

1/5/70

VIRGINIA:

DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING



	)	
	)	
Complainants,	)	
	)	
vs.	)	In Re:
	)	
"PUBLIC SCHOOLS,	)	
	)	
Respondent.	)	

DECISION

This action arose as a request for a Due Process Hearing by the parents of (hereafter ). parents contest the appropriateness of Individual Educational Plan (hereafter IEP). parents have placed in a residential therapeutic school and seek approval of the placement and reimbursement for the costs.

The Public Schools (hereafter PS) contend that IEP is sufficient to meet the standards for a free appropriate public education (hereafter FAPE) as required by the Individuals with Disabilities Education Act, 20 USC § 1400 et seq. (hereafter IDEA). PS denies that parents are entitled to reimbursement for private school placement costs.

Findings of Fact

is a year old who was found eligible for special education services on by PS. This was initial eligibility for special education services. eligibility was made in the category of emotional disability.

After attending a private preschool, began school career in PS at School. successfully completed grades through grade at School. was in a mainstream educational program and displayed above average intelligence.

attended School for and grades. is a PS facility. completed both and grade with passing grades. and grades were mainstream programs. has passed all standards of learning tests through the grade.

was scheduled to begin grade year at School in the of School is a PS facility. has not attended School because of the onset of serious emotional difficulties which have resulted in a series of hospitalizations and private school placements.

During the of , was seeing , a psychiatrist, because of argumentative behavior. recommended be admitted to the day treatment program at . When learned of the recommendation, ran away and was later taken by police to was at Hospital from to displayed depression and suicidal ideation. From to attended the behavior did not improve and continued to threaten to run away and commit suicide. On 2001, was admitted to Hospital again. was diagnosed with depressive disorder, borderline personality traits and severe conflicts with parents and peers. was discharged from Hospital on and returned to the program. When discharged from Hospital, consideration of long-term residential treatment was suggested by doctor. attended the program until and then stayed at home until an incident in In , became upset with and threatened with a knife. The police were called and was taken to Hospital. was detained in the psychiatric unit of Hospital for approximately 36 hours and then transferred to Hospital under a court order after a commitment hearing. doctor at Hospital, wanted to transfer from Hospital to Hospital, another psychiatric hospital, but agreed to release on the condition that go to a residential treatment center. parents were opposed to being sent to Hospital and arranged admission to School (hereafter in began at on after being transported there by parents.

is a private residential facility. provides therapeutic services and academic programs. uses the method. consists of two components, a school and a treatment facility. students are all coded as emotionally disturbed and receiving special education services. Each student has an IEP for every class and modifications to the program are made to accommodate each student's needs. is on a remote ranch-style location and provides many outdoor activities as part of its therapeutic component.

has been at continuously since has continued to have behavioral problems which include running away, violence and verbal abuse. Upon arrival at received educational testing and was found to be on or above grade level in all subjects. has tested out of a number of classes and appears to be on track academically. On psychologist at , reported wanted a program more involved with animals, closer to home and more one-on-one. agreed with at that time.

Shortly before the beginning of PS school year, contacted PS and notified them that would not be attending because of the difficulties was experiencing. On a referral was made to check for eligibility for special education services. On 's parents sent a letter to PS asking that the IEP process be expedited. On the Local Screening Committee met to review case. On a Child Specific Team (hereafter ) was held to discuss possible services for and family. On was found eligible for special education services.

On an IEP meeting was held. No decision was reached by the IEP team at the meeting. parents requested a residential placement. PS suggested School with additional community services. The meeting concluded with an agreement to reconvene at a later date with a Contract Services office representative who could discuss residential placement possibilities. was to remain at Hospital during the interim.

On a letter was sent by parents' attorney informing PS that would be enrolled on at . The letter requested PS consider supporting the placement.

On PS contacted parents and attempted to schedule an IEP meeting for . On contacted PS and indicated was unavailable on and scheduled an IEP meeting for . On an IEP meeting was held. PS proposed a placement at School. parents disagreed with the IEP.

A second meeting was held on . Services that would be available to family if returned to , Virginia were discussed. On of PS Contract Services visited and met with . On 2002 an IEP meeting was held. parents requested PS adopt and fund the placement. PS proposed placement at , a PS special education facility located within School. parents disagreed with the IEP.

reported that was always a difficult child in regard to schooling. is strong willed and oppositional. frequently refused to do homework and was belligerent with school staff.

#### Conclusions of Law

is a child with a disability. has been identified by PS as having an emotional disability and is eligible for special education services. parents have not raised any procedural issues and all notice requirements have been met by PS.

parents have unilaterally placed [redacted] in a private residential school and seek reimbursement for the costs as well as a change to [redacted] IEP for placement at [redacted]. When a child is unilaterally placed in a private school by the child's parents and reimbursement for costs is sought the burden of proof lies with the parents to establish two issues. Bales v. Clarke, 523 F. Supp. 1366 (E.D. Va. 1981). The parents must establish that the program offered by the local school system is inappropriate and that the program they have placed the child in is appropriate. Bales v. Clarke, supra.

In [redacted] case [redacted] PS has offered two programs to [redacted] and [redacted]. Both programs offer special education services for children with emotional disabilities in a day school setting. [redacted] parents presented evidence which demonstrated that in the [redacted] and [redacted] of [redacted] displayed severe emotionally disturbed behavior. [redacted] presented a danger to [redacted] and others. Hospitalization was needed to control [redacted] behavior. As a result of the hospitalizations a number of documents were created which detailed [redacted] condition and made recommendations. These documents were presented as evidence by [redacted] parents. Among the documents was a recommendation by [redacted] doctor at [redacted] Hospital that residential treatment be considered. Subsequently, [redacted] threatened [redacted] with a knife and was committed to the [redacted] Hospital where [redacted] doctor wanted to keep [redacted] institutionalized. [redacted] parents did not want [redacted] to remain in a psychiatric hospital and made an agreement which would allow [redacted] to leave on condition [redacted] was placed in a residential facility resulting in the placement. The evidence presented by [redacted] parents clearly shows a child who was undergoing an emotional crisis and in need of mental health treatment.

What [redacted] parent's evidence failed to show is the relationship of [redacted] mental health needs to the educational opportunities offered to [redacted]. The recommendations from [redacted] doctors never speak to [redacted] educational requirements but rather address [redacted] mental health needs. Clearly [redacted] needs mental health treatment. However, [redacted] doctors never stated that [redacted] could not gain educational benefit from any specific program. [redacted] the only witness for the complainant, details the difficulties with [redacted] and the family crisis which occurred but had virtually no knowledge of the schools and programs offered by [redacted] PS. [redacted] is not an educational expert. [redacted] belief that the programs offered by [redacted] PS were not appropriate is insufficient to establish whether [redacted] could gain some educational benefit from the [redacted] PS programs.

A child is not entitled to the best possible education but only one that provides some floor of opportunity for educational benefit. Board of Education v. Rowley, 458 US 176 (1982); Barnett v. FCPS, 927 F.2d 146 (4<sup>th</sup> Cir., 1991); Tice v. Botetourt County School Board, 908 F.2d 1200 (4<sup>th</sup> Cir., 1990); Burke County Board of Education v. Denton, 895 F.2d 973 (4<sup>th</sup> Cir., 1990); Doyle v. Arlington Co. School Board, 806 F.Supp. 1253 (E.D. Va. 1992). To show that the program proposed by [redacted] PS is inappropriate [redacted] parents needed to demonstrate that [redacted] could not derive any educational benefit from the program. Rowley, supra; Doyle, supra.

The evidence presented in the hearing shows that [redacted] had no history of needing special education prior to [redacted] grade. [redacted] successfully completed [redacted] through [redacted] grade in mainstream programs. While [redacted] school grades may not have been the best or even as good as they could be, [redacted] demonstrated educational benefit. [redacted] educational testing verified progress and even tended to show [redacted] had excelled in some areas. [redacted] ability to learn and be educated does not necessarily appear to be tied to [redacted] emotional disability. [redacted] hospitalizations occurred because of violent acts which could be attributed to mental illness. Protecting [redacted] from suicide and [redacted] family from violence are issues of great concern, however, there was no evidence presented which demonstrated [redacted] hospitalizations were made for educational reasons, quite the opposite is the case, they were made for mental health treatment.

[redacted] placement at [redacted] was likewise made because of [redacted] mental health. [redacted] parents did not wish for [redacted] to remain in a psychiatric hospital setting but could not obtain [redacted] release without a residential placement. [redacted] placement at [redacted] was made as a substitute for the hospital [redacted] was committed to because of [redacted] mental illness.

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 parent's the right to transfer their parental responsibilities in this regard to [redacted] PS. 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. Rowley, supra; Jennings v. Fairfax Co. School Board, 35 IDELR 158 (E.D. Va. 2001).

Additionally, IDEA favors placement in the least restrictive environment. Devries v. FCPS, 882 F.2d 876 (4<sup>th</sup> 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. The evidence in the hearing showed that [redacted] PS has not been given any opportunity to see if [redacted] could be successful in its special education programs. While the motives of [redacted] parents in placing [redacted] at [redacted] reflect genuine interest in [redacted] well being their decision to place [redacted] in [redacted] created a scenario where we do not know if the proposed [redacted] PS placements would have been successful. It is appropriate to try the less restrictive [redacted] PS placement.

Since being at [redacted], [redacted] has repeatedly requested a less restrictive placement and psychologist at [redacted] has agreed that a placement closer to home could be helpful. Thus, it does not appear that [redacted] would be resistant to trying a [redacted] program and even [redacted] agreed that [redacted] could accomplish any goal [redacted] wanted to accomplish.

The PS special education programs are very sophisticated and offer a high level of service. The PS witnesses all indicated they believed they could give educational benefit in either the School or Center. No evidence was offered to rebut the PS witnesses.

parents have failed to produce sufficient evidence to demonstrate that the programs offered by PS are inappropriate to provide with FAPE as required by IDEA. Because parents have not demonstrated the PS programs offered are inappropriate, it is unnecessary to determine if the is an appropriate placement. Therefore, no finding will be made on that second issue of the test.

Order

This matter is hereby dismissed for lack of sufficient evidence to determine the PS programs are inappropriate for to receive a free appropriate public education as required by law. The Complainants' request for relief is denied.

Notice

This decision is final and binding unless appealed by a party in a State Circuit Court within one year of this decision's issuance date, or in a Federal Court.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hearing Officer

copies to:

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