

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

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Appearing on behalf of the Board: Attorney Frederick Dorsey
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Appearing before: Margaret D. Northrop, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board offered an appropriate program to the Student for the 2000-2001 school year.
2. If not, does the Forman School offer an appropriate program?
3. Is the Board responsible for reimbursement of the cost of the Parent's independent evaluation?

SUMMARY:

The student is a fourteen-year-old ninth grader who was identified as learning disabled and eligible for special education services in the second grad and has been receiving services provided by the Board since that time. For the 2000-2001 school year, he was unilaterally placed at the Forman School by his parents. The Parents have requested reimbursement for costs related to this placement, claiming that the Board has not offered the Student an appropriate program. The Parents requested a hearing on behalf child on May 18, 2000. A prehearing conference was held on May 31 and the hearing was held on June 28, July 20, September 12, and September 18, 2000. After briefs were filed, the Hearing Officer determined that the matter was not yet ripe for a full decision as the record was incomplete. Due to scheduling difficulties, there had been no testimony from a representative of the Forman School as to the program, being offered to the Student. The hearing was reconvened on November 29, 2000 for the taking of such testimony. The

Board declined to present any rebuttal testimony and both parties declined to file any further written memoranda.

FINDINGS OF FACT:

1. The Student, now in ninth grade, was identified in second grade by the Board as a student with a Learning Disability requiring special education and related services under IDEA and related Connecticut statutes. (Exhibit B-2)
2. He was initially provided with 2.5 hours per week of “pull out” services in reading, then an additional 2.5 hours “upon need” in the classroom. The number of hours was increased to ten, including in-classroom paraprofessional assistance by grade four. (Exhibits B-2, B-6, B-7)
3. Testing performed during fourth grade indicated that the Student’s Broad Reading was at the 2.4 grade level, and his Broad Math was at the 2.5 grade level. By the beginning of the fifth grade, his reading level was at 2.8 (Exhibit B-13, B-22). Services were continued in grade five and grade six, when a special education teacher followed him through his academic program to take notes and was available as a resource before school. (Testimony of Mother)
4. In the sixth grade year, the Student was give the *fourth* Grade Connecticut Mastery Test, with modifications, and failed to master any of the categories in the areas of written communication and reading. In the mathematics portions of the test, the Student mastered 22/30 objectives, with a score of 94 (the goal being 103/121) (Exhibit P-7)
5. In seventh grade, the student had fifteen hours per week of special education services, including academic support in the mainstream classroom and structures study and two and ½ hours of reading in the resource room. The reading instruction was given in a small group, and used the Orton Gillingham reading program. The Student was receiving good grades and was on the honor roll. As part of his IEP, he was allowed to take tests and re-tests in an alternative setting with extra time, had questions read to him, and modifications to some questions. The parents had frequently expressed to Board personnel their concern that the grades were not reflective of his true performance and that he was being “set up” for failure. The response from the Board was that the modified grades would boost his self-esteem. (Exhibit B-32, Testimony of the Mother)
6. In eight grade, the student’s IEP provided for 13.75 hours of special education services similar to those provided in the previous year. However,, the “regular education” component consisted of collaborative, team-taught classes with a larger percentage of students identified with special needs. Although his IEP provided for academic support only in math and language arts classes, the Student also received assistance in Science and Social Studies from the Resource teacher who was assigned to all the special education students in his academic classes to take notes, make

modifications in the way the material was presented, answer questions, etc. and who would follow-up in the group structured study time. She would also assist any student in the class who needed it. (Exhibit B-33, Testimony of Resource Teacher)

7. As part of his IEP, the Student received 2.25 hours of reading instruction per week by a well-trained teacher who utilized the Orton Gillingham approach with a group of three other students in the Resource Room. (Exhibit B-36, Testimony of Director of Pupil Personnel Services)
8. In the fall of eighth grade, the Student took the *sixth* grade Connecticut Mastery test, with modifications. He was again unable to meet mastery objectives in reading or mathematics, but did meet the holistic writing score goal. In the mathematics section, he mastered 13/36 objectives, with an overall score at 73. This result was 60% of the goal set for *sixth* graders (a score of 122/154, Exhibit P-14)
9. During the eighth grade, the Student's grades declined somewhat and he became more frustrated about his continuing academic difficulties. He felt that he did not belong with many of his classroom peers, and felt stigmatized and therefore more resistant to going to the resource room. He wrote a poem expressing his "lost hope". (Testimony of Mother, Teachers, Exhibits B-46, P-21)
10. In the middle of the eighth grade year, the Student was administered the Kaufman Test of Education Achievement – Brief by the Board's Special Education Reading teacher. The report indicates that "since (the Student) is "performing better than less than 10 percent of his age group, his results represent significant weaknesses in math, reading, and spelling." His grade equivalent scores were 5.2 in mathematics, 4.1 in reading, 4.2 in spelling, with a total composite score of 4.6. (Exhibit B-41)
11. The PPT convened in February of 2000 to discuss the results of the testing and a placement in ninth grade at the Board's high school, with a tentative ninth grade program of writing, "collaborative classes" in math, earth science, and social studies, two guided study periods, PE/Health and an elective to be determined. The "collaborative classes" would include regular education and special education students, with both a special education and a regular education teacher. These classes were within the "general class category" track at the High School (the other categories being "Honors" "AP" and "college prep"). The Parents expressed concern as to whether what they perceived to be "watered-down" classes would prepare their son for college. They also expressed concern as to how their son could do high school level work since he was reading at the fourth grade level. No particular reading program for high school was offered or discussed at this meeting. It was agreed that the Reading Teacher would conduct further testing and that the PPT would reconvene. At some point after the February PPT meeting, the Parents informed school personnel that they were engaging Dr. Robert Kruger, a psychologist, to do an independent evaluation. The Reading Teacher and Dr. Kruger conferred so as not to do duplicative testing. (Exhibit B-43, Testimony of Parent, Reading Teacher, and Dr. Kruger)

12. When the Reading Teacher began retesting the Student, he became very upset when he was informed that the testing required him to read independently and that she could not read the questions to him. He told the Reading Teacher that he would know more or what the words meant if they were read to him. When the Student again became upset at the second test session, having learned that Dr. Kruger was also conducting his testing, the Teacher contacted the Mother for permission to stop the testing, which was given. (Exhibit P-18, Testimony of Reading Teacher)
13. Dr. Kruger met with the Student on five occasions and administered several tests. The test results were consistent with those previously obtained by the Reading Teacher. His report indicates that the Student is of average intellectual ability, who is severely dyslexic with significant deficits in all academic areas with the exception of reading comprehension. He notes that despite six years in special education, the Student seems not to have improved his skills in reading, decoding, spelling, writing, and math to any great degree, with reading, decoding and spelling 5-6 years below grade level. (Exhibit P-19)
14. The PPT reconvened at the end of May, and after reviewing the test results, the Board offered essentially the same schedule of mostly “collaborative classes as was discussed at the February PPT and 7.5 hours of special education and related services (including reading instruction which had not been part of the schedule offered in February). The IEP on its face is somewhat unclear as to the exact nature of the special education services; the testimony seemed to indicate that 3.75 hours per week were attributable to a self-contained writing class and support by the special education teacher in the collaborative classes, 1.5 hours/week in guided study, and 2.25 hours of Reading instruction using the Orton Gillingham approach, to be taught in a small group setting in the resource room. The Board also offered twenty hours of private tutoring in Orton Gillingham for the summer of 2000. The Parents requested that the Board fund a placement at the Forman School and that it fund the evaluation done by Dr. Kruger. (Exhibit B-48, Testimony of Director of Pupil Personnel Services, Mother and Reading Teacher)
15. The Student received 16.5 summer hours of individualized tutoring from his Reading Teacher who used primarily the Orton Gillingham as well as the Wilson and Lindamood methods of instruction. The Student made “more than moderate, less than considerable” progress. The Teacher recommended one/one reading instruction in high school. She also agreed with the characterization that the Student is “severely dyslexic”. (Exhibit P-22, Testimony of Reading Teacher)
16. There was not Board offer of one-to-one reading instruction in any formal IEP for the 2000-2001 school year. It is clear that no reading instruction was mentioned in the initial class schedule presented at the February PPT meeting. The IEP presented at the May meeting does include 2.25 hours per week of Orton Gillingham instruction. Until mention was made during the course of the hearing in September that the services would be rendered to the Student individually, the Parents had reason to believe that

this instruction would continue to occur in a small group setting. (Exhibits B-43, B-48, Testimony of Mother)

17. The Forman School is a private, primarily residential, college preparatory high school that is not approved for special education by the State Department of Education. Forman accepts students with learning differences and average to above-average intelligence, many of whom have had difficulties with reading. There are approximately 180 students from grades nine through twelve, about 20 of whom are day students. There are 20 ninth grade students, of whom 3 are day students. The teachers incorporate the University of Kansas model of organizational skills and strategies which they adapt to their content area. They use a strategic mastery learning method with the goal of students mastering a hierarchy of skills. All students take daily small classes in language training; ninth and tenth graders receive one-to-one instruction, with older students working in groups of two to four students. The school program also includes chores, sports, and mandatory evening study hall with teacher assistance available. (Testimony of Forman Teacher)
18. The Student began attending the Forman School in September, 2000. He receives one-to-one daily instruction in language training, including using Orton Gillingham and other approaches. He is in a low-level math class of two students, which focuses on basic math skills. His other academic classes have from seven-to-ten students. Three of his teachers are certified in special education. Most of the students in his Science class are at the fourth –fifth grade reading level. While presenting the ninth grade science curriculum, the teacher is also working on reading-related issues by having the students read aloud in class, highlight the main ideas, answer guided questions, and studying vocabulary. All the teachers are given learning profiles of their students with recommendations made by the Strategies teacher. The Student achieved good grades for the first marking period, with his test scores lower than his classwork and homework. (Testimony of Forman Teacher, Exhibit P-25)

CONCLUSIONS OF LAW:

1. There is no dispute that this learning-disabled child is qualified to receive a free and appropriate public education (“FAPE”) as a student who is eligible for special education and related services under the provisions of Connecticut General Statutes sections 10-76 *et seq.* and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401 *et seq.*
2. In determining whether a Board has provided FAPE, the Supreme Court has ruled that a twofold inquiry is required: 1) have procedural requirements been met? and 2) is the student’s individualized educational program reasonably calculated to provide educational benefit? Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). Since Rowley, Courts have held that individualized educational programs offered to children with disabilities must provide more than a trivial or *de minimis* educational benefit. See Mrs. B. v. Milford Board of Education, 103 F. 3d 1114, 1121 (2nd Cir. 1997), where the Court cites language from

Hall v. Vance County Board of Education, 774 F. 2d 629, 636 (4th Cir. 1985) (“Clearly, Congress did not intend that a school system could discharge its duty under the (IDEA) by providing a program that produces some minimal academic advancement, no matter how trivial”, and adds “Of course, a child’s academic progress must be viewed in light of the limitations imposed by the child’s disability”. See also Polk v. Central Susquehanna Intermediate Unit 16, 853 Fed. 2d 171 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989) and Oberti v. Board of Education of the Borough of Clementon, 995 F. 2d 1204 (Cirri. 1993). In Ridgewood Board of Education v. N.E., 172 F. 3d, (3rd Cir. 1999), the Court more recently stated that the appropriate standard is whether the IEP offered the opportunity for “significant learning” and “meaningful educational benefit”.

3. In addition, the law expresses a strong preference for providing education in the least restrictive environment for each child. See, e.g., 34 C.F.R. 300.550 (b) which provides:

“Each public agency shall ensure – (1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not-disabled; and (2) that special classes, separate or other removal of children with disabilities from the 3rd regular education environment occurs only when 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.”
4. As set forth in Burlington School Committee v. Massachusetts Department of Education, 105 S. Ct. 1996 (US 1985), in order for the parents to be reimbursed for a unilateral placement, the program offered by the LEA must be found to be inappropriate to the student’s special education needs, and the private school program must be found appropriate. A private school selected by parents may be appropriate for an individual unilateral placement, even if it does not meet the standards for state approval for special education placements by public school districts. Florence County School District Four v. Carter, 114 S. Ct. 361 (U.S. 1993). These principles have been incorporated into 34 C.F.R. Section 300.403 (c).
5. In this case, there is no dispute that the procedural requirements of the Act were met. However, it should be noted that the IEP for the ninth grade year was confusing as to the allocation and nature of special education services to be provided.
6. The Student has been receiving special education services from the Board since second grade. Although he has made some progress, the evidence showed that in eighth grade, he was reading at a 4.1 level whereas he had been at a 2.5 grade level four years previously. In math, he showed somewhat more progress (a 5.2 grade level in eighth grade, as opposed to a 2.5 level four years before), but was still three grade levels below the norm. In both sixth and eighth grades, he did not meet the goals set for students *two years younger* than his chronological age on the Connecticut Mastery Test, and the gap had substantially widened by eighth grade, when he took the sixth grade test. These disappointing results were reached in spite of the fact that the

Student was receiving 13.75 hours per week of special education services from caring, well-trained professionals. With the exception of the 2.25 hours per week of small group reading instruction, these services were aimed more towards accommodating the student's disability that intensively remediating it. The focus of the program was to modify the curriculum to give the Student a better chance to succeed. The testimony was clear that despite being given frequently less-demanding tests in an untimed setting, the Student continued to "struggle". The effect of the accommodations and the somewhat inflated grades was to lower the expectations for this Student and not sufficiently address the underlying disability.

7. The Board did not offer an appropriate program for the 2000-2001 school year. The program does not sufficiently address this Student's particular needs, especially his need for intense remediation in reading and math. As discussed supra, the IEP is somewhat unclear as to the nature of the special education services offered and indicates that the number of hours of special education services has been reduced from the prior year. No witnesses from the High School were called, although the Director of Pupil Personnel Services did testify in general terms. The "collaborative classes" appear to be similar to those offered in eighth grade, and although there was testimony that only the "pace" is slower, it is questionable to what extent these classes are "college preparatory" in nature. The role of the special education teacher and the nature of the services to be rendered in those classes are not specified in the IEP. There is no indication as to how and if the Student's deficits in mathematics would be addressed. It was unclear as to what would take place during "guided study". Assuming that this would be an opportunity for assistance with assigned work and to work on organizational skills, the proposed 1.5 hours/week is greatly insufficient for this Student. There was also little specific information about the Writing Composition class, beyond the fact that it is for special education students only and that it involves "computer-generated writing".
8. The reading instruction program offered in a one-to-one setting does represent an attempt to address the Student's need for remediation. However, the offer of individualized instruction was not made until after the 2000-2001 school year began, when the Parents had already placed the Student at Forman. The Board has made a commendable commitment to training its teachers in the Orton Gillingham approach. Although usually most effective with younger children, this methodology had been somewhat helpful to the Student. However, the Student has been successful in carrying over skills learned in the reading class to other classes. In addition, based on the testimony of the Reading Teacher and Dr. Kruger, Orton Gillingham should not be the only method used with the Student.
9. The Forman School does offer an appropriate program. With the one-to-one daily reading instruction and the one-to-two daily math instruction, it offers an opportunity for intensive remediation. Moreover, the learning strategies and emphasis on organizational skills are incorporated throughout the curriculum. This consistency of approach could be particularly helpful to this Student in generalizing his reading skills. He will benefit from the structured environment and the small classes.

However, although the Student might well benefit from the supervised evening study time, a residential placement at Forman is not necessary for him. The IDEA does not require the best education for a special education child, but instead seeks to provide an appropriate, meaningful education. See *Walczak v. Florida Union Free School District*, 142 F. 3d 119, 129, citing *Rowley supra*, at 192 (2d Cir. 1998). The day student program at the Forman School is currently the least restrictive environment in which the Student's unique needs can be met.

10. The Board is not responsible for the costs of the independent evaluation performed by Dr. Kruger at the Parents' request. The evidence indicated that the Parents informed the Board that it was seeking an independent evaluation in February, 2000, but made no request for reimbursement until the May 2000 PPT meeting. The Board had no input as to who the evaluator would be and the scope of the evaluation. The fact that there was communication between the Reading teacher and Dr. Kruger, and the Board considered his testing results, which were consistent with those previously obtained by the Board, is a sign of professionalism on the part of the Board personnel and does not constitute a duty to reimburse.

FINAL DECISION AND ORDER:

1. The Board did not offer an appropriate program and placement to the Student for the 2000-2001 school year. 2. The Forman School does offer an appropriate program and placement to the Student for the 2000-2001 school year. 3. The Board is ordered to reimburse the Parents for the cost of a day student, non-residential placement at the Forman School for the 200-2001 school year. The Board is ordered to reimburse the Parents for the costs of transportation to and from the school to the extent that such costs are actually incurred by them.