

VIRGINIA:

SPECIAL EDUCATION DUE PROCESS HEARING
Local Hearing

[REDACTED]

vs.

[REDACTED] PUBLIC SCHOOLS

)
)
)
)
)
)
)

In Re: [REDACTED]

DECISION

This matter has arisen from a request for a due process hearing by [REDACTED]. The [REDACTED] seek to determine the appropriate educational placement for their child [REDACTED]. [REDACTED] While the request for a hearing was made by the [REDACTED] [REDACTED] [REDACTED] Public Schools (hereafter [REDACTED]) is similarly seeking to determine the appropriate educational placement for [REDACTED].

FINDINGS OF FACT

[REDACTED] is a child with a disability and is eligible for services under the Individuals with Disabilities Education Act, 20 USC Section 1400 et seq (hereafter IDEA), as was agreed by the parties. [REDACTED] was operating under an Individualized Education Plan (hereafter IEP) that was developed in [REDACTED] 2001 when this dispute arose. Both parties agree the [REDACTED] 2001 IEP is inappropriate for [REDACTED] at this time. The parties agree that [REDACTED] needs a more restrictive placement than the [REDACTED] 2001 IEP provides. At this time [REDACTED] needs an educational placement which provides a highly structured learning environment and program with a therapeutic component.

A new IEP was developed in 2001, to which the [REDACTED] have never agreed. [REDACTED] seeks to establish that this IEP is appropriate with an educational placement for [REDACTED] in [REDACTED] Program. The [REDACTED] have requested that [REDACTED] be placed in an out-of-state therapeutic residential school.

The [REDACTED] are deeply concerned and highly involved in the educational process of their child, [REDACTED]. The [REDACTED] felt [REDACTED] had not kept them properly informed about [REDACTED] status and had violated school policy in that regard. They are concerned about [REDACTED] safety and want what is best for [REDACTED]. [REDACTED] is highly intelligent and has the potential to be successful in [REDACTED] education and in life. To do so, however, [REDACTED] must overcome [REDACTED] emotional problems and apply [REDACTED] to [REDACTED] endeavors.

[REDACTED] has historically done well in school. Through the [REDACTED] grade [REDACTED] brought home good grades, past [REDACTED] Standards of Learning tests (hereafter SOL) and was actively engaged in [REDACTED] education. [REDACTED] has been an avid reader and has tested average to above average in [REDACTED] intelligence tests.

[REDACTED] has a diagnosis of [REDACTED] (hereafter [REDACTED]) and [REDACTED] Disorder. [REDACTED] has been qualified for services under IDEA under the category [REDACTED] and [REDACTED] ([REDACTED]). [REDACTED] has made two known suicide attempts and has reported four. [REDACTED] has self mutilated on a number of occasions by cutting [REDACTED] arms. [REDACTED] takes a substantial regimen of medication for [REDACTED] condition. [REDACTED] has been hospitalized for psychological treatment.

[REDACTED] grade school year has been marked by significant changes in [REDACTED] development, educational progress and overall functioning. While the school year seemed to

begin well enough [REDACTED] began to have difficulties in late [REDACTED] [REDACTED] difficulties were exacerbated by an incident around that time in which [REDACTED] was sexually harassed and assaulted by another student. Around the end of the calendar year [REDACTED] broke down completely and attempted suicide and was hospitalized. A diagnosis of [REDACTED] was added to [REDACTED] ailments. [REDACTED] was in the [REDACTED] Hospital from [REDACTED] 2001 to [REDACTED] 2001. [REDACTED] fell behind in [REDACTED] school work at this time but did participate in a school program at [REDACTED] Hospital. [REDACTED] teachers were encouraged by [REDACTED] guidance counselor to accept [REDACTED] school work from the [REDACTED] Hospital program.

Upon [REDACTED]'s return to school in [REDACTED] 2001 an IEP was developed which provided [REDACTED] with resources from [REDACTED] Program. [REDACTED] continued to take [REDACTED] regular classes, except for [REDACTED] but had therapy and an instructional studies period added. [REDACTED] teachers also offered [REDACTED] additional help at lunch and after school.

Despite the additional help provided by [REDACTED] [REDACTED] continued to have problems. [REDACTED] began to associate with other [REDACTED] children, [REDACTED] had attendance problems, [REDACTED] grades deteriorated and [REDACTED] was emotionally unstable and fearful. [REDACTED] guidance counselor, noted the formation of a clique of students with emotional problems which [REDACTED] had joined. [REDACTED] felt the group was feeding off each others problems and had a negative impact on [REDACTED] [REDACTED] also associated with the group for protection. [REDACTED] was fearful of being attacked and was promised protection by a member of the clique who was a member of the school's football team and physically imposing. [REDACTED] was fearful of staying after school. There was a late bus available but it only provided the regular service route which was not useful to [REDACTED]

██████ has demonstrated the ability to transition from one environment to another successfully with the proper structure present. ██████ successfully went back and forth to school with the help of family and friends. ██████ was also able to participate in a trip to ██████ during Spring break that was sponsored by ██████ history teacher. The trip was highly structured and well supervised. ██████ works a ██████ a few hours per week.

██████ involvement with the ██████ Program components of ██████ IEP did not go well in the ██████ of 2001. ██████ was to meet with ██████ for therapy one session per week. They met for a total of three sessions. ██████ did not want to work with ██████ and expressed extreme discontent with the ██████ Program. ██████ made up stories about leaving the program and ██████ did not pursue additional sessions or treatment for ██████ ██████ continued to have attendance problems, self mutilation, failing grades, fear and anxiety throughout the Spring.

When ██████ was presented with the option of the ██████ Program full time ██████ threatened to run away. ██████ lacks self esteem and can not be successful where ██████ feels ██████ is different from ██████ peers.

██████ strategy for integrating ██████ into the ██████ Program is a team approach. The teachers, assistants and the therapist work together to monitor and educate the children. ██████ Program team would try to convince ██████ can be successful in the program. The program would offer therapy as a regular component of the program. The program offers many of the regular curriculum courses but not all of them. Some ██████ Program students mix classes between the program and the regular education program. The program is contained within the regular education ██████ school. ██████ hopes ██████ can

begin full time in the [REDACTED] Program and make progress to where [REDACTED] can be in a mixed program. The [REDACTED] Program is [REDACTED] only program with a therapeutic component.

The [REDACTED] have requested placement for [REDACTED] in an out-of-state therapeutic residential school. The [REDACTED] have reviewed several schools and indicated that the schools they reviewed had high levels of academic success with the students and that the students were prone to continuing to higher education. The reviewed schools' student bodies appeared normal and you could not tell there were [REDACTED] children present. In [REDACTED] opinion these schools offered [REDACTED] an opportunity for success that the public schools did not because all of the students were "in the same boat" and none of them stood out as different from the other students. [REDACTED] has not been enrolled or even accepted by any of the reviewed schools and the [REDACTED] were not sure if [REDACTED] could get into the schools.

CONCLUSIONS OF LAW

In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176; 102 S. Ct. 3034 (1982), the U.S. Supreme Court directs the use of a two question test to determine compliance with IDEA. The first inquiry is whether the school system has complied with the procedures of IDEA. The second inquiry is whether the child's IEP is reasonably calculated to enable the child to receive educational benefit. The [REDACTED] raised as a procedural issue that they felt [REDACTED] had violated its own policies in regard to keeping parents properly informed. A violation by [REDACTED] of local school policies which were not related to IDEA do not constitute a procedural violation of the Act. The evidence submitted on this issue was accepted for what value it had in determining the appropriate educational placement for [REDACTED]

The educational placement for [REDACTED] is the issue presented by both parties. The parties agree that [REDACTED] placement as stated in [REDACTED] 2001 IEP is inappropriate and therefore a new IEP was developed in [REDACTED] 2001 in which both parties seek a different placement and no consensus was reached. [REDACTED] has written the [REDACTED] 2001 IEP placing [REDACTED] in the [REDACTED] Program. Thus the relevant inquiry is the second part of the Rowley test. The central issue of this matter is whether an educational placement in [REDACTED] Program is reasonably calculated to enable [REDACTED] to receive educational benefit from the program.

The evidence shows that [REDACTED] is an intelligent child who suffers severe [REDACTED] [REDACTED] was able to succeed academically through the [REDACTED] grade using [REDACTED] intellect and treatment to overcome [REDACTED] difficulties. In [REDACTED] grade [REDACTED] was overwhelmed by [REDACTED] problems which were augmented by sexual harassment and an assault on [REDACTED] by another student. This created additional fears and problems for [REDACTED] negatively impacting [REDACTED] ability to function in the public school setting. [REDACTED] reacted appropriately by putting additional services in place for [REDACTED]

[REDACTED] was provided with services from the [REDACTED] Program. Therapy, extra teacher help, instructional studies, exemption from some course requirements and a program monitor were all provided to [REDACTED]. Unfortunately, these [REDACTED] Program features were unsuccessful and [REDACTED] continued [REDACTED] downward spiral. [REDACTED] failure with the [REDACTED] Program services in place was contributed to in some part by [REDACTED] own actions. [REDACTED] has reacted to the [REDACTED] Program by skipping school, self mutilation and threats of running away. These appear to be manifestations of [REDACTED] illness.

It is highly unlikely that the [REDACTED] Program can be successful with [REDACTED] [REDACTED] has a strong desire not to be in the program. [REDACTED] is intelligent enough to manipulate [REDACTED] situation and sabotage any attempt to place [REDACTED] in the program. [REDACTED] has clearly demonstrated this ability already and is unable to control the self destructive behavior brought on by [REDACTED] illness when under this stress. [REDACTED] plan for the [REDACTED] Program team to convince [REDACTED] is unlikely to succeed because [REDACTED] has already met and dealt with the personnel and failed both academically and therapeutically.

While the smaller class size, highly structured program and greater monitoring features of the [REDACTED] Program are appropriate for [REDACTED] these features are unlikely to overcome [REDACTED] fears and self esteem problems associated with mixing in the public school environment which includes a vast body of regular education students and a small body of special education students. This combines with the fact that the therapeutic component of the [REDACTED] Program has already been used and failed with [REDACTED]

For the above stated reasons [REDACTED] Program is not an appropriate placement for [REDACTED]. An IEP placing [REDACTED] in the [REDACTED] Program is not reasonably calculated to enable [REDACTED] to receive educational benefit from that IEP because it is highly unlikely that [REDACTED] will be successful in that program.

Educational benefit under IDEA is only a basic floor of opportunity. Rowley, supra; Tice v. Botetourt County School Board, 908 F. 2d 1200 (4th Cir., 1990); Burke County Board of Education v. Denton, 895 F. 2d 973 (4th Cir., 1990); Barnett v. FCPS, 927 F. 2d 146 (4th Cir., 1991). There is no obligation on the part of a school system to try to maximize the educational opportunity offered to the student. *Id.* The programs identified by the [REDACTED] would

undoubtedly provide [REDACTED] with a good opportunity, if not the best opportunity, for success. However, the school system is not obligated to provide what is best for a student, only a program that is reasonably calculated to provide educational benefit. It is laudable that the [REDACTED] want [REDACTED] to be in an environment which will maximize [REDACTED] chances for higher education and future success but it exceeds the parameters of the benefits bestowed by IDEA.

[REDACTED] has clearly demonstrated an ability to successfully transition from one environment to another. Even after the onset of [REDACTED] difficulties with [REDACTED] [REDACTED] was able to take the Spring break trip. Being highly structured and monitored were important components but with those factors in place [REDACTED] was able to transition from one environment to another.

It is not the role of the school system to be full time caretakers and guardians of our children. The role of the school system is to provide education. IDEA does not confer on the [REDACTED] the right to transfer their parental responsibilities in this regard to [REDACTED]. There is nothing in the evidence which suggests [REDACTED] requires residential placement to gain educational benefit from [REDACTED] IEP. [REDACTED] safety may be better insured by being monitored 24 hours a day but this is not the obligation of the public schools if [REDACTED] can derive educational benefit from a day school program.

Additionally, IDEA favors placement in the least restrictive environment. Devries v. ECPS, 882 F. 2d 876 (4th Cir., 1989). A residential placement is a highly restrictive environment. Day school is a far less restrictive environment which allows the student opportunities for employment, freedom of association and the freedom to choose outside activities. Because an out-of-state residential therapeutic school is not the least restrictive

environment in which [REDACTED] can derive educational benefit, an IEP with such a placement is inappropriate when objected to by the public school system, as is the case in this matter.

For [REDACTED] to benefit from [REDACTED] educational placement, [REDACTED] needs a highly structured program which is closely monitored and has small class sizes. The placement needs to be in a school which specializes in providing for [REDACTED] children and can provide therapeutic services. It is appropriate for [REDACTED] placement to strike a balance between a placement which confines [REDACTED] 24 hours a day and one which places [REDACTED] in the highly stressful and often chaotic environment of a public high school. Too much stimulus has proved debilitating to [REDACTED] ability to be educated yet [REDACTED] clearly has benefited from a wide range of outside activities.

The appropriate placement for [REDACTED] is in a private therapeutic day school. There are many such schools in the local area such as the [REDACTED] School for [REDACTED] Education, [REDACTED] and the [REDACTED].

NOTICE OF APPEAL RIGHTS

Any party aggrieved by the findings and decision in this hearing may appeal directly to the appropriate Federal Court or State Circuit Court within one year.

ORDER

It is hereby ordered that an IEP be developed for [REDACTED] which designates [REDACTED] educational placement in a local private therapeutic day school such as the [REDACTED] [REDACTED]. Said IEP should be developed as soon as possible so that [REDACTED] can begin the new school year in this placement.

[REDACTED]

Date

[REDACTED]
Hearing Officer