

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Wallingford Board of Education

Appearing on behalf of the Parents:

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**Appearing on behalf of the Board of Education: Attorney Frederick L. Dorsey
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Appearing before:

**Attorney Stacy M. Owens
Hearing Officer**

FINAL DECISION AND ORDER

ISSUES

1. Whether the educational program developed by the Planning and Placement Team on January 17, 2003 provides the Student with a free and appropriate public education to adequately meet his special needs?
2. Whether the proposed educational placement is in the least restrictive environment?

PROCEDURAL HISTORY

On January 23, 2003, the undersigned was appointed as hearing officer to preside over the hearing, rule on all motions, determine findings of fact and conclusions of law, and issue an order in the above-stated matter. A prehearing conference was scheduled for Wednesday, January 29, 2003. During the prehearing conference, the dates for hearing and the issues were discussed. The initial hearing date was scheduled for Friday, February, 21, 2003. Attorney Frederick Dorsey, for the Board, requested a postponement on February 19, 2003 that was granted by the Hearing Officer. The first day of hearing

took place on Friday, February 28, 2003. The hearing was continued on March 19, March 24, April 11 and April 25, 2003.

At the close of the hearing on April 25, 2003, dates for the submission of briefs and reply briefs were selected. Briefs from both parties were due on Tuesday, May 27, 2003. Reply briefs were due on Monday, June 9, 2003. Attorney Daniel Murphy, on behalf of the Board, requested a postponement for the submission of reply briefs that was granted by the hearing officer. Reply briefs became due on June 13, 2003.

On June 25, 2003, Attorney Shelley White, for the Parent, filed a Motion to Supplement the Record to include the minutes of the Student's June 10, 2003 annual meeting. Such Motion was granted by the Hearing Officer.

SUMMARY

On January 17, 2003, the Planning and Placement Team proposed placement of the Student in a full-time, out-of-district, therapeutic school to meet his special education needs. The Parent believes the Student's individualized educational needs can be met in-district with a one-to-one aide ("1:1 aide") and an appropriate behavioral management plan.

FINDINGS OF FACT

1. The Student was born on June 4, 1990. While living with his birthmother and her boyfriend, the Student was neglected and sexually abused. As a result of the abuse, the Student suffers from Post Traumatic Stress Disorder. (Tr. 3/19/03 pp. 195, 196, Exh. B-44).
2. At age five, the Student was placed by a private placement agency, Connecting Children and Families (CCF), with the Parents in a therapeutic foster home at the age of six. The parental rights of the Student's birthmother were terminated. (Tr. 3/19/03 p. 140, Exh. B-46).
3. The Student presently attends Dag Hammarskjold Middle School ("Dag"). In the fall of the 2003-2004 school year, he will be entering the 7th grade. (Tr. 2/28/03 p. 18).
4. The Student is older and appears physically larger than other students in his grade. As a result of his past sexual abuse, the Student's sexual knowledge is more advanced than that of his peers, which he sometimes expresses or acts out inappropriately. The Student's sexually inappropriate behavior is at the heart of the Planning and Placement Team's (PPT) placement decision for the 2003-2004 school year. (Tr. 3/19/03 p. 184; Tr. 4/11/03 p. 103, B-44).
5. The Student has been identified as learning disabled, and more recently in January 2003, also identified as seriously emotionally disturbed (SED). (Tr. 3/19/03 p. 145; Exh. B-46).

6. The Student presently receives therapy once a week for school and family-related issues from Logan Dubell, a CCF social worker. He has also been receiving periodic therapy relating to his sexual abuse history from Carol D'Amora, MSW. (Tr. 3/19/03 pp. 8, 142; Tr. 3/24/03 p. 57).
7. When the Student was six years old, Ms. D'Amora treated the Student once a week for six to seven months to explore his past and monitor his transition into his new home. The sessions stopped once Ms. D'Amora determined the Student had met his initial goals. (Tr. 3/19/03 pp. 8, 44, 45, 202).
8. Ms. D'Amora now monitors the Student and provides treatment when new issues arise. Ms. D'Amora has seen the Student intermittently between 1998 and 2002, and resumed therapeutic sessions with the Student in the fall of 2002 as a result of the inappropriate sexual behaviors reported by Dag. (Tr. 3/19/02 pp. 8, 58, 65).
9. The Parents also receive training provided by CCF to enable them to meet the Student's social, emotional and educational needs. The Student's foster mother currently works as a paraprofessional supporting special education students with severe communication and behavioral disorders. (Tr. 3/19/03 pp. 139-143).
10. In January 2002, Serwaa Anokye, a school psychologist employed by the Board, identified the Student as having socialization problems. She recommended the Student "be taught to use a problem-solving approach to behavioral situations." (Exh. B-26).
11. Specifically, Dr. Anokye suggested steps in which the Student determines "what he should be doing, looking at all the possibilities, choosing a strategy or behavior, and evaluating the outcome." (Exh. B-26)
12. On May 14, 2002 the PPT developed an IEP for the Student's 2002-2003 school year. (Exh. B-29).
13. In accordance with the Student's May 14, 2002 IEP, the Student was mainstreamed for two of his 6th grade academic subjects and placed in a self-contained special education classroom for two other academic subjects. He was also placed in a self-contained special education classroom for reading and homework period. (Tr. 4/11/03 p. 86, B-29).
14. The minutes of the May 2002 IEP reveal "behavior issues were discussed," and "some social problems with peers." Further under the assessment entitled "social/emotional/behavioral", the May 2002 IEP revealed "behavioral rating scales indicate difficulties in attention, learning, and disruptive behaviors. At times, he has difficulty interacting with peers." (Exh. B-29)

15. Despite the behavioral observations noted in the May 14, 2002 IEP, the IEP does not list any goals or objectives specifically designed to address the Student's behavioral issues. (Tr. 3/19/03 pp. 147-149; Exh. B-29)
16. The Student was not involved in any school incidents involving sexually inappropriate behavior prior to September 2002. (Tr. 3/19/03 pp. 144, 149; Exh. B-38).
17. On or about September 19, 2002, while in the mainstream cooking class, the Student told a female student, "I want to slit your throat and fuck you like a goat." The female student was shaken and crying in response to the Student's comment. (Tr. 4/11/03 p. 88, Exh. B-47).
18. When questioned by the school Social Worker, Melissa Hoon, about the September 19, 2002 incident, the Student expressed that he liked the girl and wanted her to like him. He stated the comment was a lyric from a rap song in an R-rated movie, Scary Movie, which he watched without parental permission. (Tr. 4/11/03 p. 88-90, Exh. B-47).
19. The Student did not seem to understand the inappropriateness of his comment in trying to express an interest in a female. The Student's actions on September 19, 2002 resulted in a five-day suspension from school and reassignment to another class, away from the female student. (Tr. 4/11/03 pp. 89, 90, Exh. B-36, 47).
20. On or about October 9, 2002, while in a self-contained special education classroom, the Student swore at a female student and pinched her on the buttocks. The Student received a three-day, out-of-school suspension for the October 9, 2002 incident. (Tr. 4/11/03 p. 115; Exh. B-46, 47).
21. On or about October 22, 2002, while in the lunchroom, the Student told another student who refused to move from his seat when the Student demanded, "I saw your mother's anus last night." The Student received a three-day, in-school suspension for the October 22, 2002 incident. (Exh. B-37).
22. A PPT meeting was held on October 30, 2002, during which time the PPT reviewed and discussed the Student's inappropriate sexual behavior. In-school counseling was discussed, but the Parent insisted on having the Student continue out-of-school counseling to ascertain and address the underlying issues causing the Student to engage in sexually inappropriate behavior (Tr. 3/24/03 pp. 36-40; Exh. B-38).
23. A "reactive" interim behavior management plan was developed by the PPT. As part of the plan, the Student was to be sent for intervention and discussion limited to his understanding and alternative choices whenever he engaged in sexually inappropriate behavior. (Tr. 3/19/03 pp. 110, 111, 168; Exh. B-38).

24. Subsequent to the October 30, 2002 PPT meeting, while participating in a lunch group headed by the School Psychologist, Robert Mancusi, the Student discussed “getting a blowjob” from his girlfriend with the other peer members of the group. Mr. Mancusi verbally reprimanded the Student. (Tr. 4/11/03 p. 148; B-46).
25. A PPT meeting was held on November 26, 2002, to conduct a manifestation determination and review the Student’s program and progress. (Tr. 4/25/03 p. 64; Exh. B-40, 41).
26. It was decided during the November 26, 2002 PPT meeting that the Student’s improper conduct was not a manifestation of his disability and that additional supports were required to monitor the Student’s behavior. (Tr. 3/24/03 p. 30; Tr. 4/25/03 p. 64; Exh. B-40, 41).
27. The Student was assigned a paraprofessional to escort him from class to class, to lunch, to the lavatory and through the hallways. There was an aide assigned to the class, but not assigned specifically to the Student. (Tr. 3/19/03 p. 105; Tr. 3/24/03 p. 30; Tr. 4/25/03 p. 64; Exh. B-40, 41).
28. On November 26, 2002, the PPT also devised a homework sheet to check the Student’s completion of assignments, decided to continue the Student’s interim behavior management plan, and decided to use lunch detentions only for minor disciplinary infractions. The PPT referred the Student to Dr. Alicia Carmona for a psychiatric evaluation. (Tr. 4/11/03 p. 9).
29. On December 18, 2002, while in the self-contained special education classroom, the Student made a sexual gesture to another male student and stated he wanted to “tie [a female student] up in chains and fuck her up the ass.” The Student was referring to the same female student whose buttocks he pinched during the October 9, 2002 incident. The Student received a 10-day out-of-school suspension for the December 18, 2002 incident. (Tr. 4/11/03 pp. 9, 90, 94, 98, 102, 116-120; B-46).
30. Upon his return from the 10-day suspension, the Student made reference to the same comment he made during the December 18, 2002 incident in response to a cafeteria aide’s inquiry as to where he had been. (Tr. 4/11/03 p. 102) There is insufficient evidence to establish whether the Student made the same comment or provided an explanation relating to the comment. (Tr. 4/11/03 p. 100; Exh B-46).
31. On January 17, 2003, the Student pulled a condom out of his pocket and asked a female student if she wanted to see it. The Student received a five-day suspension. (Tr. 4/11/03 p. 94); Exh. B-47).
32. A PPT meeting was held on January 17, 2003 to conduct another manifestation determination, review the Student’s program, evaluation, goals, objectives and supports. (Tr. 4/11/03 p. 105; Exh. B-46)

33. During the January 17, 2003 PPT meeting, the Student was identified as SED in addition to learning disabled. It was determined that the emotional issues stemming from the Student's post traumatic stress disorder were impacting his educational performance. (Tr. 4/11/03 p. 105; Exh. B-46)
34. The January 17, 2003 PPT reviewed Dr. Carmona's evaluation and recommendations relating to the Student's behavior and performance. To devise her evaluation, Dr. Carmona relied upon the Student's school records, files from Connecting Children and Families, a one-hour interview with the Student, and discussions with the school's psychologist and social worker. (Tr. 4/11/03 p. 10).
35. Dr. Carmona was not provided any information relative to the treatment the Student was receiving through CCF's program. Dr. Carmona did not speak with the Parents. Dr. Carmona did not review the IEP developed in January 2003 for the Student because her evaluation was conducted prior to such meeting.
36. Based on her observations and findings, on December 20, 2002, Dr. Carmona diagnosed the Student with Reactive Attachment Disorder of Childhood (Disinhibited Type); Chronic Post Traumatic Stress Disorder; and Impulse Control Disorder (due to severe sexual abuse) (Tr. 4/11/03 p. 47; Exh B-44)
37. Dr. Carmona recommended: 1) specific treatment for sexual abuse victims and perpetrators to improve and reduce compulsive sexual behavior; 2) placement in an out-of district, structured, therapeutic school with more intense treatment and supervision; and 3) careful supervision by his foster parents. (Exh. B-44)
38. Dr. Carmona concluded that unless the Student receives intensive treatment now, he would be at great risk for aggression and predatory sexual behaviors. (Exh. B-44).
39. In the alternative, Ms. D'Amora, who has been providing therapy to the Student since 1996, concluded the Student needs to be "taught" social skills and requires a 1:1 aide within a couple of feet of the Student to monitor the Student's behavior, help him organize and cue him into learning activities. (Tr. 3/19/03 pp. 69-71).
40. Ms. D'Amora's recommendations echo similarity to the approach suggested by Dr. Anokye, the school psychologist who evaluated the Student during his 5th grade year in January 2002. (Tr. 3/19/03 pp. 69-71; Exh. B-26, P-4)
41. Ms. D'Amora believes the Student needs to learn his social skills in a community setting not in a segregated setting with persons with more severe social problems. She is familiar with both the Klingberg and St. Francis schools and believes the Student's educational performance would decrease significantly. (Tr. 3/19/03 pp. 77, 78, P-4).

42. Through her sessions with the Student, Ms. D'Amora learned that the Student did not view the incidents involving his inappropriate behavior as "sexual." Instead, he viewed his behavior as "social" and "a way to interact with his peers, a way to be accepted, a way to be silly." (Tr. 3/19/03 p. 65).
43. Through his sessions with Ms. D'Amora, the Student is learning that other people perceive his actions as sexually inappropriate. (Tr. 3/19/03 p. 66).
44. As of April 2003, the Student began receiving additional intensive counseling from Dr. Horowitz, an independent contractor with CCF, for the specific purpose of revisiting his past trauma and assisting him in processing his past. (Exh. P-5).
45. Supportive of Ms. D'Amora's findings, the Behavior Intervention Plan implemented by the Board states staff at Dag "have been unable to determine any specific triggers for [the Student's] behavior." It notes that the Student's comments "occur at random," and "it appears [the Student] makes comments when he is aware that there are no adults right next to him. The comments also seem to occur when he is trying to impress a girl or get a male peer to laugh." (Tr. 3/24/03 p. 9; Exh. B-46).
46. In line with Ms. D'Amora's conclusions, Dr. Carmona also found the Student "to present no psychosis, but his reality testing in social situations can be poor." She found the Student "to be oriented in time, place and person," to be pleasant and cooperative, to have normal attention and concentration, no hyperactivity, adequate receptive and expressive language and normal fine and gross motor coordination. (Exh. B-44).
47. Dr. Carmona attributed the Student's "social impulsivity" and inability to control sexual impulses to the Student's adolescent physical development. (Exh. B-44, 44).
48. As reported by Ms. Hoon and the school principal, Enrico Bucilli, when they spoke with the Student about the inappropriateness of his actions, the Student was not oppositional or defiant in his attitude, but instead, cooperative and polite. He appeared to understand them when they spoke to him about the inappropriateness of his conduct, but confusingly he continued to engage in the conduct. (Tr. 4/11/03 p. 89; 4/25/03 pp. 42-43).
49. In fact, Ms. Hoon's own impression of the Student's actions after the September 19, 2002 incident was that the Student did not mean to threaten or frighten the female student. (Tr. 4/11/03 p. 114)
50. The Parent believes the Student needs a behavior program implemented with a 1:1 aide working with a teacher. (Tr. 3/19/03 pp. 170-172).

51. During the January 17, 2003 meeting, the PPT decided a 1:1 aide for the Student would not be effective and found it inappropriate to consider moving an aide from a reasonable proximity to one or two feet away from the Student. (Tr. 2/28/03 pp. 86-93; Exh. B-46).
52. Dr. Robyn Redinger, Director of CCF, explained that the assignment of a 1:1 aide would not require closeness in proximity as much as an aide that is “attuned to what is going on with [the Student],” “aware of the environment, situation, the setting that [the Student] is in.” (Tr. 3/24/03 pp. 14, 15).
53. Ultimately, the PPT determined the Student’s individualized educational program could not be implemented at Dag and only a therapeutic environment could meet the Student’s emotional needs. Thus, the PPT recommended the Student be fully educated in an out-of-district placement at either the St. Francis Behavioral Health Center (“St. Francis”) of Portland or the Klingberg Family Center’s Special Education School (“Klingberg”) of New Britain. (Tr. 2/28/03 pp. 86-93; Exh. B-46).
54. The Student would be expected to remain in the out-of-district therapeutic placement for up to two years. (Tr. 2/28/03 pp. 102,103)
55. As testified by Dr. Joseph Bivona, Klingberg and St. Francis are private special education facilities that have experience working with children who have been sexually abused. All of the students that attend the schools are disabled – mostly identified as SED. (Tr. 2/28/03 pp. 76-82)
56. The Student progressed during his 6th grade year in accordance with the goals and objectives set forth in his May 14, 2002 IEP. The Student gained benefit from his placement in the mainstream environment. (Tr. 3/19/03 pp. 38, 109, 162,163, 205; Exh. B-38, 41, 48).
57. As reflected in the PPT meeting minutes on June 10, 2003, the Student continues to progress academically, is prepared and engages appropriate behaviors in class. (Exh. P-5).
58. The June 10, 2003 IEP appropriately prescribes goals relating to social skills and social awareness that were absent in previous IEPs developed for the Student. (Exh. P-5).
59. The Student engaged in inappropriate conduct during unstructured time. Howard Haberman, Educational Consultant with the State of Connecticut Department of Children and Families, found the Student was doing well 90 percent of his school day. He “[did] well academically, satisfactorily, his behavior was good.” (Tr. 3/19/03 p. 109.)

60. As reported by Ms. D'Amora, the Student "likes [Dag], he's so proud of the school, and proud of being in middle school, and . . . having a little bit of choice. He has a very positive attitude about school and about Dag." (Tr. 3/19/03 p. 42).
61. The decision to place the Student in an out-of-district therapeutic school was not based on his academic needs, only his emotional and behavioral issues. (Tr. 2/28/03 pp. 86, 87).
62. The Student's interaction with nondisabled peers would be limited to outside of the school environment. Thus, the Student would not be educated in a school setting amongst nondisabled peers for the purpose of modeling his behavior, making it likely that the Student will become less familiar with appropriate behavior and boundaries in a regular education setting. (Tr. 2/28/03 pp. 80-82, 88; Tr. 3/19/03 p. 114; Tr. 4/11/03 p. 55, 69, 70).
63. Dag has a sexual harassment policy. (Exh. B-50)
64. Students attending Dag do not receive a copy of the entire sexual harassment policy as written, but instead, receive highlights from the policy in their student handbooks, which are distributed to students annually. (Tr. 4/25/03 p. 34)
65. Students are expected to review the student handbook at home with their parents. The school does not have a process to confirm students have actually read and understood the handbook. (Tr. 4/25/03 pp. 39, 40).
66. With respect to the school's sexual harassment policy, the student handbook only provides, "sexual harassment will not be tolerated among students or staff of the school district" and that "sexual harassment of students by another student or staff member is forbidden." (Exh. B-52).
67. The student handbook does not define "sexual harassment", it does not outline examples of what conduct constitutes "sexual harassment," nor does it direct students to where a copy of the actual sexual harassment policy can be obtained. (Exh. B-52).
68. When the Student was disciplined for engaging in inappropriate sexual behaviors, he was not informed that the disciplinary action to which he was subjected was based on his violation of the school's sexual harassment policy. (Tr. 4/25/03 pp. 36-38).
69. Even after the Student engaged in sexually inappropriate behavior, no one ever reviewed the sexual harassment policy with the Student or provided him a complete copy of the actual policy. The Student was not told that his actions amounted to "sexual harassment", but instead, was told that his actions could be "*construed as*" sexual harassment, in essence, marginalizing the seriousness of his behavior (Tr. 4/25/03 pp. 36-38).

70. The Student is a special needs child that possesses a level of understanding and comprehension that warrants more one-to-one attention, more comprehensive teaching, inclusive of appropriate social conduct, and repetition to instill proper boundaries within the school setting and social environment. (Exh. B-26)
71. The Student could not be expected to understand what “sexual harassment” is or how his conduct could be “*construed*” as sexual harassment without having trained personnel go over the policy in a manner consistent with his level of understanding, explain how his conduct could be deemed in violation of the sexual harassment policy, and the ramifications of his continued misbehaviors. (Exh. B-23-46).
72. The Board’s position is that “a one-to-one aide would not be sufficient to address [the Student’s] long- term therapeutic needs.” (Exh. B-46).
73. The Board failed to provide any information relative to the programs offered by Klingberg and St. Francis, other than they are schools that help children with a history of sexual abuse. The Board failed to show how a segregated placement will meet the individualized educational needs of the Student. There was no testimony or evidence presented by the Board detailing the courses, activities, therapy sessions or classroom setting in which the Student would be enrolled. (Tr. 2/28/03 pp.15-116; Tr. 3/24/03 pp. 128-145; Tr.4/25/03 pp. 8-44)
74. The Board has failed to provide sufficient evidence to support its position that the assignment of support that is within the ability of the Board to provide to the Student, more specifically, a full-time 1:1 aide, is “unreasonable” and that placement in a segregated setting qualifies as the least restrictive environment. (Exh. B-46)

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (“IDEA”) mandates all school districts to provide students a free and appropriate public education (“FAPE”). FAPE is defined as:

Special education and related services that (a) have been provided at public expense, under public supervision and direction and without charge; (b) meet the standards of the State educational agency; (c) include an appropriate preschool, elementary, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program (IEP) under [this Act]. 20 U.S.C. §1401(8).

The Supreme Court in the case of Hendrick Hudson Board of Education v. Rowley established a two-tier review to determine whether a student’s education is

“appropriate.” The first tier of review is to analyze procedural compliance with the IDEA by the Board. The second tier of review is to analyze whether the IEP developed for the student is reasonably calculated to enable the child to receive educational benefit. Hendrick Hudson Board of Education v. Rowley, 458 U.S. 176 (1982).

In this particular case, procedural compliance by the Board is not an issue. However, the sufficiency of the IEP developed for the Student on January 17, 2003 is under scrutiny to determine whether the PPT has devised a program that will provide the Student FAPE.

The IEP is the written plan of specific special education and related services designed to meet the unique educational needs of a child with a disability. 20 U.S.C. §1414(d). The IEP must provide for personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Rowley at 203. In determining “educational benefits” the IEP should be reasonably calculated to enable the child to make educational progress according to the child’s goals and objectives. Rowley at 203-204. As was the intent of Congress in drafting the IDEA, “The term ‘unique educational needs’ [should] be broadly construed to include the . . . child’s academic, *social*, health, *emotional*, *communicative*, physical and vocational needs.” H.R. rep. No. 410, 98th cong., 1st Sess. 19 (1983), reprinted in 1983 U.S. Code Cong., & Admin. News 2088, 2106 (emphasis added).

During the 2002-2003 school year, the Student academically achieved the goals and objectives set forth in his May 14, 2002 IEP. The Student has maintained average grades and has shown progression in his academic abilities. Socially, emotionally and communicatively, however, the Student has regressed in his interaction with peers and understanding of social boundaries. Specifically, the Student has engaged in several episodes of sexually inappropriate and offensive behavior for which he has been disciplined. As such, the focal point of contention with respect to the Student’s IEP relates directly to the goals and objectives developed for the Student to achieve appropriate social skills and growth.

The evidence reveals that prior to the development of the May 14, 2002 IEP for the Student’s 2002-2003 school year, the Student was flourishing academically, but signs of social regression were surfacing. Specifically, the Student was identified by a school

psychologist as having socialization problems and impulsive behaviors. Despite evaluations and observations detailing the Student's unique social, emotional and communicative needs, the PPT failed to develop and implement a behavioral plan or appropriate IEP on May 14, 2002, to address the Student's deficiencies, thus resulting in a continual decline of appropriate behaviors engaged by the Student amongst his peers during his 2002-2003 school year.

Boards are charged with the responsibility to educate children with special needs in the least restrictive environment ("LRE"). In accordance with §10-76a-1(1) of the Regulations of Connecticut State Agencies:

[A]n educational environment which meets the needs of a child requiring special education and related services as set forth in the child's individualized education program and which, to the maximum extent appropriate to the child's needs, ensures that the child will be educated with children not requiring special education and related services.

Only in those instances in which the child cannot be educated in the regular education setting with supplementary aids and services due to the nature or severity of the child's disability, should a child be removed. 20 U.S.C. §1412(5)(A). Courts have applied several tests to determine whether an out-of-district placement satisfies the LRE requirement.

In the case of Daniel R.R. v. Board of Educ., the court first determined "whether education in the regular classroom with the use of supplemental aides and services can be achieved satisfactorily." To make such determination the following factors must be considered: (1) what measures the school has taken to educate the child in an regular education setting, (2) whether the child will benefit educationally from the regular education placement, (3) the extent of the child's experience in a regular education setting, and (4) the effect of the child's presence in the regular education classroom. Daniel R.R., 874 F.2d 1036, 1048-1049 (5th Cir. 1989).

The Board in this matter has demonstrated its attempt to address the Student's social issues and inappropriate behaviors by assigning a paraprofessional to escort the Student from class to class, to the lavatory, to the lunchroom and through the hallways. Despite its effort, the Board found the Student continued to engage in sexually inappropriate behavior. The evidence reveals that although the Student has exhibited

social, emotional and communicative regression, he has gained a benefit from his placement in the regular education setting. This benefit is made apparent through his academic progression and his enthusiasm to be a part of the Dag community.

The Student has been in the regular education setting for as long as he has been educated within the Board's district. He is fully acclimated to the regular education environment, but obviously weakening in his understanding of social boundaries. Clearly, those persons within ear distance of the Student, or those to whom he directed his actions, were affected and at the very least shocked, embarrassed, confused, and intimidated by the seemingly advanced and bold sexual content of his comments and behavior. However, the Student's intent was not to be perceived as a sexual deviant, but instead "be accepted," "be silly." He was seeking attention from the girls and acceptance from his male peers, typical of an adolescent.

Considering the Student's inappropriate behavior continued with the supplementary aides and services put in place by the Board, the next inquiry in Daniel R.R., provides for a determination as to "whether the school has mainstreamed the child to the maximum extent appropriate." *Id.* In this case, the Hearing Officer finds that the Board has not. As recognized by the Board's social workers and psychologists, the Student does not engage in inappropriate conduct when an adult is in within proximity. The Student's instances of inappropriate behavior occurred when the assigned paraprofessional was not present or several feet away – another indication that the Student engages his behaviors for the attention of his peers.

The court in Oberti v. Board of Education of the Borough of Clementon School District expanded the "maximum extent appropriate" requirement to encompass the inclusion of consideration of the "whole range of supplemental aids and services" appropriate to meet the unique needs of the child. The Parent in this matter requested the Student be assigned a full-time, 1:1 aide to monitor, cue and teach the Student appropriate behaviors, instead of placement in a segregated setting, but the Board found it to be "unreasonable" to assign a full-time, 1:1 aide in the public school setting.

The Board's argument is diluted not only by the Student's proven ability to be "cooperative" and behave in the presence of adults, but also by the existence of several cases in which local boards have utilized full-time, 1:1 aides within the regular education

setting in addressing the behavioral concerns of students. Although there is no practicable means to determine whether such strategy will, in fact, be successful, there is precedence to show it is reasonable. (*See, Ings-Ray v. School Dist. Of Philadelphia*, 39 IDELR 34 (E.D. Pa. 2003); *State of Connecticut Department of Education, Hearing Officer Decision No. 99-239* (May 2000) ; *Student v. St. Johnsbury Sch. Dist.*, 34 IDELR 136 (August 29, 2000)). The testimony of Mr. Haberman further supported the practicality of utilizing full-time, 1:1 aides in the public school setting by revealing that other SED identified children under DCF's custody are presently being educated in the public school setting with a full-time, 1:1 aide. (*See* Tr. 3/19/03 pp. 106-107)

The Board has argued in its brief that like the student in the St. Johnsbury School District case in which the hearing officer upheld a therapeutic day treatment program for placement, the Student similarly exhibits misbehaviors “on the verge of a catastrophic adulthood who needs immediate, drastic and intensive intervention,” St. Johnsbury School District, 34 IDELR 136 (August 29, 2000). In the St. Johnsbury School District case, however, the Parent sought continued placement in a program that had already proven to fail. The Board in the St. Johnsbury School District case had not only considered, but also attempted the “whole range of supplemental aids and services” available to meet the special needs of the student prior to seeking placement in a therapeutic day treatment program. Such is not the case in this matter.

Moreover, although Dr. Carmona found the Student in this case to be “at great risk for aggression and predatory sexual behaviors,” her findings are deemed less credible and less reliable in comparison to the findings offered by her counterparts, Dr. Redinger and Ms. D’Amora, who have been providing therapy for the Student and attending his PPT meetings since he was age 6. As such, Ms. D’Amora and Dr. Redinger are far more familiar with the Student’s behavioral triggers and the proper methods to address his inappropriate behaviors. As pointed out by Mr. Haberman, “those who have been involved with [the Student] would know him best.” (*See* Exh. B-46 p.11).

Courts have also applied the test in the Roncker v. Walter case establishing that “where the segregated facility is considered superior, the court should determine whether the services which make the placement superior could feasibly be provided in a nonsegregated setting. If they can, the placement in the segregated school would be

inappropriate under the [IDEA].” Roncker v. Walter, 700 F.2d 1058, 1062 (6th Cir.), *cert. denied* 464 U.S. 864 (1983), *See also* Devries v. Fairfax County Sch. Bd., 882 F. 2d 876, 879 (4th Cir. 1989), A.W. v. Northwest R-1 Sch. Dist., 813 F.2d 158, 163 (8th Cir.), *cert. denied*, 484 U.S. 847 (1987).

The factors a board must consider in determining whether a child’s placement in a segregated setting can be accomplished in a nonsegregated setting are as follows: (1) the benefits the child will receive in the segregated setting compared to the benefits the child will receive in the regular education setting; (2) whether the child’s placement in regular education classes poses a disruption; and (3) the cost of maintaining the child in the regular education classroom.]” Roncker v. Walter, 700 F.2d 1058, 1063.

Here, the Student is clearly gaining “meaningful benefits” from his participation in the regular education setting. This is evidenced by the goals and objectives the Student has met in each of his IEPs. The Student has shown steady progression in those areas of his educational program that were adequately prescribed. In fact, in the January 17, 2003, PPT meeting summary, it was noted that the Student’s science teacher regarded his behavior as “outstanding” and his social studies teacher stated the Student “participates in class and pays attention.” Absent any information describing the specific programs offered by Klingberg or St. Francis, it is impossible for the Board to analyze and draw a conclusion that these programs are “superior to” or will provide a greater benefit than the program provided at Dag.

There is insufficient evidence to establish the Student’s continued placement in the regular education setting would pose a disruption. The Student’s misbehaviors occurred when an adult was not attentive or within proximity. With adequate support, it seems even the potential for these occurrences could be alleviated. Lastly, the Board did not argue that the costs associated with maintaining the Student in the regular education classroom poses a burden. Thus, it can be inferred that cost was not a factor in the Board’s decision to place the Student in a segregated setting.

Therefore, based on the foregoing theories, facts, and conclusions and the application of such to this particular case, it is determined that the IEP developed on January 17, 2003 by the PPT does not mainstream the Student “to the maximum extent appropriate,” nor does it provide a sufficient behavior management plan to adequately

address the Student's social deficiencies in the regular education environment. In the absence of an appropriate IEP, coupled with the Board's lack of knowledge relating to the adequacy of the schools' curriculum to meet *all* the educational needs of the Student, the Board's effort to place the Student in a full-time therapeutic school is found to be premature and without sufficient basis to qualify as the least restrictive environment.

FINAL DECISION AND ORDER

1. The educational program devised by the Board at the January 17, 2003 PPT meeting does not provide the Student a free and appropriate education to meet his special needs.
2. The PPT's proposed placement, in an out-of-district therapeutic school, as outlined in the Student's January 17, 2003 IEP, does not provide for education of the Student within the least restrictive environment.
3. As part of the Student's IEP, the PPT shall devise goals, objectives and a behavioral plan that reflects its review and consideration of the recommendations outlined in the behavioral program developed by Dr. Robyn Redinger and Carol D'Amora of CCF.
4. As part of the Student's IEP, the Board shall assign a full-time paraprofessional to work one-to-one with the Student at all times during the school day. The paraprofessional shall facilitate communication between the Student's parents and the Student's teachers and other service providers with respect to homework assignments, test schedules, school activities and behavioral issues.
5. The Board shall immediately retain the services of an expert, who specializes in working with children with SED. The Board shall make an effort to select an expert who has experience working with children who have been sexually abused to train and provide the paraprofessional directives in addressing the Student's needs.
6. An IEP meeting shall convene within 14 days after the issuance of this final decision and order for the purpose of revising the Student's June 10, 2003 IEP consistent with the provisions of the final decision and order for the 2003-2004 school year.