

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Appearing on behalf of the Board: Attorney Craig Meuser
Chinni & Meuser
30 Avon Meadow Lane
Avon, CT 06001

Appearing on behalf of the Parent: *No appearance filed. While the Parent was sent notice of the prehearing conference and the hearing dates, the Parent was not present at the scheduled prehearing teleconference, did not appear at the hearing dates and submitted no filings in this matter.*

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Whether the Board can provide a free and appropriate public education in the least restrictive environment in the Student's neighborhood school.

PROCEDURAL HISTORY:

The Board filed this request for hearing [Exhibit H.O.-1] on April 12, 2010 and a prehearing conference convened on April 19, 2010. The Board's attorney participated in the prehearing conference, but the Parent did not participate, although the Parent was provided with appropriate notice of the prehearing conference.

The hearing convened on two hearing dates, May 21, 2010 and May 28, 2010, both of which were duly noticed to both parties. At the first hearing date, Board was present but the Parent did not appear. Because the Parent did not appear, the hearing officer took appropriate additional steps to ensure that the Parent had notice of the hearing. Prior to commencing the hearing on May 21, 2010, the Board director and attorney were directed at the hearing by the hearing officer to contact the Parent at all phone numbers listed in the exhibits and other records to determine whether she was attending the hearing. The Board director and attorney left the hearing room, and upon their return reported that the Parent was not available at any of the phone numbers. The hearing then proceeded with testimony on the first hearing date.

The hearing was continued to May 28, 2010 for additional testimony, and the Board director indicated that she would contact the Parent prior to the hearing date to notify the Parent about the hearing, which was in addition to the Notice of Hearing forwarded to the Parent by the hearing officer.

At the hearing on May 28, 2010 the Board director reported that she had spoken with the Parent that morning and the Parent stated that she would not contest the Board's proposed placement. The Board director further reported that she had requested that the Parent appear at the hearing to report this on the record. When the Parent did not appear at the hearing, the Board director called the Parent a second time,

and then reported that the Parent said she was on the way. The hearing officer waited an additional 45 minutes for the Parent to appear and requested that the Board contact the Parent again regarding the status of her arrival. The Board Director contacted the Parent's cell phone a third time, and the call went into voice mail. The hearing officer inquired as to whether the Parent knew the directions to the Board offices where the hearing was being held. The Board director stated that the Parent had visited the Board offices previously. It is found that the Parent had appropriate notice and opportunity to appear on her own behalf at the hearing but elected not to do so. The matter proceeded with testimony on May 28, 2010.

The witnesses who testified on behalf of the Board were the Board director of pupil services, the Board teacher of the hearing impaired and the Board fifth grade teacher.

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)

To ensure that the Student's identification is kept confidential in compliance with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g and related regulations at 34 C.F.R. § 99, this final decision uses "Student", "Board," "School", "Parent", and titles of school staff members instead of names and other personally identifiable information.

SUMMARY:

The 11 year old hearing impaired Student moved into the Board's school district in March 2010. After review of the Student's triennial evaluation at a PPT meeting, the Board offered the Student an educational program which replicates her current program at CREC Soundbridge with specialized instruction, accommodations and modifications and inclusion in the fifth grade classroom at her neighborhood school, the Board intermediate school. The Parent refused the program and the Board brought this request for hearing.

FINDINGS OF FACTS:

1. The Student is 11 years old and concluding fourth grade in the 2009-10 school year. [Exhibit B-14]
2. The Student moved into the district on March 1, 2010 from another town. She had previously been identified as eligible for special education as a student with a hearing impairment. [Testimony Board director]
3. The Student was diagnosed with bilateral and profound hearing loss at 20 months of age. She has a cochlear implant in her right ear, with access to sounds under ideal conditions. She cannot hear with her left ear. [Testimony Board teacher of the hearing impaired, Exhibits B-11, B-13] The Student does not utilize sign language as she has learned to speak and listen with the use of her cochlear implant. [Testimony Board teacher of the hearing impaired]
4. The Student has been attending the Capitol Region Education Council [CREC] Soundbridge program which is located in a public school [a school not within the Student's current town of residence nor her previous town of residence], with a self contained classroom as well as

opportunities for inclusion with nondisabled peers in some classes. [Testimony Board teacher of the hearing impaired]

5. The Student's triennial report was completed in March 2010 by CREC Soundbridge. In this evaluation, it was recommended that the Student continue to use her cochlear implant processor on a full-time basis and utilize the FM system in the educational setting. The evaluation confirmed that while the Student had made more than one year's growth in receptive language, her performance in the Peabody Picture Vocabulary Test put her in the extremely low range for receptive language. It was noted that this deficit in part was the reason that the Student required intensive support in language based classes. The Student's scores on the Clinical Evaluation of Language Fundamentals - 4th edition (CELF-4) also confirmed that the Student has significant needs in all areas of language tested as compared with hearing students. It was noted that the Student enjoys interactions with teachers and peers, and confidently interacts with friends in her mainstream classes during recess and lunch. The triennial noted that the Student is 1.5 years below grade level in math as compared to her hearing peers. The Student's DRA2 instructional level in reading was 24 and her independent level was 20. [Exhibit B-13, Testimony Board teacher of the hearing impaired]
6. The members of the Planning and Placement Team [PPT] met on March 26, 2010 to review the triennial evaluation and to plan a program for the Student. After discussion about the Student's needs, the Board proposed that the program at CREC Soundbridge could be replicated at the Student's neighborhood school with all necessary components. The PPT recommended that the Student remain at CREC Soundbridge until the end of the 2009-10 school year, and attend the Board's summer program from July 5 to July 30. The Board members of the PPT recommended that the Student attend the Board intermediate school as of September 1, 2010, receiving specialized instruction, inclusion in science, social studies, lunch, recess and specials with nondisabled peers and counseling. [Testimony Board teacher of the hearing impaired, Board director; Exhibit B-14]
7. The Student's concerns/needs at the time of the PPT meeting included vocabulary, receptive/expressive language, inferential-type questions, identifying important message in a story, math vocabulary, background math knowledge, retention of math facts and content vocabulary and language in academic areas. It was noted that the Student's hearing loss had delayed the development of vocabulary and language. It was also noted that the Student is a motivated, hard worker. [Exhibit B-14]
8. The PPT drafted appropriate goals directed at the Student's communication, academic/cognitive and social/behavioral needs. [Exhibit B-14]
9. The PPT included appropriate accommodations and modifications for the Student including an FM system, captioned media, prior notice of tests, extended time and quiet environment for tests, a reader for directions and math and science items, preferential seating, hallway door closed during instructional time, multisensory instructional strategies, frequent checks for comprehension, workshop for teachers before the start of school, audiological services and workshop for students in the fall. [Exhibit B-14] Due to a scrivener's error by the Board director, additional adult support was recommended by the PPT but was not included in the IEP document. The Board will provide the Student additional adult support for participation in science and social studies in the regular classroom. This support shall be provided by a speech language pathologist or a teacher of the

hearing impaired, not a paraprofessional which was what the CREC Soundbridge program used for this support. [Testimony Board director]

10. The Student's program for the 2010-11 school year as proposed by the Board would include the additional SLP/teacher of the hearing impaired support for the time in science and social studies, as well as 17.50 hours per week of audition/speech/language services from the teacher of the hearing impaired or speech language pathologist, 2.5 hours per week of aural habilitation by the teacher of the hearing impaired and 0.50 hours per week of counseling by the psychologist, social worker or counselor. [Exhibit B-14, Testimony Board director]
11. The Board teacher of the hearing impaired is dual certified as a teacher of the hearing impaired and as a speech and language pathologist. She is well experienced in providing appropriate education to students with a hearing impairment. [Testimony Board teacher of the hearing impaired]
12. The Student's fifth grade regular education teacher is an experienced teacher with firsthand knowledge on how to provide appropriate instruction to hearing impaired students in her mainstream classroom. She can provide the Student an appropriate educational program in her inclusion setting. [Testimony Board fifth grade teacher]
13. The Board is planning to transition the Student to the Board program through its summer program which would include time to transition to staff and peers. [Testimony Board teacher of the hearing impaired, Board director; Exhibit B-14] It was determined that it would be better to transition the Student in the summer, rather than transitioning to the Board program in March. [Testimony Board director]
14. The Parent refused the placement at the Board Schools for the 2010-11 school year as well as the extended school year 2010 because she was comfortable with the teachers at CREC Soundbridge. The Board brought this request for hearing as the Board could replicate the Student's program at CREC Soundbridge in her neighborhood school, and could provide the Student with a free appropriate public education at its intermediate school. [Testimony Board teacher of the hearing impaired, Board director]

DISCUSSION/CONCLUSIONS OF LAW:

The Board has brought this action in accordance with the Individuals with Disabilities Education Act which provides for special education and related services to children with disabilities, from birth through age 21.

It is a fundamental tenet of the IDEA that the Students should be educated in the least restrictive environment to the maximum extent appropriate. The regulations provide that "[s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 CFR Sec. 300.114

In accordance with the IDEA, the educational placement of a student with a disability shall be "as close as possible to the child's home" and that "[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school he or she would attend if nondisabled." 34 CFR 300.116

The program the Board has offered to the Student provides the Student with a free appropriate public education in the regular education environment in the Student's neighborhood school with appropriate supplementary aids and services and pull-out for additional one on one and small group services as necessary and as recommended by the PPT. The Board's proposed program for the Student at the Board intermediate school is an appropriate program in the least restrictive environment, which would provide the Student with meaningful educational benefit.

FINAL DECISION AND ORDER:

1. The Board's proposed program in the Student's neighborhood school is an appropriate program in the least restrictive environment.