

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Bloomfield Board of Education v. Student

Appearing on behalf of the Board: Attorney Christine Chinni, Chinni & Meuser, 30 Avon Meadow Lane, Avon, CT 06001

Appearing on behalf of the Father: *While the Father was sent notice of the prehearing conference and the hearing, the Father was not present at the scheduled prehearing teleconference and did not appear at the hearing.*

Appearing on behalf of the Mother: *Pro se*

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student requires an outplacement to receive a free appropriate public education [FAPE] during the 2008-09 school year.
2. If so, where shall the Student be placed to receive FAPE.

PROCEDURAL HISTORY:

The Board filed this request for hearing on July 17, 2008, and a prehearing conference convened on July 30, 2008. The Board's attorney and the Mother participated in the prehearing conference. The Father did not participate in the prehearing conference. At the prehearing conference, the Mother was informed of the process for submission of exhibits and witness lists as well as the general procedure for the formal hearing.

The hearing proceeded on one hearing date on August 29, 2008. The Board's attorney and the Mother were present at the hearing. The Father did not appear at the hearing.

At the hearing the mailing date of the decision was extended ten days to September 12, 2008, to allow the parties an opportunity to submit briefs/closing arguments no longer than five pages on or before September 3. The Board submitted a brief; neither parent submitted a closing argument/brief.

The witnesses who testified on behalf of the Board were Deirdre Osypuk, Board Director of Pupil Services; Louise Ann Roberto, Board Transition program special education

teacher; Tracy Youngberg, Board principal of Carmen Arace Intermediate School and Sam Galloway, Board principal of Carmen Arace Middle School.

The Mother testified on her own behalf.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

SUMMARY:

The 12-year-old seventh grade Student has received education in the Board's Transition program since the 2007-08 school year, which has provided a reward system and behavioral monitoring to work towards inclusion in the regular education classroom. Despite this program, the Student's behavioral difficulties increased. The Board recommended that the Student be placed in an out of district therapeutic placement. The Parents refused this recommendation. The Board brought this hearing request to override the Parents' lack of consent to the proposed private placement.

FINDINGS OF FACTS:

1. The Student is 12 years old and in seventh grade at the Board middle school. The Student resides with his Father in the Board district. The Mother resides in Manchester. [Testimony Mother, Exhibit B-18]
2. The Student is identified as eligible for special education as a student with an Emotional Disturbance. [Exhibit B-18]
3. Prior to the 2007-08 school year the Student was not enrolled in the Board schools. Rather, the Student was enrolled in the Manchester school system where the Mother resides. In Manchester the Student was placed in the alternative STEP program and was removed from general education classes after an increase in unsafe and inappropriate behavior. [Testimony Board director, Exhibits B-1, B-2, B-3, B-4, B-6B-7, B-8]
4. The Manchester Board had completed an evaluation of the Student in April 2006. In the psychological evaluation it was noted that the Student was in the low average range of intelligence classifications. He attained a verbal comprehension index of 96, a perceptual reasoning index of 82, working memory index of 88 and processing speed index of 94. The Behavior Assessment System for Children (BASC) teacher rating scales rated him as clinically significant on hyperactivity, aggression, conduct problems, anxiety, depression, somatization, atypicality, withdrawal, adaptivity, externalizing problems, internalizing problems and behavioral systems. She also rated the Student as at-risk for attention problems, learning problems, social skills, study skills, school problems and low at adaptive

- skills. The Mother did not return the BASC questionnaire to the Manchester school. [Exhibit B-3]
5. At the annual review in May 2007, while the Student was still enrolled at the Manchester schools, the members of the Planning and Placement Team [PPT] recommended that the Student continue placement in the STEP program. The IEP that was planned at this annual review provided for six hours of time with nondisabled peers out of the 30 hours of education per week. [Exhibit B-8]
 6. The Student moved into his Father's home and was enrolled in the Board schools for the 2007-08 school year. The Board staff was unaware that the Student was eligible for special education when the Student enrolled in the Board school, as they weren't informed by the Parents and did not receive the records from Manchester until early October. [Testimony Board director]
 7. When the Board became aware that the Student was eligible for special education, a PPT meeting was convened in October 2007 to review the Student's program. At the meeting, the PPT agreed that the Student should be placed in the Board's Transition program, which is similar to the Manchester STEP program. The purpose of the Board's Transition program is to help the students gain the social and emotional skills so they can earn and spend time in the inclusive environment, with the ultimate goal to be fully included in the regular education environment. The Transition program includes a reward system, with behavior checked every half hour so that the Student is monitoring his behavior. At the end of the week, the level is determined and the Student can earn inclusive classes. The Student was provided a counseling component which included group counseling, as well as a half hour of individual counseling each week. [Testimony Board director, Exhibit B-12]
 8. During the 2007-08 school year, the Student earned his way into the inclusive environment very quickly, but he couldn't maintain his behaviors in the regular education environment. His behavioral difficulties in the regular education environment included physical altercations, verbally arguing with teachers and sexual touching of female students. [Testimony Board director]
 9. In January 2008, the PPT reconvened to review and revise the Student's IEP. At that time, there were problems during transition from classes, so the PPT agreed that the Student would have a one to one aide to escort the Student to each mainstream class. [Testimony Board director, Exhibit B-14]
 10. In March, the Student's Transition classroom was changed because there were incidents of fighting and personality conflicts, and he was placed in the transition room with lower enrollment. While the Student was provided an escort, behavioral problems continued, even in the presence of the escort. He would continue to argue with other students and become physically aggressive. [Testimony Transition Room Teacher]

11. The PPT reconvened in April 2008, as the Student continued to exhibit inappropriate behaviors. At that PPT, the Board members of the team recommended that the Student be placed out of district due to his continued behavioral needs. The Mother did not agree with this recommendation, and requested that the Student remain at the Board school. The Board staff also offered van transportation as the Student was having a number of behavioral incidents on the regular school bus. The Parents refused this offer. [Testimony Board director, Exhibit B-16]
12. During the 2007-08 school year, the Student had more than 40 discipline incidents. The behavioral incidents included aggressive behavior, sexual harassment and inappropriate behavior. The Student touched the rear ends of three different girls, and kissed another one. He also engaged in several incidents of fighting, pushing and shoving. [Testimony Board intermediate school principal]
13. The PPT reconvened on May 30, 2008, to review/revise the Student's IEP. As of this time, the behavioral concerns had continued. The Board recommended that the Student be placed out of district due to the Student's increased behavioral needs. The Parents did not agree with this recommendation. [Testimony Board director, Exhibit B-17]
14. The serious behavioral concerns continued over the summer. The Student left three mocking and extremely vulgar messages on the Board transition teacher's personal home answering machine. The teacher has filed a formal police complaint against the Student for these actions. [Testimony Board Transition teacher]
15. The Board middle school principal, who also served as a Connecticut state trooper for 20 years, noted that it is highly unusual for any student to accumulate a disciplinary record like the Student's record. [Testimony Board middle school principal]
16. The Board administrators have grave concerns about what has occurred during the last school year, and believe that the Student would be safer and able to receive needed services in a therapeutic out of district placement. The middle school principal has spoken with the Student numerous times, and the Student shows no remorse regarding the incidents. Rather the Student exhibits denial, silence and blank stares when discussing disciplinary issues with Board staff. [Testimony Board middle school principal]
17. The Board requested this hearing as the staff felt they were not being successful with the Student, and his level of physical aggression and sexually inappropriate behavior was a concern. While the Board attempted to resolve this issue with the Parents, they were unable to. The Board seeks an out of district placement which

provides a strong clinical program with an on-site psychiatrist. The Board staff believes that the intense involvement of a psychiatrist is necessary as the level of his inappropriate behavior has been increasing. [Testimony Board director]

DISCUSSION/CONCLUSIONS OF LAW:

The Board has brought this action in accordance with the Individuals with Disabilities Education Act which provides for special education and related services to children with disabilities, from birth through age 21, seeking to override the Parents' lack of consent to a placement of the Student in a therapeutic setting.

In accordance with Regs. Conn. State Agencies Sec. 10-76h-8, written parental consent shall be obtained prior to private placement of the Student who requires or may require special education and related services. The Parents have not consented to the out of district therapeutic placement. While 34 C.F.R. Sec. 300.300 provides that boards cannot avail themselves of due process procedures to override parental consent for initial provision of special education and related services, initial provision of special education is not at issue in this case. Therefore, the Board has appropriately filed this action to override the Parents' lack of consent to the private placement.

It is a fundamental tenet of the IDEA that the students should be educated in the least restrictive environment to the maximum extent appropriate. The regulations provide that "[s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 CFR Sec. 300.114 Placement of a student in an out of district segregated placement is not taken lightly, as it is a very restrictive placement in the continuum of placements. The nature and severity of the Student's disability, however, necessitates this more restrictive placement.

It is understandable that the Mother is concerned about how the Student is viewed by others. But, while the Mother has testified that she wants the Student to have "some type of normalcy" and not to be singled out, the overriding concerns that the Student's disability is seriously impeding his ability to obtain educational benefit must be addressed. The Student is unable to obtain educational benefit at the placement at the Board school.

It has been demonstrated that the Student cannot obtain meaningful educational placement in the Transition program, and has been unsuccessful in the many attempts to include the Student in less restrictive settings. The Board has attempted to provide supplemental aids and services including counseling and a behavioral management plan and program without success. The Student's educational needs are inseparable from the therapeutic services that the Student requires to benefit from his education. Placement decisions must be determined based on the individual Student's unique needs and services and based on the Student's IEP. It is not appropriate for the Student to be placed in the in-school Transition program where he has demonstrated that he cannot obtain

educational benefit from this program. His unique needs are not met in that program. Rather, the Student shall be placed at a therapeutic private placement, such as Grace Webb or the Webb program so that he is able to obtain meaningful educational benefit.

FINAL DECISION AND ORDER:

1. The Student requires an outplacement to receive a free appropriate public education [FAPE] during the 2008-09 school year.
2. The Student shall be placed at a therapeutic private placement such as the Grace Webb School at the Institute of Living or the Webb School at Bloomfield.
3. The Parents lack of consent to this placement is overridden by this final decision and order.