

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Danbury Board of Education v. Student

Appearing on behalf of the Board: Attorney Christine Chinni and  
Attorney Jill Cutler Hodgman  
Shipman & Goodwin, LLP  
Hartford, Connecticut 06103-2819

Appearing on behalf of the Parents: Attorney Marc Mercier  
Beck & Eldergill, P.C.  
Manchester, Connecticut 06040

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board's proposed placement of the Student at the Board High School for the 2001-2002 school year is appropriate.
2. If not, whether the Parents' proposed placement of the Student at Kildonan is appropriate.

**PROCEDURAL SUMMARY:**

The Board requested this hearing on June 4, 2001. The hearing commenced on August 1 and continued on August 6, August 9 and August 23. Joyce Emmett, the Board's Director of Special Education; John Goetz, the principal of the Board High School and Judith D'Andrea, a special education teacher for the Board testified for the Board. The Parents; Joseph Ruggiero, the Academic Dean of the Kildonan School and Thomas Pellicciari, the Board's Speech and Language Pathologist, testified for the Parents' case.

Counsel for the Board requested two extensions of the mailing date of the decision, which were granted without objection from Counsel for the Parents. In addition, Counsel for the Board filed a joint request for a one-week extension of the mailing date of the decision to file briefs, as the transcripts were not yet received. This request was also granted. The evidentiary portion of the hearing was closed on August 23, and briefs were submitted on September 14. .

To the extent that the 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).

**FINDINGS OF FACT:**

1. The Student is 15 years old, and has attended the Kildonan School in Amenia, New York, a private school for learning disabled students, since the 1997-1998 school year. (Testimony Board Director of Special Education, Joyce Emmett, hereinafter "Director," Parents)
2. The Board has identified the Student as eligible for Special Education services due to his Specific Learning Disability.
3. While initially the Parents unilaterally placed the Student at Kildonan School, this placement was continued by agreement between the Board and the Parents through the 2000-2001 school year. (Testimony Director, Parents)
4. At the PPT in May 2001, the Board proposed a program for the Student to be placed at the Board High School for the 2001-2002 school year. (Testimony Director) Goals and objectives were set which were based on achievement reports from Kildonan and the evaluations of the Student (Testimony Director)
5. The recommendations of the Neuropsychological Evaluation completed by Marshall Gladstone, Ph.D. were incorporated into the Student's Individualized Education Program (hereinafter, IEP). (Testimony Director, Exhibit B-12) Dr. Gladstone's recommendation that the Student should receive intensive special education support in reading and language was incorporated into the reading goals of the Student's IEP, which includes a reading program of daily work in decoding and comprehension. (Testimony Director, Exhibit B-12, B-16) Dr. Gladstone's suggested accommodations were also incorporated into the Student's IEP, as were his recommended supports for study skills and time management. (Testimony Director, Exhibit B-12, B-16)
6. The Student's IEP does not include any recommendations, modifications or adaptations based on the speech and language evaluation completed by the Board's Speech and Language Pathologist, Thomas Pellicciari, as his evaluation found the Student to be age/grade appropriate in speech and language. (Testimony Thomas Pellicciari, Director, Exhibit B-13) Mr. Pellicciari noted that the Student was distractible during the evaluation, but the distractibility did not impair the Student's ability to perform on the test. (Testimony Thomas Pellicciari)
7. The Student's IEP includes modifications appropriate after the central auditory processing (CAP) evaluation completed by Karen Pollock, an audiologist. (Testimony Director, Exhibit B-18) The CAP results indicated a mild degree of inefficiency and/or immaturity of the Student's central auditory system, and the evaluator

indicated that the modifications/adaptations outlined in the Student's IEP of 5/24/01 are appropriate. (Exhibit B-18)

8. The Student's proposed program for placement at the Board High School includes Resource Room, two team-taught classes in an integrated typical and disabled student classroom, regular courses in some areas, a counseling component and a specialized reading program. (Testimony Director, Exhibit B-16)
9. The individualized reading program includes training in Orton-Gillingham strategies in a one teacher to three students ratio. (Testimony Director) The special education teacher, Ms. D'Andrea, has received extensive training in the Orton-Gillingham method, a multi-sensory method that involves auditory, visual and tactile modalities to teach individuals to read. (Testimony Ms. D'Andrea) Ms. D'Andrea will teach the Student decoding as well as reading comprehension skills in the 1:3 ratio reading class. (Testimony Ms. D'Andrea, Director)
10. While the Parents asserted that the Student needs one-to-one Orton-Gillingham training, the special education teacher who will deliver the Orton-Gillingham training to the Student believes that a 1:3 ratio is appropriate for the Student, enhances the learning experience when the Student's learn from each other, and provides less intense stress in the learning environment. (Testimony Ms. D'Andrea)
11. The Academic Dean of Kildonan testified that the Student needs the more intensive one-to-one training to progress, rather than the program proposed by the Board (Testimony Joseph Ruggiero, Academic Dean of Kildonan) His testimony, however, was unconvincing as he did not observe the Board High School program, nor did he meet with the special education teacher who will be assigned to the Student at the Board High School. Moreover, the Kildonan Academic Dean lost credibility during testimony regarding another issue, the purported appropriateness of the Kildonan program. The Kildonan Academic Dean testified that the Student should continue at Kildonan both because the Student had made progress at Kildonan, and because the student had not made progress at Kildonan. Kildonan's Academic Dean loses credibility in his testimony when his conclusion, whether or not the Student is progressing in the Kildonan programming, is that the Student requires the "intensive" program at Kildonan. Therefore, Kildonan's Academic Dean's conclusion that the Student requires one-to-one Orton-Gillingham training is unpersuasive, and is, thus, given its due weight. The Board's proposed IEP with the 1:3 ratio for the Orton-Gillingham training is appropriate for the Student.
12. Pursuant to the Board's IEP, the Student will also receive an additional period each day with one of the Board's reading specialists, who will focus on reading comprehension. (Testimony Director) This class will focus on longer reading passages and higher level reading skills, with a class size of 8 to 10 students. (Testimony Director) The IEP addresses the Student's weaknesses in reading with one period per day to address decoding, and one period per day on comprehension. (Exhibit B-16)

13. The proposed IEP also includes a study and organizational skills goal and objectives to be implemented across the entire curriculum, primarily under the direction of the resource teacher. (Testimony Director, Exhibit B-16) For one period a day, the Student will receive support in the study and organization skills area from the resource teacher. (Testimony Director, Exhibit B-16)
14. The Student will be team-taught by a special education teacher and a regular education teacher in two courses, and a part of that curriculum will address study skills in the content area context. (Testimony Director) The team-taught classes will provide a learning environment where the student will receive special education services in a class with non-disabled peers, as well as other disabled students. (Testimony Director) The Student will also be enrolled in regular education classes. (Testimony Director) The Kildonan School student population includes disabled students only. (Testimony Mr. Ruggiero)
15. The IEP also includes weekly individual counseling, to address recommendations from Dr. Gladstone and comments by the staff at Kildonan regarding the Student's self esteem issues. (Testimony Director) The Parents are concerned about the Student's emotional state (Testimony Mother), but the counseling available through the IEP addresses the Parents' concerns. (Testimony Director)
16. The testimony regarding the grade level at which the Student is reading was contradictory at the hearing. Dr. Gladstone's report noted that the Student's Word Attack and Word Identification skills reflect continued impairment in the core skills of reading. (Exhibit B-12) Dr. Gladstone's report scored the Student's reading skills at the fourth grade level, although the scores might have been lowered because the Student was ill on the date of testing. (Testimony Director, Exhibit B-12) Kildonan's evaluation noted a WRAT-3 Word Identification score at a grade equivalent of 8.2. (Exhibit B-17) According to Kildonan's Academic Dean, the progress to an eighth grade equivalency is tentative, but the Student's tutor at Kildonan thought the Student was reading at a high sixth or seventh grade level. (Testimony Mr. Ruggiero) The IEP drafted for the Student addresses the variability in the testing, and sets the Objectives based on the Kildonan staff's assessment that the Student is reading at a high sixth grade or seventh grade level. (Exhibit B-16) The IEP could be revised based on the Student's progress, and the Orton-Gillingham trained teacher would be able use her teaching methods if the Student were reading at a lower level. (Testimony Ms. D'Andrea)
17. The staff at the Board high school is certified, trained and experienced in working with Students who have learning disabilities. (Testimony Director, Ms. D'Andrea, Exhibit B-16)

### **CONCLUSIONS OF LAW:**

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.

2. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14. The Board has met its burden.
3. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Plan is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
4. The Individuals with Disabilities Education Act (IDEA) does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2d Cir. 1998), citing *Rowley, supra*. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* The goal of IDEA is not to maximize a special education child's potential, but rather to provide access to public education for such children. *K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995).
5. While it was evident that the Parents were genuinely striving for the very best for the Student in advocating for placement at Kildonan, the law does not provide for such a placement, as the Student does not require such an intensive and restrictive program. The appropriate standard is whether the Student can derive meaningful educational benefit from the proposed program, not "everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free School District*, 873 F. 2d 563, 567 (2d Cir. 1989) The Board's proposed program, based on the Student's evaluations, is carefully drafted so that the Student can derive such meaningful educational benefit.
6. In addition to the free appropriate public education requirement, IDEA's preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra*. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms. *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a disability can be educated in a regular classroom if provided with supplementary aids and services. *Oberti*, 995 F.2d at 1216, *Mavis v. Sobol*, 839 F. Supp. 968, 985-986. The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti*, 995 F. 2d at 1217 The Student does not require a segregated private school setting to obtain educational benefit, and the least restrictive environment requirement

is met by the Board's proposed IEP for the 2001-2002 school year in that the Student will be educated in the regular classroom to the maximum extent possible.

7. The program proposed by the Board is appropriate for the Student, considers his strengths and weaknesses, is developed so that the Student can derive meaningful educational benefit, and will be delivered in the least restrictive environment.
8. As the Board's program is appropriate, it is not necessary to determine the appropriateness of parent's proposed placement. *See, Burlington School Committee v. Dept. of Ed.*, 471 U.S. 359 (1985), *Florence Co. School District v. Carter*, 114 S.Ct. 361 (1993) (Reimbursement for private school placement is only awarded when the *district's program was not appropriate* and that the private placement could provide an appropriate educational program for the child.)

**FINAL DECISION AND ORDER:**

1. The Board has offered an appropriate program for the Student for the 2001-2002 school year.
2. The Parents are not entitled to payment of the costs of the Student's placement at the Kildonan School for the 2001-2002 school year as of the date of this order.