

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Shelton Board of Education

Appearing on behalf of the Student: Mother, *Pro Se*

Appearing on behalf of the Board: Attorney Craig Meuser  
Chinni & Meuser, LLC  
One Darling Drive  
Avon, CT 06001

Appearing before: Attorney Ann F. Bird  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the Board of Education’s proposed placement for the Student appropriate?
2. If not, what placement would be appropriate?

**PROCEDURAL HISTORY:**

The Student initiated this special education due process case on August 16, 2017. This Impartial Hearing Officer was assigned to the case on August 15, 2017. A Prehearing Conference was convened on August 28, 2017. The Student’s mother appeared on behalf of the Student *pro se* and the Board of Education’s Assistant Director for Special Education appeared on behalf of the Board of Education. It was established that the deadline for filing the final decision in this case was October 30, 2017.

Thereafter, Attorney Jeremy Hayden appeared on behalf of the Student and Attorney Craig Meuser appeared on behalf of the Board of Education. The Student filed a motion for an Order Re: Stay Put on August 31, 2017. The Board of Education filed opposition to the Student’s motion on the same day. The Hearing Officer issued an Order Re: Stay Put on September 1, 2017 maintaining the Student’s placement in a first grade program at Elizabeth Shelton School.

An evidentiary hearing was conducted on September 20, 2017. The Student’s mother appeared *Pro Se* in place of Attorney Hayden at the time of the second evidentiary hearing on October 19, 2017. At the conclusion of the hearing on October 19, 2017, the Student’s mother requested an opportunity to submit a brief as a summarizing argument. In addition, the Student’s mother requested an extension of the deadline for filing the final decision in the case in order to allow time for submission of a brief and consideration of the briefs in connection with the final decision and order in the case. A deadline for submission of briefs was established as October 26, 2017. The Board of Education objected to the request for extension of the deadline for filing

the final decision. The deadline for filing the final decision in the case was extended to November 20, 2017

The following witnesses testified:

Student's Mother  
Jamie Rogoff, Tutor  
Tara Murad, School Psychologist  
Beverly Belden, Principal of Elizabeth Shelton School  
Michelle Lovallo, Kindergarten Teacher  
Nicholas Mongillo M.D., Pediatrician  
Jason Collette, Special Education Teacher  
Laura Vagor, Board Certified Behavior Analyst  
Elizabeth Hannaway Ed.D., Assistant Director of Special Education

Hearing Officer Exhibits HO 1 through HO 4 were entered as full exhibits. Student Exhibits P 1 through P 6 and P 8 through P 11 were entered as full exhibits. Proposed Exhibit P 10 was marked for identification but not admitted. Finally, Board Exhibits B 1 through B 51 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

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. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

### **SUMMARY:**

The Board proposed a segregated therapeutic program for the Student in the public school setting to address his maladaptive behaviors. The Student's mother disagreed with the proposed placement. The Board's proposed placement for the Student is appropriate.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

### **FINDINGS OF FACT:**

After considering all the evidence submitted by the parties, including documentary evidence and the testimony of witnesses, I find the following facts:

1. The Student was born on September 21, 2010. He is seven years of age and in the first grade at the Board's Elizabeth Shelton Elementary School (ESS). (Exhibit B 1 (B \_\_); Testimony of Mother (T \_\_\_\_))
2. The Student was identified as eligible for special education under IDEA due to developmental delay at age three. He then began to receive early intervention services in the Board's Pre-Kindergarten program. (B 8)
3. During his Pre-Kindergarten years, the Student frequently engaged in unsafe and disruptive behaviors, including aggression, property destruction and elopement. (T Hannaway; T Murad; T Belden; B 10; B 11; B 12)
4. In an effort to address these behaviors and maintain safety, the school team developed a Safety and Response Plan at age four. (T Hannaway; B 14) In addition, the school team carefully collected data measuring the frequency of the Student's maladaptive behaviors. (T Murad; B 16)
5. The PPT also adopted and implemented a variety of Program Accommodations and Modifications as part of the Student's IEP as follows:

- Frequent movement breaks
- Minimizing or structure transitions
- Preferential seating
- Reduction of auditory or visual stimulation
- Cue expected behavior
- De-escalate strategies
- Modeling expected behavior by adults
- Optimize individual choice and autonomy
- Positive Reinforcement
- Proximity/Touch Control
- Verbal Praise

(B 11; T Collette; T Lovallo)

6. These Program Accommodations and Modifications remained part of the Student's program through Kindergarten. (B 12; B 17; B 20; B 26; B 28; B 39)
7. The Student's academic work in his mainstream class was also significantly modified. (T Lovallo; T Murad )
8. Near the conclusion of the Student's final Pre-Kindergarten year, his PPT recommended that he be placed at the Board's Therapeutic Learning Center for elementary level students (TLC) for his Kindergarten year. At that time, the TLC was located in the Elizabeth Shelton School, (ESS) which is the Student's neighborhood school. (B 17; T Mother; T Hannaway)

9. The TLC is a segregated special education program with intensive therapeutic supports, including a full time social worker who is available for real time intervention, a staff that is specially trained in behavior interventions, an elevated adult to student ratio, small class sizes and an embedded behavior intervention system. It is designed primarily for special education students whose behavior interferes with their access to education. (T Vagor; T Collette; T Murad)
10. Although it is a segregated program, the TLC is located in a mainstream public elementary school so that it offers individual students opportunities for inclusion in the school's mainstream programs as appropriate. (T Murad)
11. The Student's mother objected to the proposed placement at the TLC for Kindergarten, and the PPT decided to delay implementation of the recommendation until the next school year. (T Mother; T Hannaway) Since the TLC was then located at the Student's neighborhood school, ESS, it would have been a simple matter to transition him to the TLC during his Kindergarten year if and when his mother's objection was resolved.
12. The Student's Kindergarten program at ESS was a full time program, while his Pre-Kindergarten program had been half time. The Kindergarten class size was also significantly larger than the Pre-Kindergarten class and focused more heavily on academic instruction than had Pre-Kindergarten. In Kindergarten, the Student was expected to participate in center based learning, where he worked in small groups and needed to use cooperative social skills such as sharing and taking turns. (T Hannaway; T Belden; B 20)
13. For Kindergarten, the Student was initially placed in a mainstream classroom and pulled out for specialized instruction with his special education teacher for language arts and mathematics for .75 hours each day for each subject. He also received pull out services with the school psychologist twice per week, as well as speech-language therapy and physical therapy. He enjoyed the consultation services of the occupational therapist. (B 17; B 20)
14. On October 19, 2016, during Kindergarten, the PPT increased the Student's pull out time for specialized instruction to 2.33 hours per day and removed him from recess with his peers. (B 20; T Collette; T Lovallo; T Belden)
15. In addition, the Student had the support of a one to one paraprofessional throughout the school day. (B 17) The Program Accommodations and Modifications that had been introduced earlier were still in use. (B 17; T Collette; T Lovallo)
16. From the outset of his Kindergarten year, the Student continued to frequently display maladaptive behaviors that were highly disruptive to the educational program and threatened the safety of the Student, his classmates and the adults who worked with him. (T Hannaway; T Murad; T Belden; T Lovallo; T Collette; T Vagor; B 42)
17. The Student's team was never able to identify a pattern regarding his maladaptive behaviors. There were no particular antecedent events or circumstances that precipitated the behaviors. They took place at all times of the school day and in all settings. The Student could

be participating in a preferred task or something he chose to do or he could have been asked to perform an academic task. (T Murad; T Belden; T Lovallo; T Vagor; T Collette)

18. At the PPT meeting on October 19, 2016, the team asked that a Board Certified Behavior Analyst (BCBA) conduct a Functional Behavior Assessment (FBA) and prepare a Behavior Intervention Plan (BIP). (B 20; T Lovallo)

19. The BCBA observed the Student at school in a variety of settings and times. (B 22; T Vagor). The BCBA theorizes that the Student's maladaptive behaviors primarily serve the function of escape from demands or circumstances he dislikes at the moment, even including otherwise favored events. Secondly, the behaviors serve the function of denial of access, meaning that he is denied access to a toy or other thing he wants even if he has not asked for the thing. (T Vagor; B 22)

20. The PPT and the BCBA developed a BIP based on the FBA and implemented on February 17, 2017. It remained in place for the remainder of the school year. In addition to the initial targeted behaviors of Property Destruction, Aggression, Grounding, and Elopement, a new target of Noncompliance was added. Data was collected from February 17, 2017 on Noncompliance and the duration of Noncompliance in addition to the other earlier identified behaviors. (B 42; T Vagor)

21. The behaviors targeted in the Student's BIP were maladaptive behaviors, were highly disruptive to the educational program and threatened the safety of the Student, his classmates and the adults who worked with him. (B 25; T Vagor; T Collette; T Lovallo; T Belden)

22. The chart below summarizes the frequency of these behaviors during the Kindergarten year as well as the duration of noncompliance in minutes.

<b>Month</b>	<b>Property Destruction</b>	<b>Aggression</b>	<b>Grounding</b>	<b>Non-Compliance</b>	<b>Non-Compliance Duration</b>
Sept	84	281	56	-	-
Oct	102	488	30	-	-
Nov	32	43	7	-	-
Dec	64	136	39	-	-
Jan	50	73	12	-	-
Feb	22	17	3	25	559
March	63	70	26	81	1009
April	47	107	28	99	508
May	284	645	106	54	2025
June	5	8	2	44	183

(B 42)

23. The Student's maladaptive behavior incidents could last as long as two hours. (T Lovallo)
24. On more than one occasion, it was necessary to remove the other students from the classroom in order to manage the Student's behavior. (T Lovallo; T Belden)
25. It was also necessary to restrain the Student on approximately twelve occasions during the Kindergarten year. (B 34)
26. The Student was also secluded on nearly twenty occasions during the Kindergarten year. (B 34)
27. The Student's maladaptive behaviors were so frequent and of such duration that he was able to access his education less than 50% of the time he was in class. By the end of Kindergarten, the Student was already lagging well behind his classmates in all areas of instruction even though he has average intelligence. (T Vagor; T Collette; T Lovallo; T Murad; B 31; B 33; P 4)
28. Needless to say, the Student's behaviors also significantly interfered with and disrupted the ability of his classmates to access their education. (T Collette) The parents of several other students complained to the school principal about disruption of their children's education. (T Belden)
29. With the possible exception of maximizing the Student's opportunities for choice and autonomy, none of the Program Accommodations and Modifications, services or supports, including the BIP, significantly improved the Student's behavior in Kindergarten. (T Collette)
30. To a person, the professional staff who testified for the Board and are familiar with the Student affirmed credibly that the Student requires a segregated, small therapeutic setting with a high staff to student ratio, staff trained in behavior interventions, full time therapeutic staff and an embedded behavior system in order to gain control of his behavior and become available for instruction. (T Murad; T Collette; T Lovallo; T Vagor; T Belden)
31. Moreover, the overwhelming view of these witnesses is that the regular education program at ESS, even with the paraprofessional and extensive specialized instruction, supports and services provided there does not offer the Student appropriate educational benefit. They believe that the TLC is appropriate for the Student and will provide educational benefit. (T Murad; T Collette; T Lovallo; T Vagor; T Belden)
32. The Student's mother is a trained and experienced social worker. Her testimony, therefore, warrants respect as a person with applicable professional expertise beyond that of motherhood. She testified that the Student's program has not been successful because it does not adequately address undiagnosed specific learning disabilities in reading, writing and mathematics. She submits that an appropriate inclusive program can be provided in a mainstream school. (T Mother) In support of this view, she points to an evaluation conducted by the Yale Child Study Team dated June 12, 2017 (Yale Report). (P 4)

33. The Yale Report did diagnose the Student with specific learning disabilities as well as ADHD. (P 4) The evidence does not, however, support a diagnosis of specific learning disability for this Student under special education law, at least at this time. The Board's School psychologist evaluated the Student in Kindergarten and found no evidence of specific learning disability. (T Murad; B 33) The Yale Report's conclusion of specific learning disability appears to be based on the now discredited "discrepancy theory" (T Mother) and does not take into account whether the Student's behaviors are interfering with learning and/or whether he has had adequate instruction, as required by the 2010 Guidelines for Identifying Children with Learning Disabilities published by the Connecticut Department of Education in September 2010. (T Vagor; T Collette; Lovallo) The fact that placing academic demands on the Student does not seem to be a trigger for maladaptive behavior also supports this conclusion. (T Lovallo; T Collette; T Murad)

34. The Student's mother also testified that the Student's maladaptive behaviors were caused by a trial of medication for ADHD prescribed by his pediatrician, Dr. Mongillo between February 21, 2017 and May 19, 2017. (T Mother; T Mongillo) While the Student's behaviors did escalate somewhat during the medication trial, they certainly continued at an unacceptable rate and duration after the medication was discontinued and had been ongoing for years before the medication trial began. (B 42; T Belden; T Lovallo)

35. The PPT recommended placement at the TLC at meetings on May 24, 2016, March 27, 2017 and June 15, 2017. The Mother objected to the placement on each occasion. (T Hannaway; T Mother; B 17; B 28; B 39)

36. The Board's TLC program for elementary students is appropriate for the Student to receive a free appropriate public education.

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education (FAPE). *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982) (*Rowley*).

2. In *Rowley*, the United States Supreme Court held that FAPE "consists of educational instruction specially designed to meet the unique needs of the . . . child, supported by such services as are necessary to permit the child 'to benefit' from instruction." *Rowley* at 188-89. See also *Andrew F. v. Douglas City School District*, 580 U.S. \_\_, \_\_ (2017); *Oberti v Board of Education*, 995 F.2d 1204 (3d Cir. 1993).

3. Significantly, FAPE includes assurance that, to "the maximum extent appropriate" each disabled student is educated with children who are nondisabled; and that "separate schooling", or other removal from the regular educational environment "occurs only if the nature or severity of the [student's] disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. Section 1412(5)(B); 34 CFR Section 300.114 (a)(2); *Oberti v Board of Education*, 995 F.2d 1204 (3d Cir. 1993).

4. Accordingly, boards of education are required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 CFR Section 300.115. The continuum, in general, ranges from the least restrictive to the most restrictive: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR Section 300.115 (b)(1).
5. In determining whether a disabled student can or cannot be “educated satisfactorily” and provided FAPE in a regular class with the use of supplemental aids and services, the following factors are critical: (1) whether the board has made reasonable efforts to accommodate the student in a regular classroom; (2) the educational benefits available to the student in a regular class with appropriate supplementary aids and services as compared to the benefits provided in a segregated special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class. *Mrs. P v. Newington Board of Education*, 546 F.3d 111, 117 (2d Cir. 111); *Oberti v Board of Education*, 995 F.2d 1204, 1217-18 (3d Cir. 1993).
6. Even if the student should be educated in a segregated special education class, of course, the board must nonetheless include the child in programs with nondisabled children to the maximum extent appropriate. *Mrs. P v. Newington Board of Education*, 546 F.3d 111, 117 (2d Cir. 111); *Oberti v Board of Education*, 995 F.2d 1204, 1217-18 (3d Cir. 1993).
7. The propriety of a student’s placement, like other elements of an IEP, is assessed in light of information available at the time the IEP is developed; it is not judged in hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). “An IEP is a snapshot, not a retrospective.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be viewed in terms of what was objectively reasonable when the IEP was developed. *Id.*
8. In this case, the Board had the burden to prove by a preponderance of the evidence that the placement it offered to the Student was appropriate. Regulations of Connecticut State Agencies (R.S.C.A.) Section 10-76h-14(a); *Oberti v Board of Education*, 995 F.2d 1204 (3d Cir. 1993).
9. The evidence established that the Board made more than reasonable efforts to accommodate the student in a regular classroom. He had a one to one paraprofessional with him throughout the school day. He also had a BIP created by a team that included a certified BCBA and that was based on an updated FBA conducted by the BCBA. His teachers and paraprofessional kept detailed records of his maladaptive behaviors. (Finding of Fact (FF) 4, 5, 6, 12, 13, 14, 15, 18, 19, 20)
10. In addition, the Student had the related service of therapeutic counseling with the school psychologist. He received specialized instruction in very small groups for reading, writing and mathematics for 2.33 hours each day. His work in the mainstream class was modified. (FF 5, 6, 12, 13, 14 and 15)
11. The adults who worked with the Student implemented a variety of Program Accommodations and Modifications in order to manage his behavior. (FF 5, 6, 15)



12. None of these services or accommodations or modifications proved to be effective. (FF 16)
13. A look at the first consideration, therefore, demonstrates that the Board made reasonable efforts to accommodate the Student in the regular classroom program.
14. The second consideration is to compare the educational benefits available to the student in a regular class with appropriate supplementary aids and services as compared to the benefits that would be provided in a segregated special education class. The evidence was overwhelming that, even before and after the medication trial, the Student benefited very little from his education. His maladaptive behaviors were so frequent and of such duration that he was able to participate in his education no more than 50% of the time. He was already lagging behind his classmates in all areas of instruction even though he has average intelligence. (FF 27, 28, 29, 30, 31)
15. The overwhelming view of the Board's professional staff who testified is that the regular education program at ESS, even with the extensive supports and services provided there did not provide the Student appropriate educational benefit. They opine that the TLC is appropriate for the Student and will offer educational benefit. (FF 30, 31)
16. The Student's view that he requires specialized support for specific learning disabilities that can be provided at ESS was not supported by the evidence. To the contrary, the Student's learning difficulties at this point in time stem primarily from his maladaptive behavior rather than specific learning disabilities. He will not be available for instruction unless and until his behavior can be managed appropriately.
17. The second factor, therefore, weighs heavily in favor of the Board's proposed placement at TLC.
18. Finally, the last factor also points toward the change in placement proposed by the Board: inclusion of the Student in the regular program has substantial negative effects on the other students in the class. Without question, the extensive disruption represented by the Student's frequent maladaptive behaviors substantially impacted the ability of other students to access their education. (FF 28)

**FINAL DECISION AND ORDER:**

The Board of Education's proposed placement for the Student at the TLC is appropriate and should be implemented.