


BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION


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IN RE: C. H.	)	
	)	
	)	
Petitioners,	)	NO. 98-05
	)	
vs.	)	
	)	
MCNAIRY COUNTY SCHOOL	)	
SYSTEM,	)	
Respondent.	)	

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ORDER

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This case came before the Tennessee Department of Education upon a Petition, filed by , the parents of C. H., a 16 year old, who has the diagnoses of mental retardation and Autism. The Petition was heard upon allegations that the child was not provided a free appropriate public education by the McNairy County School System, in violation of the Individuals With Disabilities Act, 20 U.S.C. Section 33 et seq.

A hearing was conducted on Thursday, April 29, 1998, by Barbara A. Deere, Administrative Law Judge. The Petitioners represented themselves and the school system was represented by Attorney John D. Kitch. Present for the hearing, besides the parties and Mr. Kitch were: Robert B. Tipps, an educational consultant with the State of Tennessee; Diane McFarland Brooks, Special education supervisor for McNairy County School system; and Emily Lawrence, Comprehensive Developmental Class teacher for McNairy County School System.

The following accusations by the Petitioners were brought to the Court's attention at the hearing: a) Child being left in class not most beneficial to her; b) Combined issue of putting child

in class with abusive aide and their holding her out of school for 15 days because of it; c) Milk and help with her food refused to her; d) Failure to give records regarding abuse, school board failing to investigate abuse; e) Child restrained without necessity and principal failing to discuss it with parents; f) Use of weight vest without notice to parents of what problems it could cause her legs, based on claim she had "mayotosis"; g) Failure to accept her diagnosis and failure to secure a diagnosis; h) Failure to have adequate psychoeducational evaluation; i) Failure to give her classes for her educational needs, instead of because "that's all the school has to offer"; failure to give her mainstream classes; j) Failure to give M-Team in 1997 when they had to call Nashville to get it; k) Gave inconsistent answers on why she could not get assistive technology from Star Center; l) School lawyer interfering and dominating M-Team meetings; Diane Brooks presenting information to influence outcome; and m)Refused classes with Star Center; did not call meeting to change IEP.

The Petitioners offered two witnesses, Mr. Robert B. Tipps and Diane McFarland Brooks. The School System offered, as witness, Mrs. Brooks and Mrs. Emily Lawrence. An issue at the hearing was whether the Petitioners could call the school attorney, Mr. John Kitch, as a witness. The Court ruled that the Petitioners could not call Mr. Kitch as a witness, based upon the Petitioners' admission that other potential witnesses had knowledge of the same information sought by Mr. Kitch's proposed testimony.

The Petitioners then submitted a transcript of an M-Team meeting, which was met by the School System's objection. After considering the arguments and upon the Court's own research of admissibility thereof, the Court overrules the admissibility of the transcript offered as proof by the Petitioners. The Court allowed the transcript to be made an exhibit to the proceedings, along

with the School System's offer of proof against the transcript, but the Court has considered neither of these documents in forming this opinion.

The Court heard argument regarding submission of evidence that there had been abuse of the child and that the School System had not provided the Petitioners with requested records. The Court ruled that any allegations raised as to these issues were barred by applicable the statute of limitations.

At the conclusion of the Petitioners' proof the School System requested that the complaint be dismissed. After oral arguments, the Court dismissed all allegations except those regarding failure to provide a least restrictive environment; the allegations of the child's being restrained; refusal by the school to assist the child with her milk; and mainstreaming.

#### FINDINGS OF THE COURT

At the time of the hearing the child was 16 years old and had diagnoses of autism and mental retardation. She had an intelligence quotient of less than fifty-seven. The child had made progress during her enrollment and attendance with the School System.

All individual education programs (IEP's) presented to the Court appeared to be properly developed and implemented. The educational settings offered by the School System met the requirements of least restrictive environment. The parents had attended all IEP meetings as members as shown on those documents. The parents did not sign the program plan for the May, 1997 extended school year, but no proof was offered by the Petitioners as to why they did not sign that document.

The school personnel always opened the child's milk for her.

The child was placed in a self-contained classroom, with mainstreaming in three classes for

socialization. Although the school system's personnel believed that total self-contained classroom instruction was most beneficial for the child's development, they conceded to mainstreaming at the request of the parents.

The school personnel placed the child in a restrictive chair; the child did not object to the chair and complained of its removal from the classroom. The chair was removed at the parents' objection. A weight vest, recommended by a licensed occupational therapist, was used as part of the child's program until the school personnel learned of the parents' objection. No restraints were used by the school system at the time of the hearing.

There was testimony by Mr. Tipps that this child was not receiving a free appropriate public education. His testimony also revealed that he had minimal observation time in the classrooms and was testifying partly on information provided to him from the parents. The testimony from the school system's personnel was that a free appropriate public education was being provided to the child. The Court placed greater weight on the testimony of the school's witnesses as it was felt that those witnesses were in a better position to make that opinion.

There was no proof that the school's attorney had interfered with the M-Team Meetings; there was, however, proof that the parents had been represented during at least one IEP meeting by their own attorney. The Petitioners failed to prove any of their other allegations. There was no proof that the school system failed to accept or secure the child's diagnoses; nor was there proof of an inadequate psychoeducational evaluation or failure to mainstream the child. There was no proof regarding a failure to give an M-Team meeting in 1997, nor any failure of the school system to coordinate efforts with Star Center or its recommendations regarding assistive technology.

OPINION

Based upon the foregoing findings, the Court is of the opinion that the Petitioners have failed to carry their burden of proof in the Complaint filed with the Tennessee Department of Education and all issues pertaining thereto should be dismissed. The McNairy County School System has prevailed in defending against this action and the complaint is therefore dismissed with prejudice.

ENTERED this the 27<sup>th</sup> day of September, 1998.

Barbara A. Deere  
Barbara A. Deere  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this the 2<sup>nd</sup> day of ~~September~~<sup>October</sup>, 1998, served a true and exact copy of this Order upon: John D. Kitch, Suite 305, 2300 Hillsboro Pike, Nashville, TN 37212; and Mr. And Mrs. [REDACTED] by first class U. S. Mail.

Barbara A. Deere  
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