

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student S. v. Regional School District No. 13

Appearing on behalf of the Parent: Parent (Pro se)

Appearing on behalf of the Board of Education: Attorney Susan Freedman
Shipman & Goodman, LLP
One American Row
Hartford, CT 06103-2819

Appearing before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Has the Board offered an appropriate program for S. for the 2002-2003 school year; specifically, does ACES' elimination of a 4.5 hour Saturday educational program require that the school district provide those 4.5 hours of educational programming in some other way?

PROCEDURAL HISTORY:

This hearing was requested on May 29, 2002. The prehearing conference was convened on June 5, 2002. The hearing convened on June 25, 2002. The parent called Fred Senechal of the Department of Mental Retardation as her witness. The Board of Education called Susan L. Viccaro, Director of Pupil Personnel Services for Region 13 as their witness. The hearing officer called S.'s mother as a witness. The record was closed on June 25, 2002.

SUMMARY:

S. is a twelve year old student who has been identified as having multiple disabilities. She has been placed at ACES [Area Cooperative Educational Services, the regional educational service center serving south central Connecticut] Village School by the Board since the 1998-1999 school year. During the second half of that school year, ACES requested that S. begin attending their Saturday morning program so that S.'s family could attend a signing class. During the 1998-1999 school year, the program was held on most Saturday mornings. During the 1999-2000 school year, the Saturday class met approximately 28 times. The program was reduced by ACES to 20 Saturdays per 10 month school year for all participating students for the 2000-2001 and 2001-2002 school

years. In the 2001-2002 school year, S.'s educational program consisted of 33 hours of programming. In January, 2001, ACES decided to eliminate the Saturday program for the 2002-2003 school year. S.'s mother has requested that the time S. spent in the Saturday program be made up. The Board members of the PPT believe that S.'s educational program can be appropriately delivered and her goals and objectives met in the proposed 28.5 hour per week educational program.

FINDINGS OF FACT:

1. S., a student who is eligible for special education services as a student with multiple disabilities, received special education and related services in Board schools until the 1998-1999 school year during which her mother requested that S. be placed out of district. After several programs were considered, S.'s mother chose (with the agreement of the PPT) the ACES Village School because she felt it could provide the most appropriate program; this was at least in part because they offered a total communication program. At a PPT convened on November 23, 1998, S. was placed at the Village school for a one month diagnostic period which later became a permanent placement. (Exhibits B-11, B-12, Testimony of Susan Viccaro)
2. Due to S.'s need to improve her communication skills, ACES recommended that S. participate in their Saturday program to enable S. and her family to attend signing classes. At a PPT convened on January 20, 1999, the ACES team noted that this recommendation was not made for regression and recoupment purposes. S. attended the Saturday program for the school years 1998-1999 through the 2001-2002 school years. (Exhibit B-15)
3. As part of her educational program, S. received related services and extended school year services in addition to the extended week program for the school years 1998-1999 through the 2001-2002 school years. (Exhibits B-23, B-34, B-40, B-44, B-50, B-55, B-59, B-66, B-69, Testimony of Susan Viccaro and S.'s Mother)
4. At some point after S. began attending the Saturday program, the signing class for families was moved to a Tuesday morning. S.'s Saturday program became a continuation of her Monday through Friday educational program although S. had different teachers on Saturday. The program met from 8:30 a.m. to 1:00 p.m. (Testimony of Susan Viccaro and S.'s Mother)
5. During the 2000-2001 school year, the Saturday program was reduced by ACES for all participating students from 28 sessions over a ten month school year to 20 sessions per ten month school year (this continued through the 2001-2002 school year). The ACES staff felt that this reduction in hours would not compromise S.'s program in any way. At that time, the Board recommended that S. begin participating in inclusive afternoon programming at the Board elementary school for approximately one hour per week on Wednesday afternoons (when the Village School has an early dismissal). This addition to S.'s IEP began in late fall, 2000 and continued through the 2000-2001 school year. For the 2001-2002 school year, S. was placed in a similar one hour per week program at the Board middle school. For the 2001-2002 school

year, S. received a total of 33 hours per week of educational programming. (Exhibits B-44, B-53, B-59, Testimony of Susan Viccaro and S.'s Mother)

6. In a memo dated January 12, 2001, ACES notified directors of pupil services and special education in their member districts that the Saturday program would be discontinued for the 2002-2003 school year. The memo states, "The enrollment has been steadily declining for at least eight (8) years, we believe due to greater community options for students and perhaps additional respite care." (Exhibit B-47)
7. At a PPT convened on May 13, 2002, the team met for S.'s annual review and to plan for the 2002-2003 school year. The proposed IEP called for S.'s continued placement at the ACES Village School and an educational program consisting of 28.5 hours per week. All members of the team, including S.'s mother, agreed on the goals and objectives, the provision of related services, and S.'s placement. In addition, all team members including S.'s mother agreed that S. had made progress while in the ACES program. Since Saturday programming was being discontinued, the team asked ACES staff to review S.'s progress and records to determine whether, due to the discontinuation of the Saturday program, S. required those educational hours to prevent regression. (Exhibit B-66)
8. The PPT reconvened on June 11, 2002 at which time ACES staff informed the PPT that recent data suggested that S. had consistent performance on Mondays whether or not she had participated in Saturday programming. They also stated that the proposed IEP was appropriate and that S.'s goals and objectives could be met in a five day program plus the extended school year services. S.'s mother confirmed that the ACES staff (S.'s teacher and principal) had stated that the IEP was appropriate and that S. would not regress as a result of the termination of the Saturday program. In addition, the Board offered an in-district program but S.'s mother refused this, preferring the ACES program. (Exhibit B-69, Testimony of Susan Viccaro and S.'s mother)
9. S.'s mother testified that the loss of 4.5 hours of educational programming should be made up in some way because special education students require more educational time; they do not catch up as quickly as regular education students. She believes that this was an administrative decision, not an educational decision. (Testimony of S.'s Mother)

CONCLUSIONS OF LAW:

1. There is no dispute that S. is qualified to receive a free and appropriate public education ("FAPE") as a student with multiple disabilities under the provisions of Connecticut General Statutes section 10-76 et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et seq.
2. The standard for determining whether FAPE has been offered or provided begins with the two prong test established by the Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 459 U.S. 176 (1982). First the procedural requirements of the IDEA must have been met by the school district.

Second, the individualized educational program must be reasonably calculated to enable the child to receive some educational benefit.

3. Since *Rowley*, courts have clarified the requirements of FAPE to hold that individualized educational programs offered to children with disabilities must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), cert. denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993)). However, the IDEA does not require that the educational potential of each child be maximized. (*Rowley* at 189).
4. The only issue to be determined here is with regard to hours of educational programming. S.'s mother expressed satisfaction with every other aspect of S.'s program and agreed with the Board that S. had made good progress in the program over the last 4 years. In addition, she agreed that the ACES staff, who know S. quite well, stated that S. would not suffer any regression due to the loss of programming. In addition, she acknowledged that these staff members, under whose instruction S. had made such good progress, believed that the proposed IEP was appropriate to meet S.'s needs and that her goals and objectives could be met with a 5 day per week plus extended school year program. S.'s mother was unable to provide any evidence or testimony to support her belief that the loss of 4.5 hours of educational programming has rendered the IEP inappropriate.
5. While ACES' decision to terminate the Saturday program was an administrative decision, this does not necessarily mean that its educational effect will be negative. It is clear that the Board and ACES looked carefully at S.'s needs and progress before reaching any conclusions. While S.'s mother is understandably concerned about the loss of educational hours, according to the evidence and testimony of both parent and Board, it must be concluded that the Board's proposed program is appropriate and will provide far more than a trivial educational benefit.
6. S.'s mother is to be congratulated for being a strong and effective advocate for her daughter. There is no doubt that she will continue to work positively on her daughter's behalf and that S.'s educational program will continue to be successful due to her mother's consistent support.

FINAL DECISION AND ORDER:

The Board has offered S. an appropriate program for the 2002-2003 school year. The Board is not required to provide an additional 4.5 hours of educational programming to make up for ACES' elimination of a Saturday program.