

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Wallingford Board of Education

Appearing on behalf of the Parents: Attorney Eric L. Sussman, Day Pitney LLP, 242 Trumbull St., Hartford, CT 06103

Appearing on behalf of the Board: Attorney Frederick L. Dorsey, Siegel, O'Connor, O'Donnell & Beck, P.C., 150 Trumbull St., Hartford, CT 06103

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Student shall be transitioned to the Board high school through a transition program by Behavioral Developmental Education Services [BDES].
2. If not, whether the transition program shall be provided at another facility as recommended by the Board.

**PROCEDURAL HISTORY:**

The Board received this request for hearing on September 2, 2008, and a prehearing conference convened on September 18. The hearing proceeded on one hearing date on October 28, 2008.

The Mother testified on behalf of the Parents. The Board's witness was Janice Lautier, Board director of pupil personnel.

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 ninth grade Student is eligible for special education and related services under the primary disability of autism. The Student's autism includes a high level of anxiety and behavioral issues.

Since 2004, the Student has received his educational program at Behavioral Development Education Service [BDES], a private program that is currently not a state approved special education program. The Board has proposed that the Student be placed at another state approved private program that would work to gradually transition the Student to the Board high school. The Parents brought this action to challenge the Board's proposal, and seek to have the Student remain at BDES while the Student gradually transitions to the Board high school.

**FINDINGS OF FACTS:**

1. The Student is 15 years old and in ninth grade. The Student is eligible for special education and related services under the primary disability of autism. [Testimony Mother, Exhibit B-4]
2. The Student currently attends Behavioral Development Education Services [BDES], which he has attended since 2004. His current educational program also includes a library internship at the Board high school on the high school's B/D days and he receives an hour of speech each week. [Testimony Mother]
3. BDES is in the process of becoming "Meliora Academy" and is working towards becoming a facility that is a state approved special education program. [Exhibit P-12] BDES is not currently a state approved program. [Testimony Ms. Lautier]
4. The Student's autism includes extremely high anxiety, other behavioral issues, some sensory issues, and issues involving processing information in terms of his intake of information. The behavioral issues include the Student getting loud in his behavior and being argumentative. [Testimony Mother]
5. The Student's current program at BDES has been successful for the Student. BDES understands teens, in that they have new social and academic issues, and teaches the students in an integrated holistic style. [Testimony Mother]
6. BDES is working towards transitioning the Student to the Board high school, so that he is successful in an inclusive setting at the Board high school. [Testimony Mother]
7. The Board and the Parents have stipulated that the Student has obtained meaningful educational development and benefit at BDES. [Stipulation on the record, 10/28/08]
8. The Board and the Parents agree that the Student should be slowly transitioned to the Board high school. This gradual transition is appropriate, and is based on the Student's needs and ability to appropriately adjust to the new environment at the Board high school. [Testimony Ms. Lautier, Mother]

9. When the Student's anxiety and behavior progress are considered, it has been found that the Student tolerates the current additions to his schedule, beginning with the internship at the Board high school, because his placement at BDES and its supports remain in place. Leaving BDES and going to another private placement to work towards a transition to the high school would cause significant increase in anxiety and result in considerable skill regression across domains, according to the Student's most recent educational update. [Exhibit P-12]
10. Other than the fact that BDES is not yet on the approved list of special education programs for the State of Connecticut, the Board has no problem with the program provided by BDES to the Student, which includes a gradual transition to the Board school. The Board has been satisfied with the services provided by BDES to the Student, and agrees that the Student has made meaningful educational progress at BDES. [Testimony Ms. Lautier]

### **DISCUSSION/CONCLUSIONS OF LAW:**

The Parents have 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 challenge the Board's transition program for the Student.

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.

It has been demonstrated that the Student has obtained meaningful educational benefit in the BDES program, which is working towards a more inclusive program for the Student in the Board high school. The testimony and evidence presented also

demonstrate that the Student has a high level of anxiety, especially in the school setting, creating intense social needs that require extensive interventions. These anxiety issues and educational needs would present severe problems in transitioning the Student from BDES to another private approved facility, and then ultimately to the Board high school. The Board's proposal to transition the Student to another facility, which would then work towards transitioning the Student to the Board high school is not appropriate.

The Student will obtain meaningful educational benefit, and will be mainstreamed to the maximum extent appropriate, if the transition is completed by BDES to the Board high school, in a gradual manner, based on the Student's needs and ability to adjust to the new environment into the Student's local Board high school. The Student's placement at BDES is appropriate, and is based on the Student's unique needs. BDES staff shall be used to assist in the transition. The Student's program shall include a program at the Board high school, one class per day for two to three days per week [based on the Board high school's BD class schedule], plus one hour of related speech services per week at the Board high school. The Board and the Parents shall work together to gradually transition the Student to the Board high school. During the transition, the Board shall continue to provide the Student with transportation to and from the Student's home, BDES and the Board high school.

**FINAL DECISION AND ORDER:**

1. The Student's placement at BDES with a gradual transition to the Board high school is appropriate.
2. The Student shall be provided a program at BDES with a gradual transition to the Board high school with the assistance of the staff from BDES. The Student's program shall include a program at the Board high school, one class per day for two to three days per week [based on the Board high school's BD class schedule], plus one hour of related speech services per week at the Board high school. The Board and the Parents shall work

together to gradually transition the Student to the Board high school. During the transition, the Board shall continue to provide the Student with transportation to and from the Student's home, BDES and the Board high school.

2. The transition program shall not be provided at another facility as recommended by the Board.