

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF)
)
B. G.)
)
PETITIONER,)
)
vs.)
)
McMINN COUNTY)
SCHOOLS,)
)
RESPONDENT.)

No. 02-04

OPINION

Background Information

The child in this case is a 13 year old student in the McMinn County School System who has been diagnosed with Attention Deficit Disorder, Tourette Syndrome, Depression, Oppositional Defiant Disorder, Learning Disabled, Intellectually Gifted, and Disruptive Behavior Disorder.

He was placed in the regular classroom and has a long history of having problems with authority figures especially school personnel. As a result of his uncontrollable behavior, due to his disability, this child had a behavioral plan which was in effect during the 2001-2002 school year.

On November 2, 2001 the child was required to go to the principal's office by his teacher. The child, teacher and resource officer were involved in an altercation near the office area which resulted in the child's placement being changed. The mother filed this Due Process hearing request which was received by the school system, on January 3, 2002 contending that the child's placement in alternative school was not the least restrictive environment and further that the school had violated the child's right to a free appropriate public education. The mother alleges the child's placement should have been the McMinn County School System. The school system contends that the placement was appropriate and that the behavioral plan was followed. This matter was continued for several months on agreement of the parties and was heard on April 22nd and 23rd, 2002.

Issues

1. Whether or not the school system denied the child the right to a free appropriate public education in the implementation of the behavioral plan and was this the least restrictive environment.

Findings of Fact and Conclusion of Law

On November 2, 2001 the school system had a behavioral plan in effect for the child (Exhibit 1 page 167-168). The plan indicated that the child should not be touched unless it was necessary for the protection of another person or protecting the student from hurting himself. On this date the teacher asked the child to go to the principal's office for using profanity and refusing to mind in class. The child pushed another student's books off the desk, turned his desk over and struck the door as he was leaving the room. The teacher then contacted the office and informed them that the child was on his way to the office.

Pursuant to the plan the resource officer and the principal tried to find the child. The child was found sitting outside the office and was requested to go inside. The child struck the window with his hand or fist and ran in the office. The child then picked up the phone, the officer tried to hang the phone up at which time the child struck him in the side of the head with the phone. The officer then restrained the child on the floor. The child has had a long history of behavior problems including other instances where physical restraint was required.

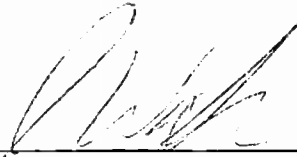
On November 14, 2001 the Multi-Disciplinary Team (M-Team) met and made a recommendation that the child should be homebound for safety reasons. The M-Team determined that the child's behavior was a manifestation of his disability. Apparently the child stayed on homebound until the M-Team meeting was held in

early January 2002 at which time the school system recommended alternative school for the child. In Exhibit 3, Dr. David Rose, a licensed psychologist, conducted an independent evaluation for the school system. In his deposition, page 66, Dr. Rose indicated that restraint of the child should take place where the child is posing a danger to himself or others. Dr. Rose also indicated on page 60, of his discovery deposition, that the child should continue in the alternative school because of the incidents at school. This was also noted in his report, Exhibit 1 page 238-248, where he indicated that a transition period out of the alternative placement would be best with clear steps and elements for the transition plan. The school is required to provide this child with a free appropriate public education as set out in Board of Education v. Rowley 458 U.S.176 (1982).

In Roncker v Walter 700 F. 2d 1058, 554 IDELR 381(6th Cir. 1983) the Court held that a determination of the least restrictive environment may include consideration of the student's academic benefit in regular education environment and the amount of classroom disruption caused by the student's presence in the regular class setting. Clearly the burden of proof is on the Petitioner to prove by the preponderance of evidence that he did not receive educational benefit and that this was not the least restrictive environment. The Petitioner fails in his burden of proof.

Summary

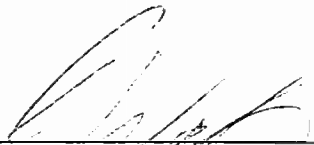
The Defendant is the prevailing party and the Defendant is ordered to schedule another M-Team meeting consistent with Dr. Rose's report.



Honorable Richard H. Walker
Administrative Law Judge
Tennessee Department of Education

Certificate of Service

I, Richard H. Walker, do hereby certify that I have forwarded a copy of the foregoing Opinion to Mr. Steven B. Ward at 400 Main Street, Madisonville, Tennessee 37354 and Ms. Melinda Baird at 300 Montvue Road, Suite D, Knoxville, Tennessee 37919-5510 by placing same in the United States Mail postage being fully prepaid.



Richard H. Walker
Administrative Law Judge
Tennessee Department of Education