

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. New Britain Board of Education

Appearing on Behalf of the Parents: Attorney Mary Jean Schierberl  
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Appearing Before: Attorney Gail K. Mangs, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board of Education offer an appropriate program to the Student for the 2003-2004 school year?
2. If an appropriate program was not offered, does the Student require a full day educational program with a teacher of the hearing impaired such as that offered by CREC Soundbridge?

**PROCEDURAL HISTORY:**

This hearing was requested on August 4, 2003. The prehearing conference was convened on September 2, 2003. The hearing convened on September 18 and September 25, 2003. The parties submitted written summations on October 3, 2003. The Parent called the following witnesses: Dianne Quinn, parent advisor at CREC Soundbridge; Raisa Heikoff-Usifer, Educational and Pediatric Audiologist at CREC Soundbridge; Angela Lepore, Coordinator of Special Education and Pupil Services for the Board of Education; the Student's Mother; and Dr. Elizabeth B. Cole, CREC Soundbridge Assistant Director for children from birth through kindergarten. The Board of Education called the following witnesses: Carl Gross, Board of Education Coordinator for Special Education (middle and high schools) and Coordinator for Speech and Language Services; Linda Heiten, Board of Education Birth to Three Transition Coordinator; Beth DelBuono, Board of Education Speech and Language Pathologist; and Angela Lepore, Board of Education Coordinator of Special Education and Pupil Services.

**SUMMARY:**

The Student, who is now three years old, is moderately hearing impaired; his hearing impairment was detected at birth. He has received services from the Connecticut Birth to Three program since he was four months old. These services included weekly visits from a parent advisor as well as audiological evaluations and programming of the hearing aids he has worn since he was four and one half months old. Despite these services, the Student, whose family is Spanish-speaking, has developed minimal language. In addition, as he has gotten older, his behavior has become difficult to control. This has affected his ability to be tested resulting in questions as to the validity of recent audiological evaluations. During the spring and summer of 2003, the school district began to plan for the Student's transition from the Birth to Three program. Based upon his seemingly unmanageable behavior as well as his poor performance on standardized tests, the school district proposed a half-day program in a self-contained special education classroom. The Student's Mother refused the program and requested a full day program with a teacher of the hearing impaired such as the program offered at CREC Soundbridge. The school district refused the Mother's request after which this hearing was requested.

**FINDINGS OF FACT:**

1. The Student was born on September 9, 2000. He lives with his mother and, until recently, his grandmother. The family speaks Spanish at home. His mother understands and speaks English but feels more comfortable communicating in Spanish. An interpreter was with the Mother when she was present at the hearing. (Testimony of Mother)
2. The Student began receiving services from the Connecticut Birth to Three program at four months of age due to a mild to moderate hearing loss in his left ear and a moderate to moderately severe loss in his right ear; his hearing impairments were detected at birth. He began using hearing aids in both ears at four and one half months of age and appears to receive appropriate benefit from the hearing aids. While hearing aid use was somewhat inconsistent at first, it appears that more recently the Student has been wearing the aids regularly during his waking hours. In May, 2002 the Student began to occasionally use an FM system. (Exhibits B-1, B-2, B-3, B-4, Testimony of Dianne Quinn, Raisa Heikoff-Usifer)
3. Birth to Three services were provided by the Capitol Region Education Council ("CREC") Soundbridge program. Nine times per year audiological assessments were performed by Raisa Heikoff-Usifer, an audiologist at Soundbridge. In addition, the audiologist programs his hearing aids and adjusts them as needed. Since the Student was four months old, weekly home visits have been provided by Dianne Quinn, a parent advisor and certified teacher of the hearing impaired, who has modeled activities and behavior for the Mother. (Exhibit B-5, Testimony of Dianne Quinn)
4. A Birth to Three Assessment was performed in January, 2003 by Dianne Quinn. At that time, the Student had a vocabulary of approximately 7 Spanish words; most of his communication was through gestures and crying. While his motor and self-help skills

were age-appropriate, his expressive and receptive language skills were significantly delayed. (Exhibit B-4)

5. As the Student has gotten older, he has become very active and uncooperative during the audiological evaluations. As a result, the tests have become less reliable; play audiometric testing techniques have been used during recent evaluations although with little success. The Student's lack of language has also contributed to the lack of reliability of the testing results. Therefore, while the hearing aids do allow the Student to detect all speech sounds at the level of normal hearing, it is uncertain how clear the sounds are for the Student; improving the Student's language skills would assist in obtaining accurate results from the audiometric testing. Ms. Heikoff-Usifer testified that the Student's test behavior is fairly typical for his age. (Exhibit B-6, Testimony of Raisa Heikoff-Usifer)

6. In March, 2003, the Student was referred to the school district by the Birth to Three program and intake procedures were begun. (Exhibits B-7, B-8, B-10, B-11)

7. Dianne Quinn performed another assessment in May, 2003. At that time, the Student had a vocabulary of approximately of 15-20 Spanish words. Significant speech and language deficits were again noted. In addition, Dianne Quinn reported that the Student's limited language had a major impact on his behavior. Temper tantrums and crying for attention were common behaviors that the Student's Mother was having difficulty controlling. The Student has also had limited exposure to other children. (Exhibit B-9, Testimony of Dianne Quinn)

8. At the request of the school district, Dianne Quinn administered the Battelle Developmental Inventory to the Student on July 9, 2003; at that time, the Student was 34 months old. The Student's communication scores fell at the 17 month level (first percentile); his cognitive scores fell at the 16-18 month level (first percentile). His personal-social scores fell at the 13 month level. Ms. Quinn believes that the cognitive scores are not true estimates of the Student's cognitive ability because the Battelle requires a language base that the Student does not yet have; therefore, the Student's language deficits depress his scores. She also sees his personal-social scores as impacted by a lack of behavior controls and limited peer interaction as well as his minimal ability to communicate. Ms. Quinn recommends placement in a small, full-time, language-based program with typical peers who can serve as language models; she also believes that parental support including instruction in behavior techniques will be necessary. (Exhibit B-12, Testimony of Dianne Quinn)

9. Linda Heiten, the school district's Birth to Three transition coordinator, visited with the Student and his Mother in the spring of 2003 to plan for the Student's transition to the school district. She observed the Student play quietly for only a few minutes after which he screamed, threw lego bricks about the room, poured milk on the carpet and spit. She did not hear the Student use any words. However, during her second visit, Ms. Heiten did not observe any negative behavior. (Testimony of Linda Heiten)

10. The Student's Mother, Dianne Quinn and Linda Heiten visited classrooms proposed by the school district in May, 2003. Both classes were half day programs. One

classroom included typical peers but contained approximately 20 children and was quite noisy. The other classroom was a self-contained special education class with 8 children. There was very little verbalization by the children. The children in the classroom have language delays, multiple, physical and global delays. Angela Lepore testified that none of the children could serve as language models for the Student. (Testimony of Dianne Quinn, Angela Lepore)

11. The Student, his Mother, and Dianne Quinn also visited a childcare program at the YWCA; this program had been suggested to supplement the school district's program and create more of a full day program. While visiting the classroom, the Student demonstrated aggressive behavior with the other children and was difficult to control. (Testimony of Dianne Quinn)

12. On July 15, 2003, a PPT was convened to plan an educational program for the Student. Hearing impairment was designated as the Student's primary disability. The school district members of the team recommended placement in a self-contained special education preschool classroom that meets 5 half days per week (2 hours, 35 minutes per day) with one hour per week of direct speech and language services and 15 minutes per week of speech and language consultation. They also recommended exploration of an FM system for the classroom and on-going hearing assessment. Proposed goals and objectives included sorting by objects and colors, progress in social skills, improving receptive language skills by correctly following one step directions and answering yes/no questions, and improving expressive language skills by learning 25 new words and increasing the mean length of utterance to 2-3 words. The proposed program would be reviewed and modified as needed after the Student had been in the program for two months. This proposal was based upon the results of the Battelle, reports by CREC Soundbridge staff, and observations of the Student's behaviors including his temper tantrums, aggressiveness with other children and difficulty following directions as observed by Linda Heiten, and an employee of the YWCA who observed the Student during his visit to the YWCA and reported to the PPT. The school district has not performed any evaluations of its own. Carl Gross testified that although the Student's limited vocabulary is atypical of a child with his degree of hearing loss, the Student does not require a teacher of the hearing impaired because his hearing loss is not severe, and, because speech pathologists are trained in many of the techniques used by teachers of the hearing impaired. He also testified that the Student needed a structured, language-based program with family carryover, but that typical peers need not be a part of the program. The Student's Mother, who requested a full day program with typical peers and a teacher of the hearing impaired such as the program available at CREC Soundbridge, rejected the school district's proposed program. Due to a language problem, she misunderstood a consent form and refused to consent to the provision of special education services leading the school district representative to suggest the possibility of a referral to the Department of Children and Families. (Exhibit B-13, Testimony of Carl Gross, Angela Lepore, Student's Mother)

13. Dianne Quinn testified that the goals and objectives are not appropriate: the objective of learning 25 new words is too vague and not sufficiently ambitious. Not only does the objective not specify what kinds of words these should be (nouns, verbs, etc.) but learning only 25 new words would still leave the Student with significantly delayed

language skills. In addition, even if 25 words were added onto the Student's current vocabulary, this would be an insufficient vocabulary to support 2-3 word utterances. And finally, the Student is already able to follow one step directions and answer yes/no questions with the shake of a head. Dianne Quinn testified that speech and auditory goals need to be the focus of the Student's program, not his behavior; improving language skills will improve the Student's behavior. (Testimony of Dianne Quinn)

14. Raisa Heikoff-Usifer testified that the Student needs a teacher of the Hearing Impaired, an FM system, consistent access to audiological services to better define his hearing loss and maintain proper adjustment of his hearing aids, and an acoustically sound classroom. She also stated that peer language models are very important as is hearing language all day. (Testimony of Raisa Heikoff-Usifer)

15. Soundbridge is operated by the Capitol Region Education Council ("CREC"), one of the six regional educational service centers in Connecticut that receive public funding to provide educational programs and services to its member school districts. Soundbridge provides education directly to approximately 65 hearing impaired children from preschool through secondary school on site, and sends audiologists and teachers of the hearing impaired to provide direct educational services to approximately 525 hearing impaired children in their local schools. Soundbridge also provides consulting services to teachers and school districts throughout the state. Soundbridge is specifically for families who want their children to learn spoken language. (Testimony of Dr. Elizabeth B. Cole)

16. Dr. Elizabeth B. Cole, the Assistant Director of Soundbridge for children from birth through kindergarten, is a certified teacher of the hearing impaired, has a Ph.D. in special education for the hearing impaired, and has published extensively in the area of education of the hearing impaired. Dr. Cole has known the Student since he began receiving services from CREC Soundbridge. She testified that the Battelle does not represent the Student's true learning capabilities due to the test's language requirements. She also testified that the program offered by the school district is not appropriate. Not only are the goals and objectives (learning 25 new words) too conservative, but 2-3 word utterances require a vocabulary of at least 50 to 100 words. (Typical three year olds have vocabularies of 1000-2000 words and speak in 3-4 word utterances.) In addition, the school district program offers no typical peer language models who are important to the Student's developing language skills. Dr. Cole testified that most of the Student's behavior issues are due to his hearing loss and lack of language, and that his behavior difficulties are minor compared to his hearing loss and associated issues. She recommended a preschool program such as the program offered at Soundbridge. (Testimony of Dr. Elizabeth B. Cole)

17. In the Soundbridge preschool, which runs from 8:45 a.m. to 3:00 p.m., half of the 14-15 students are hearing impaired. Two acoustically appropriate rooms with a connecting door are used so that the hearing impaired students can be instructed by a teacher of the hearing impaired as well as have educational experiences with their typical peers. The program is taught by a teacher of the hearing impaired, a preschool teacher and an assistant; an audiologist is also part of the program as are parent guidance sessions. Dr. Cole testified that she recommends audiologists and teachers of the hearing impaired for

hearing impaired children because they train children to listen and speak using specific language stimulation techniques. Speech pathologists, however, focus on having children watch them in order to correctly produce specific sounds. (Testimony of Dr. Elizabeth B. Cole)

18. It is uncertain why the Student has such limited language skills. Contributing causes appear to be his hearing impairment, limited social interaction and peer contact (most of his time has been spent with just his mother and grandmother), a language-poor environment at home, and inconsistent use of the hearing aids. (Testimony of Dianne Quinn, Dr. Elizabeth B. Cole, Raisa Heikoff-Usifer)

### **CONCLUSIONS OF LAW:**

1. Both parties agree that the Student, who has been identified as a hearing impaired child, is entitled to a free and appropriate public education (“FAPE”) with special education and related services as provided for 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. The standard for determining whether FAPE has been offered begins with the test established by the Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). First, procedural requirements of the IDEA must have been met by the school district. Second, the student’s program must be reasonably calculated to enable the child to receive educational benefit. This test has been clarified to hold that FAPE requires that the educational program must provide more than a trivial educational benefit. (Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988), cert denied, 488 U.S. 1030 (1989)).
3. The local educational agency has the burden of proving whether an appropriate program has been offered by a preponderance of the evidence. (Regulations of Connecticut Agencies Section 10-76h-14).
4. The parties agree that the Student needs support in the areas of behavior and language skills. The Parent and CREC Soundbridge view the development of language skills as the Student’s greatest area of need: if the Student’s expressive and receptive language is improved, his frustration levels will decline and the behavior will improve. The school district emphasizes his inappropriate behavior and believes appropriate behavior controls must be developed first.
5. In developing its proposed program for a student they do not know very well, the school district performed no evaluations of its own. The school district has relied on isolated observations by Linda Heiten and a YWCA employee as well as observations and evaluations by the CREC Soundbridge staff who provided the Student’s Birth to Three services. The school district has relied on the CREC evaluations and reports, including the Battelle whose results are highly questionable (Findings of Fact Nos. 8 and 16), and yet does not accept CREC Soundbridge recommendations. In refusing to follow

these recommendations, the school district has proposed a program that will not offer more than a trivial educational benefit to the Student.

6. CREC Soundbridge staff, who know the Student quite well, has recommended a full day program with a teacher of the hearing impaired, an audiologist, and placement with typical peers who can serve as language and behavior models. Dr. Cole, who has extensive experience in education of the hearing impaired and knows the Student well, testified to the Student's need for the language stimulation techniques used by teachers of the hearing impaired and how these techniques differ from those of speech and language pathologists. Typical peer language models also play an important role in helping the Student develop his language skills. In addition, an audiologist is essential to monitor the Student's hearing aids and continue audiometric testing so that his hearing needs can be accurately measured and met. The Student's receptive and expressive speech is so delayed and his language needs are so intense, that a full day, language rich program with typical peers, a teacher of the hearing impaired, an audiologist and parental support and education is of crucial importance if he is to ever catch up.

7. The school district has offered a program that will not enable the Student to gain meaningful educational benefit. First, the program is only 2 hours and 35 minutes per day. This program is simply too short to meet the Student's intense language needs. Second, there are no typical peers to serve as behavior and language models. Third, the staff is not appropriate; as Dr. Cole testified, a speech and language pathologist can not meet the Student's needs as can a teacher of the hearing impaired. And even if the speech pathologist did provide some benefit, one hour per week is an insufficient amount of time to meet the language needs of a three year old student with a 20 word vocabulary and mostly single word utterances. In addition, an audiologist, which the Student needs for testing and hearing aid maintenance, is not a part of the program. The program also does not provide parent support or training. Finally, the goals and objectives, as discussed in Findings of Fact Nos. 13 and 16, are not appropriate.

8. There are no evaluations, reports or observations that suggest other than that the Student needs an intense language-rich program that will help him develop his communication skills. The school district offered no testimony that suggests otherwise. Carl Gross testified that the Student needs a structured, specialized language-based program with family carryover (Finding of Fact No. 12): nothing about the program offered by the school district meets these requirements. Angela Lepore testified that the students in the recommended classroom are not sufficiently verbal to act as language models (Finding of Fact No. 10). How can a preschool classroom be language-rich and language stimulating if the only person talking is the teacher? The school district has not met its burden of proving that it has offered an appropriate program.

9. Just as it is unknown why the Student's language is so limited (see Finding of Fact No. 18), it is uncertain whether the Student's inappropriate behaviors are due to his limited communication skills. Those who know the Student best and have experience with hearing impaired children certainly believe this to be the case. What is clear is that at three years of age, the Student's lack of language is his most salient characteristic - not his temper tantrums. Resolving his temper tantrums will not improve his language skills, but improving his language skills is far more likely to resolve his behavior issues.

10. In addition to meeting the requirements of Rowley, the IDEA also requires that children with disabilities be educated in the least restrictive environment (“LRE”); that is, to the maximum extent appropriate, children with disabilities are to be removed from the regular education environment only when, with the use of supplementary aids and services, they can not be satisfactorily educated in regular classes (20 U.S.C. Section 1412(a)(5)(A)). While the program offered by the school district is within the public school, the Student would be placed in a self contained, special education classroom with no access to typical children. The program at CREC Soundbridge, while not within a public school district, is a publicly funded program and would place the Student with a mix of special education and regular education students. As such, it is the least restrictive environment within which the Student can receive a free and appropriate education calculated to meet his individual needs and provide a meaningful educational benefit.

11. The Parent contends that the PPT did not seriously consider her program request nor did they meaningfully include her in drafting the IEP. While it appears that the PPT did not engage in an in-depth discussion of the CREC Soundbridge program, there is no evidence that would lead to a conclusion that it was not considered at all. It does appear, however, that despite the presence of an interpreter at the July 15, 2003 PPT, there was some lack of understanding on the part of the Parent. Reference to the Department of Children and Families certainly did not further the relationship between the school district and the Parent. The school district would be well-advised to reconsider such behavior.

**FINAL DECISION AND ORDER:**

1. The school district did not offer an appropriate program to the Student for the 2003-2004 school year.
2. A program such as that offered by CREC Soundbridge (with all of the elements described in Finding of Fact No. 17 and Conclusion of Law No. 6) does offer such an appropriate program. The PPT shall immediately convene to plan an appropriate program either at CREC Soundbridge or an equivalent placement.