

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Case Number 01-317

Date of Decision: January 9, 2002

Student A. v. Enfield Board of Education

Appearing on behalf of the Parents:

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Appearing on behalf of the Board of Education: Attorney Christine L. Chinni  
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Appearing before:

Attorney Gail K. Mangs, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board offer A. an appropriate program for the 2001-2002 school year?
2. If not, does the Curtis Blake Day School offer A. an appropriate program?

**PROCEDURAL HISTORY:**

This hearing was requested on September 25, 2001 after unsuccessful mediation. The prehearing conference was convened on October 3, 2001. Hearing dates were scheduled for November 5, 13, and 16, 2001. November 16, 2001 was canceled due to a scheduling error. November 19, November 26 and December 19 and 21, 2001 were added as hearing dates and the date for the mailing of the final decision and order was set as January 9, 2002. The Parents called the following witnesses: A.'s Mother and Father, and Marguerite Geneste and Kimberly McCarthy of the Curtis Blake Day School. The Board called the following witnesses: the Acting Pupil Services Director and A.'s fifth grade teacher. Dr. Michael Fulco appeared on the witness list of both parties but was called as a witness by the Board with the understanding that the Parents could ask questions beyond the scope of direct examination; by agreement of the parties, the Parents questioned Dr. Fulco first. On December 14, 2001, the Parents notified the Board and Hearing Officer by facsimile that they intended to call the Director of Pupil Services as a witness; however, he was then on medical leave and it was uncertain when

he would return. On December 19, 2001, the Board objected to his being called as a witness and the hearing officer stated her unwillingness to hold the hearing open until his return. The Board attorney stated that she would seek information about the Director's medical condition and report back on December 21; the hearing officer stated that she would withhold her final decision with regard to the Director's testifying until December 21. On December 21, neither party indicated that the Director's testimony was still an issue and the hearing ended that day with final arguments.

### **SUMMARY:**

A. is an eleven year old student currently in the sixth grade at the Curtis Blake Day School, a small special education school located in Springfield, Massachusetts. A. has displayed academic difficulties since the first grade (the 1996-1997 school year). At the end of her first grade school year, the PPT identified A. as a speech and language impaired child. From second grade through the end of A.'s fifth grade school year, A. received both consultative and direct special education services. Although A. made educational progress, she experienced continuing difficulty with receptive and expressive language, written expression, organization, homework completion, and learning and retaining new material. A neuropsychological evaluation performed by Dr. Michael Fulco in 1999 revealed a developmental learning disorder characterized by deficits in processing and executive function. He recommended placement in a regular education classroom supplemented with resource room support. During fifth grade, A. brought home significant amounts of homework with which she required hours of assistance from her parents. Concerned about A.'s difficulty understanding and completing her homework, and believing that A.'s removal from the resource room during fifth grade had been detrimental to her progress, A.'s parents requested placement at the Curtis Blake Day School for the 2001-2002 school year. The PPT refused to support the placement and A.'s parents unilaterally placed A. at Curtis Blake on August 28, 2001.

### **FINDINGS OF FACT:**

1. A. first began receiving remedial reading services while in the first grade when her teacher noted that A. had difficulty learning new concepts; she needed repetition and to "overlearn" in order to master new material. A language evaluation performed in May, 1997 revealed a moderate language disorder and resulted in A.'s identification as a language impaired student. During the second and third grades, A. remained in the regular education classroom and received consultative speech and language services with various modifications employed due to her deficits in auditory comprehension. She also received remedial reading instruction. In psychoeducational testing administered during third grade, A. performed within the average to low average range in both intellectual functioning and academic achievement. A.'s third grade teacher noted reading comprehension, writing skills, and problem solving among A.'s areas of difficulty. (Exhibits B-1 through B-9; P-3 through P-5, P-7, P-12)
2. In response to the concerns expressed by A.'s parents about her difficulty with school assignments, the Board asked Dr. Michael Fulco to perform a neuropsychological evaluation. Dr. Fulco performed an extensive evaluation during the summer of 1999.

In testing, A. demonstrated average intelligence and borderline average verbal reasoning abilities. Results of the evaluation revealed a developmental learning disorder characterized by processing deficits, slow processing speed, deficits in executive function including impaired organization and problem solving skills, and poor reading comprehension and writing. These deficits made it difficult for A. to process, retain, and retrieve new information. Attention deficits were also noted. Further complicating this picture was A.'s basic temperament which is anxious and non-assertive. Dr. Fulco recommended mainstream education with resource pull-out support. He also recommended classroom and assignment modifications due to A.'s slow processing speed and her need for practice and preteaching when confronted with new material. A central auditory processing assessment was also suggested. Dr. Fulco testified that A.'s resource needs fall mostly in the areas of organization, preteaching and reinforcement rather than on the acquisition of basic skills. (Exhibit B-17, Testimony of Dr. Michael Fulco)

3. After reviewing Dr. Fulco's evaluation, the PPT developed an IEP for fourth grade that provided regular education placement with thirty minutes per day of resource room support and one hour per week of direct speech and language services. The PPT also added "Other Health Impaired" (OHI) as a secondary disability due to Dr. Fulco's finding of attention deficits. Fourth grade was a relatively successful year for A. (Exhibit B-19, Testimony of Mother)
4. A.'s initial IEP for fifth grade, dated May 11, 2000, provided for regular education placement with thirty minutes per day of resource room support and fifteen minutes per week of speech and language consultation. Two goals were developed: (1) A. will improve written language skills, and (2) A. will maintain auditory comprehension skills in class. Regular education modifications were not deemed necessary. On September 27, 2000, the PPT reconvened and changed the IEP to remove resource room support. Instead, the IEP provided for "resource room services" in the regular education classroom with a writing program co-taught by A.'s regular education and special education teachers for one and one-half hours per week. (Exhibits B-20, B-21)
5. On the fourth grade Connecticut Mastery Test, A. scored below the state goals on all areas of the test. (Exhibit B-37)
6. A.'s parents testified that A.'s fifth grade year did not go well. Despite average grades (B's and C's), A. seemed to be bringing home a great deal of homework with which she required hours of assistance from her parents each night. A.'s fifth grade teacher testified that during the fifth grade, he met with A.'s parents on about ten occasions to discuss the homework issue, although he did not know that homework was a problem until almost half way through the school year. It was determined that much of what A. was bringing home were incomplete classroom assignments. A.'s teacher testified that his homework policy called for students to work between 45 minutes and one hour each night; if they required more time, then they were to bring in a note signed by their parents that they were unable to complete their work within the allotted time. He stated that homework often consisted of classroom assignments; students usually began the assignments in class so that they could ask questions, and

then brought home whatever they had not finished. A.'s teacher testified that A. was a diligent student who worked on grade level during fifth grade. She was able to attain grades of C or better in the regular education curriculum; he did not modify her grades. Writing remained A.'s weakest subject. (Exhibit B-22, Testimony of A.'s Father, Mother, and Fifth grade teacher)

7. PPT's were convened on March 1, March 19, April 24, May 2, and June 18, 2001. At the request of A.'s parents, changes were made to A.'s IEP that added goals for reading comprehension, homework completion and the development of organizational strategies. At the March 19 PPT, one hour per day of resource room services was added to A.'s IEP as well as twenty minutes per week with the school counselor to assist A. with organization. A.'s regular education and special education teachers disagreed with the IEP changes, maintaining that A. was receiving average grades without the need for modifications or pull out assistance, although she often required repeated instructions and some prompting. The PPT recommended a Central Auditory Processing evaluation and, at the May 2 PPT, the team made further recommendations for assistive technology, psychiatric, and neuropsychological assessments. The minutes of these PPT's reflect that at most of these meetings, the Parents requested that A. be placed at the Curtis Blake Day School. The PPT refused all such requests. (Exhibits B-24, B-27, B-35, B-39, B-51)
8. On a reading assessment administered by the Board in March, 2001, A. scored within the average range in all areas. (Exhibit B-37)
9. An audiologist from the Capitol Region Education Council ("CREC") performed an Audiological and Auditory Processing Assessment on June 4, 2001. The results of the evaluation indicated that A. has an auditory processing disorder with weaknesses in auditory discrimination, selective listening, auditory memory and organization, and phonemic awareness. These weaknesses commonly result in difficulty following directions, retaining information, a tendency to mishear, and problems with reading, spelling, retelling a story, and writing in an organized fashion. Recommendations were made for a trial with an Easy Listener FM system, and teaching strategies such as repetition of information, presentation of information in short segments, frequent breaks, preteaching, paraphrasing and rewording, and accompanying auditory information with visual support. Private placement was not recommended. (Exhibit B-46)
10. On June 14, 2001, Dr. James Black performed a psychiatric evaluation. Dr. Black found little indication of an attention deficit problem, but described A. as a perfectionistic, anxious girl who fears failure. He recommended family oriented psychotherapy to focus on her perfectionism and the homework anxiety that results from her desire for the approval of her parents and teachers. Dr. Black also recommended a focus on effort over outcome, emotional support to relax her self-expectations, and extracurricular activities at school so A. would view school as a pleasant environment. (Exhibit B-59)
11. On June 18, 2001, the PPT convened for the annual review and to plan A.'s sixth grade IEP. Two goals were developed: (1) A. will maintain academic progress in all

curriculum areas and (2) A. will use effective listening skills in the classroom. The educational plan called for placement in a regular education classroom with one hour per week of direct speech and language services and thirty minutes per week of resource room assistance on a consultative basis only. In addition, various classroom modifications were provided including an FM system, the use of which would be monitored by the CREC audiologist. A.'s parents again requested, and were refused, placement at the Curtis Blake School. (Exhibit B-51)

12. A. was unilaterally placed at the Curtis Blake Day School by her parents on August 28, 2001 for the 2001-2002 school year. Curtis Blake is a small private day school located in Springfield, Massachusetts; it is approved by the state of Massachusetts as a private special education school. It enrolls approximately eighty students from eight through sixteen years of age; while most of the students have been diagnosed with language-based learning disabilities, all of the students have some disability. Students receive a language-based program that is integrated throughout all classes. Physical education is provided once per week at a local community center. Students tend to stay at the school for five to seven years or until they complete the program; over half of the students then go on to a special education high school. ( Exhibits P-10, P-15, Testimony of A.'s Mother and Marguerite Geneste, Curtis Blake school psychologist)
13. In testing performed at Curtis Blake in April, 2001, A. scored 90% at the grade four level in word recognition and silent reading comprehension, and 60% at the grade four level in oral reading comprehension. Testing also indicated that A.'s instructional math level was then at grade 4.5. Curtis Blake personnel testified that A.'s language and academic abilities place her in the middle to higher level of Curtis Blake students (some of whom have been studying there for more than six years). (Exhibits P-10, P-15, Testimony of A.'s Mother, Marguerite Geneste, and Kimberly McCarthy, Curtis Blake speech and language pathologist)
14. With the agreement of the Parents and the Board, Dr. Michael Fulco performed an independent neuropsychological evaluation in September, 2001. Dr. Fulco reviewed Board and Curtis Blake School records as well as the evaluations by CREC and Dr. Black. Dr. Fulco's findings were essentially consistent with his previous assessment in that A. still has a learning disorder characterized by higher order processing difficulties. She continues to demonstrate academic skills in the low average to average range and to have difficulty obtaining information from complex passages. However, Dr. Fulco also found significant improvement in many neuropsychological functions; specifically, he found improvement in A.'s ability to attend, her reading fluency and comprehension, executive functioning and problem solving, and the use of compensatory strategies. In addition, A.'s auditory and language processing skills were more consistent and her cognitive functioning was less influenced by anxiety. Dr. Fulco testified that except in her writing skills, A.'s learning difficulties fall within the mild range and that she has made the expected level of progress for someone with her disabilities. However, according to Dr. Fulco's testing, A.'s writing skills had actually deteriorated since the first evaluation. Dr. Fulco again recommended that A. be placed in a mainstream educational program with resource pull-out services in order to further develop her written expression as well as to

provide preteaching, review, tutorial support, and instruction on metacognitive strategies. Dr. Fulco recommended that these support services continue even if it appears that A. is doing well. While A. would benefit from a co-teaching model, such instruction should not be in lieu of resource support. (Exhibit B-57, Testimony of Dr. Michael Fulco)

15. On October 31, 2001, the PPT convened to discuss Dr. Fulco's evaluation. The IEP was revised to include new goals emphasizing metacognitive strategies, phonemic awareness, language concepts, auditory skills, self-confidence and self-advocacy, written expression, reading comprehension, and keyboarding skills. Placement was maintained in a regular education classroom, although five hours per week of resource room support and thirty minutes per week of counseling were added. One hour per week of direct speech and language services was maintained from the June 18, 2001 IEP. In an addendum to the PPT minutes, A.'s Parents stated that Dr. Fulco's recommendations were not being followed and had not been followed since his first evaluation. They again requested placement at Curtis Blake School. (Exhibits B-58, P-14, P-16)
16. Throughout A.'s elementary school years, teachers have found A. to be cooperative and a very diligent worker. At the same time, she fears making mistakes and rarely takes academic risks if she thinks she might be wrong. Even when modified assignments were given, A. often felt compelled to do the entire assignment. (Exhibit P-8 B-17, B-57, Testimony of Mother and A.'s fifth grade teacher)

### **CONCLUSIONS OF LAW:**

1. There is no dispute that A. is qualified to receive a free and appropriate public education ("FAPE") as a language impaired student under the provisions of Connecticut General Statutes section 10-76 et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et seq.
2. The standard for determining whether FAPE has been provided begins with the two prong test established by the Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 459 U.S. 176 (1982). First, the procedural requirements of the IDEA must have been met by the school district. Second, the individualized educational program must be reasonably calculated to enable the child to receive some educational benefit.
3. Since Rowley, courts have clarified the requirements of FAPE to hold that individualized educational programs offered to children with disabilities must provide more than a trivial educational benefit. (See Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988), cert. denied 488 U.S. 1030 (1989) and Oberti v. Board of Education of the Borough of Clementon, 995 F.2d 1204 (3rd Cir. 1993)) However, the IDEA does not require that the educational potential of each child be maximized. (Rowley at 189)
4. In addition to the provision of FAPE, the law also requires that children with disabilities be educated to the maximum extent appropriate with children who are not

disabled (34 C.F.R. 300.550(b)). Education must be provided in the least restrictive environment (“LRE”) appropriate to meet the unique needs of each disabled student.

5. Under the line of cases that includes Burlington v. Dept. of Educ., 736 F.2d 773 (1st Cir. 1984), aff’d 471 U.S. 359 (1985) and Florence County Sch. Dist. Four v. Carter, 510 U.S. 359 (1985), a parent can unilaterally place their child in a private school and seek payment for such placement from their school district. Such funding requires a finding that the Board’s proposed program was not appropriate, and second, that the parental placement is appropriate. Under Regulations of Connecticut Agencies Sec. 10-76h-14, the Board of Education has the burden of proving the appropriateness of the child’s proposed educational program by a preponderance of the evidence while the Parents must prove the appropriateness of their private placement.
6. The educational program offered by the Board in the June 18, 2001 IEP was not appropriate. Dr. Fulco, the only educational expert who testified at this hearing, and the independent evaluator agreed to by both the Parents and the Board, was clear and consistent in his two evaluations: A. requires direct resource room support. This can best be seen in A.’s deficient writing skills. Due to her deficits in higher order language processing and organization, A.’s writing skills continue to need support. Such support should come from the resource room. In addition, due to the nature both of A.’s disabilities and her naturally reticent, perfectionist personality, it may not always be clear when she requires assistance. Therefore, resource room services must continue even when it appears that A. is making good progress. The June 18, 2001 IEP, with only two educational goals listed and no provision for direct resource room support, did not provide an appropriate educational program to meet A.’s unique needs. While many of the modifications listed in this IEP are appropriate, it is unclear whether these modifications could be provided in the regular education classroom so as to enable A. to receive the preteaching, review and reinforcement that she requires to effectively learn new material. Also, there is no counseling provided in the IEP, a component that A. requires if she is to eventually become a self confident learner who can advocate for herself. Metacognitive strategies are also missing from the limited goals; these will be necessary if A. is to become an independent learner able to attack, complete and comprehend assignments and new material on her own. It should also be noted that when resource room support was provided in the fourth grade, A. had a relatively successful year.
7. While A. has made more than trivial progress with the Board’s programs, it must be recognized that at least some of that progress has been due to the continued advocacy of her parents and their willingness to spend long hours at home with A., helping her with her assignments and actually providing her with the kind of support she needs to “overlearn” and, therefore, comprehend and retain new material. This kind of assistance should have been provided in the school’s programs but was not provided either in the fifth grade or in the June 18, 2001 IEP.
8. While the June 18, 2001 IEP does not provide an appropriate program, the Curtis Blake Day School also does not provide an appropriate educational program. A. presents as a child with a complex set of disabilities. As described by Dr. Fulco, A.’s processing deficits and impaired executive functioning impact on her ability to

operate within a traditional academic program both in the classroom and when completing homework. But A.'s disabilities, while frustrating for her and her parents, are comparatively mild; as such, A. has been able to make educational progress and receive some educational benefit even where her educational program has been less than appropriate. While A. may make progress and gain academic skills at Curtis Blake, A. has demonstrated that she does not require such a restrictive program in order to make educational progress. It is clear from the testimony of Curtis Blake representatives that A., even after attending the school for just three months, falls within the mid to upper range of their students' academic abilities. In addition, all students in the school are disabled; in fact, over half the students complete their education at special education high schools. A. has already demonstrated that she can experience academic success within a mainstream environment. This was confirmed by the progress noted by Dr. Fulco in his second evaluation. A.'s level of progress and need for resource room support was such that the program offered by the Board was not appropriate, but having said that, her level of progress also compels the conclusion that the Curtis Blake program also does not offer an appropriate program in the least restrictive environment for A.

9. It should also be noted that no educational professional recommended that A. be placed in a special education school. Dr. Fulco, the expert supported by both the parents and the Board, explicitly endorsed mainstream placement with resource room support. In addition, the CREC auditory evaluation did not recommend special education placement.
10. While neither the June 18, 2001 IEP nor the Curtis Blake Day School offered an appropriate program, an appropriate program can be found in the October 31, 2001 IEP developed by the PPT after a review of Dr. Fulco's second evaluation. (See Finding of Fact No. 16) It provides for five hours per week of resource room support, an hour of direct speech and language services, and weekly counseling to help A. become less anxious and more of a self-advocate. In addition, the PPT designed goals appropriate to meet A.'s unique needs. These include language, written expression, reading comprehension, auditory skills, and metacognitive strategies to help A. become a more independent learner. This is the IEP that should have been offered to A. in June, 2001.

**FINAL DECISION AND ORDER:**

1. The Board did not provide an appropriate program for the 2001-2002 school year.
2. The Curtis Blake Day School does not provide an appropriate program.
3. The October 31, 2001 IEP contained in Exhibit No. B-58 and described in Finding of Fact No. 16 and Conclusion of Law No. 10 does provide an appropriate program. The PPT shall convene immediately to review this IEP, make any changes deemed necessary by the PPT, and implement the educational program contained therein.