

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. East Hartford Board of Education

Appearing on behalf of the Parent: Atty. Lynn B. Cochrane, Greater Hartford Legal Aid, Inc.,  
999 Asylum Avenue, 3<sup>rd</sup> Floor, Hartford, CT 06105

Appearing on behalf of the East Hartford Board of Education: Atty. Linda L. Yoder, Shipman &  
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Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES**

The Parent submitted the following issues for the hearing:

1. Did the Board offer the Student a free appropriate public education (“FAPE”) for the 2007-2008 school year with a program based at East Hartford High School?
2. If not, would the Parent’s preferred placement at ACES Whitney High School East in Hamden provide the Student with a FAPE for the 2007-2008 school year?
3. Does the Student require a bilingual paraprofessional in order to receive FAPE?

**SUMMARY**

The Student is a 20 year-old student at ACES Whitney High School East in Hamden. The Student, also referred to as M., is a young man with multiple disabilities who has been attending ACES Village School and ACES Whitney High East (ACES) an out-of-district school for severely disabled students since 1999. He was placed there while residing in Hartford. In April 2006, his family moved to East Hartford, which agreed to continue his educational placement at ACES while East Hartford staff obtained his records and evaluated his needs. At ACES, he has been assisted by a one-to-one paraprofessional. He will graduate in June 2008, as he will be 21 years old on December 31, 2007. At the June 14, 2007 PPT, the team recommended that M. attend his final year of education in East Hartford High School’s (EHHS) self-contained special education class for medically fragile students (“Realities”), with a one-to-one paraprofessional, and pursue his transition planning for adult services from there. It also recommended that he receive Extended School Year (ESY) services in July 2007 at ACES, and that an East Hartford paraprofessional observe him there in preparation for the move to East Hartford. This paraprofessional spent the last two weeks of ESY and the month of September

observing M. The Parent (Mother) disagreed with the change of placement to East Hartford and claimed the Student needed a bilingual paraprofessional. She filed for due process and invoked stay put.

## PROCEDURAL HISTORY

The Parent's attorney requested this hearing by faxing a letter to the State Department of Education (SDE) and a copy to the Board's attorney and Special Education Coordinator on August 14, 2007. Hearing Officer (HO) Exhibit 1. This Hearing Officer was assigned to the case on August 16. A prehearing conference was held on August 27, 2007. The parties reported that mediation had been held on August 14 and was not successful. The mailing date of the final decision was established as October 24, 2007. Hearing dates were agreed on for September 21 and October 10, 11 and 15. The Parent's attorney requested a Spanish interpreter for the hearing. The parties were directed to file witness lists and exhibits by September 14.

The hearing convened on September 21. The Parent filed Exhibits P-1 through P-6 and their witness list on September 14. The Board filed Exhibits B-1 through B-29 and its witness list on September 15. All exhibits were entered as full exhibits without objection. A Spanish interpreter was provided to the Parent throughout the hearing. The attorneys presented opening statements. The Parent then presented direct testimony from Lisa Mendoza, Case Manager, Department of Mental Retardation (now known as Department of Developmental Disabilities – DDS); Maria Ortiz, paraprofessional at ACES; and Colleen McDonald, special education teacher at ACES. The hearing continued on October 11 with testimony from Rosa Mendez, Certified Nurse Assistant, Visiting Nurses Association (VNA); Anton Alerte, M.D., University of Connecticut Burgdorf Clinic; and the Mother. The Parent rested her case. Exhibits P-6a and B-30 through B-32 were admitted as full exhibits during the course of the hearing.

The Board began presenting its case on October 12 with testimony from Rhea Klein, Ph.D., Department Head of Special Education grades 7-12; and Laura Brancato, special education teacher, medically fragile class. On October 15, the hearing continued with testimony from Kelly A. Grant, Supervisor of Special Education; and Katharine Dutton, special education teacher in the Realities program at EHHS. The Board rested its case. The Parent presented rebuttal testimony from the Mother.

The parties requested time to file briefs. Simultaneous briefs were due on October 31. The mailing date for the decision was extended to November 26, 2007 by agreement of the parties. The Hearing Officer sent the attorneys a letter on October 17 confirming these dates. The Board's attorney sent a letter on October 31 requesting one-day extension to the briefing schedule until November 1. The request, which was not objected to by the Parent's attorney, was granted. The Parent's brief was filed on November 1. The Board's brief was filed on November 2. On November 26, the Hearing Officer notified the parties that additional time was needed to complete the decision. The parties agreed to extend the mailing date for the final decision to November 30, 2007.

The Findings of Fact incorporate various portions of the Parties Proposed Findings of Fact. To the extent that the findings of fact are conclusions of law, or that the conclusions of law

are findings of fact, they should be so considered without regard to their given labels. Bonnie Ann F. v. Callahan Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993). The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record. Id.

#### FINDINGS OF FACT

1. The Student has a birth date of December 31, 1986, is 20 years old and has been at ACES since September 2, 1999. Testimony of Mother; and Exhibit P-6 at 2.
2. The Student attended the Connecticut Children's Medical Center (CCMC) school from October 1997 to September 1999, when the school relocated from Newington to Hartford. Testimony of Mother; and Exhibits P-3 and P-4.
3. The Student attended Hartford public schools from age three to September 1997, including Simpson Waverly in pre-school and kindergarten, Kinsella in kindergarten, Parkville for first grade, then Burns school. During his years in Hartford schools, M. had a bilingual paraprofessional. Testimony of Mother; and Exhibit P-1.
4. From September 1999 until June 2001, M. attended the ACES Village School for seventh and eighth grades. In September 2001, he began attending the ACES Whitney High School East. Testimony of Mother and Ms. McDonald; Exhibit B-2 at 3 and 7.
5. The Student lives with his mother, who is his legal guardian, and his older sister. Testimony of Mother.
6. M. has multiple disabilities, including moderate to severe mental retardation, cerebral palsy, severe neurological deficits, Legg-Perthes disease, which is a condition that affects the upper end or head of the femur (thigh bone) where it enters the hip joint causing the head to soften and undergo other changes. As a result of his physical deficits, he has difficulty walking and standing and uses a wheelchair to ambulate throughout his surroundings. He functions at about the level of a 10-month old. He also suffers from severe constipation and requires constant monitoring and restricted diet. Id.; Testimony of Dr. Alerte and Exhibit P-6a.
7. For the most part, he is non-verbal and communicates through body language and facial expressions. Through these movements, his family and staff who work with him at home and school have come to know what he wants or how he is feeling. Testimony of Mother, Ms. Mendez, Ms. Ortiz, and Ms. MacDonald.
8. From October 2005 until April 2006, the Student did not attend school because he was hospitalized with a bowel obstruction, which required surgery. He was in the

hospital for 54 days, and then recuperated at home before returning to school. Testimony of Mother and Dr. Alerte.

9. In or around April 2006, M.'s family moved to East Hartford. The Mother enrolled M. in East Hartford schools on March 28, 2006. Testimony of Mother; and Exhibit B-8.
10. The Board staff attempted to obtain M.'s school records from Hartford, but received very few records. Testimony of Dr. Klein and Ms. Grant; and Exhibit B-12. All they received from Hartford was the 2004 IEP. Other records were later obtained from ACES. Testimony of Ms. Grant.
11. The last triennial evaluation of the Student was conducted in 2002. Because the Student was hospitalized in the fall 2005, he was not reevaluated by Hartford, nor was an annual review PPT meeting held in December 2005. Exhibits B-2 and B-9.
12. Michael Enson, school social worker at ACES, advised East Hartford on April 3, 2006 that M. had returned to school on that day with his mother and sister. They returned home, awaiting a decision from East Hartford whether to continue placement at ACES. Exhibit B-9.
13. On April 4, 2006, the Board arranged for wheelchair transportation to begin on April 10 to take the Student to ACES from his home in East Hartford. Exhibits B-10 and B-11.
14. ACES advised Ms. Grant that the Student had no current IEP in place and had not received any services during the six months he was not attending school. Testimony of Ms. Grant.
15. On May 16, 2006, Ms. Grant sent the Mother a notice of a PPT meeting scheduled for June 15, 2006 at ACES. Exhibit B-13.
16. The PPT met on June 15 to conduct an annual review and develop an IEP for the Student for the 2006-07 school year. The PPT recommended continued placement at ACES, including the ESY in July 2006. A triennial evaluation was planned to include an inventory of his basic academic/adaptive skills, a work profile and measure of occupation therapy (OT) and physical therapy (PT). A PPT meeting was planned in the fall to discuss the results. Exhibit B-14; and Testimony of Dr. Klein and Ms. Grant.
17. A one-to-one individual aide was provided in the IEP throughout the Student's day. There was no specific provision for a bilingual aide, but there was a recommendation for prompts in both English and Spanish. Exhibit B-14 at 18-20.

18. The Student's instructional language was English. Since he is preverbal, prompts using a single word or sign would be best. Exhibit B-14 at 1; and Testimony of Dr. Klein.
19. On November 15, 2006, the PPT met to review the triennial evaluations. The Student remained eligible for special education under the multiple disabilities category. Continued direct OT and PT services were recommended. Ms. McDonald, the Student's teacher at ACES, reviewed the results of his work profile assessment. One-to-one assistance was needed in all activities and at all times. The PPT agreed to continue the June 15 IEP and schedule an annual review in June 2007. Exhibit B-18; and Testimony of Ms. Grant.
20. Board staff, including Dr. Klein, Ms. Grant and Ms. Brancato visited ACES and observed the Student in his program there. The PPT found the placement at ACES appropriate. Testimony of Ms. Grant.
21. On February 9, 2007, the PPT met to review and revise the IEP. Id.; and Exhibit B-20. The PPT team discussed moving M. from ACES to East Hartford, but because the Mother said that her landlord wanted her to leave soon and she was not sure of their continued residence in East Hartford, the team decided to reconsider the placement issue in June. The PPT made this decision because they did not want the Student to have too many transitions in a short period of time. Id.
22. Ms. Grant is responsible for supervising the programs of all East Hartford special education students who are placed out of district. She also has expertise as a bilingual teacher and school psychologist and is called in to evaluate students and develop programs relating to English proficiency. Ms. Grant spoke to M. in Spanish and English and saw no difference in M.'s response. If prompting the Student in Spanish were helpful, the Board could provide it. Prompts in Spanish could be used by any of the paraprofessionals including David Case. They would be used if the Student did not comply with prompts in English. Testimony of Ms. Grant.
23. The Mother expressed her desire to keep the Student at ACES because he does not do well with transitions and she was afraid he would regress. Testimony of Mother and Exhibit B-20.
24. On February 14, 2007, Dr. Alerte wrote a letter at the Mother's request recommending continued placement at ACES rather than in EHHS. He based the recommendation on M.'s progress at ACES and their knowledge of his needs, as well as the Student's profound difficulty with tolerating change. Exhibit B-21; and Testimony of Dr. Alerte.
25. On June 14, 2007, the PPT met at EHHS. The Mother attended with an attorney. Two staff members from DMR attended. Dr. Klein, Ms. Grant and Ms. Brancato

attended for the District. ACES staff participated by telephone. The Student and his sister also attended. The Mother provided the team with Dr. Alerte's letter. Exhibit B-26.

26. The purpose of the meeting was to conduct an annual review, develop an IEP and discuss transition planning for the Student's final year of education. Id. At that time, the Mother indicated that the family would remain in East Hartford. The PPT recommended implementing the IEP (a program at EHHS in the Realities program), an ESY at ACES and a one-to-one paraprofessional. Id.
27. ACES was recommended for the summer program because the East Hartford ESY program was not held at EHHS and the staff was different than the regular school year program. Id. The Mother was adamantly opposed to placement at EHHS and also wanted the IEP to require a bilingual paraprofessional. Id.
28. The team did agree with the Mother's request that an East Hartford paraprofessional work with M. at the ACES summer program so that M. would have a familiar face in the EHHS program in the fall. The PPT recommended that the East Hartford paraprofessional transition with M. at ACES during the latter two weeks of the ESY program. Id. at 2.
29. Ms. Brancato has nearly 29 years of experience as a special education teacher, including 13 years teaching the medically fragile students. Currently she works with ages 15 to 21 in her classroom, which has six children, five paraprofessionals. All of the students participate in some regular education classes. Testimony of Ms. Brancato.
30. Her class, which is part of the Realities program, has students with cognitive levels ranging from six months to 4-5 years old. Four of the six students are non-verbal, one speaks but is difficult to understand and the other student tries hard to talk. The language spoken in class is English, but they work in some Spanish words, including days of the week, numbers and greetings. Two of her students have Spanish spoken at home. Id.
31. Her class follows a schedule beginning with arrival at 7:30 a.m. The Students are met at their van transportation at a school entrance, which is very close to her classroom. The paraprofessionals assist the students in putting away coats and belongings and communication books from home. The first part of the day is taking care of the students' hygiene needs, followed by an OT activity. Next is morning calendar and pledge of allegiance. Some students leave the classroom to sell water throughout the building. The students have art as a regular education class, which is currently working on shapes and colors. The students also have gym class, which is several classes together with a variety of activities. Students can choose an activity to participate in. PT and OT therapists help to make the activities appropriate for the students, three of whom use wheelchairs and walkers. Id.

32. The students have lunch period in the cafeteria where they have two tables. The regular education students like to interact with her students. Some of her students don't eat lunch in the cafeteria because of special needs—one is tube fed in the nurse's office, one is on a liquid diet and one is on a limited diet, but they all go along with the others for lunch period. M. would be able to go through the lunch line with assistance and choose what he would like to eat. Id.
33. After lunch, the students return to her classroom for hygiene as needed, followed by vocational jobs, music and leisure skills. There are trips into the community to the library, recycling center, mall and other places. The students travel by city bus or by van transportation. Every student has a job, such as sorting, matching laundry, using switches to make cake mixes or smoothies or play music. Id.
34. Students can also participate in after school activities, such as dance club, unified sports and step team. Paraprofessional support and transportation is available after school. Paraprofessional support, but no transportation, is also offered for evening events at school, such as dances and sports events. Id.
35. Transportation from M.'s home in East Hartford to ACES in Hamden takes approximately one hour each way. The ACES program starts at 9:00 a.m. and ends at 2:30 p.m. Testimony of Ms. Grant; and Exhibit B-31. It does not have any non-disabled students at its schools. M. would have a longer school day at EHHS and opportunities for interactions with non-disabled peers during and after the school day. Testimony of Ms. Brancato.
36. Ms. Brancato also works with the Realities transition coordinator, Ms. Dutton, to develop portfolios for the students to present to prospective adult programs. Id.; and Testimony of Ms. Dutton. The contents of the portfolios include work experiences and vocational training, community experiences, transition planning and pictorial data. Exhibits B-30 and B-32. M. would fit in well with the Realities program. He would have a period of adjustment, but he will transition well, as have her other students. David Case, one of the paraprofessionals in Ms. Brancato's classroom spent several weeks with M., traveling on the van to and from ACES and spending the day with M. for two weeks in July in his ESY program for the month of September in his regular program at ACES. Mr. Case was able to learn about the Student's program and how to provide for his needs. Mr. Case is very capable and excellent with students with behavior problems. Testimony of Ms. Brancato.
37. Since M. will be living in East Hartford after June 2008, there is the opportunity to see what he needs for adult programs. East Hartford can better assess his needs than ACES in Hamden. Testimony of Ms. Grant. Ms. Dutton is a special education teacher who focuses on transitioning students from high school to post high school programs. She has approximately 15 years experience at EHHS and has worked with 15-20 classes in transition. Testimony of Ms. Dutton. From age

18-21, the focus is on vocational, independent living and inclusion in the community. Id. She worked with Ms. Brancato to develop a transition plan for M. Id.

38. Ms. Dutton spent a total of about two working days reviewing M.'s IEP and meeting with staff. M. needs to become familiar with his community and his community needs to know him. There would be weekly outings in the community with specific objectives. Examples are learning to recognize a place, such as Stop & Shop, staying with the group and increasing stamina by walking and attending to a task. Id. They learn to use the city bus, where drivers know her students by name. They also learn to use the ADA van, which picks students up at their homes with paraprofessionals. On Wednesdays they go to Shaw's, where the manager and staff know her students. Id.
39. Ms. Dutton works directly with adult service providers prior to the student's graduation, including the DMR (now DDS) transition coordinator. David Case is trained as a job coach and, in that capacity, Ms. Dutton supervises him. He is well qualified, has a bachelor's degree and trains others as job coaches. Id. Ms. Dutton can provide prompts in Spanish if needed. She can also instruct others on Spanish prompts. Id.



## CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that M. is a child with multiple disabilities. 34 C.F.R. Section 300.8(c)(7) provides:

Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

2. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207. The Parent has not alleged any procedural violations. As to the second prong of the inquiry: “IDEA requires only that school districts provide an ‘appropriate’ IEP, gauged by whether the IEP is ‘sufficient to confer some educational benefit.’” Id. In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2<sup>nd</sup> Cir. 1997). In this case, the Parent is not challenging the IEP goals and objectives, but only the placement.

3. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. Board of Education of the Hendrick Hudson Central School District v. Rowley, supra., 181; 34 C.F.R. Section 300.114(a). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.114 through 300.120; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. Id. “Least restrictive environment” is defined as follows under IDEA:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such

that such education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. Sec. 1412(a)(5); 34 C.F.R. Sec. 300.114(a). FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002).

4. Section 300.116(b) provides: "The child's placement—(1) is determined at least annually; (2) is based on the child's IEP; and (3) is as close as possible to the child's home." In this case, the PPT developed an IEP for the Student for his final year of high school at his home school, which provided for special education in the medically fragile classroom. Part of his school day is provided in the regular education classes and lunch with non-disabled peers and part of the day is spent in the special education classroom. Throughout the day, the Student is provided with one-to-one assistance of a paraprofessional.

5. ACES school in Hamden is an hour's driving distance from the Student's home. The Board argues that placement at ACES does not provide a meaningful education in the least restrictive environment as required by the IDEA. 20 U.S.C. Section 1412(a)(5); 34 C.F.R. Section 300.114 (2006 Rev.). The Board offered substantial evidence that placement at EHHS would provide the Student with meaningful educational benefits in his home school with opportunities for interaction with typical peers in art class, at lunchtime and during extracurricular activities. The program would also offer the Student opportunities for transition to adult services in his home community.

6. The Board's programs offered the right balance between special education and regular education. R.L. by Mr. and Mrs. L. v. Plainville Bd. of Ed., 363 F.Supp.2d 222 (D.Conn. 2005):

Because the statute expresses that disabled children should be educated alongside non-disabled peers 'to the maximum extent appropriate,' special education services must be provided in the least restrictive environment consistent with the child's educational plan. Only when "'the nature or severity' of a child's disability is such 'that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily' should a child be segregated." Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (2d Cir. 1998) (quoting 20 U.S.C. § 1412(5)).

In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an individualized education program. The IEP is intended to be "the result of collaborations between parents, educators, and representatives of the school district." Lillbask v. Connecticut Dep't. of Educ., 397 F.3d 77, 2005 U.S. App. LEXIS 1655, (2d Cir. Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential, it must

provide "meaningful" opportunities and the possibility for more than "trivial advancement." *Walczak*, 142 F.3d at 130.

There is substantial evidence in the record that the Student does not require an out-of-district placement in order to be educated. The evidence does not support the Parent's claim that the Student cannot be transitioned successfully to EHHS. The Student had numerous successful transitions to different schools throughout his years in Hartford public schools, CCMC school, ACES Village School and ACES high school.

7. The Court of Appeals has also cautioned that meaningful educational benefits are "not everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2<sup>nd</sup> Cir. 1989). The Parent claims that the Student requires a Spanish-speaking paraprofessional in order to receive FAPE. His IEPs at ACES have not required a bilingual paraprofessional. The Student is pre-verbal and his current class at ACES is instructed in English. His paraprofessional there, who is bilingual, testified that she spoke to the Student in English and, only when he did not comply, did she use Spanish. East Hartford is able and willing to provide similar resources for its paraprofessionals to have available words in Spanish for prompting if needed. The paraprofessionals do not need to be bilingual in order to do this. Further EHHS has staff who speak Spanish and can assist in communicating with the Mother.

#### FINAL DECISION AND ORDER

1. The program proposed by the Board on June 14, 2007 for the 2007-2008 school year at EHHS offered the Student a free appropriate public education.
2. The Board was not required to continue the Parent's preferred placement at ACES in order to provide the Student with a FAPE for the 2007-2008 school year.
3. The Student does not require a bilingual paraprofessional in order to receive FAPE.