

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

On behalf of the Parents:

Mother, *Pro Se*

On behalf of the Board of Education:

Attorney Ann F. Bird
City of Hartford
Office of Corporation Counsel
550 Main Street
Hartford, CT 06103

Hearing Officer:

Stacy M. Owens, Esq.

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student has been appropriately placed at the Hartford Transitional Learning Academy (“HTLA”).
2. Whether the evaluation conducted by Dr. Kenneth S. Robson is appropriate.

PROCEDURAL HISTORY:

On July 9, 2003, the Department of Education, Due Process Unit, received a request for hearing from the Parent in the above-stated matter. By letter dated July 14, 2003, the undersigned was appointed as Hearing Officer in this matter to preside over the hearing, rule on motions, make findings of fact and conclusions of law, and issue a final decision and order.

On July 23, 2003. Attorney Ann Bird, on behalf of the Board, and the Parent appeared for the prehearing conference via conference telephone call. During the prehearing conference it was revealed that the Parent had dual-filed her claims and had a hearing scheduled the next day with Hearing Officer, Patricia Strong, concerning the same issues against the same party in case # 03-189. As such, this Hearing Officer, held this case open pending a final judgment was made in case #03-189.

Case #03-189 was dismissed without prejudice for failure to prosecute. By letter dated August 28, 2003, this Hearing Officer informed the parties that since case #03-189 was not decided based on the merits, the matter in this case was to move forward and a hearing had to be scheduled.

The parties convened on Monday, September 16, 2003 for a hearing. During a discussion of preliminary matters at the hearing, it was determined that it would be in the best interest of the parties and more efficient to allow the parties to convene a Planning and Placement Team (“PPT”) meeting to discuss the findings of a psychiatric evaluation by Dr. Kenneth Robson, that was just received by the parties on Friday, September 12, 2003. After review of the evaluation at the PPT meeting, the issues in this case were to be discussed for a possible resolution. Tr. 9/16/03. The PPT meeting was held on Wednesday, September 18, 2003. The Parent requested a Spanish interpreter be present at the PPT meeting, as well as any subsequent hearings.

Based on the parties’ unsuccessful attempt to resolve the issues in this matter at the September 18, 2003 PPT meeting, the hearing reconvened on Monday, September 22, 2003. A Spanish-speaking interpreter was provided for the Parent and her witness.

SUMMARY

This is a case involving a student with a Serious Emotional Disturbance (“SED”) whose increasingly severe episodes of misbehaviors were deemed by the PPT to be best addressed in the self-contained, therapeutic environment of HTLA. The Parent now disagrees with this placement primarily based on the school’s use of restraint and her son’s above average IQ scale. She believes verbal command is the only measure the school should take to discipline and that her son’s program at HTLA does not meet her son’s unique intellectual needs in his areas of strength.

FINDINGS OF FACT

1. The Student was born on October 7, 1992. He is eligible for special education services, and identified as Learning Disabled (LD) and having a Serious Emotional Disturbance (SED). Exh. B-1.
2. The Student attended school in Orlando, Florida from his kindergarten year until November 2001 of his 3rd grade year, at which time he enrolled in the Board’s district and attended West Middle School. Exh. B-1.
3. The Student’s school records indicate that while attending school in the Orlando, Florida district, he was tested for special education eligibility in October 2000. It was determined then that the Student was eligible to receive speech and language services, which the Parent refused. Tr. 9/22/03; Exh. B-1, B-2.
4. In December 2001, after attending West Middle School for a few weeks, the Student was issued a two-day suspension for “hitting and kicking.” Exh. B-1.
5. In January and February 2002, the Student was issued two more two-day suspensions for making verbal threats and using vulgar language. Exh. B-1.

6. The Student was reported by his teachers and the school social worker, Marcia Hinckley, to have difficulty sitting still in large groups, staying focused and paying attention. He demonstrated impulsivity, and made inappropriate sexual comments. Exh. B-1, B-2.
7. During the 2001-2002 school year, the Student was working above grade level in math and nearly two years below grade level in reading and writing skills. Exh. B-1.
8. The Student received school social work services during the 2001-2002 school year. Exh. B-1.
9. A psychological evaluation was conducted on April 25 and 26, 2002, by Marcia Levy, school psychologist, pursuant to a PPT request and based on the Student's behavioral concerns and below grade level reading and writing skills. Exh. B-1.
10. Ms. Levy engaged the following methods of assessment in making her determinations and recommendations (Exh. B-1):
 - a. WISC-III;
 - b. Bender-Gestalt with Recall;
 - c. DAH;
 - d. RCMAS;
 - e. Sentence Completion;
 - f. Achenbach Scales;
 - g. Connors' Teacher Rating Scales;
 - h. Teacher Interviews;
 - i. Clinical Interviews; and
 - j. Observations
11. The Student's full scale IQ indicates superior intelligence. Exh. B-1, B-2.
12. Through testing, Ms. Levy found "clinically significant elevations in the areas of hyperactivity" and "attention problems." The Student "knows right from wrong and has good common sense judgement." He lacks social skills and his responses to problematic peer interactions are impulsive and immature. Testing and observations further revealed "elements of anxiety" and "possible depressive elements related to his feelings of loneliness and isolation." Exh. B-1.
13. According to her assessments, the Student's reading difficulty may be related to "sound/symbol deficits" and "possible speech and language problems." His "visual memory skills are very weak," and he has "poor auditory short-term memory." Exh. B-1.
14. Ms. Levy recommended: resource support for reading and writing skills; memorization techniques for academics; seating the Student within proximity of his teachers for instruction; school social work services to assist with school adjustments and social skills; outside counseling for self-esteem and social skills issues; after school adult supervised

- activities; a doctor consultation concerning the Student's attention difficulties; and define behavioral expectations with rewards given for meeting behavioral goals. Exh. B-1.
15. The Student was also administered a speech and language evaluation in April 2002, in which deficits in auditory processing were noted. Exh. B-2.
 16. The Student began his fourth grade year at Moylan School. At that time he was identified as LD. He was placed in a regular education setting and received resource room, and speech and language services. Exh. B-2.
 17. During fourth grade, the Student continued to demonstrate significant behavioral problems. He was reported to be extremely disruptive in the classroom, aggressive towards peers, cursing, making inappropriate sexual comments and defiant to authority. He would throw objects, walk on desks, lay on the floor, have outbursts of laughter while engaging in the conduct. Exh. B-2.
 18. As a result of the Student's behavioral issues, on November 8, 2002, the Student was administered a psychiatric evaluation by Dr. Eric Bruce Cohen, to determine whether his conduct resulted from a serious emotional disturbance and how to address his needs. Exh. B-2.
 19. Dr. Cohen used the following information to draw his conclusions (Exh. B-2):
 - a. The Student's school records;
 - b. November 5, 2002 social work report;
 - c. Marcia Levy's psychological evaluation;
 - d. Summary of achievement testing of April 2002;
 - e. Speech and language evaluation of April 2002;
 - f. Third grade report card;
 - g. October 15, 2002, functional behavioral assessment and behavior intervention plan; and
 - h. Interview with the Student on November 8, 2002
 20. Dr. Cohen learned from the Parent that the Student has been demonstrating behavioral weaknesses, such as hyperactivity and aggression, since kindergarten. He has frequent mood swings, laughs in a near hysterical manner, talks to himself, and seems internally distracted. She reported that he is quickly bored and has no fear. The Student fights with his siblings, fails to follow directions, is quickly bored, and has made threats of self-harm when disciplined. He has been physically aggressive at home and required physical restraint. Exh. B-2.
 21. Dr. Cohen diagnosed the Student with Attention Deficit Hyperactivity Disorder, Bipolar Disorder, Mood Disorder, and Phonological Disorder. Exh. B-2.
 22. In his November 8, 2002 evaluation, Dr. Cohen recommended the Student be placed "in a highly structured, supportive classroom with behavioral protocols and the capacity for

hands on interventions to insure his and others' safety." He continued to support the recommendation for resource support for reading and writing skills and memorization strategies. Exh. B-2.

23. Due to the Student's scaled superior intelligence, Dr. Cohen recommended the Student be given additional challenging work. He further recommended pairing the Student with a peer buddy with appropriate social skills, regular social services, outside psychotherapy, and psychotropic medication to address hyperactivity, impulsivity and mood lability. Exh. B-2.
24. During the November 21, 2002, PPT meeting, the PPT recommended the Student be placed in a "self-contained therapeutic setting with time-out and restraint procedures to address serious emotional concerns that hinder [the Student's] school and home behaviors and academic functioning." Exh. B-3.
25. The Parent opposed placing the Student on medication because of her concerns the Student may be at risk for potential side effects. Exh. B-8.
26. At the November 21, 2002, PPT meeting, the Parent agreed with the PPT's recommendation of full-time placement at the Hartford Transitional Learning Academy ("HTLA") and requested the Student received homebound instruction with continued speech and language consultations during the transitional period. Exh. B-3, B-4.
27. In accordance with the November 21, 2002, PPT meeting, the Student is expected to: 1) increase reading level from 2nd grade to 4th through the use of the outlined objectives; 2) write on a given topic highlighting the main idea with supporting detail; 3) explore all four basic math operations to do computations and solve word problems; 4) improve auditory processing through the use of the outlined objectives; and 5) increase his ability to make socially constructive choices. Given the Student's areas of deficiency, the PPT devised appropriate goals supported by adequate objectives to meet the Student's special needs. Exh. B-3.
28. The November 21, 2002 IEP placed the student in school full-time. He received special education services in Reading, Writing and Math for 10.45 hours/week for each subject in a self-contained classroom. He received 45 minutes/week of social work services and 30 minutes/week of speech and language therapy, both in the resource room. Exh. B-3.
29. Despite the Parent's noted agreement with full-time placement at HTLA, she testified in the September 22, 2003, hearing that she no longer agreed with the Student's placement at HTLA after the Student's father witnessed the restraint of a child by school authorities.¹ Tr. 9/22/03; Exh. B-6.

¹ The Parent also expressed concerns with the physical education curriculum offered to the Student after he sustained a "facial scratch" during the rope climbing activity in gym class. Though an unfortunate mishap occurred during the rope climbing activity, there is no evidence to suggest the activity hindered the Student from safely gaining educational benefit from a common physical education activity. Tr. 9/22/03; Exh. B-7, P-1 (*sworn affidavit of Parent dated September 15, 2003*)

30. As evidenced by the Parent's consent for placement at HTLA and her signature on December 17, 2002, the Parent was informed that "[persons] entrusted with the care and supervision of a student may use reasonable physical force when he/she believes it is necessary to (a) protect himself/herself or others from immediate physical injury; (b) obtain possession of a dangerous instrument or controlled substance upon or within the control of such student; (c) protect property from physical damage; or (d) restrain or remove such student to another area to maintain order." Exh. B-5.
31. Both the Parent and the Student's father testified that they did not know the circumstances that arose prior to witnessing the restraint of the child. They simply testified that they believed use of any restraint is not proper. Tr. 9/22/03.
32. The Student in this case, was only restrained once when he attempted to run into a busy street during a fire drill. The use of restraint was necessary to prevent the Student from causing harm to himself. Tr. 9/22/03; Exh. B-9.
33. As testified by Barbara McCauley, HTLA's Principal, the school's policy and practice is to not use restraints when a student is non-compliant, but instead, only when safety is an issue. Tr. 9/22/03; Exh. B-7.
34. Based on the Parent's expressed concerns and refusal to comply with Dr. Cohen's recommendations for treatment of the Student's psychiatric disorder, PPT meetings were held on May 8, May 16 and June 12, 2003. Exh. B-6-B-8.
35. During such PPT meetings, a Functional Behavior Assessment was conducted and the Behavior Intervention Plan was revised. The Student's IEP provides for (Exh. B-6-B-8):
 1. 6.25 hours/week of reading with special education staff
 2. 1.25 hours/week of writing with special education staff
 3. 3.25 hours/week of math with special education staff
 4. 45 minutes/week social work services in a resource room
 5. 30 minutes/week speech and language therapy in a resource room
36. As of the May 8, 2003 PPT meeting, the length of the Student's school day and total school hours/week were reduced. There is no information in the IEP or the PPT minutes which explains the reason for the reduction. Exh. B-6.
36. The school's Principal, Ms. McCauley, testified the Student is provided a nondisabled peer buddy. However, the Student's IEPs do not reflect this assignment. Tr. 9/22/03; Exh. B-3, B-6 – B-8, B-14.
37. While attending HTLA the Student continues to be defiant and engage in inappropriate behaviors. The Student frequently takes off from staff and seems to become amused when more staff has to struggle to get him in the time-out room. Exh. B-6.

38. In July 2003, the Parent filed for a due process hearing case #03-189, that was ultimately dismissed without prejudice. The Board scheduled another PPT meeting that convened on July 31, 2003. At such PPT meeting, the Board agreed to pay for another independent psychiatric evaluation and the Student was temporarily placed on homebound instruction pending the results of the evaluation. Exh. B-12.
39. On September 8, 2003, Dr. Kenneth S. Robson conducted a psychiatric evaluation of the Student. Exh. B-13.
40. Dr. Robson, in his evaluation, reviewed the Student's school records, Dr. Cohen's psychiatric evaluations, Marcia Levy's psychological testing, conducted interviews of the Student's parents and the Student. Tr. 9/22/03; B-13
41. In his interview with the Parent, Dr. Robson also learned of the Student's past history of suicidal ideation and assaultive behavior. Exh. B-13
42. The Parent informed Dr. Robson that the Student's difficulties in school were far less intense outside of the school setting. Exh. B-13.
43. Dr. Robson made the following diagnostic impressions (Exh. B-13):
 - a. ADHD, Combined Type, severe
 - b. Disruptive Behavior Disorder
 - c. Bipolar Disorder
 - d. Learning Disorder
 - e. Bronchial Asthma
 - f. Parent-Child problems
44. Dr. Robson's findings and diagnoses mirror those outlined in Marcia Levy's and Dr. Cohen's evaluations. Exh. B-13.
45. Dr. Robson, however, further identified factors that may significantly contribute to the Student's high activity level and attentional problems. More specifically, Dr. Robson identified biological and environmental difficulties as contributing factors to the Student's problems, which are further intensified by the conflict that exists between the parents and the school system. Exh. B-13.
46. Dr. Robson suggested strategies to reduce "the adversarial relationship between [the Student's] parents and the school system." He further suggested the aide of a bilingual third-party mediator to break the " 'log jam' with which [the Student] is increasingly squeezed." Dr. Robson clearly identifies this as a significant issue that greatly impacts the Student negatively. Exh. B-13.
47. Dr. Robson states in his evaluation that essentially any efforts made by the Board will likely "fall upon deaf ears" without the intervention a third-party, and concludes that should such attempts fail, then even involvement from the Department of Children and

- Families may be warranted. Essentially, Dr. Robson's evaluation details just how crucial it is for the parents to understand and cooperate in addressing their son's problems. Exh. B-13.
48. Like Dr. Cohen, Dr. Robson also recommended the utilization of mood stabilizers and antidepressants, as well as stimulants. However, the Parent continues to refuse any medication to address her son's instability. Exh. B-13.
 49. Dr. Robson's psychiatric evaluation is deemed appropriate. Exh. B-13.
 50. The Parent not only failed to prove any inadequacies in Dr. Robson's report, but she also failed to provide any evidence that Dr. Robson's evaluation is not credible. Exh. B-13.
 51. The Student's father testified that he does not believe *any* psychiatrist can do a better job than he can. He stated that he has 14 children and he knows better than anyone else, including a psychiatrist, how to address his child's needs. Tr. 9/22/03.
 52. Besides Dr. Robson's professional qualifications, the consistencies between all of the evaluations lends credibility to Dr. Robson's findings. In interviews, the Student consistently presented himself to be irritable, unable to sit still and increasingly disrespectful. Dr. Robson, not only gained the same impressions of the Student as did Dr. Cohen, but he also considered additional external factors that may play a role in the Student's increasingly problematic behavior. Exh. B-13.
 53. Although the Parent expressed concerns and told of history of incidents relating to the Student's misbehaviors, hyperactivity and mood swings in her interview with Dr. Cohen and Dr. Robson, the Parent, today, denies her son has any problems. Instead, she seems to believe that since he has superior intelligence, the other issues do not exist or can be addressed simply by telling the Student to "stop". Tr. 9/22/03; Exh. B-6.
 54. The Parent was invited by the PPT to visit HTLA and observe the Student in the classroom setting. She refused. Exh. B-8.
 55. As evidenced by the psychological and psychiatric evaluations, the Student's misbehaviors are "recurrent", becoming "increasingly severe over time and clearly impairing all lines of his educational and social development." Exh. B-1, B-2, B-6, B-13.
 56. The Student's behavioral concerns would not be manageable in the mainstream environment. Not only would it be difficult for the Student to learn while his behaviors are being addressed in a setting insufficient to meet his needs, but his placement in the regular education setting, *at this time*, would clearly disrupt the educational flow of learning for other students in the regular education setting. Tr. 9/22/03; Exh. B-6.

CONCLUSIONS OF LAW:

The Individuals with Disabilities Education Act (“IDEA”) mandates all school districts to provide students a free and appropriate public education (“FAPE”). FAPE is defined as:

Special education and related services that (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 (IEP) under [this Act]. 20 U.S.C. §1401(8).

The Supreme Court in the case of Hendrick Hudson Board of Education v. Rowley established a two-tier review to determine whether a student’s education is “appropriate.” The first tier of review is to analyze procedural compliance with the IDEA by the Board. The second tier of review is to analyze whether the IEP developed for the student is reasonably calculated to enable the child to receive educational benefit. Hendrick Hudson Board of Education v. Rowley, 458 U.S. 176 (1982).

In this particular case, the Parent has made no claims of procedural violations by the Board. Therefore, the crux of this decision is based on the determination as to whether the IEP developed for the Student on May 8, 2003, which provides the Student full-time placement at HTLA, is reasonably calculated to enable the child to receive educational benefit. Engrafted within this decision is the determination as to whether the psychiatric evaluation conducted by Dr. Kenneth S. Robson on September 8, 2003 was appropriate, as it was a basis for continued placement of the Student at HTLA by the PPT during the September 17, 2003, PPT meeting.

The IEP is the written plan of specific special education and related services designed to meet the unique educational needs of a child with a disability. 20 U.S.C. §1414(d). The IEP must provide for personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Rowley at 203. In determining “educational benefits” the IEP should be reasonably calculated to enable the child to make educational progress according to the child’s goals and objectives. Rowley at 203-204.

Although the IDEA requires that children with disabilities be educated with nondisabled children “to the maximum extent appropriate,” it was also recognized by the court in Daniel R.R. v. State Bd. Of Educ. that “[r]egular classes . . . will not provide an education that accounts for each child’s particular need in every case.” Daniel R.R., 874 F. 2d at 1044. Only in those instances in which the child cannot be educated in the regular education setting with

supplementary aids and services due to the nature or severity of the child's disability, should a child be removed. 20 U.S.C. §1412(5)(A).

It was first decided, in this case, to place the Student at HTLA full-time during the November 21, 2002 PPT meeting. HTLA is a self-contained learning facility for children with severe behavioral issues and/or learning disabilities.

As held by the court in Daniel R.R., it must first be determined "whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily." *Id.* at 1048. In this case, the Student attended regular education classes in the district from November 2001 of his third grade year through November 2002 of his fourth grade year. During such time, the Student was provided speech and language services, as well as resource room.

Despite attempts made by school authorities to address the Student's misbehaviors, he seemed to continue to test the limits. The Student's behavior has been described as "defiant" with "no respect" for authority. As concluded by Dr. Cohen in his psychiatric evaluation, "[The Student's] mood lability, poor impulse control and deficient social skills are negatively impacting on his academic and social performance in school and he has become a risk to himself or others in that setting." While attending fourth grade at the Moylan School, the Student's episodes of misbehaviors were "recurrent" and "increasing". Thus, the PPT properly found that due to the nature and severity of the Student's disability, SED, placement at HTLA was the most appropriate to meet the special needs of the Student, thereby alleviating the increased risk to himself or others. As the evidence reveals, the Parent agreed with this placement.

Next, since the Student's placement outside the regular classroom is deemed necessary for the child to benefit educationally, inherent in the review of such placement is the need to determine "whether the school has mainstreamed the child to the maximum extent appropriate." *Id.*

As found by the court in Oberti v. Clementon School Dist., in comparison to tests proffered by other courts, the Daniel R.R. test further evaluates, and factors in, opportunities for inclusion in school programs with nondisabled children. Oberti, 995 F.2d 1204, 1215 (1993).

At the time the Parent agreed to the Student's placement at HTLA, she was informed of the school's restraint policy to "maintain safety and order," and expressed no contentions with the policy. It is clear she was put on adequate notice of the school's policy and practice relating to the

procedures engaged by the school. The fact that the Parent has not personally witnessed her son's behavior in the school environment weakens her claim that the school's use of restraint is improper in instances where her son's safety is a concern. The Student is defiant. When instructed to "stop," as suggested by his parents, he continues to engage in inappropriate conduct. Reasonable measures to insure the Student is safe may, at times, warrant minimal restraint to prevent harm. This is what the Parent was informed. As evidenced by her signatures, this is what she agreed to when she agreed to placement at HTLA.

There is, however, insufficient evidence to show that the Parent agreed to the reduction of special education services outlined in the Student's most recent IEPs. Not only is it found that the Student is being denied the benefits of a full school week without explanation, but he is also denied adequate services in areas in which he displays the greatest deficiencies. Oddly, the Student, who has been noted to have difficulty in language articulation, receives only 30 minutes per week of speech and language therapy. This difficulty could be potentially exacerbated absent adequate exposure to nondisabled peers. Also, without any evidence of improvement in the areas of Reading, Writing and Math skills, the Student's special education services were significantly reduced. Considering the Student has been declared to be intellectually superior based on his IQ scale with strengths in math, his individualized educational program does not comport with his need to be challenged, so as to not be "quickly bored" and as recommended by Dr. Cohen in his November 8, 2002 evaluation. Although placement at HTLA is deemed appropriate to especially address the Student's behavioral problems, the IEP developed for the Student is inadequate. The Board's responsibility does not cease at placement.

FINAL DECISION AND ORDER:

1. *The Student has been appropriately placed at the Hartford Transitional Learning Academy, with exception to the special education services and schedule provided in accordance with the IEP presently in effect to meet his special needs.*
 - a. The PPT shall convene immediately for the development of a new IEP structured to meet the unique needs of the Student.
 - b. In developing the IEP, the PPT should implement a program inclusive of the following:
 - i. a schedule for a full 32.5 hour school week;

- ii. more interaction with nondisabled students. (for example: if already in place, a continuation of the Student's participation in a peer buddy program or similar; participation in nonacademic activities; homeroom . . .);
- iii. additional speech and language therapy;
- iv. additional reading and writing special education services; and
- v. additional time to develop achievement in Math – providing for more challenging activities.

2. *The evaluation conducted by Dr. Kenneth S. Robson is appropriate.*

COMMENTS PURSUANT TO §10-76H-16(b) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES:

It is recognized not only by this Hearing Officer, but also through the evaluation of Dr. Kenneth Robson, that much of the struggle in addressing the Student's needs has been amplified by the divisive communication that exists between the Parent and Board. It is imperative that this breakdown is resolved. Dr. Robson's suggestion of a skilled, outside bi-lingual, third-party to intervene and develop a trusting a relationship with the parties may be a step towards progress for the parties to consider.