

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Seymour Board of Education

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Appearing before: Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the program offered by the board appropriate to meet the student's unique needs in that the transition will not cause him to regress educationally, socially and emotionally?
2. If not, is the current program that the student is enrolled in appropriate to meet his needs.

SUMMARY:

The student is twelve years old and is currently enrolled at ACES Mill Road School (hereinafter ACES) in a highly structured, self-contained setting. His identification since first grade has been seriously emotionally disturbed and he has been in the ACES program since second grade. The student has made academic and behavioral gains at ACES. His local school district has determined that the student should be educated in a setting that while still structured and self-contained they believe is less restrictive. The parent has requested due process to allow the student to remain in his present educational program believing that he is not ready for transition to the new program.

PROCEDURAL HISTORY:

On March 14, 2002 the student requested a due process hearing when the district proposed that the student, who was placed by the district in ACES, be transitioned to Housatonic Children's Center for the 2002-2003 school year. Hearing dates were April 30 and May 3. The parent called the following witnesses: Harry Whitney, PhD. LCSW and student's mother. The Board called Shelby Ludden, Special Education Teacher, ACES Mill Road School; Jennifer Gillard, Social Worker, ACES Mill Road School; Mark Kostin, Principal Housatonic Children Center; Erika Forte, Principal ACES Mill Road School; and Dr. Renie Castellucci, Seymour Director of Special Education. The due dates for briefs was 30 days from May 14, 2002, the last tentative date of hearing which was cancelled. By agreement of the parties the deadline for briefs was extended to June 30, 2002 and the last brief was received on July 1, 2002 and the reply brief date was fifteen days after that. The date for mailing of the final decision was thereby extended to August 9, 2002.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The student was first referred to PPT on December 6, 1996 when he was in first grade. The concern was behavioral issues. A psychiatric evaluation completed on August 19, 1996 at the Child Guidance Center of Greater Bridgeport had concluded that the child had ADHD and Oppositional Defiant Disorder. (Exhibits B-85, B-86)
2. He had been placed on medication but his oppositional behaviors continued and included pushing and shoving, throwing food and not maintaining control even in the office. He had been placed on a shortened school day in November, 1996. (Exhibits B-74, B-81, B-82, B-83)
3. The PPT recommended further evaluations and these were conducted. The school psychologist evaluated the student and recommended an alternative placement to regular education. She concluded that the student "may benefit from placement in a special education classroom for serious emotionally disturbed students." (Exhibit B-72)
4. On January 22, 1997 the PPT reconvened and an initial IEP was drafted. The student's primary disability was identified as "severe emotional disturbance" and his secondary disability was ADHD. The PPT notes reflect that the nature and severity of the student's disability was such that even with the use of supplementary services, he would not make satisfactory achievement in a regular education classroom in that

he needed more structured support. This recommendation was consented to by the student's mother. (Exhibit B-70)

5. On January 27, 1997 the student was referred to the Yale Child Study Center while hospitalized at the Children's Psychiatric Inpatient Service of Yale-New Haven Hospital. During his enrollment at the Yale Child Study Center he was observed in a classroom environment. The Diagnostic Prescriptive Psycho-educational Evaluation generated while he was at Yale recommended, based on his behavioral and emotional difficulties, that he be placed in a full-day special education program in a self-contained classroom and that his program have a strong behavior management component to provide him with substantial behavioral support. Further, it was stated that the student responded very well to a highly structured behavior modification plan consistently implemented on a frequent basis (i.e., every 10 minutes) and that he responded well to frequent teacher redirection and praise while at the Yale Child Study Center. (Exhibit B-69)
6. Laurie Cardona, Chief Psychologist, Children's Psychiatric Inpatient Service, Yale University performed a Psychological Evaluation of the student on January 31, 1997 and February 3, 1997 and found that the student has cognitive skills and abilities that should allow him to perform adequately in academic environments. (Exhibit B-52)
7. In February of 1997 the student transferred to the Seymour Public School system because it was determined that the student's mother was living in Seymour. (Exhibits B-71, B-67, P-1)
8. On February 6, 1997 the Seymour Public Schools held a PPT. The recommendation at the PPT was that Seymour Public Schools accept the educational cost responsibility for the stay at the Yale Child Study Center and that the PPT not make any further recommendations at that time. The PPT decided to wait until the student was discharged from Yale and to see how he responded to further medication. Additionally, at this PPT, Susan Holzman from the Yale Child Study Center reported the current educational status of the student, which indicated that his intellectual Vocabulary was 93 (average); Matrices was 90 (average); IQ composite was 92 (average); WIAT –Basic Reading was 88 (below average); Math was 89 (below average); Spelling 79 (well below average) and Composite 83 (below average). Finally, it was discussed at this PPT that the student be placed with ACES. (Exhibit B-63)
9. On April 2, 1997 ACES informed Seymour Public Schools that the student was an appropriate candidate for their emotionally disturbed/learning disabled program and an entry date of April 2, 1997 was set. (Exhibit B-58)
10. On June 2, 1997 the parties held another PPT. At the PPT it was recommended that the student continue placement at ACES Unit 1 with special ACES van transportation. It was also recommended that the student be placed in an extended year program and that he proceed into the 2nd grade for the following school year.

The annual goal statement given at the PPT was to enhance self-esteem so that school performance will improve. (Exhibit B-54)

11. After the 1997-98 school year ACES generated an Annual Review of the student's progress. The Annual Review indicated that the student had made significant progress in reading, good progress in his writing skills and excellent gains in mathematics. The report also noted that the student has positive relationships with his teachers who enjoy his enthusiasm for learning. (Exhibit B-48)
12. At the June 5, 1998 PPT meeting it was recommended that the student continue special education services with an extended school year to July 24. It was also recommended that Seymour provide the transportation. The PPT meeting also noted that the classroom ratio of 8:2 was good for the student. (Exhibit B-47)
13. At the May 28, 1999 PPT meeting it was again recommended that the student continue special education services at ACES and the school year be extended to July 30, 1999. The PPT noted that the student had a classroom change for the 1998-99 school year due to the student's good academic progress. It was noted that the student was reading at the 3rd grade level, spelling was at the 3rd grade level, and the student was performing mathematics at a 3rd grade level. (Exhibit B-45)
14. At the May 9, 2000 PPT meeting it was noted that the student had made good academic progress and the student's social interactivity had increased. It was also noted he might be bipolar, was psychologically 'quite involved' and was undergoing reevaluation by a psychiatrist, Dr. Nicholson. The ACES staff again recommended that the student continue placement at ACES with transportation and that the school year be extended and the PPT agreed to this. (Exhibit B-43)
15. Yale Child Study Center evaluated the student on July 7, 2000. The evaluation found that the student has low average cognitive abilities, average abilities in reading and spelling. In addition, the results indicated that the student was experiencing difficulties with his thought processes and his ability to deal with stressful and ambiguous situations. The Yale Child Study Center recommended that the student receive psychotherapy to help deal with issues of abandonment, understanding male/female relationships, and how to learn more adaptive coping strategies. It was also recommended that the student's reality testing and thought processes also need to be monitored to assure that he is maintaining well organized and accurate thinking processes. (Exhibit B-40)
16. In May 2001 Seymour School District requested a functional behavior assessment. Donn Sottolano, Ph.D, the Director of ACES Behavioral Services Department performed the assessment. The process of conducting the assessment included the following data sources: School records were reviewed; the functional assessment interview form was completed with interview information provided by Yvonne Burke (School Social Worker), Karen Sportino (Classroom teacher), Nancy Arotsky (Classroom Assistant) and Chris Marczak (Driver); the motivation assessment scale;

and direct observations of the student were conducted across multiple days and locations (classroom, cafeteria, and hallways). The assessment described the student as having problems staying on task (through completion of the instructional objective) and ignoring other persons within the classroom environment. The reports and observations indicate that the behavior occurs across all environments, time of day, activities and persons. A slightly higher rate of behavior occurs during transportation, although the total number of incidents reported is small. It is suggested by Dr. Sottolano that functional responses to attention driven behavior include ignoring the behavior and reinforcing other students who are demonstrating the desired behavior. This would provide a model for the student to follow in order to gain access to the reinforcer [attention]. (Exhibit B-35)

17. On May 9, 2001, Ronald Benner, NCSP, LPC, School Psychologist performed a Psychoeducational Evaluation of the student. Mr. Benner found the student to be a handsome and active with the ability to be charming and with a good sense of humor. He also found the student to be guarded and suspicious and extremely impulsive with hypermotoric behavior associated with a high degree of anxiety. He found that the student had cognitive skills and abilities that should allow him to perform adequately in academic environments. He found no evidence of disordered thinking, such as hallucinations or delusions but suggested that the student's suspicious and impulsive style results in his developing unusual and inaccurate impressions of his environment. Mr. Benner saw both pros and cons to moving the student into his local community. When the evaluation was conducted in 2001 he noted that such a move might disrupt the trust that he had developed at ACES and "if that trust was allowing him to work on behavioral concerns then it would seem reasonable that he should stay there." Mr. Benner noted that the benefits of moving into his local community included developing strategies that will become lifelong survival skills, skills that can be worked on in the natural setting that will have a direct carry over to his everyday living in that community. Another plus for the community-based educational program is that there will be an opportunity for the student to do community exploration. (Exhibit B-37)
18. At the May 31, 2001 PPT meeting it was stated that the student had continued to do well with diminished behavioral incidents. The PPT recommended that the student continue placement at ACES for the 2001-02 school year with transportation. However, it was also recommended that the student be transitioned to Houstonian Children Center (HCC) for the 2002-03 school year. The delay in the transition was recommended because the student was changing therapists and needed time to adjust, and changing schools at that time would not be in his best interest. HCC and ACES were to communicate and collaborate during the school year to help in transition issues. The PPT and the parent were in agreement on this course of action. The PPT consisted of Dr. Renie Castellucci, Seymour Director of Special Education; Dr. Eric Nicholson, M.D, Therapist; Karen Sportino, Special Education teacher; Yvonne Burke, Social Worker; Donn Sottolano, Ph.D, the Director of ACES Behavioral Services Department; Ann Lopresti, Social Worker; Barbara Coppola, Family

Advocate; Nancy Ceballos, DCF Social Worker; Mark Kostin, Principal HCC; the mother; and a friend of the mother. (Exhibit B-32)

19. Dr. Eric Nicholson, M.D., Ph.D., provided an updated “working diagnosis” of the student at the May 2001 PPT, which was Psychotic Disorder, N.O.S. and Anxiety Disorder, N.O.S. Dr. Nicholson recommended an extended year program “based on the severity of his disability, his being prone to regression, [and]his mother’s inability to provide educational support at home.” (Exhibits P-9, B-26)
20. The 2001 PPT did not recommend summer school for the student. It was determined that there would be no significant academic regression if the student did not attend summer school. (Exhibit B-27)
21. A mediation agreement was reached on June 29, 2001 regarding the PPT’s decision not to recommend extended school year services. The school district agreed to place the student in the ACES Mill Road extended school year program for the 2001 session. The placement was made in the spirit of cooperation to help the student, the family and other agencies. It was also agreed that during the fall of 2001, in order to plan an appropriate program for the student, the parent would visit HCC and that ACES staff would also visit HCC and Dr. Castellucci would visit ACES. Finally, it was agreed that the PPT would reconvene in November 2001 to review the student’s Individual Education Plan (IEP) and make appropriate modifications if necessary. (Exhibit B-25)
22. The November 2001 PPT found the student to be doing well academically and making good progress. The student was noted to be active in class discussions and an active participant throughout the school day, however, it was noted that he tends to rush through written work and his written work assignments are sometimes done three or four times. (Exhibit B-17)
23. At the November 30, 2001 it was recommended that the student continue placement at ACES until January 2002 with transportation and that the student transition to HCC in January 2002 with transportation. (Exhibit B-17)
24. Dr. Aviles of the St. Francis Home attended the November 2001 PPT. Dr. Aviles stated the student’s psychotherapy is complicated and that he needs a structured, therapeutic educational program. The district agreed with Dr. Aviles and did not propose to take the student out of a private school placement. The district recommended only a change in location, to an even smaller program (under 25 students), within the community and closer to the student’s home. (Exhibit B-17)
25. At the PPT, Erika Forte, the Principal of ACES provided an overview of both ACES and HCC. She indicated that the student no longer needed a significant amount of behavior management at ACES. He did not need to go to time out and he “hardly ever” needed to go to the alternative learning center. She concluded that the student

would do fine at HCC based on what had been observed at school (ACES). (Exhibit B-17)

26. The school team including the ACES staff agreed that an appropriate educational program could be provided at HCC with the transition from ACES to HCC scheduled for January 2002. (Exhibit B-17)
27. The mother did not think it was appropriate to move the student at the PPT. (Exhibit B-17)
28. Mediation was requested by the mother regarding the decision to transition the student at the November 2001 PPT meeting. (Exhibit B-4)
29. An agreement could not be reach in mediation and the student's mother requested a due process hearing. (Exhibit B-3, p1)
30. The mother described the student as fragile and confused. He interrupts, has laughing spells and rages in which he pulls things down in their home. When he talks on the phone with a friend it is only for a short period before having a laughing spell. (Testimony of mother)
31. The mother visited HCC and did not think it was as structured as ACES and thought the students at HCC were more in control. She had not observed the student in his class at ACES in over two years. (Testimony of mother)
32. Dr. Henry Whitney, PhD, LCSW, of Griffin Hospital started seeing the student in May 2001. Dr. Henry Whitney replaced Dr. Nicholson, who had been treating the student for two years. He has seen the student once a week, but for most of the time the student can tolerate only 10 to 15 minutes of the session before he tells the doctor that he has to go. Dr. Whitney described the student as a boy whose psychosis makes it very difficult for him to control his behavior and his mental illness interferes with his ability to learn. Although the student is just a child, he is presently receiving anti-psychotic medications at an adult level. Dr. Whitney testified about several incidents where the student was completely out of control in the waiting room as recently as four weeks before the hearing and now the student is ushered in immediately so that there is not waiting room time. When discussing possibly leaving ACES, Dr. Whitney reported that the student said "I will be a very bad boy, I will be very angry, There will be hell to pay." Dr. Whitney believes the student is unable to consistently control his behaviors and often is unable to determine what is real and what is not real. He gave as an example of this, that when the student ends the session shortly after it begins and says he has to go, if pressed for a reason the student says that he (the student) is the doctor and the doctor is the patient. However, he did acknowledge that the mother and student reported that the student could control himself at ACES. Dr. Whitney testified that he has made no progress with the student and perhaps some regression. He indicated that it is very important for the student to have a high level of structure in his educational setting. He testified that he is unfamiliar with any

specifics of the ACES or HCC programs, having never visited HCC and having visited ACES once seven or eight years ago for a reason he could not remember. (Testimony of Dr. Whitney, Exhibits P-12, B-20)

33. His current teacher is Shelby Ludden. She is certified in special education and has approximately seven years experience working as a teacher at ACES. She testified in a credible, straight-forward manner. The student is currently a sixth grade student in what is considered the first year of the intermediate level of the school. He was very happy to be in that level of the program and was successful in forming relationships with teachers and both new and old friends. (Testimony of Shelby Ludden)
34. The student was more disruptive than the other students but he stays within the classroom. His behaviors are of the more mild and juvenile type such as talking out of turn, making silly noises, laughing at and with other students and running in the hallway. He has not had violent or threatening behaviors. He is not out of control and can be redirected easier than some others. (Testimony of Shelby Ludden)
35. He went on field trips and did not need a lot of teacher redirection. He maintained himself appropriately. These included field trips to the Beardsly Zoo and Oakdale Theater. (Testimony of Shelby Ludden)
36. His sixth grade teacher, who had extensive, daily experience with the student, never observed or thought he was hallucinating and never observed or thought the student was talking in a way that seemed he was not in touch with reality. Further, she does not see him as an emotionally fragile student. (Testimony of Shelby Ludden)
37. The social worker assigned to the student at ACES meets with the student as part of a group experience for one half hour a week and on an as needed basis for emergencies. The social worker is Jennifer Gilliard. She received her MSW in 2001 and this has been her first year as a social worker at ACES. There has been only one emergency involving the student requiring her service this most recently completed school year. The student was very anxious for reason that the driver that takes him to his after school program had taken a long route for an unexplained reason. The social worker and the student resolved the problem by talking it over. The session took fifteen minutes to resolve. Although the student was highly anxious at the beginning of the session he was not violent or out of control. (Testimony of Jennifer Gilliard)
38. In group sessions with Ms. Gilliard the student is more disruptive than other students for reasons of silly behaviors and name calling which sometimes escalate into verbal arguments. The student does participate and has developed positive relationships with his peers and has experienced some growth. (Testimony of Jennifer Gilliard)
39. The student becomes more hyperactive and anxious if there is less structure. Ms. Gilliard was concerned that the student needed structure in his program to succeed but she was not concerned that adapting to a different type of structured program would be a problem for the student. (Testimony of Jennifer Gilliard)

40. The ACES program is a highly structured program with a very complicated and rigid color and point system. (Testimony of Shelby Ludden)
41. The principal of ACES has known the student for three and a half years. The student is ready to transition to less restrictive behavior management program. The student spends more time in his ACES classroom than most of his classmates and he is functioning well academically. (Testimony of Erika Forte)
42. The student looked forward to and enjoyed changes including the idea of going back to his home school someday. He was very happy when he made the transition to the ACES intermediate level. (Testimony of Shelby Ludden)
43. The disruptive behavior that the student does exhibit does not interfere with his learning. (Testimony of Shelby Ludden)
44. The principal of HCC, Mark Kostin, has over twenty years experience working with students that are seriously emotionally disturbed. He testified in a highly credible manner and appeared to be dedicated and thoughtful regarding the HCC program and the students enrolled in it. He had observed the student in his program at ACES and did not see any behaviors that he thought HCC could not appropriately address. He and his staff understand the importance of making a successful transition and they have experience helping students accomplish this task. (Testimony of Mark Kostin)
45. The HCC program currently has twenty-eight students enrolled. There is a middle school for 10 to 13 year olds and a high school for ages 14 and up. The HCC program is highly structured but in a different way than ACES. The HCC program is based on teaching the student to take responsibility for their actions through a rewards program. Because the program is so small every adult (administrator, teacher, clerical and maintenance personnel) knows every student very well and there is a great deal of support for the individual student. The small, community based, family-like atmosphere creates an intimacy that gives the staff an edge in working with students. In one instance, a student's parent cannot take the student for his prescription so the staff takes the student to the doctor for the parent. (Testimony of Mark Kostin)
46. One of the supports at HCC is the use of the Student Assistance Room for students to go to when they behave inappropriately. It is staffed by an aide, teacher, social-worker or principal who will talk to the student about what behaviors didn't work and what behaviors might work better. The rewards program involves many community activities that appeal to the older child and teenager. These include overnight ski trips, roller blading, camping trips and hiking outings. Fridays are a day in the community which include community service activities such as clearing hiking trails and working in soup kitchens as well as fun activities such as a cookout at the beach or a game of ball. (Testimony of Mark Kostin)

47. HCC is right across the street from the day treatment program and some students attend this. If the student at issue in this matter needs to attend a day treatment program he will lose less educational time than in the past due to the close proximity of the two programs. (Testimony of Mark Kostin)
48. The HCC program has a zero rate of attrition except when court orders are involved. (Testimony of Mark Kostin)
49. HCC is located in Ansonia, five minutes from Seymour, whereas his present placement at ACES requires 45 minutes of travel time each way. The student would be in school with children from his hometown and that he would have the opportunity to participate in sports in town and could participate in dances and build social relationships with children in his community. (Testimony of Mark Kostin)

CONCLUSIONS OF LAW:

1. There is no dispute that the student is entitled to special education and related services as a student identified as seriously emotionally disturbed and thereby entitled to receive a free and appropriate public education ("FAPE") pursuant to 20 U.S.C. Section 1400 et. seq., the Individuals with Disabilities Education Act ("IDEA", also "the Act"), 34 C.F.R Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
2. The Act defines FAPE as special education and related services which:
 - “(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 required under Sec. 614(d).” 20 U.S.C. Section 1401(8).
3. Connecticut Regulations provide that “the public agency has the burden of proving the appropriateness of the child’s program or placement or of the program or placement proposed by the public agency.” Conn. Reg. 10-67h-14. While these regulations became effective July 1, 2000, they were enacted to bring Connecticut law into compliance with well-established federal law. “[c]omplaints are resolved through an “impartial due process hearing,” 20 U.S.C. Section 1415(b)(2), at which school authorities have the burden of supporting the proposed IEP, see Matter of the Application of a Handicapped Child, 22 Educ. Dep’t Rep. 487, 489 (1983)(“It is well established that a board of education has the burden of establishing the

appropriateness of the placement recommended by [the school board].”). Walczak v Florida Union Free School District, 142 F. 3d 119 (2d Cir. 1998).

4. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al. v. Rowley*, 458 U.S. 176 (1982), 102 S.Ct.3034. The first prong requires determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
5. In examining the record, it is concluded that the Board has complied with the procedural safeguards set out in the IDEA. IDEA requires that the relevant public education authority to prepare and review at least annually an "individualized education program" (IEP) for each child with a disability. 20 U.S. 1414 (d)(4); 34 C.F.R. 300.343. The IEP is the primary vehicle for ensuring that a disabled child's educational program is individually tailored based on the child's unique abilities and needs. See U.S.C. 1414(d); 34 C.F.R. 300.345-300.350. The Board has complied with 34 C.F.R. Section 300.342(a), which states, in pertinent part that “[a]t the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.” Further, it is found that the parent received proper notice of all PPT meetings and was provided with the opportunity to participate at the PPT meetings. Finally, both parties were represented by counsel from the beginning of this case. In the statement of issues no procedural concerns were placed in issue in this matter and therefore none are addressed in this decision.
6. As to the second prong of the Rowley two-part test, it must be determined whether the 2002-03 IEP is reasonably calculated to confer meaningful education benefit upon the student. Rowley 458 U.S. at 192, 102 S.Ct. at 3043-44. While the law does *not* require that a school district provide an educational program to *maximize* a student’s educational potential (*Rowley* at 3046), the school district must provide more than “mere trivial advancement.” *Mrs. B. v. Milford Board of Education* 103 F.2d1114 (2d Cir. 1997).
7. Connecticut Regulations provide that “the public agency has the burden of proving the appropriateness of the child’s program or placement or of the program or placement proposed by the public agency.” Conn. Reg. 10-67h-14.
8. It is well established that an educational program provided to a special education child under IDEA must be in the least restrictive environment possible. 20 U.S.C. 1412(a)(5)(A), 34 C.F.R. 300.550(b). The Rowley Court noted in the course of its opinion that the IDEA contains a separate specific legal mandate which “requires participating states to educate handicapped children with nonhandicapped children whenever possible.” “Courts have looked to a number of factors to indicate whether an IEP is reasonably calculated to provide a meaningful educational benefit under the

IDEA, including, *iter alia*... (2) whether the program administered is in the least restrictive environment.” *M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D. Conn. 2000).

9. While, the “least restrictive environment” (LRE) mandate of the IDEA requires that school districts ensure that a child’s placement “[i]s as close as possible to the child’s home,” 34 C.F.R. Section 552(b)(3), educating the child in his community or closer to his community is “not the *sine qua non* of educational benefit, [t]he term ‘unique educational needs’ [shall] be broadly construed to include the handicapped child’s academic, social, health, emotional, communicative, physical and vocational needs.” H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2016.” Seattle Sch. Dist. No. 1 v. B.S., 82 F.3d 1493 (9th Cir. 1996). The Seattle case, cited by the parent in their brief, involved a student who was placed in a residential setting pursuant to the order of an administrative law judge. She had not received any educational services from the district for a six month period prior to the beginning of the hearing and the district did not even provide tutoring until ordered to do so by the administrative law judge. Significantly, three doctors testified at hearing, all supporting the need for residential placement. The court further noted “No doctor or member of the School District staff expressed an opinion supporting the ability of the District to successfully educate A.S. through the District’s day-schooling proposal. Denise Snow, a Fairfax Hospital staff person, who met with A.S. occasionally in a hospital setting, provided support for this option.” *Id.* at footnote 1. This is a significantly different situation than the instant case where the testimony of the board witnesses, taken both individually and as a whole, lead to the conclusion that this student would not only derive educational benefit, but thrive, at the board’s proposed placement.
10. To the Director’s credit, this is not a change that has been arrived at in a hasty manner. In fact, from February 1997 through May 2000 this Board supported the current placement of the student at ACES and acknowledged that he was properly placed and making progress. It was only in May of 2001, after a thorough and thoughtful psychoeducational evaluation and functional behavioral analysis did the PPT recommend transitioning the student to HCC. Even then, for reason that the student was changing therapists the team agreed to delay the transition until the 2002-2003 school year. The mother was in agreement with this plan.
11. The description given of this student by the current treating therapist, Dr. Whitney, does not comport with the testimony of the ACES witnesses, all of whom have interacted with him significantly more than the therapist. Dr. Whitney describes an out of control child while the ACES staff describes a child prone to frequent but minor behavioral disruptions. In fact, even the one time when the relatively inexperienced social worker had to provide crisis intervention, the issue was successfully resolved in only fifteen minutes. While there is no reason to doubt the accuracy of the description by Dr. Whitney of what he observes in his office setting, it is in stark contrast to what the board witnesses describe regarding their more frequent observation and interaction with the student in the school setting. Moreover, the board witnesses have observed and interacted with the student in the

educational setting over a long period of time. Dr. Whitney did not observe the student in the school setting and was essentially unfamiliar with either the current ACES or HCC programs. The mother had not observed the student in the school setting in over two years.

12. Further, even in the unfamiliar settings of the field trips this student was able to maintain a reasonable degree of control. In summary, behaviorally this is a child who has made very significant behavioral progress at school, as well as academic progress. He has adapted well to change as was demonstrated by the enthusiasm with which he embraced his promotion to the intermediate level of his current school and his participation in the field trips.
13. It is certainly understandable that this mother is concerned for her child's well-being and wants to protect him. He has been at ACES for a long time and the prospect of change is frightening, particularly given the bleak prognosis the current therapist is providing. But eventually, even if he never controls himself in his therapist's office, the student's best chance for independence and success is to learn to control himself in the community. That work has begun at ACES and the student has, to a significant degree, learned better behavioral control. Moving him to HCC will offer him more opportunity to enhance and expand these skills. The HCC behavioral program is more appropriate for a student of this child's aptitude and grade level. The system of community based and activity based rewards is likely to appeal to a child who has enjoyed and been successful on his school based field trips and interacts well and frequently with his classmates even when put into a new classroom.
14. The proposed program is closer to the home school and would allow for much more frequent and more natural community involvement. The enrollment at HCC is smaller than ACES and the HCC staff is particularly well trained and adept at dealing with this age group. Every staff knows every student. The small enrollment allows for a very finely attuned response to student behaviors and needs. The principal of this small group is highly committed to the student body and very experienced.
15. The proposed placement of the Board at HCC not only is reasonably calculated to confer meaningful education benefit in the least restrictive environment, and not cause the student to regress educationally, socially or emotionally, but if this student can enter HCC with an open-minded attitude, the testimony, particularly that of Mr. Kostin, established that HCC is likely to actually maximize the educational benefit that this child derives, a benefit that goes beyond what the board is required to provide.

FINAL DECISION AND ORDER:

1. The program offered by the board for the 2002-2003 school year is appropriate to meet the student's unique needs.

2. The parties will schedule a PPT prior to the beginning of the 2002-2003 HCC school year to allow them to work together to provide this student with a smooth transition. Both parties will make every effort to give this student, who is certainly at an impressionable age, a positive first impression of his new placement and thereby increase his likelihood of a good transition and continued success.