



No. 96-63

**The University of the State of New York**  
**The State Education Department**  
State Review Officer

**Application of a CHILD WITH A DISABILITY, by his parent,  
for review of a determination of a hearing officer relating to the  
provision of educational services by the Board of Education of  
the Central Islip Union Free School District**

**Appearances:**

Kevin A. Seaman, Esq., attorney for respondent

**DECISION**

Petitioner appeals from the decision of an impartial hearing officer which upheld a recommendation by respondent's committee on special education (CSE) that petitioner's son be placed on a full-day basis in a special education program of the Board of Cooperative Educational Services for the First Supervisory District of Suffolk County (BOCES). She asks that the hearing officer's decision be annulled, and that respondent be ordered to provide her child with individual tutoring in his home, and occupational education in BOCES. The appeal must be sustained in part.

Petitioner's son is fifteen years old. He was initially referred to respondent's CSE when he was in the second grade. While in the third grade, the child was classified by the CSE as learning disabled. He has retained that classification, which is not in dispute in this proceeding. In his triennial psychological evaluation which was performed on February 7, 1996, petitioner's son achieved a verbal IQ score of 83, a performance IQ score of 93, and a full scale IQ score of 86. The child's scores on various subtests of the Wechsler Intelligence Scale for Children-III ranged from deficient to average. The school psychologist also reported that the child's age equivalent score on a test of his visual motor integration skills was approximately one year below his chronological age. In his interview with the school psychologist, the child reportedly displayed no interest, and appeared to lack any

motivation. The school psychologist described the child as being somewhat sad, and lonely, with low self-confidence, especially with regard to academics. Although she apparently did not test the child's academic achievement, the school psychologist reported that the child's academic skills were at the second to fourth grade level.

There is very little information in the record about the child's educational history. He reportedly entered respondent's special education program in the third grade, and has allegedly been educated in special education classes since then. During the 1994-95 school year, petitioner's son was enrolled in a self-contained special education class with a child to adult ratio of 12:1+1 in respondent's Reed Junior High School. The child's special education teacher testified at the hearing in this proceeding that petitioner's son completed few, if any, of the seventh grade level assignments which he was given during the 1994-95 school year. In March, 1995, the special education teacher reported to the CSE that the child's instructional levels were 2.0 in reading, 2.0 in spelling 2.5 in writing, 6.0 in mathematics, 4.5 in social studies, and 4.0 in science. Neither the report nor the teacher's subsequent testimony revealed the basis for the grade equivalent scores which the teacher used in his report.

For the 1995-96 school year, respondent's CSE recommended that the child remain in his 12:1+1 special education class for instruction in academic subjects during the morning, and that he attend the BOCES for special education instruction in occupational education (SOE) during the afternoon. I note that the individualized education program (IEP) which the CSE prepared for the child did not specify the extent to which the child would participate in regular education classes (cf. 34 CFR 300.346 [a][3]; 8 NYCRR 200.4 [c][2][iv]), nor did it describe the child's present levels of educational performance (cf. 34 CFR 300.346 [a][1]; 8 NYCRR 200.4 [c][2][i]). His IEP included annual goals relating to reading, language arts (writing), social studies, mathematics, and science. It did not include any goal relating to his SOE.

During the 1995-96 school year, the child was disciplined a number of times for misbehavior in school and on the school bus. The child's special education teacher testified that although the child made little effort to do any school work for him, he was nevertheless orderly in his self-contained class. However, the child was reportedly disruptive in other settings in school, especially in the school cafeteria, and he reportedly threatened school staff and other students with physical harm. The disciplinary reports on the record before me indicates that he was insubordinate to his teachers on a number of occasions. On January 19, 1996, the child was referred to the CSE by the Assistant Principal of the Reed Junior High School. The Assistant Principal indicated that the child had received five out-of-school suspensions, and four in-school suspensions, and had been suspended once from the school bus. The Assistant Principal asserted that the child was not responding to his current placement. I note that as of April 15, 1996, the child had been absent from school for 34 days, and had been tardy on fourteen other days. The boy's report card revealed that he received the grade of F in English, social studies, and mathematics for each of the first three marking periods of the 1995-96 school year.

On March 7, 1996, the CSE met in response to the Assistant Principal's referral of the child. Petitioner did not attend the CSE meeting. The CSE reportedly reviewed the child's records, and the results of his February, 1996 psychological evaluation. The CSE recommended that the child continue to attend the BOCES for SOE in the afternoon, but that he no longer be enrolled in respondent's 12:1+1 special education class. Instead, the CSE recommended that the child be enrolled in a BOCES 12:1+1 class for academic instruction in the morning. It also recommended that petitioner's son receive individual counseling once per week. The child's IEP indicated that the new program was to be initiated on March 19, 1996.

The record reveals that on March 7, 1996, the CSE also formally applied to the BOCES for the child's possible admission to the BOCES special education class. By letter dated March 15, 1996, respondent's Director of Special Education informed petitioner that her son had been accepted into the BOCES Brookhaven Learning Center special education program, effective March 25, 1996. In a letter dated March 21, 1996, petitioner advised the Director of Special Education that she did not want her child to go to the BOCES. Petitioner was offered the opportunity to mediate the dispute, and an impartial hearing was scheduled.

On March 16, 1996, petitioner's son was reportedly involved in a disciplinary incident, in which he allegedly had to be restrained by the Principal and the Assistant Principal of the Reed Junior High School. The Principal asked the Director of Special Education to arrange for the child to be placed on home instruction, pending his placement in another educational program. I note that the parties have briefly alluded to a court proceeding initiated by respondent to effect an alternative placement for the child at home, in accordance with the United States Supreme Court Decision in Honig v. Doe (484 U.S. 305 [1988]). Although the disposition of the court proceeding has not been revealed to me, I note that the child apparently did receive instruction at home during the fourth marking period of the 1995-96 school year.

The hearing in this proceeding was held on May 17, 1996. Petitioner was assisted at the hearing by the child's aunt, who acted as petitioner's lay advocate. Respondent's Director of Special Education, who was also the CSE chairperson, testified that the CSE had concluded that the child's placement in respondent's 12:1+1 special education class was no longer appropriate because of the child's behavior and his alleged inability to learn in that setting. He explained that the BOCES placement recommended by the CSE would provide the child with a behavior management system throughout the school day, administered by staff who were better trained to deal with the boy's behavior than respondent's staff. The Director of Special Education further testified that the BOCES could provide more support services to the child, and would permit him to be grouped with children having similar skills and needs. The boy's aunt asked the hearing officer to direct respondent to provide her nephew with a program of academic tutoring at home, occupational instruction at the BOCES, and individual counseling. She asserted that the boy required individual tutoring because his reading skills were substantially delayed, and that he needed to be removed from

the company of certain peers in the Reed Junior High School. She also asserted that the boy was not academically challenged in respondent's 12:1+1 class.

On June 26, 1996, the hearing officer rendered his decision. He found that respondent's special education program in the Reed Junior High School could not provide petitioner's son with the structure and support which the boy required. The hearing officer also found that long-term individual tutoring was not an educationally appropriate alternative to placement in the junior high school. He concluded that the BOCES placement recommended by the CSE would be educationally appropriate for petitioner's son.

In this appeal, petitioner asserts that she does not disagree with the CSE's conclusion that the boy's placement in the Reed Junior High School was no longer appropriate for him. She contends that her son's primary academic challenge is his inability to read, and that his inability to read prevents him from taking part in classroom assignments and tasks. Petitioner asserts that she does not wish to take chances with the child's literacy problem by placing him in the BOCES special education program, and that, in any event, her son requires one-on-one instruction in reading which a tutor could provide.

The board of education bears the burden of demonstrating the appropriateness of the program recommended by its CSE (Matter of Handicapped Child, 22 Ed. Dept. Rep. 487; Application of a Child with a Handicapping Condition, Appeal No. 92-7; Application of a Child with a Disability, Appeal No. 93-9). To meet its burden, the board of education must show that the recommended program is reasonably calculated to allow the child to receive educational benefits (Bd. of Ed. Hendrick Hudson CSD v. Rowley, 458 U.S. 176 [1982]), and that the recommended program is the least restrictive environment for the child (34 CFR 300.550 [b]; 8 NYCRR 200.6[a][1]). An appropriate program begins with an IEP which accurately reflects the results of evaluations to identify the child's needs, provides for the use of appropriate special education services to address the child's special education needs, and establishes annual goals and short-term instructional objectives which are related to the child's educational deficits (Application of a Child with a Disability, Appeal No. 93-9; Application of a Child with a Disability, Appeal No. 93-12).

The IEP which the CSE prepared for the child after its meeting on March 7, 1996 had virtually no description of the child's special education needs, or his present levels of performance. Although it listed the results of the boy's IQ testing in February, 1996, it did not make any reference to the projective testing results, especially the school psychologist's description of the boy's avoidance of tasks and acting-out behavior. This omission is particularly egregious in view of the CSE's determination that the child required a more restrictive placement because of his behavior. The CSE's failure to record the child's present levels of performance was also reflected in the boy's IEP annual goals and short-term instructional objectives, which were very general and would not have provided the child's teachers with direction as to the CSE's expectations (Application of a Child with a Disability, Appeal No. 94-8; Application of a Child with a Disability, Appeal No. 94-26). In the absence of an adequate description of the child's needs, it is impossible to conclude that

the child's IEP annual goals and objectives addressed all of his special education needs. Although the CSE recommended that the child receive counseling, it failed to include any annual goal for that related service in the child's IEP.

I find that the CSE failed to adequately identify the child's needs, and to prepare appropriate annual goals and short-term objectives for him. Until that failure is rectified it is somewhat premature to ascertain what would be the appropriate special education services for him. However, I will note for the benefit of the parties that despite the many disciplinary incidents which are in the record before me, there is virtually no description of what, if any, behavior modification techniques respondent has employed to address the child's behavioral needs. I further note that almost all of the disciplinary incidents arose outside the structured setting of the boy's special education classroom. Although this might suggest that the boy needs to be placed in a more restrictive setting, it is still respondent's obligation to show what it has done to meet the child's needs in the less restrictive setting of its own junior high school.

There is one other reason why I must find that respondent has not met its burden of proof. The record reveals that respondent applied to the BOCES for the child's enrollment in a BOCES 12:1+1 class on the same day that the CSE recommended that the child be placed in the BOCES program. There is no evidence in the record that the BOCES had accepted the child, or indicated that it had an appropriate placement for the child, before the CSE made its recommendation (cf. Application of a Child with a Handicapping Condition, Appeal No. 92-3; Application of a Child with a Disability, Appeal No. 93-15). Although the BOCES reportedly accepted petitioner's son after the CSE had made its recommendation, I find that respondent failed to present sufficient information at the hearing about the proposed placement to afford a basis for finding that it would meet the child's needs, or that the child would be suitably grouped for instructional purposes as required by 8 NYCRR 200.6 (g)(3).

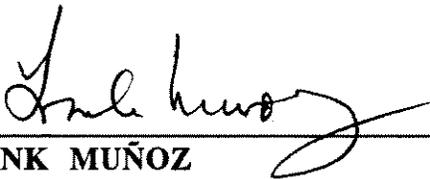
Although I have found that respondent has failed to meet its burden of proof with regard to the appropriateness of the placement which its CSE recommended, it does not follow that the program of individual tutoring at home which petitioner has requested is appropriate to meet the child's special education needs. Such a program is one of the most restrictive placements which a school district can make. I find that there is no basis in the record to conclude that the child's special needs dictate that he be individually instructed at home.

**THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.**

**IT IS ORDERED** that the decision of the hearing officer is hereby annulled; and

**IT IS FURTHER ORDERED** that within 30 days after the date of this decision, respondent's CSE shall recommend an appropriate placement for petitioner's son for the remainder of the 1996-97 school year.

**Dated:** Albany, New York  
January 15, 1997

  
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**FRANK MUÑOZ**