

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Shelton Board of Education  
and Trumbull Board of Education

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Appearing before: Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the program offered by the Shelton Board to the Student for the 2004-2005 school year is appropriate.
2. If not, what is the appropriate program for the Student.

**PROCEDURAL HISTORY:**

The Parents requested this hearing in June 2004 to challenge the removal of the Student from his placement as a tuition student at the Trumbull Board's SMILE program to a program and placement at the Shelton Board's Mohegan School. [Exhibit H.O.-1] Trumbull is a public school, but is not the town of residency for the Student; he is a resident of Shelton.

The Parents' attorney initially requested stay put to maintain the Student's placement in the SMILE program in the request for hearing. Another hearing officer was initially assigned to this matter. The previously assigned hearing officer recused herself on August 26, and this matter was assigned to the undersigned hearing officer on that date. At the time the matter was assigned to this hearing officer, this Motion for Stay Put was pending. The issue to be decided on the Motion for Stay Put was: *Whether the Shelton Board shall maintain the Student's placement at the Trumbull Board's SMILE program during the pendency of this hearing.*

At the prehearing conference on August 31, the parties were given additional time to supplement their submitted briefs with affidavits, exhibits and additional argument on the pending Stay Put issue. A deadline for submission of these additional documents was set for September 3, 2004, and an *Interim Ruling on Motion for Stay Put* was issued on September 6.

Included in the *Interim Ruling on Motion for Stay Put* was an order that the Parents' attorney shall clarify their issues that were presented in the request for hearing. The Parents' attorney submitted the Statement of Issues on September 13, which set forth the issues as is stated, *supra*, as the issues in this hearing.

The parties were given an opportunity to present additional evidence on the stay put issue at the hearing on September 21, a date requested by all counsel. At the conclusion of the evidence on the stay put issue, all counsel collectively requested an opportunity to supplement their briefs on the Motion for Stay Put, which was granted. All counsel requested that briefs be submitted by October 6, which request was granted. On September 27, the Parents' attorney forwarded notification that the Trumbull Board would no longer accommodate the Student in accordance with the stay put provision. The correspondence which was sent from the Trumbull Board to the Shelton Board was dated September 23, two days after the hearing on the stay put issue.

The state Department of Education due process unit submitted a request for information to the undersigned hearing officer. A Status of Stay Put Issue was forwarded to all parties and to the due process unit on September 29.

The deadline for additional supplemental briefs was extended one day at the request of Parents' counsel due to a family medical issue. Counsel for all parties submitted supplemental briefs by October 7.

After the hearing on the stay put issue, the Shelton Board was ordered to maintain the Student's placement in the Trumbull program, and the Trumbull Board was ordered to fully comply with the stay put order to maintain the Student's placement in the Trumbull program. This ruling was issued on October 11.

In so ruling, it was found that the stay put provision of IDEA provides that "[t]he child shall remain in the then-current educational placement of such child during the pendency of any proceedings conducted in accordance the IDEA, 20 U.S.C. Sec. 1415(i)(2)(B)(i).

The then-current educational placement of this Student, in accordance with this provision, was the SMILE program in the Trumbull schools.

The Trumbull Board had taken the position that it was not bound by this stay put order. That conclusion was erroneous. Trumbull has accepted this Student on a tuition basis, akin to a private school placement. Private special education programs have been found to be bound by the stay put provisions in other jurisdictions. *See, e.g., Northampton Public Schools*, 40 IDELR 118 (Mass. SEA 2003) This is consistent with Connecticut Regulations which provide that “a child placed in a private facility shall be accorded all of the educational rights the child would have if served directly by his or her board of education.” Regs. Conn. Agencies Sec. 10-76d-17. These educational rights would include the maintenance of the then-current educational placement of the Student during the pendency of any administrative proceeding, in accordance with IDEA, and as set forth in Sec. 10-76h-17 of the Connecticut regulations. Therefore, if considered merely a private facility that accepts tuition students, Trumbull was bound by the stay put provisions.

The Trumbull Board was further bound by this stay put order, as it is a “public agency” under the Connecticut regulations and a “local educational agency” and “public agency” under the federal regulations. Under the Connecticut regulations, the “public agency” that can be a party to a hearing means “a local or regional board of education, the state vocational-technical school system, a unified school district or the Department of Mental Health and Addiction Services or any other state agency to the extent such agency is responsible for the provision of special education and related services to children eligible for such services.” Regs. Conn. Agencies Sec. 10-76h-1(j) The Trumbull Board is well within the definition of “public agency” in accordance with the Connecticut special education due process regulations. Therefore, the Board was bound by the provisions of the regulations which provide that the child shall remain in his or her then-current educational placement during the pendency of any administrative proceedings. Regs. Conn. Agencies Sec. 10-76h-17

The Trumbull Board is also a “local educational agency” [LEA] as is defined in the federal regulations. “[T]he term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.” 34 C.F.R. Sec. 300.18 The term “public agency” includes LEAs in the federal regulations. 34 C.F.R. Sec. 300.22 The Trumbull Board would be a proper party on the stay put issue, as it is a “public agency,” obligated by the due process hearing procedures. *See, e.g.* 34 C.F.R. Sec. 300.507, 300.509. Therefore, the Board was bound by the stay put provisions of the federal regulations which provide that the child must remain in his or her current educational placement. 34 C.F.R. Sec. 300.514

The Trumbull Board submitted a Motion to Dismiss, challenging that the Hearing Officer did not maintain jurisdiction over the Trumbull Board in this action. The Trumbull Board's Motion to Dismiss was granted in part, and denied in part. It was found that the hearing officer had jurisdiction over the Trumbull Board as to the stay put issue only. The Parents argued that the hearing officer had jurisdiction to order the Trumbull Board to maintain the Student in its program at the conclusion of this hearing as a final decision and order. It was found that there was no jurisdiction to order the Trumbull Board to maintain the Student in its program at the conclusion of this hearing. Since the Trumbull Board was terminating its tuition program, it could not be forced to continue enrollment of the tuition student, just as there is no authority to compel a private school to accept a Student into its program in a final decision.

The Trumbull Board maintained standing in this case to challenge any request for postponements of hearings and extensions of the mailing date of the decision, as those decisions would impact the stay put order. A scheduling order was issued that limited the number of hearing dates to those dates scheduled, and ordered counsel for the parties to plan to present their cases accordingly, within the time constraints. The final briefs were due on or before November 29.

The Parents' witnesses were the Mother, the Father, consultant Adrienne Smaller, and private occupational therapist Robin Smelter.

The Shelton Board's witnesses were former director of special education Mary Bruno, special education teacher Linda Hamlin and consultant Linda Grimm.

The Trumbull Board's witness was Brenda McNeal.

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 Student, a resident of Shelton who is eligible for special education and related services, is eight years old and has been diagnosed with autism. The Parents requested this hearing to challenge the removal of the Student from his placement as a tuition student at the Trumbull Board's SMILE program to a program and placement at the Shelton Board's Mohegan School, the Student's neighborhood school. The Student's placement in the SMILE program was subject to a stay put order while this hearing was pending.

In filing this action, the Parents were seeking to continue placement at the Trumbull SMILE program, although Trumbull had made an administrative decision to close the program to tuition students. The Parents were put on notice that the final decision would not result in an order of placement of the Student in the Trumbull

program, as that program would no longer be available. The Parents then sought placement for the Student at Giant Steps.

**FINDINGS OF FACT:**

1. The Student is a resident of Shelton who is eligible for special education and related services. [Exhibits P-1, SB-1] He is eight years old, and has been diagnosed with autism. [Testimony Mother, Exhibit P-1]
2. The Parents were aware as early as 12 to 15 months of age that the Student had something amiss developmentally, as he was not babbling and didn't want to be held. Birth to three made a preliminary diagnosis, and a neurologist diagnosed the Student with autism at a young age. The Student's strengths are that he has excellent rote memory skills and excellent penmanship. He has been nonverbal until recently. He has difficulty comprehending anything that is abstract in academics. He also has social-emotional difficulties which include melt downs and engaging in self-stimulating behaviors. [Testimony Mother] The Student has a complicated profile, and presents with a number of challenging behaviors. [Testimony Dr. Smaller]
3. The Student was enrolled in the SMILE program at Trumbull schools after a January 27, 2000 PPT, and has attended that program since that time. [Exhibit SB-1]
4. The Planning and Placement Team [PPT] convened in May 2003 for the annual review of the Student's program. At the PPT, the team agreed that the Linda Grimm, an educational consultant for the Benhaven Learning Network, was to assist the district in determining the Student's needs. The team agreed that the Student's return to his home school will be reviewed at the next annual review. [Testimony Mother, Exhibit SB-5]
5. Through the 2003-2004 school year, the Student was enrolled in the SMILE program in Trumbull on a tuition basis. During that time, the Shelton Board contracted with the Trumbull Board for the provision of special education to the Student in accordance with the IEP developed by Shelton. [Exhibit TB-1]
6. The Student's program for the 2003-2004 school year included 19 hours per week of instruction by a special education teacher in a self-contained classroom, speech and language therapy for 2 ½ hours per week, and 1 ½ hours per week of occupational therapy. He was mainstreamed in the regular classroom for 9 hours, and was provided a one-to-one paraprofessional. It was noted that removal from regular education was necessary due to the nature and severity of the child's disability. [Exhibit SB-1]

7. During the spring 2004, Trumbull Board administration made the decision that Trumbull was no longer in a position to accept tuition students from other school districts. [Testimony Ms. McNeal, Exhibit TB-1]
8. The Trumbull Board notified the Shelton Director of Pupil Services that Trumbull would no longer be able to accept the Student as a tuition student in the SMILE program for the 2004-2005 school year. [Testimony Ms. McNeal, Ms. Bruno]
9. In April 2004, the consultant from the Benhaven Learning Network completed a Transition Findings report to provide input into the educational programming for the Student with respect to his transition from the SMILE program in the Trumbull School District to the Student's home school in Shelton. The consultant was hired to see if the Student could be successful in a program in Shelton. The program that was under consideration would be in the Student's neighborhood school, Mohegan. [Testimony Ms. Grimm, Exhibit P-2]
10. The consultant reviewed the Student's files, met with the Mother, observed the Student and determined whether the Board could provide an appropriate program for the Student. Initially, the consultant did not believe the first teacher assigned for the Student's program would be appropriate, so she spoke with the Board's special education director about finding an appropriate teacher. The consultant also determined that the Student needed a tutor assigned to him, not merely a paraprofessional. The Board agreed to that revision. The consultant reviewed the Board's proposed physical space, and recommended that the Student's classroom be moved to a different space. The Board agreed with that recommendation. The consultant thought it was critical for the Student to be with nondisabled peers, as he had in the SMILE program. [Testimony Ms. Grimm]
11. Ms. Grimm was found to be a credible and informative witness. While she was a paid consultant for the Board, it is clear that she is not beholden to the Board. In reviewing the Student's proposed program at the Board school, she did not accept the program as it was initially set forth. Rather, she required alterations to the Board's program so that the Student's program was appropriate for his needs. [Testimony Ms. Grimm] Her ongoing support for this program is critical to the Student's success.
12. The first element necessary to provide an appropriate program for the Student that Ms. Grimm identified in her Transition Findings was a teacher who is knowledgeable on the teachings and behavioral strategies that can be used to support a child with autism. Ms. Grimm recommended that the teacher be able to develop and implement discrete trial programs and be able to modify the Student's general education curriculum to help the Student learn. [Exhibits P-2, SB-3]
13. While initially Ms. Grimm had concerns regarding the teacher assigned to the Student, Ms. Grimm testified that the first element in her Transition Findings has

- been met when Linda Hamlin was assigned to be the Student's special education teacher. [Testimony Ms. Grimm, Exhibit SB-3]
14. Ms. Grimm indicated that Linda Hamlin is an extremely knowledgeable, capable and committed teacher who is very familiar with ABA and discrete trial methodology and has had extensive experience and training on how to support children with autism. Ms. Grimm has direct knowledge of Ms. Hamlin's skill and experience because they have collaborated together and because Ms. Grimm has provided training to Ms. Hamlin. [Testimony Ms. Grimm]
  15. The second element Linda Grimm identified in her Transition Findings as necessary for the Student's program was a teacher who understands and is able to provide a curriculum designed for an individual with autism. She noted that the Student's current program was using the ABLLS curriculum, which has been successful for the Student, and an appropriate program to continue. [Testimony Ms. Grimm, Exhibit P-2] As Linda Hamlin, who is assigned to be the Student's special education teacher, has received training on the ABLLS curriculum and used it with her students, this second element would be met in the Board's proposed program. [Testimony Ms. Grimm, Ms. Hamlin; Exhibit P-2]
  16. The third element Linda Grimm identified in her Transition Findings as a critical element for the Student's program was a physical space that can serve a variety of needs, with a workspace that is quiet with minimal distractions, a different space to take some time if needed to calm down, and a small group area to ensure that he continues to generalize skills and share attention. [Exhibit P-2]
  17. During the hearing, there was a substantial disagreement as to whether the physical space proposed by the Board met the needs of the Student. The Parents and their consultant raised concerns that the self contained classroom had visual and noise distractions, and was not an appropriate space for the Student. [Testimony Mother, Ms. Smaller] The Parents' consultant noted that the room was highly visually distracting in that the walls were covered with visual displays. She noted that she spoke with the special education resource room teacher, regarding whether the Student would be provided a work cubicle. [Testimony Ms. Smaller]
  18. The Board's special education teacher noted that she would modify the classroom as necessary for the Student. The Board's special education teacher had observed the Student three or four times in the SMILE program, including a recent three hour observation. Based on her observation of the Student in the Student's current SMILE program, the special education teacher was not convinced that the Student required a work cubicle or carrel. She will work with the Student's needs, and provide a work cubicle for him if he needed one, instead of an individual work table in her room. She also noted that when the Student first came into her classroom, her approach would be to remove the pictures hanging

- from the ceiling and the walls, and then methodically see how much the Student could handle visually. [Testimony Ms. Hamlin]
19. The distractions also of concern for the Parents were the presence of the Board's inclusion facilitator in the self contained classroom, the use of the room as an entrance into an adjacent resource room space, and the noise that could be heard from adjacent rooms. There was also concern regarding the size of the room. [Testimony Mother]
  20. While the placement of the inclusion facilitator's desk in the classroom is not ideal, the testimony presented supports the conclusion that her time at the desk is of a very limited nature during the school day, as most of the time she is in the regular classroom. [Testimony Ms. Bruno, Ms. Hamlin] It would be incumbent on the classroom teacher to ensure that the presence of the inclusion facilitator does not affect the classroom setting, and it is clear that the classroom teacher would be diligent in monitoring that situation.
  21. The use of the room as an entrance to the resource room setting is also not a situation that warrants a finding that the classroom space is inappropriate. Five to ten students go to the resource room in one day, and traverse a path that is opposite from where the Student's work station would be. The work stations are to the left of the door to the room, the entrance to the resource room is to the right of the room. [Testimony Ms. Hamlin] While children passing through the room could be a distraction for the Student, the consultant felt it could be used as an important way to sort out relevant and irrelevant information, and he could be taught to be accepting of this minimal distraction. [Testimony Ms. Grimm]
  22. The Student requires a quiet room because it helps him focus when new information is presented to him. This is necessary when intensive instruction is taking place. [Testimony Ms. Grimm] The classroom is located at the end of one wing, in a quiet area of the school building. Some sounds of clapping or loud noise can be heard from the adjacent OT room at times, although it's infrequent when this noise is heard by the one student currently in the program. [Testimony Ms. Hamlin] The classroom size also is sufficient for the Student as it includes the work space necessary to provide a clearly defined space for the Student. [Testimony Ms. Hamlin] Therefore, the physical space will meet the needs of the Student, and can be modified if necessary by the special education teacher.
  23. The fourth element Ms. Grimm identified in her Transition Findings as necessary for an appropriate program was a one on one tutor. The IEP developed for the Student addresses this element by providing the Student with a one on one tutor who has experience working with students with autism. [Testimony Ms. Grimm, Ms. Hamlin, Exhibit P-2] The Parents' consultant only concern regarding the tutor was whether she was properly trained. [Testimony Ms. Smaller] The tutor is properly trained, as she has had experience working in a facility for autistic children. [Testimony Ms. Hamlin]



24. The fifth element Linda Grimm identified in her Transition Findings as necessary for the Student's program is a second grade regular education teacher who is trained in the characteristics of children with autism and who understands the Student's learning style. As Ms. Grimm is providing consultation to the Board on an ongoing basis and providing ongoing training to the staff at Mohegan on autism and learning style needs, this element will be addressed on a continuing basis. [Testimony Ms. Grimm, Exhibit P-2]
25. The sixth element Ms. Grimm identified in her Transition Findings as needed for the Student's program is regular team meetings. [Exhibit P-2] According to Ms. Grimm, in her experience with the Board, the Board staff has held team meetings with sufficient frequency to ensure the opportunity for collaboration among all parties involved in a Student's program. [Testimony Ms. Grimm]
26. The seventh element Ms. Grimm identified in her Transition Findings as required for the Student is an occupational therapy program that addresses the Student's sensory needs. [Exhibit P-2] The IEP developed at the May 10, 2004 meeting addresses this element by providing that the Student shall receive 1 hour of OT per week. [Exhibit SB-5] The special education teacher is trained to help the Student modulate his sensory input, and will work collaboratively with the occupational therapist to develop an integrated approach to the Student's sensory needs. [Testimony Ms. Hamlin]
27. Substantial testimony was given as to whether the Student required a swing to be placed in the OT room prior to his attendance at the program. It is undisputed that the Student uses a swing at the SMILE program and in his private OT program. [Testimony Ms. Smaller, Ms. Smelter, Mother] The Student responds well to sensory integration treatment in his private program. The occupational therapist has used a variety of swings in her therapy with the Student, including a glider, a platform, a sling swing and a helicopter swing. After the Student's vestibular tolerance has increased, his focus and attention increase for the second half of the session. At the second half of the session, the occupational therapist can work on the skills for that day, including work on his ability to focus, to attend to structured games and activities, to participate in social interactions and on other specific fine motor tasks in which he is delayed. [Testimony Ms. Smelter] The Parents' consultant noted that there was no swing in the OT room, but was told that if there was a belief that the Student needed it, it would be provided. [Testimony Ms. Smaller] The Board has purchased a swing, so one is available for the Student. [Testimony Ms. Bruno] This swing should be installed in the OT room prior to the Student's first day in the Board's program in light of the compelling evidence that it is essential to the Student's program.
28. The Student's private occupational therapist who testified at the hearing had a keen understanding of the Student's needs, as she has been working with the Student for two and a half years. [Testimony Ms. Smelter] It would be beneficial

for the Board's occupational therapist to consult with the Student's private occupational therapist to collaborate on the Student's OT services.

29. The eighth element Linda Grimm identified in her Transition Findings as necessary for the Student's program is intensive services in Speech/Language and Occupational Therapy. [Exhibit P-2] The IEP developed at the May 10, 2004 meeting addresses this element by providing that the Student shall receive 1 hour of OT per week and 2.5 hours of speech/ language therapy per week. [Exhibit SB-5] There is no dispute as to the amount of time provided for these related services.
30. The PPT convened in May 2004 to conduct the Student's annual review. The goals and objectives were developed with the input from the Trumbull's staff, and without objection being voiced by the Parents. [Testimony Mother, Exhibit SB-5] The Parents later reported that they did not fully agree with the components of the IEP, as they felt that the goals regarding communication were too vague. The Parents did not want to say anything at the time of the PPT meeting, as they didn't want to embarrass the speech therapist. [Testimony Mother] The Parents did not learn that the program was to be in Shelton, rather than at the SMILE program in Trumbull until the end of the PPT meeting when teacher from the Trumbull program stated that they were not taking tuition students anymore. [Testimony Mother] The Parents were concerned about the program, as they felt there was nothing appropriate in place at the Shelton program that would meet the Student's needs. [Testimony Mother]
31. All eight critical elements identified in Ms. Grimm's Transition Findings have been met in the IEP that was developed by the Shelton Public Schools for 2004-2005 school years. [Testimony Ms. Grimm; Exhibits P-2, SB-5]
32. The Parents consulted with Adrienne Smaller, a psychologist in private practice who also serves as an assistant clinical professor of psychology at the Yale Child Study Center. [Testimony Dr. Smaller, Exhibit P-143] Dr. Smaller did not interview the child, but observed him in the SMILE program for two hours, reviewed his records and interviewed the Parents. She also spent less than an hour at the Mohegan School program. Dr. Smaller opined that the Student's program should be comprehensive, with academics, speech and language and OT services integrated throughout his day. Dr. Smaller also noted that the Student should have experience in the "least restrictive environment" apparently meaning the mainstream classroom. She noted that such an experience can be a very good learning experience for him, although with the Student's unique needs, the Student's days can be very inconsistent. Dr. Smaller noted that the Board should build a program around him, and she had concerns that the Board was trying to have the Student fit into its program. [Testimony Dr. Smaller] In light of the comprehensive review and revisions provided for the Student's program by the Board's consultant, it is found that the Board has considered the Student's unique needs in formulating the Student's program.

**CONCLUSIONS OF LAW:**

1. It is undisputed that the Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14. The Board has met its burden.
3. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. There are no procedural violations in this matter. The second inquiry is a determination of whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
4. The Individuals with Disabilities Education Act (IDEA) does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2d Cir. 1998), citing *Rowley*, supra. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* The goal of IDEA is not to maximize a special education child's potential, but rather to provide access to public education for such children. *K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995) This access is considered a "basic floor of opportunity" for the students. *Banks v. Danbury Board of Education*, 238 F. Supp. 2d 428 [D. Conn. 2003]
5. It was evident that the Parents were genuinely striving for the very best for the Student in initially advocating for continued placement in the SMILE program, and subsequently requesting placement at Giant Steps. The SMILE program is no longer available for the Student due to the administrative decision to no longer accept tuition students. As for Giant Steps, the law does not provide for such a placement, as the Student does not require such a restrictive program. The appropriate standard is whether the Student can derive meaningful educational benefit from the proposed program, not "everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free School District*, 873 F. 2d 563, 567 (2d Cir. 1989) The Board's proposed program, is appropriately set forth so that the Student can derive such meaningful educational benefit. While the communication goals could be drafted with greater specificity, the goals and objectives are appropriate for this Student. It was further noted by

the Parents' consultant that there was no goals and objectives as to articulation for the Student. The goals and objectives are appropriate, and with these minimal revisions, the Student's IEP will address the concerns of the Parents and their consultant.<sup>1</sup>

6. In addition to the free appropriate public education requirement, IDEA's preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra*. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms. *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a disability can be educated in a regular classroom if provided with supplementary aids and services. *Oberti*, 995 F.2d at 1216, *Mavis v. Sobol*, 839 F. Supp. 968, 985-986. The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible. *Oberti*, 995 F. 2d at 1217 The Student does not require a segregated private school setting to obtain educational benefit, and the least restrictive environment requirement is met by the Board's proposed IEP for the 2004-2005 school year. The Student will have appropriate mainstreaming opportunities in his home school with like aged peers. Therefore, the Student will be educated in the regular classroom to the maximum extent possible.
7. The Student's program also has the added benefit that it is being provided in the Student's home school. Unless otherwise required, the Student should be educated in the school he would attend if not disabled, in accordance with federal regulations. 34 C.F.R. Sec. 300.552(a)(3)(c) This provision further supports the conclusion that the program at Mohegan School is appropriate for the Student.
8. The program proposed by the Board is appropriate for the Student, considers his strengths and weaknesses, is developed so that the Student can derive meaningful educational benefit, and will be delivered in the least restrictive environment. The Student has progressed well in the SMILE program, and, based on that experience, will progress in the Board's program.
9. Because the Student has unique needs, the consultant Ms. Grimm shall monitor the program closely so that the team is able to provide all of the components of the IEP in an appropriate manner. The consultant can assist in ensuring that what is on paper in the Student's IEP is provided in the program, particularly due to the Student's unique profile and challenging behaviors. Benhaven Learning Center, or other similar provider, shall also provide a home component for up to ten hours so that the Parents are able to work collaboratively on the Student's program at home. These services shall include assistance to the family on working with the

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<sup>1</sup> The PPT shall also consider whether the Student's behavior plan should be revised once the Student is in the Board placement.

child on daily living skills, after school routines and meal time behavior as deemed appropriate by Ms. Grimm and the Parents.

10. As the Board's program is appropriate, it is not necessary to determine the appropriateness of Parents' proposed placement. *See, Burlington School Committee v. Dept. of Ed.*, 471 U.S. 359 (1985), *Florence Co. School District v. Carter*, 114 S.Ct. 361 (1993) (Reimbursement for private school placement is only awarded when the *district's program was not appropriate* and that the private placement could provide an appropriate educational program for the child.)

**FINAL DECISION AND ORDER:**

1. The Board's proposed program for the 2004-2005 school year for the Student is appropriate.
2. The PPT shall reconvene within 10 days to implement the provisions of this order including, but not limited to, placement at the Board's Mohegan School program, further training as necessary for all Board staff involved in providing educational services to the Student, revision of the IEP goals and objectives as noted in this decision, and placement of the OT swing in the OT room for the Student's use.
3. In addition to current and ongoing consultation services provided by Ms. Grimm, the Board shall provide for additional consultation services by Ms. Grimm and the Benhaven Learning Network, or a similar provider. The Board shall provide 10 [ten] hours of home consultation to the Parents through its consultant. In addition, the consultant shall be available to monitor of the Student's program for a minimum of two hours per week, with additional time as is required due to the needs of the Student and the Board staff.
4. The stay put order is no longer in effect at the issuance of this final decision and order. While Trumbull is no longer subject to the stay put order, it will be of assistance to the parties if Trumbull will work with the Shelton Board and Parents in ensuring that the Student is appropriately transitioned into the Shelton program with minimal difficulty.