

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student. v. Waterbury Board of Education

Appearing on behalf of the Parents: Pro Se

Appearing on behalf of the Board: Attorney Elaine M. Skoronski  
Corporate Counsels' Office  
Chase Office Building  
236 Grand Street  
Waterbury, CT 06702

Appearing before: Attorney Justino Rosado, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the summer program offered by the Board for the 2002 summer appropriate? If not;
2. Is the summer program requested by the parents with two (2) weeks at Camp Metasha appropriate?

**PROCEDURAL HISTORY:**

The parents requested this hearing on June 26, 2002. The pre-hearing conference was convened on July 8, 2002. The hearing convened on July 22, 2002 and July 24, 2002. The mother testified on behalf of the parents. The parents called Ann M. Bagley, Special Education Supervisor and Ann Marie Cullinan, Assistant Superintendent of Special Education, as their witnesses. The Board of Education called the same witnesses as the parents. The record was closed on July 24, 2002.

**SUMMARY:**

The student is a nine and ½ year-old young man who has been identified as Other Health Impaired with the underlying disabilities of autism, mild mental retardation, severe communication disorder and socialization skills problems. The parents at the PPT meeting requested that the student's Extended School Year program for the summer of

2002 include two weeks at Camp Matasha to avoid any regression in the student's socialization skills. The Board denied the request for two weeks at Camp Matasha. The Board's program was found appropriate. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference see Bonnie Ann F. v. Callallen Independent School District, 835 F.Supp. 340 (S.D. Tex. 1993)

**FINDINGS OF FACT:**

1. The student is a nine and ½ year-old young man who has been identified as Other Health Impaired with the underlying disabilities of autism, mild mental retardation, severe communication disorder and socialization skills problems. (Testimony of Mother) There is no dispute that the student is qualified to receive a Free and Appropriate Public Education ("FAPE") under the provisions of Connecticut General Statutes Section 10-76a et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. Section 1401 et seq.
2. The student has been enrolled in the Board's schools since the 1995 school year. The program offered the student during the 2001-2002 school-year was the result of a due process hearing requested by the parents and decided on October 12, 2001. (Parents' Exhibit #6)
3. The student was evaluated three times during his enrollment in the Board's school. The last evaluation by the psychologist was on May 29, 2001. This evaluation was utilized in preparing the student's IEP for the school year 2001-2002. (Parents' Exhibit # 1 & 8)
4. The student attended the Board's school during the 2001-2002 school year. The Capital Region Educational Council ("CREC") supervised the student's program. They provided the student with an aide during the school year. At the end of the 2001-2002 school year the student aged out of the CREC program. Both disabled and non-disabled students were involved in the program. (Testimony of Mother)
5. The student had an extended school year ("ESY") program for the summer of 2001. This was a 40-day homebound program with the aide from CREC providing services to the student at his home. The program was 6 hours per day five days per week with two hours of speech therapy and one hour of occupational therapy. As part of this program, at the request of the parents, the Board provided the student with one week at a summer day camp called Camp Matasha. The camp improved the student's socialization. (Testimony of Mother)
6. The student's special education teacher recommended that the student have an ESY program during the summer of 2002 in order to support the student's maintenance of academic skills (Parent's Exhibit # 8). CREC felt that the student's educational program was more important than socialization. (Testimony of Special Education Supervisor)

7. At the PPT meeting of June 12, 2002, the Board agreed to contact the psychologist Michael Powers PhD., in order to evaluate the student's 2002-2003 school-year program and give his opinion as to the program. The student's ESY for the summer of 2002 consisted of the Bucks Hill Extended Program and the Wilby Program. The Buck Hill Program was only on Fridays. The Wilby Program contained age appropriate peers that were enrolled in the student's 2001-2002 school program. During this program the student worked on discreet skills with other children. The ESY program was tailored to prevent regression. (Parents' Exhibit # 10 and Testimony of Special Education Supervisor)
8. At the June 6, 2002 and the June 12, 2002 PPT's, the parents requested that the summer program for 2002 include two weeks at Camp Matasha with an aide to be provided by the Board. (Parents' Exhibits # 8 & 10) The parents felt that the Camp assisted the student with his socialization skills and helped in avoiding any regression during the summer. The parents also felt that the ESY for 2002 should be as long as the ESY for 2001. The ESY for 2002 was 3 days shorter than the ESY program for 2001. (Testimony of Mother)
9. There was no Written Prior Notice given to the parents of the Board's refusal of the parents' requested summer 2002 program for the student. (Testimony of Special Education Supervisor)
10. The ESY for 2001 was a home based school program with an aide and the student's attendance at Camp Matasha for one week was more for socialization and recreational. The Board felt that since the ESY program for 2002 included other students and age appropriate peers, the student's socialization would not be a problem. The Assistant Special Education Supervisor did not know how the student's current goals and objectives could be incorporated at Camp Matasha. The special education supervisor observed the student during his summer 2002 program and saw that the student was making progress and not regressing. The parent has not visited the schools' ESY program for the student. (Testimony of Special Education Supervisor)
11. The student did not have a speech pathologist for the first two weeks of his summer 2002 program. The pathologist was called to the National Guard and was not available. The Board was not aware a speech pathologist had not been contracted. A pathologist is now in attendance and the student's time will be made up. The student's program receives assistance from the Institute for Professional Practice (IPP) who specializes in working with autistic children. (Testimony of Special Education Supervisor and Assistant Superintendent of Special Education)
12. The Board offered the student an additional week during the summer but the student would be at the Buck Hill Program with no other peers. The parents did not agree to this additional week. (Testimony of Mother)

13. There was an issue raised by the parents as to transportation, but before the hearing the parties resolved this issue. (Testimony of Mother)

### **CONCLUSIONS OF LAW:**

1. There is no dispute that the student is entitled to special education and related services pursuant to 20 U.S.C. Section 1400 et. seq., the Individuals with Disabilities Education Act ("IDEA"). 34 C.F.R. Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
2. Extended school year services means special education and related services that (1) are provided to a child with a disability (i) beyond the normal school year of the public agency; (ii) in accordance with the child's IEP; (iii) at no cost to the parents of the child; and (2) meet the standards of the SEA. 34 C.F.R. Section 300.309.
3. "Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§ 300.340-300.350, that the services are necessary for the provision of a free and appropriate education to the child." 34 C.F.R. § 300.309.
4. In determining the appropriateness of the Board's proposed ESY, it is helpful and pertinent to first acknowledge the purpose or justification for ESY. A variety of factors must be examined. These factors include: (1) nature of the student's disability; (2) severity of the student's disabling conditions; (3) areas of learning critical to attaining the goal of self-sufficiency and independence from caretakers; (4) ability of the child's parents to monitor programming and prevent regression; (5) extent of regression or recoupment. *Armstrong v. Kline*, 476 F.Supp. 583, 3 EHLR Dec. 551:195 (E.D. Pa. 1979); Remedial Order No. 2, 3 EHLR Dec. 551:258 (E.D. Pa 1979); rem'd sub nom. *Battle v. Commonwealth of Pennsylvania*, 629 F.2d 269 (3rd Cir. 1980), cert. den. 452 U.S. 968, 66 L.Ed. 2d 837, 101 S.Ct. 916 (1980), on rem'd. 513 F.Supp. 425 (E.D. Pa. 1981).
5. There is no dispute that the student is eligible for ESY for the summer of 2002. The issue raised by the parents is should the student have two weeks at Camp Matasha as part of his ESY? The parents' concern is that without that time at the Camp, the student's socialization skills will probably regress. The student's IEP team is responsible for determining the specifics of the student's ESY program. Because the student's individual requirements are at issue, the team may not limit the types, amounts or duration of services it will provide 34 C.F.R. Section 300.309 (a)(3)(ii).

The Board properly considered the student's needs, educational goals, objectives and placement as delineated in his IEP when it prescribed ESY for 2002. The student's socialization needs are clearly met with this program. Last year the student only spent one week with other children. This year his entire program is spent with his peers and working on discreet skills with other children. The student's ESY program also includes recreational activities. Since the ESY program ends on August 27, 2002, the

three-day difference between this year's program and last year should not affect the student. The ESY program proposed by the Board for the summer of 2002 is appropriate.

6. The procedural violation of not giving written prior notice to the parents was not a material violation, since the parents had previously been involved in a due process hearing and were knowledgeable in that they quickly requested a due process hearing.

**FINAL DECISION AND ORDER:**

1. The Extended School Year Program the Board offered to the student for the summer of 2002 is appropriate.
2. Since the Program proposed by the Board is appropriate, the issue of whether Camp Matasha is appropriate is moot.