

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Ridgefield Board of Education

Appearing on behalf of the Parents: Mother appeared pro se

Appearing on behalf of the Board: Attorney Nicole A. Bernabo
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646 Prospect Avenue
Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the program offered by the Board for the 2001-2002 school year provide the student with an appropriate program of special education?
2. Is the Board required to implement a specific methodology in a student's program to deliver speech and language services, such as the "Fast For Word" computer program requested by the Parents, for the student to receive a free appropriate public education (FAPE)?
3. Was the student denied speech therapy services for 18 months as claimed by the Parents? Is the Board required to reimburse the Parents for 10 days of auditory therapy and testing obtained in February 2002?
4. Does the diagnosis of central auditory processing disorder ("CAPD") qualify as an exceptionality under IDEA?
5. If so, is the Board required to provide the student with speech therapy for 90 minutes per week by a speech pathologist trained in auditory deficiency for the 2002-2003 school year in order for the student to receive FAPE?

6. Is the Board required to provide these services outside of the normal hours of the school day in order for the student to receive FAPE?
7. Does the Parents' consent to the IEPs have any impact on their claims?

PROCEDURAL HISTORY:

The Student's mother filed the hearing request on April 3, 2002. (Hearing Officer hereinafter HO Exhibit 1) A prehearing conference was scheduled on April 12. The Board attorney was reached by telephone, but the Student's mother could not be reached at either her work or home telephone. Later the mother called the Hearing Officer and apologized, stating that she was trying to hire an attorney. On April 18, the mother wrote to the Hearing Officer and requested a 30-day postponement of the hearing because she was unable to afford an attorney and she needed the time to prepare the case. The prehearing conference was rescheduled for April 25, at which time the hearing was scheduled for June 4 and 6 and the mailing date for the final decision was extended to July 1. The Parents filed 52 exhibits, designated herein as P-1-P-52. The Board filed 68, designated herein as B-1-B-68.

At the beginning of the first day of hearing, the parties were asked to identify exhibits to which there were objections. The Parents did not object to any of the Board Exhibits and all 68 were considered as full exhibits. The Board objected to Parent Exhibits P-28-P-31, P-37, P-49 and P-51, which were marked for identification only subject to later proffer during the hearing. P-28 and P-29, which are two articles written by Jane R. Madell, Ph.D., Director of the Hearing and Learning Center at Beth Israel Medical Center, were admitted over the Board's objection during the mother's testimony. Parent Exhibit P-30 was not admitted; P-31 was admitted after the Board withdrew its objection. P-37, a tape recording of the January 30, 2002 PPT made by the mother, and P-51, an article from the American Speech-Language-Hearing Association, were not admitted. In addition to the mother, the Student ("N.") testified. The Board called Karen Dewing, School Psychologist, Mary Ellen Nasinka, Speech-Language Pathologist, and Jean Jaykus, N.'s fifth grade teacher. At the conclusion of the hearing, the parties requested until June 19 to file simultaneous briefs. The request was granted and the decision deadline was extended to July 8, 2002 by agreement of the parties. The deadline was further extended to July 12 in order to obtain copies of 10 Board Exhibits that were missing from the Hearing Officer's exhibit book.

SUMMARY:

The student has been identified as eligible since she entered the LEA in grade one. She was completing grade 5 at the time of the hearing. In grade one, the student's exceptionality was speech and language impaired. In grade two, the student was classified as learning disabled and speech and language impaired. In grade three, the student changed schools within the LEA. Her exceptionality was changed to only learning disabled. The Parents claim that the current school attended by the student does not offer the same services as the former school in regard to speech therapy. The Board

argues that the student met the goals of her IEP and that she would not qualify for special education services without the learning disabled classification. Although the Board didn't think the speech therapy was necessary, nevertheless the PPT offered 15 minutes per week of speech therapy in grade four and 30 minutes per week in grade 5. The Parents claim there was disagreement at the January 30, 2002 PPT regarding the termination of speech therapy and at the April 1, 2002 PPT, which recommended 1.4 hours/week of special education in the resource room and 0.7 hours/week of speech therapy for grade six. (Exhibits P-38 and P-47) The Board filed proposed findings of fact, conclusions of law and order. The Parents filed a narrative statement of their closing argument. 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.

FINDINGS OF FACT:

1. N. is currently 11 years old (DOB 1/22/91) and has been enrolled in the LEA since first grade. (Testimony of Mother) She was evaluated in the area of speech and language in November 1996 and classified as eligible for special education and related services in kindergarten in her former school district in New Jersey under the category of speech and language impairment. (Exhibits P-1 and B-2)
2. In September 1997 a PPT was held when N. started school in the LEA. The New Jersey evaluation and recommendation for speech therapy twice weekly for 30 minutes was continued for N. in grade one. The exceptionality was speech and language impairment. N. was in regular education for the remaining school hours. The mother signed her consent to the placement. (Exhibits P-3 and B-6)
3. In November 1997 N.'s classroom teacher made a special education referral for academic and social areas of concern. (Exhibit B-7) The PPT met on January 30, 1998 to review N.'s program and perform educational and psychological testing. (Exhibit B-15) As a result of the evaluation, N. was classified as learning disabled. (Exhibits B-18 to B-21; P-5 through P-7) It was recommended at the April 24, 1998 that she receive 30 minutes per day of Learning Center and continue speech therapy twice weekly for 30 minutes plus 6 sessions of speech therapy in the summer. The learning disability was ranked first and the speech and language impairment second. (Exhibits B-22 and P-8)
4. On April 19, 1999, a PPT was held to do an annual review of N.'s second grade and plan for third grade. (Exhibits B-29 and P-9) N.'s exceptionality was learning disabled only. (Id.) The recommended placement was continued as 5 hours/week of special education and one hour/week of speech therapy. (Id.)
5. N. moved within the district and began attending a different elementary school (Scotland) in grade 3, the 1999-2000 school year. (Exhibit P-11 and Testimony of Mother)

6. In March 2000 the Mother gave written consent to discharge N. from speech therapy at the recommendation of her teachers because she had met her goals. (Exhibits P-10 and B-3 at p. 5) It was determined by the PPT that N. would be better served with working on her goals in the learning center. (Testimony of Karen Dewing, School Psychologist, and Maryellen Nasinka, Speech and Language Pathologist)
7. On June 8, 2000 an annual review PPT meeting was held. (Exhibits P-11 and B-35) The recommendations were 2 hours and 40 minutes of learning center per week, 30 minutes of learning center consultation per week and to perform a triennial evaluation. (Id.)
8. At the end of grade three, N. received grades of B in Reading, English, Spelling and Social Studies; and grades of C+ in Math and Science. (Exhibits B-37 and P-13)
9. A multidisciplinary evaluation was done in November and December 2000. (Exhibits B-39 and P-15) N.'s score on the Verbal Scale IQ was 76 and on the Performance Scale IQ 108. This discrepancy of 32 points is seen in only 1% of nine year olds who have taken the WISC-III. A full scale IQ was not reported because it would be meaningless. (Id. at page 3) N.'s nonverbal abilities tested in the average range, while her verbal abilities were borderline. These results were similar to the testing done in 1997. Behavior rating scales completed by the classroom teacher indicated significant social-emotional and behavioral issues. N. showed progress and growth since her previous evaluation. (Testimony of Dewing)
10. The PPT met on February 23, 2001 to discuss the triennial evaluation. (Exhibits B-42 and P-16) N.'s learning center hours were increased to 3 hours and 40 minutes per week. A third goal was added to address reading and spelling. (Id.)
11. N.'s mother was asked to and did sign on April 28, 2001, a release for N.'s clinical psychologist, Dr. Nathans, to provide social/emotional information to the school system. (Exhibit B-43)
12. On May 17, 2001, an annual review PPT meeting was held. (Exhibits B-44 and P-18) Special education was increased to four hours per week and 30 minutes of consultation time was continued. Her goals were reduced to two: to complete the fifth grade academic program and to demonstrate mastery of math skills at fifth grade level. (Id.)
13. On May 23, 2001, the mother called the school principal and reported that N. complained of being teased on the bus and at school throughout the year. (Exhibit B-47) Ms. Dewing spoke with N.'s psychologist about the issue and the principal spoke with the bus driver and manager, as well as with N.'s classroom teacher and a student. N. had not previously complained to anyone at school or to the bus driver. (Id.)
14. N.'s grades at the completion of grade four were B in social studies, C+ in math and C in reading, English, spelling and science. (Exhibits B-48 and P-20) She mastered

her goals on her IEP. (Exhibit P-19) Her fourth grade teacher had a reputation as a stricter grader than N.'s third or fifth grade teachers. (Testimony of Ms. Dewing)

15. In August 2001 N. was referred to Danbury Hospital Department of Pediatric Rehabilitation by her clinical psychologist, Dr. Nathans, for a speech and language evaluation. (Exhibits B-50 and P-21) Dr. Nathans indicated in the referral letter that she was treating N. for depression, anxiety and peer problems. (Id.)
16. Nadine Essency, MS, Speech and Language Pathologist at Danbury Hospital, conducted an evaluation of N. and issued a report on August 29, 2001. She did not testify at the hearing because the Parents could not afford her fee. The report was admitted over the objection of the Board. (Id.)
17. Ms. Essency reviewed N.'s current IEP and other unspecified school documents provided by the Mother. Ms. Essency administered four tests to N. over two sessions for a total of 2 hours and 40 minutes. (Id.) She recommended 45 minutes of direct speech-language services and 15 minutes of consultation with classroom instructors and learning center personnel. (Id.) She did not speak to any of N.'s teachers or observe her at school. (Testimony of Dewing and Nasinka)
18. At the Mother's urgent request on August 30, 2001, a PPT meeting was held on September 14, 2001. (Exhibits B-50 at page 6; B-51; and P-23) The parties disagree as to whether the Mother refused speech therapy services at this PPT. In any event the report was discussed and the Mother requested an auditory evaluation. (Exhibits B-51 at 4; P-23 at 4; and Testimony of Mother, Dewey and Nasinka) The PPT felt that an auditory processing test was not necessary since N. had previously completed a hearing test and the list of recommendations for students with auditory processing disorders was being followed at school. (Exhibits B-51 and P-23) The PPT denied the Parents' request that the school pay for the central auditory processing evaluation. (Exhibits B-54 and P-24)
19. In October 2001 N. was tested with the other fifth grade students on the Otis-Lennon School Ability Test ("OLSAT"). Her scores were in the average range overall, average in the nonverbal area and below average in the verbal area. (Exhibits B-52 and P-32)
20. In December 2001 the PPT met at the request of the Parents. Her classroom teacher Mrs. Jaykus, reported that N. had improved since the beginning of the year. Her biggest concern was reading. N. was receiving 2½ hours per week of reading instruction by the literacy team. In addition, the special education teacher, Mrs. Sass, worked with her in the regular education classroom on math. Writing mechanics and skills were fine in the classroom, but N. did not do as well on standardized tests. (Exhibits B-53 at 4; and P-36 at 4) The team reviewed a report from Jane R. Madell, Ph.D., Director of the Hearing and Learning Center, Beth Israel Medical Center. (Exhibits B-55 and P-26) Ms. Dewing had also spoken to Dr. Madell prior to the PPT, but she offered no additional input to what was stated in the report. The

recommendations were identical to those in a report for another student, which Ms. Dewing reviewed from Dr. Madell. (Testimony of Dewing) The PPT felt most of the recommendations were already being followed in N.'s program. The PPT agreed to add 15 minutes per week of speech therapy to address auditory memory skills and added an IEP goal to address that. The PPT agreed to pay for Dr. Madell's auditory evaluation, but refused the Parents' request to pay for auditory training with Dr. Madell, which Parents had scheduled for February 2002. The school did offer a tutor while N. was out of school for the training. (Exhibits B-53 at 4; and P-36 at 4)

21. On January 30, 2002 a PPT meeting was held to review N.'s progress. Speech therapy was increased to 30 minutes per week, special education learning center was decreased to 2 hours per week and a vocabulary goal was added to the IEP. (Exhibits B-58 and P-38) Ms. Jaykus reported that N.'s grades were all B's and C's. Reading and focusing were her difficult areas. She was reading at grade level, but struggled with vocabulary. (Id. at 4) Ms. Nasinka reported that N. did not like coming to speech therapy, that she had no difficulty remembering directions or recalling sentences and that her only area of weakness was vocabulary. (Id.) Ms. Sass reported that she felt N. did not need her direct services in math because her skills were good and she had mastered 3 of her 4 goals. Ms. Sass offered consultative services and direct help with vocabulary for N. (Id.) Ms. Sass and Ms. Nasinka sent notes to the Mother explaining what would be done for N. (Exhibits P-39 and P-40) Ms. Nasinka has a certification for clinical competence in speech and language pathology and is licensed in this area by the State of Connecticut. She has been employed in Ridgefield for 8 years. She is qualified to offer direct and indirect speech and language services to N. and to evaluate those services. (Testimony of Nasinka and Dewing)
22. Dr. Madell sent a copy of N.'s auditory training report to the school principal on February 21, 2002. (Exhibit B-61) Among the recommendations in that report were that N. be evaluated to see if Fast For Word would benefit her in improving auditory processing skills. (Id. and Exhibit P-41) The LEA had tried this computer program in the past and discontinued its use after it was decided it was not effective. (Testimony of Dewing)
23. An annual review PPT meeting was held on April 1, 2002. (Exhibits B-62 and P-47) Ms. Jaykus provided N.'s progress for the third quarter of the school year. (Exhibits B-63 and P-46 at 1-2) Her grades were A in spelling, math and science and B in reading, English and social studies. The narrative page indicated good progress was made for the year. In math she was currently above average and was on a consultative basis with special education. (Id. and Testimony of Jaykus) Ms. Nasinka reported that N. scored in the average range on an expressive language test and recommended continuing speech therapy to assist N. in the transition to middle school in grade 6. (Id. and Testimony of Nasinka) The PPT recommended two periods of resource room per week (1.4 hours) and one period of speech therapy per week (0.7 hours). (Id.)

24. The only documented disagreement at a PPT meeting was in December 2001 when the team refused to pay for the auditory training. Although it had initially refused to pay for the auditory evaluation in September, that decision was changed in December. The Parents are seeking reimbursement of \$1,330.00 for the auditory training by Dr. Madell (Exhibit P-42) and the provision of Fast For Word, the cost of which is not specified. (Testimony of Mother) Both auditory training and Fast For Word are methodologies for addressing auditory processing deficiencies. The age range for Fast For Word is 5-11. N. is currently 11 ½ years of age. (Testimony of Dewing and Nasinka)

CONCLUSIONS OF LAW:

1. 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 10-76a et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. She meets the criteria for identification as a student with a specific learning disability. IDEA Section 1401(a); 34 C.F.R. Section 300.7(c)(10), which provides:

(i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage.

The Parents’ claim that the Board has failed to classify N. as having a central auditory processing disorder must fail. There is no exceptionality specific to that diagnosis under IDEA. See generally, 34C.F.R. Section 300.7. The exceptionality of specific learning disability encompasses N.’s diagnosis.

2. The Parents appear to challenge the change in the student’s exceptionality from speech and language impairment and specific learning disability to only the latter category, which occurred in the triennial evaluation, but it was never discussed at a PPT. In any event, both classifications require that there be an adverse impact on educational performance. Further the Board has discretion in how to provide speech and language services to an eligible student. The Board followed the State Department of Education Guidelines for Speech and Language Programs,

Determining Eligibility for Special Education Speech and Language Services, Vol. II (1999), which provides in relevant part:

Determining that a child is eligible for general or special education speech and language services does not automatically mean that the [Speech and Language Pathologist] must be the sole, or even the primary, provider of direct services to that child. The school SLP may use support personnel and/or provide consultative/indirect speech and language services. . . .

(Id. at 9. See also generally Id. at 7-9) The Board, through the testimony of Ms. Nasinka, a state certified SLP, met the burden of proving the appropriateness of N.'s classification as learning disabled and the comprehensive nature of the services, including speech therapy by Nasinka, provided to N. Moreover N. showed progress in classroom performance in all areas.

3. The Board has the burden of proof on the appropriateness of the program for 2001-02 and the proposed program of 2002-03. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs. Section 10-76h-14. 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, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." (Id. at 206-207) The Board must establish these by a preponderance of the evidence. Walczak v. Florida Union Free School District, supra. There is no claim of a procedural violation and the record does not reveal any. The IEPs provided N. with educational benefits in that she progressed to the point where she was at grade level in reading.
4. The Parents contention that the Board must accept the recommendations of their private evaluators must also fail. The Regulations of Conn. State Agencies, which govern independent educational evaluations, provide in Section 10-76d-9(c)(2) in relevant part:

Parents have the right to an independent evaluation at public expense if the Parents disagree with an evaluation obtained by the board of education. However, the board of education may initiate a due process hearing conducted pursuant to Section 10-76h-1 of these regulations to show that its evaluation was appropriate. . . .

(Emphasis added.) In this case the Parents did not disagree with the evaluations done by the Board. Further the Board reimbursed the Parents for the evaluations. There is nothing in State or federal law that requires the Board to accept all recommendations of outside consultants.

5. The Board is obligated to evaluate a student for all suspected areas of disability. 34 C.F.R. Sections 300.320 and 532(g). The Board is, however, entitled to an evaluation to be performed by qualified professionals who are satisfactory to school officials. Dubois v. Conn. State Board of Education, 727 F.2d 44, 48 (2d Cir. 1984). The evaluations done by the Board here were the triennial evaluations that were performed by qualified professionals with appropriate state licenses and certifications. Nor is there any requirement that the Board hire consultants selected by the Parents. Although the Parents challenged the qualifications of the Board's witnesses, there was no evidence offered to support this claim.
6. The Board is obligated to consider any independent evaluation obtained by the Parents in any decision regarding FAPE for the student. 34 C.F.R. Section 502(c). The Board complied with this requirement at the September and December 2001 PPT meetings. The Parents were reimbursed for the independent evaluations.
7. Since the programs offered to N. provided FAPE, the Board has no responsibility to provide auditory training with Dr. Madell and Fast For Word. The law is clear that methodology is not subject to dispute. Rowley, supra; Lachman v. Illinois State Board of Education, 852 F.2d 290, 297 (7th Cir. 1988). See also Renner v. Board of Education of Ann Arbor, 30 IDELR 885 (6th Cir. 1999). The IDEA guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2d Cir.1989).
8. The Board is required to provide related services and equipment "which enable a disabled child to remain in school during the day and provide the student with 'the meaningful access to education that Congress envisioned.'" Cedar Rapids Community School District v. Garret F., 119 S.Ct. 992 (1999). See also IDEA Section 1401(a). There was no evidence in the record that auditory training or direct speech therapy for 90 minutes per week is necessary for the student to have meaningful access to education. The Board has sustained its burden of proof that speech therapy services, including auditory training, beyond what is in the IEP, are not necessary to provide FAPE at this time. The Board, therefore, is not obligated to provide them or reimburse the Parents for the costs of private therapy.

FINAL DECISION AND ORDER:

1. The 2001-2002 program was appropriate in that the student received an educational benefit sufficient to provide FAPE. There is no reason to modify the IEP for 2002-03 by requiring 90 minutes per week of speech therapy.
2. The Board's failure to offer services outside the regular school hours did not deny the student FAPE.
3. The Parents are not entitled to reimbursement for the costs associated with the auditory training provided by Dr. Jane Madell.

4. The Board is not required to purchase the Fast For Word program since it is not needed for the student to receive FAPE.
5. The Board has shown that additional direct speech therapy services beyond what is already provided are not necessary to provide FAPE to the student.
6. The Parents' claim for denial of speech therapy for 18 months prior to the filing of the due process request in April 2002 is denied.