

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on Behalf of the Parents: Attorney Celia M. Barnum  
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Appearing on Behalf of the Board: Attorney Frederick L. Dorsey  
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Appearing Before: Attorney Justino Rosado  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the program offered by the Board for the 2003-2004 school years appropriate?  
If not;
2. Does the program offered at Ben Bronz Academy offer the student an appropriate education as defined in 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a?

**PROCEDURAL HISTORY:**

The Parents' attorney filed a request for due process on July 7, 2003. (Hearing Officer (Hereinafter HO) Exhibit 1). A pre-hearing conference was held on July 25, 2003 at which time a hearing dates of August 18 and 29, 2003 were selected at the convenience of the parties. The Parents wanted to submit a tape of the student reading. The Board objected to this exhibit. The hearing officer sustained the Board's objection and the tape was not an exhibit. Post Hearing Briefs were requested by the Parties and a briefing schedule was established.

The hearing officer required a medical procedure and the date for the Final Decision and Order was extended to November 24, 2003.

**SUMMARY:**

The student is a 12 year-old young man who has been identified as learning disabled and is entitled to receive a free and appropriate public education. The student had shown a deficiency in his reading and writing and test performed showed no growth in his reading. The Parents rejected the 2003-2004 IEP and requested placement at Ben Bronz Academy at the Board's expense. The Board refused the Parents' request and the Parents requested a Due Process Hearing.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered and vice versa. For reference, *see SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D.Tenn. 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

**STATEMENT OF FACTS:**

1. The student is a 12 year-old young man who has been identified as learning disabled and is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the provision of the Individual with Disabilities Education Act ("IDEA"), 20U.S.C. §1401 et seq. and Connecticut General Statutes, § 10-76, et seq.
2. The student transferred from another state's public school to the Board's elementary school at the beginning of the 2000-2001 school-year. While in the first grade at the other state's district school the student was evaluated and found to be eligible for special education with a diagnosis of dyslexic and speech and language impaired. While in this state's school district, the student repeated the second grade. (Testimony of Mother, Parents' Exhibit 1)
3. In September 2000, the Board evaluated the student and identified him as speech and language impaired. The evaluator found the student to be having a basic reading skill of 2.8 grade equivalent and 8.3 age equivalent. The student at the time of testing was 9.1 years-old and in grade 3.1. (Testimony of Mother, Board's Exhibit 13, p.8)
4. On November 2000, the PPT increased the student's speech and language services to one hour per week and his special education support in language arts to 2 ½ hours per week. The student also received 20 minutes of education support in the form of guided reading. Extended school year services for reading and writing

- support were added to avoid any regression or difficulties with retention. (Board Exhibit 18 and 20)
5. During the 2001-2002 school year the student received 2 ½ hours of special education, 1 hour of speech and language related services and extended school year services. The Board once again evaluated the student and his basic reading skills increased during the year to 3.2 grade equivalent and his actual grade was 4.2. (B-23)
  6. The student was tested in November 2002. The student at the time of testing was 11.3 years-old and in the third month of the 5<sup>th</sup> grade. The evaluation placed the student's basic reading skills grade equivalent as 2.8. There was no change in the student's basic reading skills from his 3<sup>rd</sup> grade to his 5<sup>th</sup> grade. (Testimony of Mother, Board's Exhibit 27)
  7. The special education teacher did not work directly with the student, but helped to support him in his writing skills. The student's 2002-2003 IEP did not require direct education. The student was transitioned to a new intermediate school and the special education teacher was made his case manager. During the first 3 days of the student's start in the new school, he did not receive his ½ hour support in language arts because the Board was under staffed and there was a shortage of para-professionals. (Testimony of Special Education Teacher)
  8. In February 2003 the student began receiving one period of pull out services because the special education teacher became concerned about the student's reading level. The special education teacher became aware of the Parents' concern at the PPT meeting. (Testimony of Special Education Teacher)
  9. On 2/14/03 a PPT meeting was held and the student's IEP was reviewed. The student's language arts support was increased to 10 periods per week, speech and language was continued at the same level and reading support for one period per week were to be given to the student in the resource room. The Parents agreed to a neurological assessment of the student. (B-34)
  10. The neurological evaluation was done by Armin Theis a clinical neuropsychologist. The evaluator saw the student on four occasions and completed his report on May 5, 2003. The evaluator found that the use of grade norms inflated the student's achievements due to the retention of the student in the second grade. The evaluator concluded that reading comprehension was so poor that there are severe discrepancies from the student's measured intelligence. (P-12)
  11. The Woodcock Johnson Reading Achievement Subtest Cluster showed a steady decline from the student's 1999 standard test score to the student's 2002 standard score. (P-12 p. 13)

12. The evaluator was of the opinion that the student's diagnosis should be ADHD. The evaluator found that the student has difficulty integrating elemental skills in their application during more complex, functional tasks and that the student did not apply skills that he had acquired such as failing to use phonetic decoding while reading or to use graphic organizers to improve the organization of the contents of his writing. The evaluator made 12 recommendations to assist the student. (P-12)
13. The Board convened a PPT on May 22, 2003, which was continued until June 10, 2003, in order to review the results of the neuro-psychological assessment. The PPT proposed an IEP in which the student would receive 23 hours per week of regular education, 5 hours/week of language arts in the resource room, 3.3 hours/week of academic support in the classroom, 1 hour of structured study, 1 hour/week of speech and language services by the speech and language therapist and 90 minutes/week of individual tutorial after school. (B-39 & B-41)
14. The Parents' educational consultant review of the recommendations showed that the student needs to increase fluency and needs instruction in coding. It was difficult to see these needs being met in the Board's programs because the student only receives 40 min/day and that is being used at coding. The consultant felt that the student needs work in reading comprehension and his reading is so disfluent that the student does not know when he is reading what the text is about. (Testimony Educational Consultant)
15. The Parents rejected the June 10, 2003 IEP because they believed that the IEP was inadequate. They requested that the student be placed at Ben Bronz Academy at the Board's expense. (Testimony of Mother)
16. On July 17, 2003, the Board held another PPT and amended the IEP. The PPT made additions to the existing IEP. The amendments made are:
  - a. adding reading fluency and reading comprehension goals;
  - b. adding assistive technology consisting of Kurzweil and Inspiration software;
  - c. add organizational goals
  - d. revise to show specifics of where special education goals will be provided; and
  - e. consult with neuro-psychologist.
17. At the start of the 2003-2004 school year the Board was not able to implement the IEP because the text of the assistive technology software programs was not available for the student. The assistive technology software programs had never been used by his special education teacher. She needed to be trained but she was not sure when the training would take place. (Testimony of Special Education Teacher)

18. The student's writing skills were deficient but not as deficient as his reading skills. (Testimony of Special Education Teacher)
19. Ben Bronz Academy has a longer school day from 8:00 in the morning to 4:00 in the afternoon. The student can be provided with four periods each day for reading at the Academy.

### **CONCLUSIONS OF LAW:**

1. The student is entitled to special education and related services to be provided at public expense pursuant to 20 U.S.C. §§ 1401, et seq (IDEA) and Connecticut State Regulations §76a-1(d).
2. The child's attorney in a letter after the hearing was closed and post-hearing briefs had been filed requested compensatory education. Compensatory education was not an issue of this hearing and was not an issue that was raised during the course of the hearing. This hearing officer cannot make a conclusion of law as to compensatory education nor issue a finding of facts as to this issue.
3. Connecticut Regulations provide that "the public agency has the burden of proving the appropriateness of the child's program or placement or of the program or placement proposed by the public agency." Conn. Reg. 10-76h-14(a) *see also Walczak v. Florida Union Free School Dist.*, 142 F.2d 119, 122 (2d Cir. 1998).
4. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al v. Rowley*, 458 U S 176 (1982), 102 S Ct 3034. The first prong requires determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized education program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
5. The first prong under the *Rowley, supra*, test; required a review to ensure that the Board complied with the procedural requirements of IDEA.
  - Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with Sec. 300.342(c), an IFSP). 34 C.F.R. §300.343(a)
  - IDEA regulations require, A statement of --
    - (i) How the child's progress toward the annual goals described in paragraph (a) (2) of this section will be measured; and
    - (ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-disabled children's progress, of--
      - (A) Their child's progress toward the annual goals; and

(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. 34 C.F.R. §300.347(a)(7).

There was no showing by the Parents that the Board committed any procedural violations. The Parents made no charge that they did not receive proper notice for the PPT or any other violations in the preparing of the IEP for the 2003-2004 school-year. The school year in question had not commenced prior to the hearing. Testimony was given as to the lack of preparation of the Board to implement the assistive technology portion of the student's IEP (Finding of Facts #17); but IDEA is clear that the Board needs to implement the IEP as soon as possible following the IEP meeting. 34 C.F.R. §300.342(a)(1)(ii). There was testimony that it would soon be implemented.

6. The second prong of IDEA asks if the IEP was reasonably calculated to enable the child to receive educational benefit. The IEP had been revised a couple of times before the school year was to commence. The Board had incorporated the recommendations of the neuro-psychologist's assessment of the student. (Testimony of Special Education Teacher) The Board in the July 2003 PPT meeting addressed the issues of the Parents' educational consultant by adding reading fluency and reading comprehension goals. (Findings of Facts #13 and 15) The only concern of this hearing officer was that only one computer was available in the classroom for all the students in the class. The student's reading and writing skills are so deficient (Findings of Fact #18) that the student would require a computer for his own use in the classroom.

7. The Parents have not presented sufficient evidence to show that the program offered by the Board as revised on July 17, 2003 is not appropriate for the student. The Board has shown their concern and desire for the student to receive FAPE and they have provided the student with an appropriate program for the 2003-2004 school year. The Parents presented valid testimony and evidence that the student had not progressed in the Board's school in prior years with prior IEPs, but the IEP for the 2003-2004 school year with the implementation of new goals addressing reading and writing deficiencies, organizational issues and the addition of the assistive technology software is written to provide the student with FAPE.

#### **FINAL DECISION AND ORDER:**

1. The program offered by the Board to the student is appropriate.
2. The issue of the program at Ben Bronz Academy is moot since the Board's program is appropriate.
3. The Board shall insure that the student has a computer for his own use while in the Board's school.