

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Windsor Board of Education

Appearing on behalf of the Parents: pro se

Appearing on behalf of the Board of Education: pro se

Appearing before: Attorney Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

- I. Whether the individualized education program proposed by the local educational agency (LEA) which plans to return the child to the home school provides the child with a free and appropriate public education?
- II. Whether a change to the child's reading program which differs from the child's current program in the way the program is delivered renders the program inappropriate for the child?

PROCEDURAL HISTORY

The matter was assigned for an advisory opinion on October 21, 2005. The parent did not want to participate in the advisory opinion process. The special education hearing convened on November 22, 2005. The mother father, aunt, principal of the child's current school and interim-principal of the child's home school testified at the hearing. The record closed upon receipt of the transcript on January 2, 2006. The written date for mailing the final decision is January 20, 2006.

SUMMARY

On October 19, 2005 the parent filed a request for an impartial special education hearing to dispute the local educational agency (LEA) proposal to return the child to the home school as the site where she will receive her special education program. The parent claims the child will be educated with neighborhood peers and her sibling, who are triggers for her inappropriate behavior; and the home school uses a reading program that differs from the one the child receives at the current placement within the LEA school district. The parent claims both issues make the child's program inappropriate.

FINDINGS OF FACT:

1. The parties agree the child is identified as disabled and eligible to receive specialized instruction and services pursuant to the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.*, as amended. (Ex. B-7, B-9)
2. The child's disability is caused by the effects of prematurity and lead poisoning. The primary disability is intellectual disability with behaviors that require special education intervention. (Ex. B-1, B-5, Testimony, Mother, Tr., 11/22/05, pp. 28, 36)
3. In 2003 the parties agreed the child would move from the home school ("home school") to the current school ("current school") she now attends within the district. The child's behavior was sufficiently problematic for the IEP team to determine the change in school was necessary to address the child's behavior. Specifically, the behaviors occurred while the child waited for the bus with her sibling and neighborhood peers which spilled over into the classroom. Teachers observed interrupting, bullying, yelling, fighting and disrespect for school staff. The child was distracted by playmates when she encountered them in the school setting. She had difficulty focusing on school work and following school rules. When the child was moved to the "current school" her initial placement was in a self-contained special education class for first grade. The parent reports the child immediately improved in behavior and academics upon beginning her placement at the "current school". The principal confirms the parent's testimony about the improved behaviors. The IEP for the 2005-2006, school year, reduces the time for special education support from 15 hours per week to 6.5 hours per week. Over a period of time the child has a reduced need for punishment, experiences better behavior, is able to be more focused on learning and spends most of the school day in the mainstream environment. (Ex. B-1, B-5, B-9, Testimony, Mother, Testimony, principal of "current school", Tr., 11/22/05, pp. 28)
4. The child's individualized education program (IEP) dated 10/20/04 contains goals and objectives to program for behavior, (see Goal No. 4). The behavior goals do not appear in the IEP for 2005-2006, school year. Reduced need for behavior goals supports both the "current school" principal and the parent's testimony that the child's behavior has improved. Since the time the child began attending the "current school" she is responsive to her teachers' request to inhibit inappropriate behavior. She has been able to move from education in a self-contained classroom in the primary learning center to a mainstream class. The child's behaviors have stabilized and with academic support and modifications she is included into the mainstream. The school has worked to extinguish the use of the child's behavior intervention plan (BIP). She is now weaned from those supports. The parent claims it is the classmates who make a difference in the child's success in the "current school". (Exhibits B-1, B-5, B-9, Testimony, Principal, "current school", Testimony, Mother; Transcript, 11/22/05, pp. 23-34-57, 58-59)

5. Presently, the child is still agitated by the children who wait for the bus outside her home, but she is able to get on separate transportation to attend the “current school”. While riding the van she has time to calm down before beginning the academic school day. The “current school” is as close to the child’s home as the “home school”. The parent is concerned the child’s behavior will regress from the progress she has made over the past two years if she returns to the “home school”. (Testimony, Mother)
6. The child is nine years old and has improved in reading at the “current school”. The parent is concerned the child will regress if she returns to the “home school” which has a different reading program. During second grade she progressed enough to spend most of her day in the mainstream; she is now able to decode and read a mid-first grade level book. The classroom paraprofessional provides support to the child and other students in the class. The principal reports the child is taught the district curriculum which is modified for her IEP. The parent did not present any evaluation which recommends a specific reading program for the child. (Testimony, Mother, Testimony, principal of “current school”)
7. The “home school” reading program “Success for All” (SFA) is based on the district curriculum. The testimony of the principals from the “home school” and the “current school” compared the two programs. Both reading programs have a guided reading, balanced, literacy approach. At the “current school” students are exposed to aspects of the reading program throughout the day. Students stay with the same kids for the school day. At the “home school” reading is taught in ninety minute segments in which the student moves to a group with a similar skill level. The students are evaluated every eight weeks and move or stay at a reading level according to test results. Even if the child stays at a level the teacher may change. At the “home school” the child will be placed in a much lower reading level, and change classes 4-5 times per day. The child’s “home school” is the only school within the LEA district which implements the SFA reading program. The “current school” principal testified that regrouping causes loss of instruction time as the children move between classes. The “current school” is a small school with a less diverse student population so the staff opted not to regroup kids for the program. The differences, in the reading programs, seem to be significant, but there are no facts to conclude the differences as described cannot be tolerated by the child. (Testimony, principal of “current school”, Testimony, interim-principal, “home school”, Tr. 11/22/05, pp. 62-65, 76, 89)
8. The “current school” principal reports the child transitions several times per day and is able to walk independently and move through the hallways without distracting herself or others. The mother reports that she does not notice any particular difficulty with transitions between classes. (Testimony, Mother, principal of “current school”, interim-principal of “home school”).
9. The IEP for the 2005-2006 school year proposed the child begin to transition to her “home school”, because she had the skill set and capability to move back to a regular classroom. The proposed transition anticipated teachers talking to teachers with plans

for visits to the “home school”. The school team would have preferred the transition take place at the start of the school year. (Testimony, principal of “current school”, Tr. pp. 60-61)

10. The IEP developed for 2005-2006, is the same IEP proposed for placement at the “current school” and at the “home school”. (Testimony, principal of “current school”, Tr. pp. 61-62)
11. The child’s special education teacher performed educational testing when the child was in second grade. She was able to exceed her IEP reading objectives of 80% accuracy with a 98% accuracy performance for reading the pre-primer, Dolch Sight Words. Word-identification is a relative strength for the child. Overall, the child performs in the below-average and significantly-below-average range with relative strengths in reading, writing and spelling. The evaluator’s summary states the child has difficulty understanding directions and requires repetition and models in order to successfully follow directions. (Ex. B-7 p.5)
12. A speech and language evaluation dated, May 2005, concludes the child has relative difficulty with receptive language tasks particularly with concepts and following directions. Neither the second grade special education teacher nor the speech and language evaluator was called as a witness to testify at the hearing. (Ex. B-6, B-7)
13. The psychological assessment performed in May 2005, concludes the child measures in the significantly, below-average range. The BASC-2, Teacher Rating Scales reports many clinically, significant symptoms which is consistent with results of the BASC-2, Parent Rating Scale, completed by the mother. On the Vineland Adaptive Behavior Scale the overall rating places the child in the low-adaptive level of functioning. The child has relative strengths in her acquired knowledge. (Ex. B-9)
14. The child’s IEP for grade two dated 10/20/04 states there is concern about respectful behavior towards adults and peers. The concern does not appear in the IEP dated 9/7/05. (Ex. B-1, B-5, B-9)

CONCLUSIONS OF LAW:

1. The student is identified as a student with disabilities pursuant to The Individuals with Disabilities Education Act 20 U.S.C. § 1400 *et seq* as amended, (IDEA) and the 2004 amendments, Individuals with Disabilities Education Improvement Act (IDEIA); 34 CFR§ 300.7(a) and Conn. Agencies Regs. § 10-76a-1(d). There is no dispute between the parties as to the child’s eligibility to receive a free and appropriate public education (FAPE).
2. The child attends a school within the LEA’s district (“current school”) which is not the child’s home school (“home school”). The parties agreed to the placement during first grade, because of inappropriate behavior triggered by interaction with neighborhood peers and the child’s sibling. The behaviors occurred at the bus stop,

during bus transportation and at the “home school”. A dispute arose between the parties when the LEA proposed the child return to the “home school” for the 2005-2006, school year. The parents claim the child has experienced academic and behavioral success in the “current school”. They believe the change in reading program offered at the “home school” will prevent the child from succeeding as she has in the “current school”; and an education with her sibling and neighborhood peers will trigger inappropriate behavior which interferes with the child’s ability to learn. They believe the proposed changes makes the child’s IEP inappropriate.

3. The LEA faces a mandate when planning for the education of disabled children. The regulations promulgated pursuant to 20 U.S.C. 1412 (a) (5) provide the LEA must ensure, to the maximum extent appropriate, that children with disabilities, are educated with children who are not disabled; and separate removal of children with disabilities from the regular education environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, 34 C.F.R. § 300.550 (b)(i). 34 C.F.R. §300.552 (c) provides, ...unless the IEP of a child with a disability requires some other arrangements, the child is educated in the school he or she would attend if not disabled. Subsection (d) requires in selecting the least restrictive environment (LRE), consideration is to be given to any potential harmful effect on the child or the quality of services that he or she needs.
4. Whether a program is inappropriate is determined by the two-prong test articulated in *The Bd. of Education of the Hendrick Hudson Sch. Dist. v. Rowley*, 459 U.S. 176 (1982). The first prong requires the LEA must follow the procedural requirements of IDEA, *Walczak v. Florida Union Free School District*, 142 F.3d 119 (2d Cir. 1998) quoting *Rowley*, 458 U.S. 176, at 206; *A.S., ex rel P.B.S. v. West Hartford*, 245 F. Supp. 2d 417, 426 (D. Conn. 2001). When there is a claim of procedural violations, the 2004 amendments to IDEA, (IDEIA 2004), at Section 615 (f)(ii) limits the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, only if the inadequacies (I) impede the child’s right to a FAPE; or (II) significantly impede the parent’s opportunity to participate in the decision making process. In the present case, the parents testified they felt surprised by the school team proposal to return the child to her “home school” to receive her special education program. No records or notices were entered in the hearing record to support the claim of any procedural inadequacies. Surprise, without more, is not a procedural violation. The record does not support a finding that any procedural inadequacies prevented the parents from participating in the IEP process or impeded the child’s right to a FAPE.
5. The second prong of *Rowley*, requires the individual education program (“IEP”) offered by the LEA must be reasonably calculated to enable the child to receive an educational benefit. The benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177 206-207, *M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 226 F.3d 60 (2d Cir. 2000) (citations omitted); *Mrs. B. v. Milford Bd. of Edu.*, 103 F.3d 1114 (2d Cir. 1997) (citations omitted). For the benefit to be sufficient to be meaningful, the IDEA was

enacted to assure that all children with disabilities have available to them a (FAPE), which emphasizes special education and related services designed to meet their unique needs, supported by such services, as are necessary to permit the child to benefit from the instruction, *Rowley*, 458 U.S. 176, 188-189. In order for FAPE to be offered, a school district must show it complied with the statutory elements of an IEP; and the goals and objectives in the IEP are reasonable, realistic and attainable, *Honig v. Doe*, 484 U.S. 305, 311(1988); *B.L. and Mr. and Mrs. T.L., v. New Britain Bd. of Educ.* Civil Action No. 3:02 CV 767 (CFD), 44 IDELR 126 (D. Conn. 2005); *A. S., ex rel P.B.S. v. Bd. of Educ. of Town of West Hartford*, 245 F. Supp 2d 417, 426 (D. Conn. 2001). The special education and related services must be reasonably calculated to enable the child to receive an educational benefit and must be likely to produce progress not regression, *M.S. ex rel S. S. v. Bd. of Educ. of the City of Yonkers*, 231 F.3d 96, 103 (2d Cir. 2000).

6. Whether the child can receive an appropriate program in the “home school” is the question to be answered. First, the parents believe the “home school” reading program is inappropriate. Both parties agree the child has progressed nicely in the reading program provided in the “current school”. The child’s IEP provides for the same goals and objectives to be implemented in both schools. It is key to this analysis, that the 2005-2006, IEP does not incorporate any specific reading program or methodology. The child’s school record does not contain any evaluations nor were any reading experts called to testify that the child required any particular reading methodology to be successful in reading. The “current school” principal and the “home school” interim-principal both testified the reading curriculum is the same throughout the district but the delivery of the program differs in the two schools. The child’s progress in reading serves as a measure of the progress the child can achieve when the program is appropriate for her needs.
7. Methodology typically falls within the sole discretion of the LEA when the child’s IEP makes no specific provision for a reading method or program. 34 C.F.R. § 300.347 (a)(3). The IDEA regulations at 34 C.F.R. 300.26 (a)(3)(i) refers to specially designed instruction to meet the unique needs of the disabled child including adapting methodology or delivery of a program should the child require said adaptations to make the reading program appropriate. Neither the IEP nor the child’s school records contain any requirements to make adaptations to the methodology or delivery of a reading program to meet the unique needs of the child. The proposed reading program is appropriate.
8. The parent’s second concern is that interaction with neighborhood peers and the child’s sibling will trigger inappropriate behaviors which interfere with the child’s ability to learn. The record is clear the child was placed in the “current school” specifically to remedy inappropriate behavior with neighborhood peers and her sibling. Her behavior improved quickly and she has been able to maintain the improved behavior for more than two school years. Much, if not all of the improved behavior is attributed to the change in school. The school principal testified the child entered the self-contained special education class at the “current school” and was able

to move into the mainstream for most of second and third grade. The child maintains appropriate behavior with little need for a behavior intervention plan. The parents report, while the child is waiting for the school bus in front of their home, neighborhood peers continue to trigger problem behaviors. While traveling to the "current school" the child has time to calm down and enter class removed from the interactions that trigger inappropriate behaviors. The child has matured, and experienced success in controlling her behavior in the classroom setting. It is possible that problems with transportation and contact with neighborhood children remain unresolved, but there is no certainty the problem can't be resolved by less restrictive strategies.

9. It is not realistic for the child to forever avoid schoolhouse contact with neighborhood peers and her sibling. It is acknowledged the child has significant limitations due to her intellectual disability and receptive language deficits that impair her ability to follow directions. The IEP team must meet to prepare a transition plan to return the child to her neighborhood school. The principal believes it is ideal to have the child return for the beginning of the school year. The transition period shall occur during the last two months of the current school year to set the stage for the next school year. A functional behavior assessment should include analysis of the child's class room time, transportation, unstructured school time and impact of the "home school" reading program on the child's behavior. Reading performance shall be measured as well. The data shall formulate the basis for developing an IEP with realistic and attainable, goals and objectives. An appropriate program should permit the child to continue with progress commensurate with the progress experienced in the current school.

FINAL DECISION AND ORDER

1. The IEP Team shall meet to plan a transfer to the home school for the 2006-2007 school year, the transition shall commence during the last eight weeks of the 2005-2006, school year.
2. During the transition period the school staff shall conduct a functional behavior analysis of any of the child's inappropriate behavior observed while transported to or attending the home school.
3. Reading progress made in the current school shall be measured in April, 2006 and again at the end of the 2005-2006 school year.
4. The IEP team shall meet near the end of the 2005-2006 school year to review the relevant data to determine if the data supports the conclusion that transfer to the home school is an appropriate placement for the child for the 2006-2007 school year.