

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

( CASE # LL 22-01 )

STUDENT:

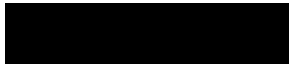


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**STATE OF RHODE ISLAND  
DEPARTMENT OF EDUCATION**

**SPECIAL EDUCATION  
DUE PROCESS HEARING**

**A.B.L. BY HIS PARENTS, A.B. and D.L.**

**VS.**

**CASE NO.: LL 22-01**

**PROVIDENCE SCHOOL DISTRICT**

**DECISION**

**TRAVEL OF THE CASE**

Student (ABL) is [REDACTED] years old. He lives in [REDACTED] with [REDACTED] parents. He attended the [REDACTED] in East Providence for the 2021-2022 school year, pursuant to a unilateral placement there by his parents. Prior to his time there he was enrolled in a private preschool, then at the Henry Barnard School (HBS) for grades K-3. ABL was home-schooled for grade 4. All of those placements were not in the Providence Public Schools.

ABL began receiving Early Intervention Services at eight weeks old. It appears that ABL had an in-utero stroke which resulted in developmental delays as an infant and a diagnosis of left-hemiplegic cerebral palsy, leaving him with limited use of his left arm and hand, and an impaired gait. As a youngster, ABL had developmental delays in speech, gross and fine motor control, and learning readiness skills. His first IEP was at age 3. ABL's diagnosis of left hemiplegia was determined following a neuropsychological evaluation in 2016, when ABL was 5 ½. It was performed by [REDACTED] Ph.D. at parental expense.

In 2017, ABL was evaluated for vision problems and it was determined that he had visual deficiencies and at about the same time he was found to have hearing disabilities as well. ABL had challenges with muscle strength and tone, motor control and fatigue.

ABL has difficulty with working memory and executive functioning. He has notable strength in his verbal knowledge and reasoning abilities. He is independent in reading, science, and social studies, but needs support in writing.

In addition to the deficiencies noted above, ABL also struggled because of the pandemic, when Covid-19 caused students to shift from direct instruction to distance learning for general education, special education and related services.

Due to the pandemic, ABL did not get any adaptive physical education, and only limited occupational therapy (OT) and resource support for writing.

### ISSUES

1. Was Providence's 2020-21 IEP reasonably calculated to provide ABL with a free appropriate public education (FAPE)?
2. Was the unilateral placement by ABL's parents appropriate?
3. Is ABL entitled to compensatory education?

### ARGUMENT

1. Parents allege that the 2020-21 IEP put forward by Providence did not provide FAPE primarily because it did not take into account the math deficiency of ABL. Dr. [REDACTED] is a neuropsychologist who evaluated ABL several times and determined that ABL had a specific learning disorder in connection with math.

But did ABL's difficulties in math rise to a level which would justify placing ABL at the Wolf School? Dr. [REDACTED] could not testify to that because she stated during the hearing that she had not even reviewed the proposed IEP. She had determined that the placement at Wood Young School was inappropriate based on her visitation on one occasion and her focus on the physical structure of the facility. Dr. [REDACTED] opinion appears to have been based only on her perception of the classroom setting (class size, noise level, access). She was unable to say that Providence's IEP could not be implemented nor its goals be met since she had never reviewed the IEP.

2. The parents' challenge to the proposed placement was not based on objection to proposed goals or testing criteria. The placement in a self-contained class at the Wolf School was clearly a more restrictive setting than that of Woods Young School. There was no basis for believing that ABL's needs could not be met at the Woods Young proposed placement. To the contrary, the record suggests that the proposed IEP could meet reasonable goals for ABL and that ABL could do so at Woods Young, in a general education curriculum, with special education and related services. It is notable that ABL never attended the Providence Public Schools. ABL's parents never gave Providence a chance to provide FAPE to ABL.

The neuropsychologist for Providence, Dr. [REDACTED] testified that the Wolf School would be highly restrictive and would limit interaction between him and other students there. Dr. [REDACTED] i opined that Woods Young would be able to provide supports for ABL in the least restrictive environment, especially taking into account ABL's strengths in verbal comprehension, verbal expression and reading skills. She stated that the Wolf School was not appropriate for ABL due to his many strengths

and would not allow him to interact with his peers at his intellectual level and his reading level.

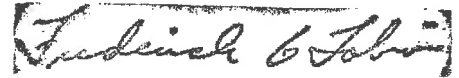
3. Compensatory services were offered by Providence in the 2020-21 IEP. But due to the Covid-19 pandemic, no such services were provided to ABL nor to any other students in the district. When the parents rejected the Woods Young placement, they also impliedly rejected the compensatory services which had been offered in the IEP.

### CONCLUSION

The burden of proof of whether or not a FAPE was offered to ABL is with the parents, who are asserting that the IEP offered by Providence was deficient. They have not met their burden. Compensatory services were offered by Providence, but not accepted. ABL's unilateral placement at Wolf School was done at parental financial risk. Since parents have not diligently pursued the provision of appropriate services from the Providence Public Schools and failed to show that Providence did not provide appropriate services to ABL in its proposed IEP and failed to prove that Wolf School was a suitable alternative, no tuition reimbursement is appropriate in this case.

Judgment is in favor of Providence on all issues.

Respectfully submitted,



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Frederick G. Tobin  
Impartial Due Process  
Hearing Officer

Dated: September 20, 2022