

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing on behalf of the Student: Pro Se

Appearing on behalf of the Board: Attorney Marsha Belmen Moses  
Berchem, Moses and Devlin, P.C.  
75 Broad Street  
Milford, CT 06460

Appearing before: Attorney Christine B. Spak  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Does the Norwalk Board of Education have the right to transfer the student to a different school in the district?

**SUMMARY:**

The Student is a fourteen year old multidisabled student. Pursuant to P.J. et al. v. State of Connecticut, State Board of Education et al. 2:91CV00180 (RNC) the Board sought, for the 2005-2006 school year, to move the student to a middle school other than the one the student had been attending. The parent opposed the move and filed for due process. The Board filed a Motion to Dismiss for lack of subject matter jurisdiction. The parent opposed the Motion to Dismiss in writing, citing what amounted to a number of facts that were in dispute. The Motion to Dismiss was denied. The hearing convened on July 27, 2005 and was completed on that day.

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 fourteen years old at the commencement of this hearing. She has multiple disabilities including the inability to communicate.
2. Based on her age, the Student was transferred from the Board's elementary school (Rowayton) to one of the Board's four middle schools (Nathan Hale) in 2002.
3. The Student attended Nathan Hale from 2002 through the 2004-2005 school year. She has a group of students she is close to and good special education teachers. The Parents have seen "enormous educational gains" in the Student in the past two years and the Student is very comfortable with the program, school, classmates and bus. The Parents do not want an increase in the number of hours their child is included in a regular classroom setting.
4. The Parent described the student's Nathan Hale special education teachers, Mr. Testa and Mr. LaFredo, as good teachers and indicated the Student has a particularly good rapport with Mr. LaFredo.
5. By letter in March 2005 the Parents were notified that the Student would be transferred from Nathan Hale to the Ponus Ridge Middle School for the 2005-2006 school year, so that she would be attending the middle school that the Board identified as the "feeder" school to the Student's neighborhood high school for the 2006-2007 school year. The Parents prefer not to disrupt their child in the 2005-2006 school year by a move out of Nathan Hale and have brought this action to stop the move. They feel their child gets flummoxed by change and will lose educational ground if she is moved now.
6. In the Spring the Parent complained to Anne Louise Thompson of the State Department of Education and was promised a call back after Ms. Thompson investigated the matter. The Parents did not get a call back as expected but did get a letter dated April 13, 2005 from the Board's Director, Elda Kluth, explaining that the two transitional programs will be now situated in two schools (Nathan Hale and Ponus Ridge) rather than both in Nathan Hale. Ms. Kluth also offered to convene a PPT at the Student's home school (Roton) to plan an inclusive program at Roton.
7. The Nathan Hale Middle School and the Ponus Ridge Middle School are essentially equal distance from the Student's home, approximately three miles from her home. Neither school is the Student's home school. The home school is Roton. Creation of an appropriate program in the Student's home school (Roton) is not an issue in this hearing as the Parents oppose any move out of Nathan Hale for the 2005-2006 school year and further feel their Student would be unsafe at her home school, Roton, because as they understood the Board's offer, a placement in her home school would have to be total inclusion in the regular education setting.
8. Initially the Board members of the PPT proposed no changes to the Student's IEP. In response to the concern of the Parents regarding the impact of the move on the Student, the Board members agreed to increase the special

- education support from 13.5 hours to 16 hours a week, which will be reduced, by agreement, as the Student acclimates to her new setting.
9. To comply with P.J. the Board selected one middle school on each side of town to house a special education classroom and “an exact duplicate” program (staffing, etc.). This meant that in place of the two classrooms previously operating at Nathan Hale, there will now be one classroom at Nathan Hale and one duplicated at Ponus Ridge. The student body was divided geographically so that the middle school students would be attending the middle school that would feed into their home high school, there being two high schools in Norwalk. As currently planned, the Student’s class at Ponus Ridge will consist of six to seven students, four of whom, including the student at issue in this hearing, will move together over from Nathan Hale. The Nathan Hale staff was being divided and one of the experienced special education teachers, Mr. Testa, was moving over to Ponus Ridge. A Board Administrator of Special Education, Joann Shippee, testified that the State was pleased that Norwalk was now in compliance.
  10. The remaining Nathan Hale special education teacher, Mr. Lafredo, has discussed requesting a transfer to a high school position that has opened up over the summer, but as of the time of hearing no decision in this regard had been made.
  11. Pursuant to discussions that came about at the hearing as a result of testimony, the Board stipulated to scheduling a meeting with Principal Fox and the Parents, and the Student if the Parents choose to bring her, to devise a concrete and specific plan regarding how to best familiarize the Student with the physical setting and staff. The parties agreed that, given the Student’s cognitive limitations, it is appropriate to wait until a few days before the start of the school year to introduce and transition the Student to her new setting.

### **CONCLUSIONS OF LAW:**

1. There is no dispute that the student is entitled to special education and related services as a student identified with a specific learning disability and thereby entitled to receive a free and appropriate public education (“FAPE”) pursuant to 20 U.S.C. §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. 10-76h-14.
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. The Parents are not pressing a procedural violation as a basis for relief and the parties are in agreement that the student’s IEP has not changed in any objectionable manner. That is, the only change is the hours of service have been increased by Parent request and Board member agreement.
6. The narrow issue presented in the instant case is whether the Board can transfer the Student to another district school in its efforts to better comply with the P.J. Settlement Agreement goals and whether that proposed transfer violates IDEA.
7. The P.J. Settlement Agreement has five main overall goals:
  - “1. An increase in the percent of students with mental retardation or intellectual disability who are placed in regular classes, as measured by the federal definition (eighty (80) percent or more of the school day with non-disabled students).
  2. A reduction in the disparate identification of students with mental retardation or intellectual disability by LEA, by racial group, by ethnic group or by gender group.
  3. An increase in the mean and median percent of the school day that students with mental retardation or intellectual disability spend with nondisabled students.
  4. An increase in the percent of students with mental retardation or intellectual disability who attend the school they would attend if not disabled (home school).

5. An increase in the percent of students with mental retardation or intellectual disability who participate in school-sponsored extra curricular activities with non-disabled students.” P.J. et al. v. State of Connecticut, State Board of Education et al. 2:91CV00180 (RNC)

8. In the instant case, as the issue is framed by the Parents, the home school, which arguably would be the least restrictive environment, is not at issue. They did not bring due process to insure that the Student would get the appropriate supports at the home school but rather brought the hearing to oppose any move whatsoever because they fear that change will cause their child to lose educational ground.

9. An examination of the facts, many agreed to or not opposed, establishes that even if the Student were not transferred, she is likely to experience significant change, and perhaps more so than if she transfers. If she remains at Nathan Hale, the only thing likely to remain unchanged is the physical setting. As with Ponus Ridge, some of the classmates will be familiar and some will be different. At Nathan Hale, given the expressed interest of Mr. Lafredo in a transfer, there is a higher risk that the staff may be very much different, whereas the likelihood of familiar staff at Ponus Ridge appears to be higher. Significantly, the IEP will be the same in either location except for an increase in special education support which the parties agree is intended to be temporary in nature. Once transferred, the move next year to the high school will be significantly less traumatic for the Student because the class will move together into the home high school.

#### **FINAL DECISION AND ORDER:**

The Norwalk Board of Education may transfer this Student to the Ponus Ridge Middle School for the 2005-2006 school year with the stipulation that the Board will work with the Parents to provide transition services for the Student.