

STATE OF RHODE ISLAND and  
DEPARTMENT OF EDUCATION

ADMINISTRATIVE IMPARTIAL  
DUE PROCESS HEARING

IN RE: JOHN DOE

CASE# LL 1823

Vs.

JOHNSTON SCHOOL DISTRICT

POSITIONS OF THE PARTIES

PARENT: The IEP does not provide FAPE if the Student is Transferred to the Johnston High School.

DISTRICT: The School District can provide all the terms and requirements of the last IEP with the transition of the Student to the Johnston High School. The School District is providing FAPE.

DECISION

The last IEP with the transition of the Student to the Johnston High School provides the Student with a free, appropriate, public education

The Parents request for placement at the Cornerstone School is denied.

## TRAVEL OF THE CASE

On September 5, 2018, the Rhode Island Department of Education received a request for an impartial due process hearing signed by a parent.

On November 30, 2018, the Department of Education appointed this hearing Officer to conduct a due process hearing. On December 3, 2018, an appointment notification letter was sent to the Parent and the attorney for the School District.

The following dates for hearing were given to the parties:

December 19, 2018  
December 20, 2018  
December 28, 2018  
January 3, 2019

A Pre-Hearing Conference was set for December 18, 2018 at 9:30A.M. at the Hearing Officer's Office, 1035 Main Street, Coventry, Rhode Island. The School District's attorney was not available on December 18<sup>th</sup> but was available for the 19<sup>th</sup> of December.

On December 20, 2018, the Hearing Officer spoke to the Parent by telephone and the Parent was available for the conference on December 19, 2018. The Parent was not represented by counsel at that time.

The Parents did obtain legal representation and the Pre-Hearing Conference date was changed by agreement of parties to January 3, 2019 at the same time and place.

The Pre-Hearing conference was held on January 3, 2019 at which time the Decision Due Date was extended from January 8, 2019 to February 7, 2019. The Decision Due Date was again extended to March 9, 2019 by the parties.

The Hearings were conducted on the following dates:

January 18, 2019  
January 22, 2019  
January 23, 2019  
January 24, 2019

The hearing concluded on January 24, 2019.

The hearing produced 516 pages of transcript and 27 exhibits from the School district and 0 exhibits from the Parents.

### FACTS

The Student was born on June 9, 2004 and lives with Mother, Father, brother, and sister. The Student has a medical diagnosis of global developmental delay, and cerebral palsy. He receives nutritional intake through a G/J.-tube. To communicate he uses the Tobii 1-12 eye tracker speech generating device. (Sch.Exh.8)

The Student has attended the Cornerstone School since July, 2007. He appears to understand a great deal that is said to him. He demonstrated receptive language skills at an approximate 40-47 month developmental level and expressive language skills at an approximate 18-24 month developmental level. He has a strong desire to communicate and uses the Tobii 1-12 eye tracker speech generating device, a combination of vocalizations, verbal approximations, body language/gesture and eye gaze to indicate what he wants, to relay his thoughts, feelings, to answer questions, engage in the classroom activities and to socialize with others. He is using his device in the home and school setting and has just started to use it within the community as he is exploring vocational opportunities. (Sch. Dist. Exh. 8)

For his orthopedic needs, he uses a body jacket which is worn all day at school and he has Bilateral Ankle Foot Orthosis Brace which is also worn all day at school. He uses a supine

stander daily for up to 45 minutes an hour at a time. He has a tilt-in space wheelchair with trunk supports, headrest, abductor, hip guides, seat belt, trunk straps and tray which he does not use in school. For school, he uses a tilt-recline stroller with seating system.

At home, he has an adapted bed, stander, car seat, bath transfer system, activity chair, porch elevator. (Sch. Dist. Exh. 5)

As to his physical therapy needs, his strength in his trunk muscles is poor. The muscle tone in his legs is high and it changes from high to severely high depending on his position. He is able to use his arms to reach, bat and grasp. His arm motions are slow and show spastic patterns. His range of motion shows a moderate loss of ROM in his hips.

His ankles have a decrease in ROM in dorsiflexion and plantarflexion. His trunk has a lateral curve. The Student can hold his head upright for up to 40 minutes if his wheel chair is in an upright position. (Sch. Dist. Exh. 5)

The Student's behavioral observations concluded that he is attentive and responsive to his surroundings. He enjoys getting attention from both peers and adults and visually attends to both people and objects in his environment. The Student communicates through eye gaze, facial expressions, and some vocalizations and by using a Tobii eye gaze communication device. He demonstrates a good understanding of verbal directions. (Sch. Dist. Exh. 3)

The Student is in the 9<sup>th</sup> grade at the Cornerstone School. On September 25, 2018 an IEP was developed to run from October 10, 2018 to October 9, 2019. (Sch. Dist. Exh. 2)

#### THE MOTHER TESTIFIED ON JANUARY 18, 2019

The Student received his first wheel chair at two and a half years old. (Vol. I, p.39 L14) He has retching, gagging and vomiting issues on a daily basis. (Vol. I, p.40 L12-15) In 2017, the

Student was diagnosed with hypomelaninating leukodystrophy. (Vol. I, p. 45 L10) The family received further information about this condition in the Children's Hospital in Philadelphia. (Vol. I, p.46 L22 to 25)

The Student has attended Cornerstone School his entire school career. (Vol. I p.49 L.2 to 4) There are four or five students in his classroom at Cornerstone and there is not a nurse in the classroom. (Vol. I p.49 L 19 to 25, p.50 L.1) The Mother has been informed that the Student needed aspiration. (Vol. I P.50 L.12 to 15) The nurse at Cornerstone School is always there when the Student starts gagging or retching. (Vol. I p.50 L. 16 to 21) At school the Student does not need a one-on-one nurse. The School has four nurses. The Student does need a one-on-one nurse on the bus because of his problem with aspirating, gagging and vomiting (Vol. I p.54 L. 11 to 17) The Staff at Cornerstone School know the Student and his needs. (Vol. I p.55 L. 13 to 16)

There are two nurses with LPN credentials and two nurses with RN credentials at the Student's school. (Vol. I p. 63 L. 15 & 16)

The Mother learned about the Student's condition when he was eleven years old. None of the nurses at Cornerstone had experience with the Student's condition. (Vol. I p. 65 L. 4 to 6, L. 21 to 25)

When Cornerstone received the knowledge of the Student's condition and diagnosis, the nursing services did not change from what they were. (Vol. I p. 68 L. 9 to 14) The report from the Children's Hospital in Philadelphia did not provide a specific recommendations to the nurses at Cornerstone School. (Vol. I p.71 L.21 to 25) If changes were to be made, the School has to go through the Student's pediatrician and the Mother. (Vol. I p. 72 L. 5 to 10) There is no formal process when one nurse leaves and another comes in at Cornerstone School. (Vol. I p. 78 L.21 to 25, P. 79 L. 1 to 4) No one from the Children's Hospital in Philadelphia visited the Cornerstone

School. (Vol. I. p. 80 L. 18 to 25) The Mother informed the Children's Hospital of Philadelphia about the services the Student received from Cornerstone School. (Vol. I p. 84 L.1 to 12) The Mother's concerns about transition to Johnston were: the Cornerstone staff served the Student during all his life; the Cornerstone classroom is smaller with four to five students opposed to eleven or twelve; the children at Cornerstone are similar to the Student, in that they are in wheel chairs, the Student can be put at risk by children with behavioral problems; the Student will go to a cafeteria with other children. (Vol. I p. 125 L. 5 to 25, p 126 L.1 to 25) the Mother was concerned with the ESY program which is five weeks (4 days) while Johnston is eight weeks (5 days). (Vol. I p. 116 L. 19 to 23) She was also concerned about the one-on-one nurse and situations where the nurse is absent. (Vol. I p.120 L. 1 to 17)

Should be  
Cornerstone

LAURIE K. CRAIG TESTIFIED ON JANUARY 18, 2019

Ms. Craig is a Licensed Practical Nurse (LPN). She was trained to work with G-tubes. (Vol. I p. 7 L. 1 to 2) LPN can no longer insert G Tubes but only Registered Nurses can perform that duty. (Vol. I p. 7 L. 19 to 25) She worked for the Student's family for 2 ½ years. There is a constant learning curve with the Student because he was so sensitive. It seemed like he was constantly vomiting. (Vol. I p. 13 L. 3 to 12) She did not know anything about the Student's condition but had to learn by experience with him. (Vol. I P. 15 L. 1 to 21) It took her three months for him to get an inkling of what was going on with the Student and another six months to feel comfortable that she had control. (Vol. I p. 16 L. 12 to 18) The Student has a G-J tube which is surgically put in. (Vol. 1 P 35 L. 15) Apart from vomiting the Student also produces mucus which requires suctioning. (Vol.1 P. 23 L. 1 to &) It took the Witness a month to train

another experienced nurse to replace her with the Student. People around the Student have to be careful because his arms will flail out and he could be injured. (Vol. I P. 29 L. 1 to 10)

KELLY SCHWEIGERT TESTIFIED ON JANUARY 22, 2019

The Witness is a full time occupational therapist for the Johnston School District. The witness was declared to be an expert in Occupational Therapy. She has been employed there for three and a half years (Vol. II P. 140 L. 1-5) She supervises three occupational therapy assistants who provide direct and indirect therapy services in the District. (Vol. II P.142 L. 1-8) She observed the Student during an occupational therapy session at Cornerstone School. (Vol. II P.1147 L. 21 to 25) The Witness never worked with anyone who has the Student's disability but has worked with those with cerebral palsy, muscular dystrophy which present in similar patterns where five motor upper extremity functioning may be impacted. (Vol. II P. 150 L. 5 to 10) The Witness was familiar with the Student's IEP of 9/25/18. The Johnston Public Schools would be able to provide the occupational therapy identified on pages 14 and 15 of the IEP. (Vol. II P. 153 L. 6 to 9) The Student would have access to a power wheelchair. (Vol. II P. 156 L. 1 to 8) In the Witnesses professional opinion Johnston School District can provide the requisite services to the Student.

KERRY ELIEEN CRANE TESTIFIED ON JANUARY 22, 2019

The Witness is a physical therapist for the Johnston School District. She has a master's degree in physical therapy. (Vol. II P. 1689 L. 20-22) She always worked with children with cerebral palsy. (Vol. II P. 172 L. 13 to 16) She provides physical therapy services in accordance

with the IEP. (Vol. II P. 174 L. 1 to 5) She visited the Student at Cornerstone School with others from the Johnston School District. (Vol. II P. 175 L.3 to 7) After reviewing page 14 of the IEP (Δ Exh. 2) she testified that she could provide the requirements for PT found on that page. (Vol. II P. 179 L. 9 to 16) The Witness would provide those services directly to the Student. (Vol. II P. 179 L. 17 to 22) The Witness reviewed page 15 of the IEP that listed equipment. (Vol. II P. 180 L. 2 to 3) The District will have all the equipment identified in the IEP (Vol. II P. 181 L.1 to 8) The Witness reviewed the 9/25/18 physical three year therapy evaluation. (Δ Exh. 5) (Vol. II P. 182 L.12 to 15) The Witness would provide in-service in the classroom which would include communicating with the Parents. (Vol. II P. 183 L. 17 to 25)

She has serviced students with: similar muscle tone and strength as the student; similar joint range of motion; similar orthopedic needs, similar gross motor mobility needs (Vol. II P. 184 L. 9 to 25, P. 185 L. 9 to 25)

The Johnston School District is able to provide positional supports for the Student. (Vol. II P. 188 L. 8 to 13) and it has a lift and sling. (Vol. II P. 188 . 14 to 24) All the Students in Ms. Kelly's class use a wheelchair, stander, AFOs and at least two have strollers. (Δ Exh. 6) (Vol. II P. 189 L. 16 to 21) The witness was declared to be an expert in physical therapy.

JOANNE HEFFERNAN TESTIFIED ON JANUARY 22, 2019

The Witness is a speech/language pathologist and provides assistive technology services for the School District. (Vol. II P. 204 L. 1 to &) Her specialty is augmentative communication which is a way of supplementing expressive communication for individuals who can't adequately communicate voice speech. She worked with students that are nonverbal and unable



to produce any speech at all. ( Vol. II. P.207 L. 1 to 25) She was declared to be an expert in speech/language pathology and augmentative communication skills. (Vol. II P. 209 L. 8 to 11)

She worked at Tech Access. They dealt with a person who has a disability which limits their functional ability to do anything in society. (Vol. II P.211 L. 16 to 25)

There are two nonverbal students in Ms Kelly's class and they have augmentative communication devices. The Witness programs the devices and trains staff. She is in class two afternoons a week. (Vol. II P. 213 L. 1 to 25) The Witness visited the Student at the Cornerstone School. (Vol. II P. 214 L. 14 to 22) She explained the use of the Tobii device in detail. (Vol. II P. 215 L. 6 to 25)

The Witness reviewed the Student's IEP, speech/language evaluation, therapy evaluation and Tech Access evaluation. (Vol. II P. 217 L. 18 to 25, P 218 L.. 1 to 7) Page 14 was reviewed and the Witness testified that the Johnston School District would be able to deliver to the Student the services enumerated in the IEP under group language lessons and individual speech/language sessions. (Vol. II P.219 L. 14 to 17) She described how those services would be delivered. (Vol. II.P.219 L.18 to 25, P. 220 L. 1 to 13)

The Witness reviewed the Speech & Language 3 Year Re-Evaluation of the Student (Δ Exh. 8) which referenced a provision on a weekly basis of at least one group session for 60 minutes and one individual lesson for 30 minutes. She confirmed that those lessons would be provided at the high school for the Student. (Vol. II P. 222 L.1 to 20) The Witness testified about the purchase of the Tobii device by the Student's medical provider and that the device would be used in school. (Vol. II P. 226 L.3 to 7)

KATHLEEN KELLY TESTIFIED ON JANUARY 23, 2019

The Witness is a Special Education Teacher employed by the Johnston School District. She teaches in a self-contained classroom that is a life-skills work-based learning classroom. (Vol. III P.251 L. 6 to 10) She is responsible for the reading, writing, math, social studies and transition classes. (Vol. III P. 252 L. 11 to 15) She has been a Special Education Teacher for 44 years. (Vol.III P. 255 L. 18) The witness was declared to be an expert in Special Education and with students who present with substantial intellectual disabilities. (Vol. III P. 272 L. 21 to 25, P. 273 L. 1 to 6) The witness met the Student at Cornerstone School. (Vol. III. P. 289 L. 18 to 22)

Based on the Witnesses review of the Student's IEP, it is her professional opinion that the Student qualifies for special education services through the IEP ( $\Delta$  Exh.2) and in her professional opinion, the Student's needs, services, supports or modifications contained in the IEP can be provided at the Johnston School District. (Vol. IV P. 294 L. 1 to 16)

There are services that can be provided in Johnston that may not be provided at Cornerstone School. The ability to interact with peers. The student's in her class will sit and play games with quiet students. (Vol. III P. 301 L.1 to 4)

The Witness explained in depth the working of her class. (Vol. III P. 284 to 289)

DENNIS MORRELL TESTIFIED ON JANUARY 23, 2019

Mr. Morrell is employed by the Johnston School District as the Principal of the High School. He is an educator for thirty-three years. (Vol. III P. 335 L. 16 to 17)

The Witness was declared to be an expert in education grades K through 12. (Vol. III P. 337 L. 6 to 8) He reviewed the Student's IEP and he did not find any impediment at Johnston

High School that would prevent the School District from meeting the requirements of the IEP for the Student. (Vol. III P. 339 L. 8 to 17)

The Witness does not have any particular training in work with special education students but did have teaching experience with special education students. (Vol. III. P 348 L. 15 to 25)

PATRICIA A. GLEASON TESTIFIED ON JANUARY 24, 2019

The Witness is the President of Gleason Medical Services. She has a Registered Nurse diploma. (Vol. IV 366 L. 1 – 8) She has been in healthcare field for 40 years. (Vol. IV P. 367 L. 1 to 9) They provided nurses to the Johnston School District and all of them are registered nurses. Gleason Medical Services match nurses with the needs identified by the Johnston School District.

Gleason is currently providing a registered nurse for the Student. (Vol. IV P. 376 L. 16 to 18) They provide the one-on-one nurse on the bus for the Student and if he goes to Johnston they would continue with the same nurse. (Vol. IV P. 379 L. 13 to 19) If there is a last minute cancellation they try to provide a substitute. (Vol. IV P. 380 L. 7 to 14) Their nurse is strictly for the bus. (Vol. IV P. 381 L. 11 to 12)

If an IEP calls for a RN, a LPN cannot be used to substitute. (Vol. IV P. 387 L. 15 to 18) Gleason does not provide the staff nurse in the school. (Vol. IV P.388 L. 13 to 22)

If the Student attends Johnston, Gleason could provide a one-on-one nurse both on the bus and throughout the school day. They could provide the same nurse that is currently caring for the Student. (Vol. IV P. 379 L. 13 to 19)

DR. SALLY A. MITCHELL TESTIFIED ON JANUARY 24, 2019

The Witness is employed by the Johnston School District as Director of Special Services. She was declared to be an expert in Special Education. (Vol. IV P. 423 L. 19 to 23)

The Student was registered with the Johnston School District on December 13, 2017. (Vol. IV P. 424 L. 10 to 24) From the Student's IEP and other documents Dr. Mitchell understood that the Student's disabilities included global development delay, a rare medical genetic condition, HABC, cerebral palsy and quadriplegia, GERD. (Vol. IV P. 427 L. 20 to 24) The Witness accepts the information in Exhibit 12 (Individual Health Plan) (Vol. IV P. 429 L. 12 to 25) The Witness accepted the present levels of functional performance of the Student as found in Exhibit 19, Central Falls IEP of 9-12-17.

In said IEP, she accepts the present levels of academic achievement. (Vol. IV P. 433 L. 4 to 15)

The Witness found, except for measurability, that the IEP was appropriate as was the supplemental aids and services which seemed appropriate. Johnston School District could provide the services required in that IEP.

The Student would qualify for extended school year services. (Vol. IV P. 439 L. 8 to 13)

The School District on 1-13-18 (Δ Exh. 20) conducted Team Meetings concerning the Student with the Mother present. (Vol. IV P. 442 L. 18 to 25) Other meetings were held on 6-4-18 (Δ Exh. 22), 7-18-18 (Δ Exh. 23), 8-16-18 (Δ Exh. 24), (The Parent/Parents were present).

The Witness testified that in her professional opinion all the requirements of the IEP (Δ Exh. 2), can be met by the Johnston School District. (Vol. IV P. 459 L. 1 to 6)

Based on the review of all information, discussions, the development of the Student's IEP, the witness has concerns about the education the Student is receiving at Cornerstone School

because it is not the least restrictive environment. Johnston would be the least restrictive environment with appropriate supports. (Vol. IV P 471 L. 14 to 24)

Johnston is the least restrictive environment because all the services and programs outlined in the Student's current IEP can be provided in the Johnston School District and the Student would have access to be with nondisabled peers and that is per regulations. (Vol. IV P. 472 L. 1 to 8)

Unlike Cornerstone School, the Student will have a one-on-one nurse throughout the school day. (Vol. IV p. 474 L. 8 to 25) The Student will continue to have a one-on-one nurse for bus transportation. (Vol. IV P 475 L. 1 to 4)

### DECISION

Except for placement, the Parents had no objection to any of the requirements of the IEP of September 25, 2018. (Δ Exh. 2)

Although not specifically argued, it is clear that the failure of the School District to leave the Student at the Cornerstone School can be a question of FAPE. (Free appropriate Public Education)

The Mother's sensitive, heartfelt, and concerned testimony about the needs of the Student is well taken and understood. I compliment the Parents for their concern and involvement with their disabled child and wanting what they believe to be the best program for their child.

Is the School District providing FAPE to the Student if the Student is transitioned to the School District from Cornerstone School?

Before we consider this issue it is important to point out that the Parents did not make any allegation that any procedural rules of the IDEA were violated.

It should be noted:

The burden of persuasion  
in an administrative hearing  
challenging an IEP is  
properly placed upon the  
party seeking relief-whether  
that is the disabled  
child or the School District  
Schaffer v. Weast, 546 U.S. 42, 126 S Ct. 528

A free, appropriate, public education was defined by the Supreme Court in the following  
manner:

A free appropriate public  
education specifically designed  
to meet the unique needs  
of the handicapped child, supported  
by such services as  
necessary to permit  
the child to benefit from  
instruction. Board of Education  
of Hendrick County et al v.  
Rowley 458 U.S. 188 & 189, 102 S. Ct. 3034

Johnston School District conducted Special Education Team meetings. On July 7, 2018,  
the meeting was held to discuss the Student's transition to the Johnston High School from  
Cornerstone School. Present were the Parents with Johnston and Cornerstone personnel.

Did the requirement that the Student attend Johnston High School affect the adequacy of  
the IEP of 9/25/18? Could Johnston provide FAPE for the Student at the Johnston High  
School?

In a Supreme Court Case, Douglas County School District RE-1, in referencing the  
Rowley case said:

“We will not attempt to elaborate on what “appropriate” progress will look like from case to case. It is the nature of the Act and the standard we adopt to resist such an effort: the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be taken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.

At the same time, deference is based on the application of expertise and the exercise of Judgment by school authorities. The Act vests these officials with responsibility for decision of critical importance to the life of a disabled child. The nature of the IEP process from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child’s IEP should pursue.” Andrew v. Douglas County School District RE-1, 137 S. Ct. 1002

To determine FAPE, it is incumbent on the educational experts to look at the last IEP with the School District’s requirement that the Student transitions to the Johnston High School.

The last offered IEP was on September 25, 2018 with the School District’s requirement that the Student transition to the Johnston High School as found in the Team Meeting of July 7, 2018.

To meet its substantive obligation under the IDEA a school must offer are IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Andrew V. Douglas County School District, 137 S. Ct. 992.

It is imperative that the experts review the program being offered by the School District In order to provide compelling opinions and evidence as to whether or not the last IEP with the transition to Johnston High School provided FAPE.

The testimony of Kelly Schweigert, occupational therapist, Kerry Crane, physical therapist, Joanne Heffernan, speech/language pathologist, Kathleen Kelly, special education teacher, and Dr. Sally A. Mitchell, Director of Special Education for the Johnston School District

provided compelling opinions and evidence that the last IEP with transition to the Johnston High School provided FAPE.

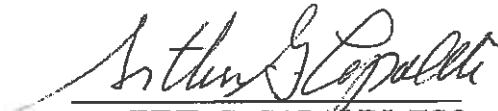
It was clear to this Hearing Officer that the School District could provide the Student with all the terms and requirements of the last IEP at the Johnston High School.

The Parents did not present any expert testimony to counter expert the testimony of the School District.

The request of the Parents for placement at the Cornerstone School is denied.

DATED: March 9, 2019

HEARING OFFICER



ARTHUR G. CAPALDI, ESQ.  
1035 Main Street  
Coventry, R.I. 02816  
Tel: 401-821-3537  
FAX: 401-821-9697  
Email: [acapaldi111@verizon.net](mailto:acapaldi111@verizon.net)