to review the CTHSS exhibits, she did not object to any. The CTHSS Exhibits were entered as full exhibits. The

CTHSS attorney requested adding a witness to her list, which was granted. The parties presented opening statements. The Mother stated that the school, Norwich Technical High School, did not provide adequate academic support for the Student. The Parents sent the Student to Sylvan Learning Center at their own expense and they believe he is improving his academic performance. The CTHSS argued that although they complied with the Student's IEP, he required more special education support services than Norwich Technical High School is able to provide and that he needs to return to his home district. Parents then presented testimony from the Mother. The Parents rested their case.

The CTHSS presented testimony of Nikitoula Menounos, Ph.D., Principal of Norwich Technical High School ("NTHS"). This was followed by testimony of Ms. Dymczyk and Sarah Minei, Special Education Teacher at NTHS. Exhibit B-14 was admitted into evidence without objection during Ms. Dymczyk's testimony. The CTHSS rested its case. The Parents did not ask to present rebuttal evidence.

The parties were offered the opportunity for oral or written closing arguments. The parties made oral closing arguments and waived the filing of written briefs.

The findings and conclusions set forth herein, which reference specific exhibits or witness testimony, are not meant to exclude other supportive evidence in the record.

ISSUES

1. Did NTHS comply with the Student's individual education plan ("IEP")?
2. Can the NTHS provide the Student with a free appropriate public education ("FAPE") within its vocational education program?
3. If not, should the Student be returned to his home district of East Lyme pursuant to Conn. Gen. Stats., Section 10-76q?

SUMMARY

The Student is a 14 year-old student with a specific learning disability in reading who currently attends NTHS in grade nine. The parties agree that he is entitled to special education services. The parties disagree as to the extent of services needed and whether they can be provided at NTHS. The Parents do not want the Student to be returned to his home school district, which is East Lyme. The Mother insists that the Student will not attend East Lyme High School. The NTHS believes that the Student has difficulty in accessing the technical school program and requires intensive special education services, which cannot be provided within the CTHSS program. Pursuant to Conn. Gen. Stats., Section 10-76q, the Planning and Placement Team ("PPT") recommended that he return to school in his home district where an IEP can be developed and implemented.

FINDINGS OF FACT

1. The Student has a birth date of November 4, 1991, and is currently enrolled in the ninth grade in the NTHS, a regional vocational-technical high school within the CTHSS. He is a resident of the town of East Lyme. Exhibits HO-1; B-3; B-5.

2. The Student previously attended the East Lyme Middle School ("ELMS"). Testimony of Mother.

3. The Student was identified with a specific learning disability in reading while in seventh grade. An IEP was developed for him at ELMS. Prior to receiving special education services, the Student received extra help in school since kindergarten. Id.

4. Mother testified that the Student had normal grades in middle school, but that his reading was at the third grade level. He had special education services for two hours per week. Id.

5. In spring 2005, while in eighth grade at ELMS, the Student applied for admission to the CTHSS. Exhibit B-3.

6. In April 2005 the Student received an acceptance letter for initial admission to the 2005-2006 ninth grade class at NTHS. The letter stated that: "Final admission will be based on successful completion of the 9th grade Exploratory Program." Exhibit B-4; Testimony of Dr. Menounos.

7. On July 21, 2005 a PPT meeting was convened to develop an IEP for ninth grade at NTHS. Those in attendance were the Mother, Joanne Holland, Special Education Department Head at NTHS, M. Tukey, guidance counselor, J. Grant, regular education teacher, C. Otto, special education teacher, and L. Anaria, administrator from ELMS. Exhibit B-5.

8. The IEP has two goals, one in reading and one in developing skills for independent living and employment:

Goal #1: C[.] will improve reading, decoding and encoding skills, as well as comprehension skills.

Objective #1: C[.] will continue to develop reading decoding skills while using the Lexia/Wilson reading materials and/or other appropriate materials.

Objective #2: C[.] will increase spelling skills/mastery using techniques from reading instruction, spell checker feature, and other supports including appropriate software programs.

Objective #3: C[.] will increase reading comprehension skills for academic and trade success.

Goal #2: C[.] will develop skills for independent living and employment.

Objective #1: C[.] will successfully complete tasks in the Exploratory Program.

Objective #2: C[.] will complete homework and project assignments. He may utilize SE supports and/or programs available to all students.

Objective #3: C[.] will practice self-advocacy, i.e. appropriately making his wants and needs as a learner clear to instructors and other students.

Id. at 7 and 9.

10. The IEP provides for a total of two hours per week of special education services to be implemented in the regular education and resource classrooms. The Student was to receive 20 minutes per academic week of instruction-consultation in writing; 20 minutes per academic week of instruction-consultation in behavioral strategies; 40 minutes per technology week instruction-consultation in reading comprehension; and 40 minutes per technology week in instruction-consultation in reading recognition. Id. at 11.

11. The IEP contains “Program Modifications/Adaptations and the Sites/Activities Where Required and Duration”:

Materials/Books/Equipment: Spell Check, Access to Computer and Other (Books on Tape; CD’s for instructional materials). [A]ll academic and trade areas for the school year. C[.] may choose to use an Alpha-Smart to assist with hand written work.

Test/Quizzes/Time: Extra Time-Tests, Rephrase Test Questions/Directions, Simplify Test Wording, Oral Testing, Test Read and Other (May take tests/quizzes in the resource room). [A]ll academic and trade settings for the school year. . . . Arrangements need to be made prior to the test/quiz if it is to be taken outside the regular classroom. . . .

Grading: No Spelling Penalty. [D]esignated words need to be spelled correctly; number presented at one time or rate at which new words are presented may be adjusted; in all academic and trade areas for the school year.

Organization: Assignment Pad. [A]cademic classes.

Environment: Preferential Seating. [A]ll areas for school year; front of classroom.

Behavior Management/Support: Positive Reinforcement. [A]ll areas, for school year.

Instructional Strategies: Check Work in Progress, Monitor Assignments, Multi-Sensory Approach, Visual Reinforcement, Other [support from teachers for self-advocacy skills], Review Directions, Repeat Instructions, Oral Reminders, and Have Student Restate Information. [A]ll areas for school year.

Id. at 12-13.

12. NTHS has a rotating schedule of academic and technology cycles. There are nine days of academic classes followed by nine days of trade classes. The totals for the year are 91 days of academic and 91 days of trade classes. The ninth grade year is an exploratory program divided into three phases. Phase I lasts for 33 days. The students spend three days in each trade area. In Phase II the students select three trade areas to explore for six days, for a total of 18 days. In Phase III the students make a final choice of a trade area where they concentrate their trade classes for the remainder of the year. Testimony of Dr. Menounos.

13. The academic classes in grade nine are English I, Science I, Algebra I, and Global Studies. The students also take Physical Education and Health. Students need a grade of 60 or better to pass the classes. Math and Reading Labs are graded as part of the English and math grades. Id. and Exhibit B-1. The Student did not have passing grades for the first and second trimesters in any academic courses. He had a 45 and 46 in English I; a 35 and 43 in Algebra I; a 35 and 15 in Science I and a 50 and 55 in Global Studies. In the Exploratory trade classes, the Student had a 74 and 59. Exhibit B-11.

14. The first progress report on the Student's IEP in January 2006 was not positive. On Goal #1, the reading goal, progress was reported as "O" (meaning Other) with the following comment:

C[.] appears to have difficulties in this area. However, it is difficult to determine what he is capable of and/or if he is transferring the skills being taught in the Lexia program to the general curriculum.

Exhibit B-5 at page 7. On Goal #2, the comment was: "C[.] is participating in the Exploratory program. Behavior is not a problem; work completion and success in the reading and math labs is a concern." On Objective #1 the Student was rated "S" (Satisfactory Progress, Likely to achieve goal). On Objectives #2 and #3 the Student was rated "U" (Unsatisfactory Progress, Unlikely to achieve goal). Id. at page 9.

15. A PPT meeting was held on January 17, 2006 to discuss his progress and to review the IEP. It was decided to continue the July 21, 2005 IEP. C. was encouraged to use the support services provided by the school. A meeting would be scheduled after the second marking period grades. Exhibit B-6.

16. On February 7, 2006, a PPT meeting was held to assess progress and to review the IEP. Present at the meeting were the Mother, M. Cronin, administrator, J. Menghi, the Student's English teacher, Ms. Minei, the Student's Special Education teacher, E. Ryan, guidance counselor, Ms. Dymczyk and B. Mason, Sylvan Learning Center. The recommendation was that the Student return to his home district for the development of an IEP and that the home district implement and finance the program. The Mother's request for the Student to finish the year at NTHS was refused. The summary of the meeting states that the team reviewed the Student's progress since the January PPT meeting and found no significant change in performance:

[T]he PPT members continue to state that C[.]’s significant deficits in his basic academic skills for reading, writing and math, make it extremely difficult for him to adequately access the curriculum at Norwich Technical High School. Failing grades, poor work quality, numerous missing assignments and poor organizational skills prevail and the team believes that C[.] needs and deserves to have a more comprehensive IEP which intensely addresses his basic skills.

Exhibit B-7.

17. Ms. Dymczyk has been employed at CTHSS since January 2006. Prior to that time, she was a special education supervisor and a special education teacher in Regional School District #10 for a total of 22½ years. She reviewed C.’s file and the teacher journals at NTHS and verified that C. received the services required in his IEP. She also contacted ELMS and found that C. had tested more than two standard deviations below the norm in reading. This information was not available at the time the Student applied for admission at NTHS, which only knew that he received special education services. In her opinion, C. needs an intensive reading program, which would not be interrupted. The nine-day cycle at NTHS causes regression for the Student. NTHS is a strategies-based program, which is insufficient for C. He cannot be provided with a FAPE at NTHS and will be harmed if he stays there. He is not on target to receive any academic credits. He is also experiencing difficulties with testing in the trade area. There are a few students, including C., who are referred back to their home districts each year. Testimony of Ms. Dymczyk; Exhibit B-14.

18. Ms. Minei has been a special education teacher at NTHS for five years. She has been C.’s special education case manager since the end of January or beginning of February 2006. She attended the February 7, 2006 PPT meeting. Ms. Holland, another special education teacher at NTHS, attended the July 2005 PPT meeting where the IEP was written, as well as the January 17, 2006 PPT meeting. Ms. Minei has known C. since November because she co-taught some of his classes. Ms. Holland wrote the January progress report for the Student. As case manager, Ms. Minei is responsible for ensuring that each goal and objective is implemented. She provides direct services to C. in English and math classes, where she co-teaches with a regular education teacher. She has also had contact with the Mother six or seven times by telephone and e-mail. The next progress reports were scheduled to be sent home near the end of April. The Student has made only limited progress and is not expected to reach mastery on his goals and objectives. Although the Mother claims there was progress, Ms. Minei has not noticed any progress since February or any change in the Student’s attitude toward school. Testimony of Ms. Minei.

19. Help is available after school for all students during an extended day from 3:00 to 5:00 p.m. two days per week. Language arts and math help is available on Tuesdays and Thursdays. The Student was asked to stay after school for these sessions, but he has not done so. Id.

CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that C. is a child with a specific learning disability in reading. 34 C.F.R. Section 300.7(c)(10).

2. The IEP serves as the centerpiece of a student’s entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child’s current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of “measurable annual goals, including benchmarks or short term objectives related to meeting the child’s individual needs.” 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.347; Roland M. v. Concord School Committee, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991). The IEP developed for the Student on July 21, 2005 satisfied these requirements. The CTHSS has proven that the Student’s IEP was implemented at NTHS.

3. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207. The Board must establish these by a preponderance of the evidence. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs., Section 10-76h-14. “Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability.” Mrs. B. ex rel. M.M. v. Milford Board of Education, 103 F.3d 1114, 1121 (2d Cir.1997). The type of program in which the IEP is implemented also impacts the Student’s progress, in this case a rotating nine-day cycle alternating academic and trade classes. The Parties agree that the Student is not progressing toward mastering his goals and objectives and that more intensive special education support is needed. The Parents claim that the Student should have more intensive services at NTHS. The CTHSS has proven that it does not have the capability to provide intensive services required by the Student at NTHS.

4. Conn. Gen. Stats., Section 10-76q provides in relevant part:

(c) If a planning and placement team determines that a student requires special education services which preclude such student’s participation in the vocational education program offered by a regional vocational-technical school, the student shall be referred to the board of education in the town in which the student resides for the development of an individualized educational program and such board of education shall be responsible for the implementation and financing of such program.

The PPT made such a determination on February 7, 2006. The CTHSS requests an order that the Student be returned to East Lyme for the development of an IEP to be financed and implemented by the East Lyme Board of Education. The Mother asks for an order to keep the Student at NTHS.

5. Conn. Gen. Stats., Section 10-76h(d)(1):

The hearing officer . . . shall have the authority to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the child or pupil . . . or to prescribe alternate special educational programs for the child or pupil. . . .

Pursuant to the above statute, the Hearing Officer confirms the decision of the February 7, 2006 PPT referring the Student to East Lyme for the development of an IEP appropriate to his needs.

FINAL DECISION AND ORDER

1. NTHS complied with the Student's July 21, 2005 IEP.
2. The Student's IEP required modification in February 2006 to provide the Student with a FAPE.
3. NTHS cannot offer the Student the additional intensive special education services to provide Student with a FAPE.
4. The Student shall be referred to his local district of residence, East Lyme, for the development and implementation of an appropriate IEP.