

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Groton Board of Education

Appearing for the Parents:

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Appearing for the Board:

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Appearing Before:

Hearing Officer Scott P. Myers, M.A. (Clinical
Psychology), J.D.

**FINAL DECISION AND ORDER
(Partial – Regarding Stay Put Issues Only)
September 22, 2003**

SUMMARY

The Student graduated from the Board's high school on June 20, 2003 with a regular high school diploma and turned 21 years of age on August 18, 2003. At all pertinent points before June 20, 2003, she had been attending the May Center in Massachusetts at Board expense pursuant to a series of IEPs. The Student attended the May Center in the period June 21, 2003 through August 18, 2003 at Board expense not as the result of an IEP, but as the result of a unilateral offer made by the Board at a PPT on April 10, 2003 to fund her attendance at the May Center in that period. The Parents were advised by the Board on April 10, 2003 that after August 18, 2003 the Board would cease providing all or funding any educational services to the Student. The Parents claim that they did not commence due process before August 12, 2003 because the Board failed to notify them of or misrepresented their rights under the applicable laws and the Parents did not know until late July or early August 2003 that they could commence due process to challenge the Board's decision to graduate the Student or to obtain special education and related services beyond the date of her 21st birthday. When they commenced due process on August 12, 2003, they also sought an "emergency" order compelling the Board to fund a placement at the May Center beyond August 18, 2003 on the basis of stay put. For the reasons set forth more fully herein, the Hearing Officer's September 5, 2003 order denying relief under the IDEA Stay Put Provision (the "September 5 Stay Put Order") is AFFIRMED and the Parents' subsequently asserted request for relief under the CT Stay Put Provision is DENIED. Whether the Student is entitled to relief on the merits of her due process claim, which is asserted under Connecticut special education law rather than the IDEA, is independent of the issue of whether she is entitled to stay put relief. The Hearing Officer reaches no conclusions herein on the merits of her due process claim.

PROCEDURAL BACKGROUND

In their August 12, 2003 request for due process the Parents sought an “emergency” stay put order from a Connecticut Department of Education (“CTDOE”) due process hearing officer compelling the Board to continue to fund the Student’s attendance at the May Center beyond August 18, 2003 (the following Monday). The only statute cited in their request for due process was the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 *et seq.* (the “IDEA”).

This matter was assigned to the undersigned Hearing Officer on August 14, 2003 (a Thursday). Although the Parents had retained their current counsel one week before they filed their request for due process, their request for stay put relief was not submitted in the form of a formal motion.

In light of the then-looming August 18, 2003 date established by the Board as the date on which it would cease funding the Student’s attendance at the May Center, the Hearing Officer exercised his discretion under the CTDOE’s regulation, Regulations of Connecticut State Agencies (“CT Regulations”) § 10-76h-8(g) and elected to address the stay put relief request immediately rather than direct that the Parents file a proper written motion. In retrospect, that decision has unnecessarily complicated the resolution of the stay put issue.

On August 15, 2003, the Hearing Officer convened a teleconference with counsel for the parties to address the stay put request. Counsel for the Board objected to the Parents’ request for stay put relief. The Hearing Officer advised the parties that he had concerns regarding the apparent failure of the Parents to take actions prior to August 12, 2003 to protect their interests and the interests of the Student with respect to the notice they appear to have received by no later than April 10, 2003 that continued Board funding of the Student’s attendance at the May Center was not assured after August 18, 2003. However, given the need to take some immediate action to protect the Student’s interests caused by the timing of the Parents’ filing, the Hearing Officer advised the parties that he would enter an initial, interim order that the Board must continue to fund the Student’s placement at the May Center through and including September 8, 2003 subject to further review. The Hearing Officer’s August 15, 2003 written initial interim order (the “August 15 Interim Order”) was issued based on the “stay put” or “status quo” provision of the IDEA, which provides in pertinent part that:

[D]uring the pendency of any proceedings conducted pursuant to this section, unless the state or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then-current educational placement of such child . . . until all such proceedings have been completed.

IDEA, 20 U.S.C. § 1415(j) (the “IDEA Stay Put Provision”).

The August 15 Interim Order established a schedule for resolving the Board’s objection to the Parents’ request for stay put relief. The Parents were directed to submit on or by August

27, 2003 a pleading in the nature of a motion for injunctive relief explaining why, as a matter of law and fact, the Hearing Officer should enter an order compelling the Board to continue to fund a stay put placement at the May Center beyond September 8, 2003. The Board was directed to submit on or by September 4, 2003 a responsive pleading explaining why, as a matter of law and fact, the Hearing Officer should deny the Parents that relief. The parties were specifically directed to include appropriate documentary and affidavit evidence to support their claims, thereby creating an evidentiary record if such proved necessary to resolve the issue.

The August 27, September 4 and September 8 dates were established largely by the schedules of counsel for the parties. The Hearing Officer advised that he would issue a ruling on September 5, 2003 by e-mail.

Both parties complied with the August 15 Interim Order. With their August 27 Memorandum, the Parents submitted the following materials: (1) an affidavit from the Student's mother (the "First Parent Aff."); (2) an affidavit from Michele Arons, Director of Education and Training at the May Center (the "Arons Aff."); (3) the minutes of the April 10, 2003 PPT; (4) a neuropsychological evaluation of the Student performed in July-August 2002; (4) a cognitive and educational evaluation of the Student performed in April 2000; (5) a copy of CTDOE Update # 32; (6) a copy of the CTDOE publication "Steps to Protect a Child's Right to Special Education: Procedural Safeguards" (the "CTDOE Procedural Safeguards"); (7) an evaluation of the Student performed in July 2003; and (8) the Student's May Center quarterly progress reports for the 2002/2003 school year.

With its September 4 Memorandum, the Board submitted the following materials: (1) an affidavit from Yvette Jacaruso, Ed.D., the Board's Director of Pupil Personnel Services and Special Education (the "Jacaruso Aff."); (2) an affidavit from Michael Forbes, the Student's guidance counselor (the "Forbes Aff."); (3) minutes of PPTs dated April 13, 1992, May 15, 1998, May 11, 2000, May 7, 2001, June 6, 2002, and April 10, 2003; and (4) the Student's May Center quarterly progress reports for the 2002/2003 school year.

In their August 27 Memorandum, the sole basis for stay put relief asserted by the Parents, who have the burden as the movant seeking stay put relief, was the IDEA Stay Put Provision and its related regulation, 34 C.F.R. § 300.514(a). The Hearing Officer did not undertake an independent review of other statutes or regulations that might be applicable, leaving it to counsel for the Parents – who is a well-known, capable, and experienced plaintiff's Connecticut special education lawyer – to identify all pertinent statutory provisions and legal authority supporting the Parents' position as to stay put relief.

Based on the arguments asserted by the Parents in their August 27 Memorandum, the Hearing Officer determined that the Parents' due process claim was not based on the IDEA but rather was asserted under Connecticut law, specifically Conn. Gen. Stat. § 10-76d(b) and the related CT Regulation § 10-76d-1(a)(7). The Hearing Officer then concluded that because "***Connecticut special education law does not have a stay put provision***, any stay put relief afforded to the Parents under Connecticut law would ***have to be based on the stay put relief***

available to them under the IDEA.” September 5, 2003 Order at 6 (emphasis added). The Hearing Officer then denied the request for stay put relief because the IDEA’s Stay Put Provision “does not operate in favor of an individual who has reached his or her 21st birthday.” *Id.*, citing *Oak Park and River Forest High School Dist. No. 200 v. Illinois State Bd. of Educ.*, 886 F. Supp. 1417 (N.D. Ill. 1995) (“*Oak Park I*”), affirmed, 79 F.3d 654 (7th Cir. 1996) (“*Oak Park II*”). Since the August 15 Interim Order pertained to periods after the Student turned 21 years of age and relied only on the IDEA Stay Put Provision, the Hearing Officer also vacated the August 15 Interim Order. To further assure that the Student’s interests were fully protected by allowing the Parents the maximum opportunity in the circumstances to make appropriate arrangements for their daughter’s potential return to Connecticut on September 8, 2003 or seek relief from the September 5 Stay Put Order from a court, the Hearing Officer (1) e-mailed the September 5 Stay Put Order to counsel at 10:28 a.m. on September 5, 2003 and (2) stayed until September 9, 2003 the effectiveness of that portion of the September 5 Stay Put Order vacating the August 15 Interim Order.

On September 9, 2003, purportedly after being advised of the September 5 Stay Put Order by their counsel, the Parents removed the Student from the May Center and returned her to their home in Connecticut, where she remains. (Second Parent Aff., at ¶ 2.)

By agreement of the parties, a pre-hearing conference (“PHC”) was convened on September 11, 2003 pursuant to CT Regulation § 10-76h-7(b) to establish pre-hearing procedures and schedule hearing dates. At that time counsel for the Parents asked for clarification regarding the September 5 Stay Put Order, stating that he did not understand the reasoning and identifying for the *first time* in this proceeding CT Regulation § 10-76h-17(a) as the basis for the stay put relief the Parents were seeking.¹ That Regulation, which is CT’s Stay Put Provision, provides in pertinent part that:

[U]nless the public agency and the parent agree otherwise, the child shall remain in his or her then-current educational placement during the pendency of any administrative or judicial proceedings regarding issues set forth in [CT Regulation §] 10-76h-3 . . .

Nowhere in his August 12, 2003 request for due process, during the August 15, 2003 teleconference or in his August 27 Memorandum did counsel for the Parents refer to the CT Stay Put Provision, much less assert any argument as to its potential applicability and significance. At

¹ At page 3 of his September 17 Memorandum, counsel for the Parents states, without providing any evidence to support this assertion, that on September 8, 2003 he advised the Hearing Officer of the existence of the CT Stay Put Provision. Counsel for the Parents is mistaken. The undersigned had no contact with counsel for the Parents at any time between September 5 and the September 11, 2003 PHC.

no point prior to September 11, 2003, did the Parents' challenge or seek reconsideration of the Hearing Officer's September 5 Stay Put Order or seek relief from that order from a Court.²

At the PHC, the Hearing Officer advised the Parents counsel to file an appropriate motion regarding his concerns as to the September 5 Stay Put Order if he desired to do so. However, following the PHC and based on the comments of Parents' counsel at the PHC regarding the CT Stay Put Provision, the Hearing Officer reviewed the CT Stay Put Provision and concluded that the September 5 Stay Put Order may have been in error as a matter of law. Because of that concern, the Hearing Officer reconvened counsel for the parties by telephone to advise them of his concern and solicit their input as to how to proceed. Counsel for the Board objected to reconsideration of the September 5 Stay Put Order and requested an opportunity to brief the issue. By written notice issued by e-mail and US mail on September 11, 2003, the Hearing Officer formally advised the parties that he was going *sua sponte* to reconsider the September 5 Stay Put Order in light of the CT Stay Put Provision, and was specifically considering two issues: (1) Whether the Parents were entitled to entry of a stay put order pursuant to the CT Stay Put Provision; and, (2) if so, whether the May Center was the Student's stay put placement.

A briefing schedule was established at that time. The Board submitted a memorandum on September 15, 2003. On September 17, 2003 the Parents submitted a reply memorandum with a supplemental affidavit from the Parent (the "Second Parent Aff.") responding to certain claims made by the Board. The Board submitted a further response on September 19, 2003.

FINDINGS OF FACT

The Findings of Fact stated herein are made solely for purposes of deciding the stay put issue and are not intended to be dispositive of the merits of this due process claim. In some cases, Findings of Fact are derived from the pleadings and legal and factual assertions contained therein. The affidavit and documentary evidence submitted by the parties provides a sufficient record for the Hearing Officer to resolve the stay put issues, to the extent factual findings are necessary to do so. Accordingly, oral testimony or argument is not required to resolve this issue. See CT Regulations §§ 10-76h-8(d), (e) and (g).

1. The Student suffered "significant brain damage" as a result of the removal of a portion of a malignant brain tumor in July 1991 and subsequent treatment of the cancer. Her present disabilities include visual impairments, cognitive and memory deficits, compulsive eating and behavioral difficulties such that she is functioning below her chronological age level with respect to communication, daily living skills and socialization. (First Parent Aff. at ¶¶ 3, 4)
2. On January 13, 1992, the Student was determined to be eligible to receive special

² The Parents in their September 17 Memorandum at 4 acknowledge that they could have sought relief from the September 5 Stay Put Order from a Court.

- education and related services under the IDEA. (First Parent Aff. at ¶ 2; Jacaruso Aff. at ¶ 4)
3. At all times since through at least June 20, 2003 the Student was eligible to receive special education and related services under both the IDEA and Connecticut special education laws based on her visual and/or neurological impairments.
 4. For several years prior to the 2002/2003 school year, the Student had been placed at Board expense at the May Center in Massachusetts, pursuant to a series of annual IEPs developed through the PPT process. *See* First Parent Aff. at ¶ 6 (since 1994); Jacaruso Aff. at ¶ 5 (since 1997).
 5. The Student was placed at the May Center at Board expense for the 2002/2003 school year pursuant to an IEP developed on June 6, 2002 and covered the period through June 30, 2003. (Board September 4 Memorandum at Ex. B-5)
 6. The May 15, 1998 IEP identifies the criteria for termination of the Student's eligibility for special education and related services as functioning in the mainstream environment without special education support, rather than graduating from high school or turning age 21 years. (Board September 4 Memorandum at Ex. B-2)
 7. That determination was changed in the May 11, 2000 IEP to reflect graduation from high school as the criteria for termination of the Student's eligibility to receive special education and related services. (Board September 4 Memorandum at Ex. B-3; *see also* Jacaruso Aff. at ¶¶ 7; 8)
 8. At a PPT dated April 10, 2003, the Board advised the Parents that the Student had met or will meet the Board's criteria for earning a regular high school diploma and that it was the Board's intention to graduate the Student with a diploma on June 20, 2003. (Jacaruso Aff. at ¶¶ 22, 23)
 9. The Board offered at that PPT to continue to fund the Student's attendance at the May Center after June 20, 2003 (the date of her graduation from high school) and through August 18, 2003 (the date on which she turned 21 years of age), but that after August 18, 2003, the Board would no longer fund any special education or related services to the Student. (First Parent Aff. at ¶¶ 7, 9, 10; Arons Dec. at ¶¶ 6 7; Jacaruso Aff. at ¶¶ 20-21) The minutes of the April 10, 2003 PPT state that the Student will remain at the May Center until her 21st birthday on August 18, 2003 and that the Board "will no longer be responsible for [the Student's] educational needs [and] financial support after August 18, 2003." (Board September 4 Memorandum at Ex. B-5)
 10. The Parents were given a copy of the CTDOE Procedural Safeguards at the April 10, 2003 PPT. (First Parent Aff. at ¶ 17)

11. At no point in time has an IEP been proposed or developed to cover any period after the end of the 2002/2003 school year.
12. At the April 10, 2003 PPT, the Board understood that in certain circumstances, as set forth in CTDOE Update # 32 and the Connecticut laws described therein, that an eligible child may be entitled to receive special education and related services through the end of the school year in which he/she turns 21 years of age or, in other words, that under Connecticut law the Board's obligation to provide a child with special education and related services may not automatically terminate when the child turns 21. (Jacaruso Aff. at ¶ 24)
13. At no point between the April 10, 2003 PPT and July 1, 2003: (1) did the Board discuss with CTDOE Update # 32 with the Parents; (2) did the Parents ask the Board about CTDOE Update # 32; (3) did the Board discuss with the Parents the potential for the Student to receive special education and related services provided by the Board under state or federal special education laws either after her graduation from high school or after she turned 21 years of age; and (4) did the Parents ask the Board about the potential for the Student to receive special education and related services provided by the Board under state or federal special education laws either after her graduation from high school or after she turned 21 years of age.
14. The Student was graduated from the Board's high school with a regular diploma on June 20, 2003. The Parents were aware that graduation was held on June 20, 2003 and that the Board was going to award the Student a high school diploma at that time and in fact did so. (Jacaruso Aff. at ¶¶ 22, 23, 28, 29, 30, 31; Forbes Aff. at ¶ 20)
15. The Student remained at the May Center from June 21, 2003 through August 18, 2003 at Board expense.
16. No PPT was convened for the Student after April 10, 2003.
17. The Parents removed the Student from the May Center on September 9, 2003, and returned the Student to their home. The May Center has advised that although they have assigned the Student's place at the May Center to another individual, the date on which that individual will be admitted to the May Center is uncertain, so that it is possible at this time for the Student to return to the May Center for a period of time. (Parent Second Aff.)

DISCUSSION

No party has argued that the Hearing Officer lacks authority to rule on the Parents' request for stay put relief or enter an order regarding stay put. The Parents, as the moving party, bear the burden of proving that they are entitled to stay put relief. To make clear that any further relief as to stay put in this matter must be timely sought from a Court and because the stay put

issue is severable from the merits, the Hearing Officer hereby bifurcates this matter into a Phase I which will address stay put issues only and a Phase II which will address the Student's claims on the merits. This Final Decision and Order concerns only Phase I of the case.

A. The September 5 Stay Put Order is Affirmed

As stated in the September 5 Stay Put Order, the Student is not entitled to relief under the IDEA Stay Put Provision since she has turned 21 years of age. *See, e.g., Oak Park II.*³ The Board correctly notes that since the Parents are not seeking compensatory education under the IDEA, once she turned 21 years of age on August 18, 2003, the Student was no longer entitled to benefits under the IDEA and the IDEA Stay Put Provision ceased to operate or be available to her. The fact that the Parents commenced due process just prior to the Student's 21st birthday is not dispositive.

The Parents have failed to meet their burden of establishing that they are entitled to relief under the IDEA Stay Put Provision. They have failed to cite in their August 12, 2003 request for due process, their August 27 Memorandum or their September 17 Memorandum, any case law supporting their argument that the Student in this case is entitled to such relief. Rather they simply cite general case law regarding the purpose of the IDEA Stay Put Provision.

B. Whether the Stay Put Issue Has Been Mooted

Although the Student has been discharged from the May Center and her bed has been promised to another individual, the May Center has advised the Parents that the Student could return for some period of time pending the actual admission of that other individual. Presumably, the length of her stay would depend on both the availability of a bed (e.g., should another resident depart). The Board argues that the stay put issue has effectively been mooted because the Student may not be able to gain readmission to the May Center and, even if admitted, she may not be able to remain throughout the pendency of this case. (Board September 15 Memorandum at 4, n. 1.) However, the stay put issue is not moot precisely because it is unclear whether the Student can return to the May Center and if she can return for how long she

³ The district court in *Oak Park I* concluded that the IDEA Stay Put Provision was enacted to provide parents and eligible children with a shield against erroneous or improper changes of educational placement by a local educational agency ("LEA"), but that as the child "nears 21 . . . that shield may become a sword" that could be improperly wielded to (in the Board's words) "delay the inevitable" and secure services to which the student is not entitled. *Oak Park I*, 886 F. Supp. at 1426. The Court of Appeals for the Seventh Circuit agreed, concluding that because the benefits available to a child under the IDEA expire when the child turns 21 years of age, the IDEA's Stay Put Provision also ceases to operate at that time because to allow otherwise would allow the "parents to obtain adult benefits for their child to which they had no entitlement [under the IDEA] by the simple expedient of filing a claim . . . on the eve of their child's turning 21 . . ." *Oak Park II*, 79 F.3d at 660.

can remain. Unless it is established with certainty that the Student cannot return to the May Center during the pendency of this administrative hearing, the stay put issue is not moot.⁴

C. Whether the Hearing Officer May Reconsider the September 5 Stay Put Order

The Board argues that the Hearing Officer has no authority to reconsider the September 5 Stay Put Order, whether *sua sponte* or otherwise, for several reasons, all of which lack merit.

The Board argues first that the Hearing Officer may not reconsider the September 5 Stay Put Order because that order is a “final decision” and the Hearing Officer is without authority to reconsider the order. The term “final decision” has a specific meaning for purposes of these proceedings: a written determination in a contested case which includes expressly identified findings of fact and conclusions of law. The September 5 Stay Put Order was issued as an interlocutory ruling on a motion not as a “final decision.” That the September 5 Stay Put Order may be an immediately appealable interlocutory order does not make it a “final decision” within the meaning of the case law and other authority cited by the Board.⁵

The Board has pointed to no rule that prevents the Hearing Officer from reconsidering on his own initiative an interlocutory order (even if it may be immediately appealable) to correct an error of law. The Hearing Officer agrees with the Parents that it would be an absurd rule if an administrative hearing officer would lack the power to correct an erroneous ruling during the course of an administrative hearing. (Parents’ September 17 Memorandum at 4.)

The Board also argues that Connecticut law does not permit parties to file a motion to reconsider, or informally request that the Hearing Officer reconsider an order since a motion for reconsideration is not among the types of motions specifically enumerated in CT Regulations § 10-76h-8(f) that a hearing officer may consider. (September 15 Memorandum at 7.)⁶ The

⁴ The Board also claims that “there is [now] an additional concern at this juncture as to the educational appropriateness of [returning the Student to the] May Center for a temporary period of time.” (Board September 15 Memorandum at 4, n.1.) However, since the Board has taken the position that it no longer has any responsibility for the Student’s education, that decision is the Parents’ to make and the Board should not be heard to complain if the Parents decide to return the Student to the May Center.

⁵ The authority cited by the Board applies to “final decisions” not interlocutory orders. *See* CT Regulation § 10-76h-16(a) (party seeking to stay a “final decision” must apply to the court for such relief); CTDOE publication “Due Process Regulations Effective July 1, 2000, Circular Letter C-5, Series 2000-2001” (“Circular Letter C-5”) (only a court can stay or reverse a “final decision” of a CTDOE hearing officer).

⁶ The Board cites to the final decision in *Student v Norwalk Board of Education*, Final Decision and Order 01-258 (SEA CT 2002) for the proposition “that motions for reconsideration

Parents correctly note that CT Regulations § 10-76h-8(f) identifies specific types of motions that a hearing officer may consider, but states quite clearly that the list is not all inclusive. (Parents' September 17 Memorandum at 5.)

The Board argues next that because the Parents failed to diligently and/or timely assert arguments under the CT Stay Put Provision prior to the September 11 PHC, they have waived their rights to do so. *See* Board's September 17 Memorandum at 5 (“[t]he law is clear that the Parents, having had the full opportunity to raise and brief the issue of Connecticut stay put law, and having failed to do so, have thereby waived that issue”).⁷ While the Board may correctly state the general rule, there is no compelling reason to apply that rule to the facts here.

Although the Parents have not done so with a level of clarity that would have permitted a more efficient resolution of the issue, they have raised the issue of stay put in a timely fashion in this hearing process.⁸ In any event, whether the Parents have waived their right to assert the issue does not prevent the Hearing Officer from revisiting a previously issued order where the Hearing Officer is concerned that that order may have entered in error.

The Board also argues that because the Parents did not diligently pursue relief from the September 5 Stay Put Order, there is no “aggrieved party” before the Hearing Officer and no justification for the Hearing Officer to reconsider that order. (September 15 Memorandum at 9) Although not as diligent or zealous as perhaps they should have been, and although they did not submit a formal written motion before the Hearing Officer reconvened the parties on September

are not properly made in special education due process hearings”). However, nothing in that decision addresses a motion for reconsideration.

⁷ The cases cited by the Board are distinguishable. *See, e.g., Wilton Board of Education*, 37 IDELR 266, Final Decision and Order 01-351 (SEA CT 2002) (refusing to consider an issue regarding procedural rights raised by the parent for the first time in the parent's post hearing brief); *Student v. Putnam Board of Education*, Final Decision and Order 02-288 (SEA CT 2002) (refusing to consider an issue where the parents failed to raise the issue in their request for due process or during the prehearing conference).

⁸ Parents' counsel seems to argue at pages 3-4 of his September 17 Memorandum that he is not required to identify the specific statutory bases supporting his claim for stay put relief, and that the request for stay put in and of itself was sufficient to put the Board and the Hearing Officer on notice that the Parents were seeking relief under both the CT and IDEA Stay Put Provisions. The Parents bear the burden of proving that they are entitled to stay put relief. Even assuming they are not obligated to identify a statutory basis for the relief they seek, given case law making clear that relief is not available under the IDEA Stay Put Provision once the child turns age 21, as the party with the burden of proof, counsel for the Parents should have specifically identified the CT Stay Put Provision in his pleadings and bears the risk of failure to do so.

11, 2003 to address the issue, the Parents are aggrieved by and have sufficiently raised a question about the validity of the September 5 Stay Put Order to warrant reconsideration.

D. Whether the CT Stay Put Provision Provides Relief That is Broader than the IDEA Stay Put Provision

The Board argues that the Parents are not entitled to relief under the CT Stay Put Provision because the Parents are not entitled to relief under the IDEA Stay Put Provision and the two provisions are identical in scope. That argument lacks merit.

A State is free to enact laws which provide eligible children within its jurisdiction benefits that are broader than those provided under the IDEA. Connecticut has enacted its own special education laws which define the rights of eligible Connecticut children to receive special education and related services and the obligations of Connecticut LEAs to provide those services. These laws exist independently of the IDEA, which means that to the extent Connecticut provides its eligible children with benefits that are broader than those provided under the IDEA, an eligible Connecticut child may have a claim under Connecticut law for special education and related services that may not exist under the IDEA.

The pertinent Connecticut statutes include:

(1) Conn. Gen. Stat. § 10-76d(a)(1). This statute provides that, in accordance with CTDOE Regulations, each Connecticut LEA shall provide the services necessary to identify Connecticut school age children within their jurisdiction who are eligible “for special education *pursuant to [Conn. Gen. Stat. §§] 10-76a to 10-76h*, inclusive [and] prescribe suitable educational programs” for such children. (Emphasis added.)

(2) Conn. Gen. Stat. § 10-76d(b). This statute provides that in accordance with CTDOE Regulations, each LEA “shall: (1) Provide special education for school-age children requiring special education [as defined in Conn. Gen. Stat. § 10-76a, which “obligation”] shall terminate when such child is *graduated from high school or reaches age twenty-one, whichever occurs first . . .*” (Emphasis added.)

(3) Conn. Gen. Stat. § 10-76h. This statute sets forth Connecticut’s special education due process procedures, and gives parents of eligible children the right to commence a due process proceeding whenever the LEA “responsible for providing such services . . . proposes or refuses to initiate or change . . . the educational placement of or the provision of a free appropriate public education to such child[ren] . . .” This statutory scheme includes Conn. Gen. Stat. § 10-76h(a)(3) provides that the parent of an eligible child shall have up to two years from the date on which the action at issue was taken to commence due process, except that if the parent was “not given notice of the procedural safeguards, in accordance with [CTDOE Regulations] . . . such two-year limitation shall be calculated from the time notice of the safeguards if properly given.”

(4) Conn. Gen. Stat. § 10-76h(d)(1). This statute provides that a CTDOE hearing officer “shall have the authority to [among other things] confirm, modify, or reject the identification . . . or educational placement of or the provision of a free appropriate public education to the child or pupil”

The CTDOE’s regulations implementing those laws are set forth in CT Regulations §§ 10-76a, 10-76d and 10-76h.

The right to special education and related services under the IDEA ends when an otherwise eligible student turns 21 years of age (unless, under a judicially created exception, the student is seeking compensatory education).⁹ However, under Connecticut law eligible students are potentially entitled to receive special education and related services for several months beyond the date on which they turn 21 years of age. CT Regulation § 10-76d-1(a)(7), which implements Conn. Gen. Stat. § 10-76d, expressly provides that “[e]ach board of education shall provide [FAPE] for each school age child requiring special education and related services [with] ***such special education [being] continued until the end of the school year in the event that the child turns twenty-one during that school year.***” (Emphasis added.)

Through its March 26, 2003 Update # 32, the CTDOE has interpreted Connecticut law as follows:

The Connecticut statutes define the fiscal and school year as commencing July 1 [of calendar year 1] and ending June 30 [of calendar year 2] (Section 10-259). In Connecticut, regulations state that students with disabilities who require special education are eligible to receive special education and related services until receipt of a high school diploma or “until the end of the school year in the event that the child turns 21 during that school year” (10-76d-1(a)(7), whichever occurs first. For example, a student with disabilities eligible for special education ***and without a high school diploma*** who turns 21 between July 1, 2003 and June 30, 2004 is eligible to receive services, as recommended by the PPT and stated on the IEP, through June 30, 2004. If a student turns 21 prior to July 1, 2003 eligibility for services would end June 30, 2003.

(Emphasis added.)

⁹ See, e.g., *Garro v. Connecticut*, 23 F.3d 734 (2nd Cir. 1994) (discussing compensatory education relief available under IDEA); *Hilden v. Lake Oswego School District No 7J*, 21 IDELR 671 (D.C. Or. 1994)(where a student is no longer eligible for special education, and the student has not sought compensatory education through due process, the IDEA Stay Put Provision does not apply).

The Parents are not making a claim for compensatory education under the IDEA in this case.¹⁰ Rather they are seeking a decision that because the Board improperly graduated the Student she is entitled to services at Board expense under CT Regulation § 10-76d-1(a)(7) potentially until June 30, 2004.¹¹

The Board argues that there is no need to reconsider the September 5 Stay Put Order because the scope of the relief provided under the CT Stay Put Provision is the same as that provided under the IDEA Stay Put Provision since the two provisions are so similarly worded as to be identical. (Board September 15 Memorandum at 10-11) The Hearing Officer agrees that both the standard for determining a student's "then current educational placement" and the nature of the relief (injunctive) under the IDEA Stay Put Provision and the CT Stay Put Provision are the same. However, that does not mean that the reach of each provision is the same.¹² Contrary to the Board's assertion, however, the two provisions are not identically worded. The difference in wording is critical. The CT Stay Put Provision expressly provides that:

[U]nless the public agency and the parent agree otherwise, the child shall remain in his or her then-current educational placement during the pendency of any administrative or judicial proceedings regarding *issues set forth in [CT Regulation §] 10-76h-3 . . .*

(Emphasis added.) By its terms, the reach of the CT Stay Put Provision is expressly tied to the reach of Connecticut law not the IDEA. As set forth above, Connecticut law is more expansive than the IDEA with respect to a student's entitlement to special education and related services

¹⁰ "This case concerns the question of whether a school system can 'graduate' a disabled student at her 21st birthday, rather than providing one additional year of education *as provided by Connecticut law.*" (Parents' September 17 Memorandum at 11; emphasis added.)

¹¹ The Parents correctly note that availability of stay put relief under the CT Stay Put Provision cannot be avoided by the conferral of a high school diploma which is the subject of an appeal. *See, e.g., Cronin v. Bd. of Educ. of the East Ramapo Central School Dist.*, 689 F. Supp. 197, 202 (S.D.N.Y. 1988), decided in part under N.Y. Educ. Law Sec. 4404 (McKinney 1981) which is identical to the CT Stay Put Provision.

¹² The parties have not cited any legal authority for the proposition that the CT Stay Put Provision is to be interpreted as operating any differently from the IDEA's Stay Put Provision. They have in fact cited only to case law interpreting the IDEA Stay Put Provision. The IDEA Stay Put Provision has been deemed to be an automatic preliminary injunction which (1) substitutes a rule that a disabled child, regardless of the merits of his/her claims, is to remain in his/her "then current educational placement" until any dispute regarding his/her educational program is resolved for (2) the court's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of hardships. *See generally* cases cited in note 15 *infra*.

after his/her 21st birthday. Accordingly, the Student in this case may be entitled to relief under the CT Stay Put Provision even if she is not entitled to relief under the IDEA Stay Put Provision.¹³

E. Whether the Student Timely Requested Relief under the CT Stay Put Provision

Stay put relief, whether under Connecticut law or federal law, is independent of relief on the merits. To effect the purpose of the stay put provision, a party must *timely* seek stay put relief since the purpose of the provision is to maintain the “status quo” pending a resolution of the dispute on the merits. The “status quo” is the child’s “then current educational placement” at the time that due process is commenced. If the child has no “then current educational placement” when due process is commenced, there is no status quo to maintain.

Although both the IDEA and CT Stay Put Provisions use the phrase “then current educational placement,” neither statutory scheme defines that term, or otherwise provides guidance as to how to determine a student’s “then current educational placement.” IDEA Stay Put Provision cases provide the following guidance. First, since an LEA is not obligated to fund an eligible student’s unilateral placement in a private setting, a court (or hearing officer) may properly determine the student’s “then current educational placement” when presented with a request for stay put relief. Second, the student’s “then current educational placement” is the educational facility that the student was attending as of the date due process was commenced, if the student was attending the facility pursuant to: (1) an undisputed IEP, (2) a final order of a hearing officer or a court,¹⁴ or (3) an agreement settling a dispute between the parties regarding the student’s educational program that does not clearly limit the LEA’s obligations with respect to the placement identified in the agreement. Third, since the term “then current educational

¹³ The Board’s reliance on *Student v. Madison Board of Education*, 38 IDELR 169, Final Decision and Order 02-338 (SEA CT 2003), described by the Board as the only CTDOE case referencing the CT Stay Put Provision, is misplaced. The Board claims that Hearing Officer Gelfman was asked to render a stay put determination pursuant to both the IDEA and CT Stay Put Provisions, but relied only on the IDEA Stay Put Provision in her final decision. From this, the Board concludes that Hearing Officer Gelfman necessarily concluded that the reach of both provisions is identical. There is absolutely no basis for reaching that conclusion based on the decision issued by Hearing Officer Gelfman, which is devoid of any discussion regarding the relationship between the two statutes. Similarly, the Board’s reliance on the Commissioner’s statements regarding the CT Stay Put Provision in Circular C-5, at 7, is equally misplaced. In Circular C-5, which describes the implementation of the CT Stay Put Provision among other new CTDOE Regulations, the CTDOE Commissioner simply stated the language of the CT Stay Put Provision without offering any analysis of its reach or operation.

¹⁴ This prong of the test is not applicable in this case since the Student has not been placed at the May Center pursuant to an order of a court or a CTDOE hearing officer.

placement” is a legal construct, the educational facility the student is physically attending as of the date of due process is not necessarily the student’s “then current educational placement” for stay put purposes, and there may be some circumstances in which although the student is physically attending an educational facility, he/she has no “then current educational program” for stay put purposes.¹⁵

(1) Timeliness if the Student’s Attendance at the May Center on August 12, 2003 was Pursuant to an Undisputed IEP

If the status quo to be maintained is attendance at a particular facility pursuant to an undisputed IEP and it is clear that once that IEP expires *no* further services will be provided by the LEA, to obtain stay put relief the parents must commence due process prior to the expiration of that IEP. *See, e.g., Woods v. New Jersey Department of Education*, 20 IDELR 439 (3d Cir. 1993), in which the Court concluded that the “dispositive factor in deciding a child's 'current educational placement' should be the [IEP] **actually functioning** when the 'stay put' is invoked.” (Emphasis added.)

The last undisputed IEP in this case was the June 2, 2002 IEP, which was in effect for the 2002/2003 school year only. While that IEP was in effect, the May Center was the Student’s “then current educational placement” for stay put purposes. That IEP expired potentially as early as June 20, 2003 (if the Student was properly graduated) and in any event no later than June 30, 2003. By no later than April 10, 2003, the Board had advised the Parents of its position that once the Student graduated on June 20, 2003, the Board no longer had any legal obligation to provide any special education and related services to the Student since graduation was the (then agreed-upon) criterion for “exiting” her from special education. To obtain a stay put placement at the May Center in this case based on the last undisputed IEP (i.e., to maintain the status quo – a placement at the May Center at Board expense pursuant to the Board’s duty under applicable special education laws), the Parents should have commenced due process by or before June 19, 2003 (the day before her graduation) or at the very latest June 29, 2003 (the day before the end of the 2002/2003 school year).

When the Parents commenced due process on August 12, 2003, there was no “then current educational placement” to maintain on a status quo basis *based* on the last undisputed IEP, since that IEP had already expired.

¹⁵ *See generally, Zvi D. v. Ambach*, 520 F. Supp. 196 (E.D.N.Y. 1981) (“*Zvi I*”), *affirmed Zvi D. v. Ambach*, 694 F.2d 904 (2d Cir. 1982) (“*Zvi II*”); *Board of Education of the Pawling Central School District v. Schutz*, 137 F.Supp.2d 83 (N.D.N.Y. 2001) (“*Schutz I*”), *affirmed sub nom.*, 290 F.3d 476 (2d Cir. 2002) (“*Schutz II*”); *Verhoeven v. Brunswick School Committee*, 207 F.3d 1 (1st Cir. 1999); *Jacobsen v. District of Columbia Bd. of Ed.*, 564 F. Supp. 166 (D.D.C. 1983); *Janice Doe v. Independent School District No. 9*, 938 F. Supp. 758 (N.D. Ok. 1996); *Mayo v. Baltimore City Public Schools*, 40 F. Supp.2d 331 (D. Md. 1999).

(2) Effect of the Board's April 10, 2003 Unilateral Funding Offer

The Parents contend that the May Center is the Student's "then current educational placement" by virtue of the Board's April 10, 2003 unilateral offer to fund the Student's attendance at the May Center through August 18, 2003, and that they have timely commenced due process and sought stay put relief. Their reliance on *Zvi* to support that argument is misplaced, since that decision makes clear that "[p]ayment and placement are two different matters." *Zvi D.*, 694 F.2d at 908.

The pertinent case law on this point concerns settlements agreements entered into between parents and an LEA to resolve a due process dispute that was underway or imminent. There is no such settlement agreement in this case. The Board's offer to extend funding from June 21, 2003 through August 18, 2003 was not made to resolve a dispute with the Parents – indeed, by their own argument and affidavit testimony the Parents were not even aware at that time that the Board's position may have been improper, and that there therefore could be a dispute between them to resolve. Although there was no settlement agreement in this case, there is no reason not to apply the principles of those cases to the unilateral funding offer at hand.

The case law makes clear that when determining stay put issues in a case in which the parties have an agreement regarding a placement, the outcome hinges on the terms of the agreement.

(i) *Zvi I and II*

Zvi's parents enrolled him in The Alternative School in the 1977/1978 school year and requested that the LEA (the "COH") determine his eligibility to receive public funding for that placement. In April 1978, the COH recommended a public school placement. *Zvi*'s parents contested that recommendation. Before a determination on the merits could be made, the COH and the parents agreed in November 1978 that the COH would fund a placement at The Alternative School for the 1978/1979 school year only. The parties specifically agreed that "[t]his funding is being provided with the stipulation that a review of *Zvi*'s classification will be conducted at the end of the current year with a view toward placing him in an appropriate public program in September 1979." The COH conducted an evaluation in April 1979, with the result that a public school placement was recommended in May 1979 for the 1979/1980 school year. The parents challenged that recommendation. The due process hearing officer concluded that the proposed placement was appropriate under the IDEA but ordered (apparently as a sanction) that the COH fund a continued placement at The Alternative School for the 1979/1980 school year because the COH had failed to have a physician present at the classification conference as required by New York law. A July 1980 COH evaluation again recommended a public school placement for the 1980/1981 school year.

The parents objected and sought a determination that the student's stay put placement during the pendency of the dispute regarding the 1980/1981 school year was The Alternative School. The district court, *Zvi I* found that at the time the parents commenced due process

regarding the 1980/1981 school year, Zvi was “not promised” public funding for The Alternative School for the 1980/1981 school year, and was not entitled to public funding because that placement was contrary to the COH’s recommendation. *Zvi I*, 520 F. Supp. at 203. The Second Circuit affirmed, concluding that The Alternative School was not the student’s stay put placement:

[W]e agree with the [district court] that the status quo provision would apply if the [COH] had previously agreed to, or had been ordered to provide private placement. In [this case], the COH had not so agreed or been ordered, though it had through stipulation agreed to pay for The Alternative School in the 1978/1979 school year and had been ordered by [the] Impartial Hearing Officer . . . to pay for such placement in the 1979/1980 school year because the COH had failed to have a physician present at the classification conference held on May 29, 1979. ***Payment and placement are two different matters.***

Zvi II, 694 F.2d at 908 (emphasis added).

(ii) *Jacobsen*

The issue before the court in *Jacobsen* was whether the LEA was financially responsible for the student’s placement at the Forman School for the 1982/1983 school year, where it had agreed to fund the placement at that school for the 1981/1982 school year. The student’s parents unilaterally placed him at Forman School in September 1981, disagreeing with the LEA’s recommendation for a public school placement. The dispute between them for the 1981/1982 school year ended when the LEA advised the parents by letter that it had “made ‘an administrative decision’ to assume financial responsibility [for the student] at the Forman School” and that “further recommendations will be rendered as deemed appropriate.” The *Jacobsen* court concluded that the 1981/1982 placement was the “current placement” within the meaning of the IDEA Stay Put Provision because the LEA “did not limit the placement to the 1981/1982 school year or provide that another placement would be considered for the 1982/1983 school year.” *Jacobsen*, 564 F. Supp. at 171. “Since [the LEA] failed to limit its financial responsibility the parents were free to assume that [the LEA] would continue to fund [the student] at Forman until a change of placement [was made in accordance with the requirements of the IDEA]. Accordingly, Forman was [the student’s] ‘current’ placement in 1981/1982.” *Jacobsen*, 564 F. Supp. at 171-72.¹⁶

(iii) *Doe*

¹⁶ The *Jacobsen* court distinguished *Zvi* by noting that “[t]he court of appeals concluded that neither the agreement to fund *Zvi* for 1978/1979 nor the hearing officer’s determination for 1979/1980 constituted a public placement and that the [COH] never determined that *Zvi*’s placement [at the private facility] was appropriate.” *Jacobsen*, 564 F. Supp. at 171.

In *Doe* the parent commenced a due process proceeding in 1992 to challenge her child's educational placement. In March 1993, prior to the conclusion of that hearing process, the parent and the LEA entered into a settlement agreement which provided in pertinent part: (1) that the child would be placed at Private School for the 1993/94 and 1994/95 school years; and (2) that the LEA will bear a certain percentage of the costs of the child's placement at Private School for the fiscal year 7/93-7/94 and 7/94-7/95. The child was attending Private School at the time the agreement was executed. The LEA did not pay any of the costs for the child at Private School for the 1995/1996 school year based on the settlement agreement and the parent commenced due process in September 1995. Citing *Zvi I and II* and *Jacobsen*, the *Doe* court concluded that Private School was the child's "then current placement" for stay put purposes because "[t]he Agreement . . . specifically covered the 1993-94 and the 1994-95 school years [but because it] was silent on any plans for [the child] extending past May of 1995 [the] Agreement did not expressly place the parents on notice in the manner and to the extent required by the IDEA that another placement would be considered beginning with the 1995-96 school year. ***Because [the LEA] failed to state affirmatively in the Agreement that [the child's] placement at Private School would be re-evaluated at the end of the 1994-95 school year with a view toward placing her in an appropriate public program for the 1995-96 school year,*** the parents were entitled to assume that [the LEA] would continue to fund [the child's] Private School education until such time as another placement was either agreed to by the parties or dictated by administrative and judicial proceedings." *Doe*, 938 F. Supp. at 761 (emphasis added).

(iv) *Mayo*

In *Mayo* the student attended the Norbel School for the 1994/1995, 1995/1996 and 1996/1997 school years. As a result of a due process hearing decision concerning the 1994/1995 school year and two subsequent settlement agreements with the LEA, the LEA funded that placement for those school years. The LEA determined that the child was not eligible for IDEA services for the 1997/1998 school year and proposed to return him to a regular education public school setting. The parents commenced a due process proceeding in September 1997 after placing the student at Norbel for the 1997/1998 school year and argued that Norbel was the stay put placement. The court held that Norbel was not the student's "then current educational placement," the parents were not entitled to automatic tuition reimbursement under the stay put provisions, and that the child effectively had ***no*** "then-current educational placement" for stay put purposes (even though he was physically attending a school). The court's holding was based on the following factual findings: (1) The ALJ ruling determining the student's placement for the 1994/1995 school year did not create a permanent "stay put" placement at Norbel. (2) The student attended Norbel for 1995/1996 and 1996/1997 at public expense by virtue of single year settlement agreements, rather than a determination by an ALJ or court that Norbel was an appropriate educational placement. (3) The LEA "agreed to pay [the student's] tuition but did not agree that it was unable to provide a free, appropriate public education to [the student] or that Norbel was an appropriate placement for [him]." (4) The LEA advised the parents throughout this period that it "did not agree that Norbel would be [the student's] 'educational placement' for stay put purposes." *Mayo*, 40 F. Supp. 2d. at 333-334.

(v) Schutz

This case involved a dispute regarding a child's ("K's") placement for the 1999/2000 school year. K's parents had disputed the LEA's proposed placements for each school year between the 1993/1994 and 1999/2000 school years and sought to have the LEA fund a placement at Kildonan on the basis of stay put while their dispute with the LEA regarding the 1999/2000 school year was resolved. The courts in *Schutz I* and *II* held that Kildonan was K's stay put placement because:

the last final administrative ruling as to the current educational placement of [K] occurred in September of 1997. That decision . . . fixed Kildonan as the current educational placement of [K]. This ruling has yet to be supplanted by a final administrative decision altering [K's] placement, and the parties have, by intervening agreements, maintained Kildonan as his "current educational placement." The [LEA] is therefore obligated to continue [K's] placement at Kildonan until it is changed in accordance with the IDEA.

Schutz I, 137 F. Supp. at 90. The Second Circuit found the *Schutz* case factually distinguishable from the *Zvi* case. In *Zvi*, "the reimbursement was initially caused by a stipulation entered into by the parties without an administrative order and later continued when the hearing officer ordered reimbursement due to a procedural failure by the [LEA]" while in *Schutz*, in contrast, "the reimbursement was ordered by the hearing officer after a determination that the proposed IEP was inadequate." *Schutz II*, 290 F.3d at 483.

(vi) Verhoeven

In *Verhoeven* the parents and the LEA were engaged in due process to resolve a dispute regarding the child's ("PJ's") placement for the 1998/1999 school year. The parties had resolved a dispute between them regarding the 1997/1998 school year by an agreement settling a due process proceeding. Under that agreement, PJ attended an out-of-district placement ("SMLC") for the 1997/1998 school year. The agreement expressly provided that it was the intent of the parties that PJ would return to the LEA's school system for the 1998/1999 school year and that SMLC was a "temporary placement only." The Third Circuit concluded that because the parties "never agreed that PJ would be placed at SMLC beyond June 1, 1998" but rather "expressly agreed that PJ would only be placed at SMLC during the 1997-98 school year," PJ's placement at SMLC terminated at the end of the 1997/1998 school years and therefore could not be his "current educational placement" for stay put purposes. The Third Circuit concluded further that on these facts that maintaining PJ at SMLC while a dispute regarding the 1998/1999 school year "would actually change the agreed-upon status quo, not preserve it" and would "thwart" the purpose of the IDEA Stay Put Provision. *Verhoeven*, 207 F.3d at 27.

The Board in this case made clear as early as April 10, 2003 that it would not fund the Student's attendance at the May Center beyond August 18, 2003 and the Parents so understood.

Under the case law cited above, because the Board had made clear its view that it had no obligations to the Student whatsoever after August 18, 2003, the May Center cannot properly be considered to be the Student's "then current educational placement" *based on* the Board's April 10, 2003 unilateral funding offer.

F. Equitable Considerations – Notice Arguments

In their August 27 Memorandum, the Parents argued that they were entitled to stay put relief because the Board:

- (1) "failed to advise the [P]arents of [CTDOE Update # 32] and *their right to challenge* the Board's application of [that Update] to [the Student];" or
- (2) "misrepresented the relevant facts to the [P]arents by advising them that the Board's responsibility ended at age twenty-one without informing them that under [CTDOE Update # 32] eligibility would continue until June 30, 2004."

(August 27 Memorandum at 11-12; emphasis added.) These claims were also made in the August 12, 2003 request for due process.

The Hearing Officer did not address these arguments in the September 5 Stay Put Order because it was unnecessary to do so to resolve the question of relief under the IDEA Stay Put Provision. The Parents have not reasserted these arguments in their September 17 Memorandum. Accordingly, these arguments are deemed abandoned.

Even if not abandoned however, they afford no basis for relief. The Parents appear to be arguing that the Board had an affirmative obligation under the IDEA (and presumably Connecticut law) to advise them of the Student's potential entitlement to services beyond age 21 years. The IDEA and Connecticut law cited by the Parents, however, requires that the Board provide the Parents only with information regarding their procedural protections under the IDEA and Connecticut law – in other words, that the Parents have a right to seek administrative and judicial review of a decision of the Board with which they disagree and the procedures and requirements for exercising those rights. The IDEA and Connecticut law cited by the Parents does not require the Board to provide legal advice to the Parents – in other words, the Board is under no obligation to advise the Parents as to whether they have a legal claim, simply what to do if they disagree with a decision of the Board.

The Parents acknowledge that they received the Procedural Safeguards brochure at the April 10, 2003 PPT. That the Parents assumed that they could not challenge the Board's decision to graduate the Student or assumed that they had no right to receive services from the Board after the Student turned 21 years of age does not make the Board responsible for providing

such services. If the Parents disagreed with the Board's decision, they are responsible for diligently and timely investigating their rights and remedies.¹⁷

CONCLUSIONS OF LAW

Based on the foregoing, the Hearing Officer finds as follows.

1. Since the Student has turned 21 years of age, she is not entitled to relief under the IDEA Stay Put Provision.
2. The Student is potentially entitled to relief under the CT Stay Put Provision because she is potentially entitled to receive special education and related services through and including June 30, 2004 under Connecticut law. The Parents on behalf of the Student are challenging a decision of the Board to cease providing those services.
3. To obtain stay put relief, whether under Connecticut law or the IDEA, the Parents must timely commence due process and ask for that relief.
4. The Parents knew or should have known by no later than April 10, 2003 and at every point thereafter, that the Board considered its legal obligation to provide special education and related services to the Student under special education laws, whether Connecticut or the IDEA, to end on the date of her graduation, June 20, 2003.
5. When it was made, the Board's April 10, 2003 unilateral offer to fund the Student's attendance at the May Center between June 21, 2003 and August 18, 2003 did not create a legal obligation of the Board under the IDEA or Connecticut special education law. Whether the Board has an obligations to the Student after June 21, 2003 under Connecticut law has not yet been determined.
6. The Board's April 10, 2003 unilateral offer to fund the Student's attendance at the May Center between June 21, 2003 and August 18, 2003 does not make the May Center the

¹⁷ Reading the First Parent Affidavit, one comes away with a distinct impression that the Parents had minimal awareness or no understanding that the Board had graduated the Student on June 20, 2003 or was intending to do so. In their submissions, the Parents understandably focus instead on August 18, 2003. The Board's pleadings, in contrast, suggest that as early as May 2003 the Parents were actively investigating the legitimacy of the Board's decision to graduate the Student. At that time, the Board answered an inquiry from the CTDOE regarding its decision to graduate the Student, which in turn had been prompted by an inquiry to the CTDOE by the Parents. (Jacaruso Aff. at ¶¶ 28, 29, 30, 31, 32, 33) Mr. Forbes also contacted the Parents to advise them of the graduation date and arrangements. (Forbes Aff. at ¶ 20) The Parents do not dispute these assertions in their September 17 Memorandum, suggesting that these events unfolded as described by the Board.

Student's "then current educational placement" for purposes of either the IDEA or CT Stay Put Provisions in this dispute because it was a temporary arrangement clearly and expressly not intended to extend beyond August 18, 2003.

7. The Parents knew or should have known by no later than April 10, 2003 that the IEP pursuant to which the Student attended the May Center for the 2002/2003 school year at Board expense would terminate as early as June 20, 2003 and by no later than June 30, 2003, and that no IEP had been developed for the Student covering any period beyond June 30, 2003.
8. To obtain stay put relief in this case under the CT Stay Put Provision, the Parents were required to commence due process by no later than June 19, 2003.

FINAL ORDER AND DECISION – STAY PUT ISSUES ONLY

1. The Parents' motion for entry of an order compelling the Board to fund the Student's attendance at the May Center at any point after August 19, 2003, whether under the IDEA Stay Put Provision or the CT Stay Put Provision is denied.
2. The Student is not entitled to relief under either the IDEA Stay Put Provision or the CT Stay Put Provision.

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Groton Board of Education

Appearing for the Parent: David C. Shaw, Esq.
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Appearing for the Board: Marsha Belman Moses, Esq.
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75 Broad Street
Milford, CT 06460

Appearing Before Hearing Officer: Scott Myers, M.A. (Clinical Psychology), J.D.

**FINAL DECISION AND ORDER
(Partial – On the Merits)
March 9, 2004**

STATEMENT OF ISSUES

1. At any point after August 12, 2001 and before April 10, 2003, was the Board required under the IDEA¹ or Connecticut law to modify the identified criterion for exiting the Student from special education and related services support (award of a high school diploma²) to provide a free appropriate public education (“FAPE”) to the Student?
2. If not, had the Student by April 10, 2003 satisfied the requirements for earning a high school diploma under Conn. Gen. Stat. § 10-221a?
3. If so, had the Student satisfied all other requirements to be awarded a high school diploma under the IDEA and Connecticut special education law?
4. Did the Board comply with the procedural requirements of the IDEA and Connecticut law in making the determinations set forth in Issues (1)-(3) above?
5. If the Student was not properly awarded a high school diploma in June 2003:

¹ Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 *et seq.*

² As used herein the term “regular high school diploma” refers to the diploma that a student not eligible to receive special education and related services (a “nondisabled” or “noneligible” student) would receive upon graduation, and does not refer to either a “special education diploma,” a GED, or a certificate of completion or mastery.

- a. Is the Parent entitled to reimbursement of the costs of the Student's placement at the May Center from August 19, 2003 through and including September 9, 2003?
 - b. If the Student remains entitled to receive special education and related services under Connecticut special education law, what relief is she entitled to receive?
 - c. Is the Student entitled to compensatory education under the IDEA and, if so, to what is the Student entitled?
6. Whether the transition planning that was done for the Student, particularly in the 2002/2003 school year satisfied the requirements of the IDEA and, if not, what relief is the Parent entitled to?

SUMMARY

The Student was graduated on June 18, 2003 with a regular high school diploma and turned 21 years of age on August 18, 2003. Between June 4, 1997 and June 18, 2003, she had been placed at the May Center in Massachusetts on a full calendar year residential basis at Board expense pursuant to a series of Individualized Education Programs ("IEPs"). The Student attended the May Center in the period June 19, 2003 through August 18, 2003 at Board expense pursuant to a unilateral offer made by the Board and accepted by the Parent at a Planning and Placement Team ("PPT") meeting on April 10, 2003 to fund her attendance at the May Center in that period. The Parent was advised by the Board on April 10, 2003 that the Student would be graduated in June 2003 and that after August 18, 2003 the Board would cease funding any educational services to the Student. The Parent commenced this due process proceeding on August 12, 2003.

For the reasons set forth more fully herein, to the extent that they are not barred by the statute of limitations, the Parent's claims that the Student's eligibility for special education and related services was prematurely and improperly terminated by graduating her with a regular high school diploma on June 18, 2003 lack merit as a matter of law and/or fact. The Student completed the requirements for an award of a regular high school diploma on June 18, 2003 and was properly graduated. The academic and (except as described herein) transition service components of her IEPs were reasonably calculated to provide her with nontrivial educational benefits and she clearly benefited from that educational program.

In this case, not only was the Student's eligibility for special education and related services under the IDEA being terminated, but also the Board's responsibility for the Student overall was also being terminated and she was being transitioned to adult service providers. To the extent that the Parent is claiming that in the 2002/2003 school year the Board failed to fully discharge its obligations with respect to transition planning and implementation of certain transition-related components of the Student's IEP, those claims have merit.

The Board's failure to fulfill this limited aspect of its transition service-related responsibilities deprived the Student of a FAPE but does not warrant rescinding her diploma. The Student earned her diploma and the award of that diploma has nothing to do with the transition service-related deficiencies. To remedy those deficiencies, the Student is entitled to "compensatory education" in the form of reimbursement for the costs of her May Center placement for the period August 18, 2003 through and including September 9, 2003.

PROCEDURAL BACKGROUND

Resolution of Dispute Concerning Stay Put

When the Parent commenced due process August 12, 2003, she sought an "emergency" stay put order compelling the Board to continue to fund the Student's placement at the May Center beyond August 18, 2003. That request was denied by order dated September 5, 2003. On reconsideration, that request was again denied and the issue was severed from the case on the merits by partial Final Decision and Order issued on September 22, 2003.

Statement of Issues

This partial Final Decision and Order concerns the merits of the Parent's claims. The Statement of Issues set forth above was established by the Hearing Officer over the course of the hearing. Issue #s 1-5 are intended to apply to aspects of the Student's programming other than transition planning. The parties were unable to agree on the Statement of Issues and both parties have objected to aspects of the Statement of Issues as framed by the Hearing Officer. The Parent disagrees with the framing of Issue # 1 which reflects the Hearing Officer's conclusion regarding the application of the statute of limitations set forth in Conn. Gen. Stat. § 10-76h(a)(3) and Section 10-76h-4 of the Regulations of Conn. State Agencies (the "CTDOE Regulations"). The Board disagrees more generally with the process by which the issues have been identified, particularly with respect to the Parent's damages claims.

Pre-Hearing Conference

A Pre-Hearing Conference ("PHC") addressing the merits phase of this proceeding was convened by agreement on September 11, 2003.

Hearing Dates and Date For Issuance of Final Decision and Order

Hearing convened on October 2nd, October 31st, November 10th, November 14th, December 11th and December 17th 2003 and on January 23rd 2004. The evidentiary record was closed on January 23, 2004. The 2003 dates were driven largely by the schedules of counsel for the parties and certain non-party witnesses. For that reason, and due (1) to the need for additional hearing dates that could not be scheduled before September 29, 2003, and (2) to the request of the parties at the January 23, 2004 hearing to submit post-hearing briefs and the schedule established for those submissions, the date for issuance of this Final Decision and Order (Partial – On the Merits) was ultimately extended from September 29, 2003 to and including

March 5, 2004 pursuant to CTDOE Regulation § 10-76h-9(c), and to March 10, 2004 to permit the Hearing Officer to complete the Decision.

***Ex Parte* Communication**

On February 20, 2004, the Hearing Officer received an *ex parte* e-mail communication from the Parent. The Hearing Officer advised counsel for both parties and sent a copy of that communication to them on February 20, 2004. A copy of the communication from the Parent, the Hearing Officer's transmittal and the response received from counsel has been marked as "Document A for I.D. Only" and is included with the package of exhibits for this hearing to be maintained by the CTDOE. The purpose of marking the communication and discussing it herein is to create a record of the fact that there was an *ex parte* communication. In reaching this Final Decision and Order, the Hearing Officer has not read and therefore not considered the contents of that *ex parte* communication.

Hearing Officer Exhibits

The following documents were marked as Hearing Officer ("HO") exhibits and admitted into the record:

HO	Description
1	August 12, 2003 request for due process.
2	A statement of issues prepared by the Parent at the Hearing Officer's request and submitted at the October 2, 2003 hearing.
3	Fitch High School Program of Studies 2002/2003
4	Fitch High School Course Catalog 2001/2002
5	Fitch High School Course Catalog 2000/2001
6	Fitch High School Course Catalog 1999/2000
7	Fitch High School Course Catalog 1998/1999
8	Fitch High School Course Catalog 1997/1998
9	Fitch High School Handbook 2002/2003
10	Fitch High School Handbook 2001/2002
11	Fitch High School Handbook 2000/2001
12	Fitch High School Handbook 1999/2000
13	Fitch High School Handbook 1998/1999
14	Excerpts from the CTDOE Regulations and Connecticut General Statutes pertinent to Mr. Dowaliby's testimony.
15	Affidavit of Michael Forbes

Parent Exhibits

The Parent submitted as potential exhibits documents labeled P1 through P18. Exhibits P1, P2, P3 and P6 -P15 were admitted into the record by agreement as business records for evidentiary purposes. Exhibits P16 (a copy of the subpoena for Mr. Dowaliby) and P17 (Dr. Pancsofar's resume) were admitted into the record on November 10, 2003, and P18 (a copy of

the CTDOE Procedural Safeguards) on December 17, 2003. The Parent proffered Exhibits P4 and P5 to address issues resolved in the partial Final Decision and Order regarding Stay Put issues. The Board's relevancy objections to Exhibits P4 and P5 were sustained and these documents were marked for identification only.

Board Exhibits

The Board submitted as potential exhibits documents labeled B1 through B80. At the October 2, 2003 hearing, exhibits B1 through B59 were admitted into the record by agreement as business records for evidentiary purposes. By the November 17, 2003 hearing, Parent objections to exhibits B60 through B75 had been overruled or withdrawn, and those documents were admitted into the record. Exhibits B76 through B80 were ultimately admitted as well.

Witnesses

The Parent presented her case-in-chief on October 2nd, October 31st, November 10th, November 14th and December 11th 2003 through: the Parent, Yvette Jacaruso, Ph.D. (the Board's Director of Pupil Personnel and Special Education Services), Mr. Michael Forbes (the Student's Guidance Counselor), Mr. George Dowaliby (CTDOE Bureau Chief, Bureau of Special Education), and two expert witnesses: Ernest Pancsofar, Ph.D., and Kathleen Wickham.

The Parent intended to also call witnesses from the May Center. The Parent's counsel reported prior to the first day of hearing that the May Center witnesses had agreed to testify by telephone and arrangements were made to accommodate that request. However, Parent's counsel subsequently advised that the May Center witnesses had on advice of their counsel declined to appear and testify unless subpoenaed to do so. *See* November 10 Trans. at 81-82. The Parent subsequently advised that she had contacted the May Center to determine if they would reconsider that decision, but was also advised that May Center witnesses would not testify unless subpoenaed. (November 14 Trans. at 160-61; 169; December 11 Trans. at 221) At the December 11, 2003 hearing date Parent's counsel requested that the Hearing Officer make a finding that the May Center witnesses were unavailable in part to permit the Parent to introduce into evidence the Affidavit of Michelle Arons submitted in connection with the Parent's motion for stay put relief. The Board's objections to both requests were sustained. (December 11 Trans. at 236-245)

The Board presented its case-in-chief on December 11th and December 17th 2003 and January 23rd 2004 through Dr. Jacaruso and Mr. Forbes.

Qualifications of Expert Witnesses

The parties disagreed over the scope of Ms. Wickham's and Dr. Pancsofar's qualifications as expert witnesses.

(A) Ms. Wickham was qualified as an expert with respect to the type of assessment that she performed of the Student, the observations that she made of the Student in July 2003 and the recommendations she made based on those observations. (November 14 Trans. at 33) Given the limited scope of her engagement, she was not properly able to render any opinions on the adequacy of the services provided by the May Center to get the Student to the point at which Ms. Wickham observed her. (November 14 Trans. at 125)

(B) By agreement of the parties, Dr. Pancsofar's qualifications as an expert were not established prior to completion of his substantive testimony. (November 10 Trans. at 46, 52-53, 132) As a result of that procedure, Dr. Pancsofar's testimony, including various "opinions" he offered, may have strayed beyond the areas in which he was ultimately qualified as an expert, and the description of his testimony set forth herein must be considered accordingly. After his testimony was concluded on December 11, 2003, Dr. Pancsofar was offered by the Parent as an expert in the development and implementation of an IEP that includes transition plans and the development of individualized exit criteria for a student who has disabilities of the type the Student has. The Board objected to the need to qualify Dr. Pancsofar as an expert at all and, in the alternative, to qualifying Dr. Pancsofar as an expert in these areas. The Board's objection was overruled in part. Dr. Pancsofar was qualified for purposes of this hearing as an expert with respect to "transition planning and with respect to identifying transition planning needs, and determining whether transition planning has been adequate." To the extent that determining an individualized exit criterion for a student is part of transition planning, Dr. Pancsofar was also qualified as an expert on that aspect of transition planning. However, based on the limited scope of his engagement (review of records; no interview, observation or evaluation of the Student), he was not qualified to render an opinion as to whether any transition plans as may have been in place for the Student were adequately implemented. (December 11 Trans. at 100-110)

Matters Administratively Noticed

At the November 10, 2003 hearing, the parties were advised that administrative notice was being taken that Mr. Badway and Ms. DeFrancis share the same office space at the CTDOE and respond to telephone calls from parents seeking assistance regarding special education due process matters. (November 10 Trans. at 3-5)

Briefs Submitted

In connection with stay put issues, the Parent submitted on August 27, 2003 a Motion to Enforce Stay Put (the "Parent's Stay Put Motion"), the Board submitted on September 4, 2003 a Response to the Parent's Stay Put Motion, the Board submitted on September 15, 2003 a memorandum in opposition to reconsideration of the September 5, 2003 order regarding stay put (the "Board's Reconsideration Opposition"), and the Parent submitted on September 17, 2003 a reply to the Board's Reconsideration Opposition (the "Parent's Reply to Opposition"). Some of these submissions include factual assertions, in the form of affidavits by Dr. Jacaruso, the Parent, Mr. Forbes and May Center personnel, and legal arguments pertinent not only to stay put issues but also to aspects of this decision on the merits.

At the Hearing Officer's request, each party submitted a pre-hearing brief as to their position as to the standard that must be applied to determine whether the Student had been properly graduated. *See* September 29, 2003 Board and October 3, 2003 Parent submissions (respectively, the "Board Graduation Brief" and the "Parent Graduation Brief").

On February 23, 2004, each party also submitted a post-hearing brief (the "Board Post-Hearing Brief" and the "Parent Post-Hearing Brief" respectively).

Parent's Argument

The Parent claims that the Board violated the Student's rights under the IDEA and Connecticut law as follows:

- (1) The PPT "failed to develop individualized criteria for exiting [the Student] from special education." Parent Post-Hearing Brief at 2.
- (2) The Board "awarded [the Student] a regular high school diploma and terminated her special education eligibility without assessing whether she met the same criteria for receiving such a diploma as non-disabled students and excluded the Parent and PPT from the process used to determine whether [the Student] met the criteria for receiving a regular high school diploma." Parent Post-Hearing Brief at 2.
- (3) The Board "terminated [the Student's] eligibility even though [it] failed to address the transition planning requirements of [the IDEA] and failed to assess whether progress on her IEP goals justified termination of special education eligibility." Parent Post-Hearing Brief at 2.
- (4) The Board "violated [the Student's] rights by failing to provide an appropriate notice that [the Student's] rights under the IDEA were being terminated." Parent Post-Hearing Brief at 3. The Parent alleges that the Board was required to provide Prior Written Notice ("PWN"), as that term is used in IDEA Regulation 34 CFR § 300.503(b), of its intention to graduate the Student as early as 1999 but failed to do so, and in any event was required to do so at the June 6, 2002 PPT but also failed to do so. The Parent also alleges that the PWN provided at the April 10, 2003 PPT is deficient because: (a) "it fails to clearly state why the Board is taking the action and is misleading in that it states that the decision is based in part on the fact that [the Student] was reaching her 21st birthday," (b) "it fails to specify other options that were considered and the reasons those options were rejected," (c) it "fails to state the basis for the proposed action," and (d) it "fails to advise the Parent of her rights under CTDOE Update # 32." The Parent also alleges that the April 10, 2003 PWN was not provided "within a reasonable time of the proposed action . . . [because there] was not sufficient [time] to enable the PPT to develop goals and objectives, including those relating to transition planning, to bridge the gap between school and post-school activities." Parent Post-Hearing Brief at 17-18.

FACTUAL BACKGROUND/FINDINGS OF FACT

Resolving this dispute involves considering events that have transpired since approximately 1997. The Findings of Fact reflect both documentary and testimonial evidence. To the extent a specific piece of documentary or testimonial evidence is being relied upon to support a Conclusion of Law, that information is identified in the Conclusion of Law section as a Finding of Fact (“FF”). A citation to specific witness testimony or documentary evidence as a Finding of Fact in support of a particular Conclusion of Law is not meant to suggest that that testimony or document is the only evidence supporting that Conclusion of Law. Rather, citations to specific documentary or testimonial evidence are for illustrative purposes and not meant to exclude any other admissible record evidence which also supports that Conclusion of Law.

Findings of Fact are based in part on the Hearing Officer’s assessment of the credibility of witnesses, including expert witnesses. Accordingly, where a Conclusion of Law expressly or implicitly credits a version of events offered by one witness as opposed to the version offered by another witness, that Conclusion of Law reflects a conclusion as to witness credibility on that point.³

To the extent that any portion of this Final Decision states a Finding of Fact or a Conclusion of Law, the statement should be so considered without regard to the given label of the section of this Final Decision in which that statement is found. *See, e.g., SAS Institute, Inc. v. S. & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985); *Bonnie Ann F. v. Callahan Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

FINDINGS REGARDING CREDIBILITY

1. The Parent has raised numerous claims of procedural violations of the IDEA regarding the graduation of the Student with a regular high school diploma. The only two witnesses who testified as to these matters were the Parent and Dr. Jacaruso. Since their testimony on these events conflicts, resolution of the claims of procedural violations as to graduation hinges essentially on a credibility determination. The Parent’s testimony with respect to her claims of procedural violations as to the graduation of the Student with a regular high school diploma is essentially not credible. To the extent that they are not otherwise barred by the statute of limitations, resolution of her remaining claims regarding the merits of graduating the Student with a regular high school diploma and her claims regarding the transition planning deficiencies does not hinge primarily on credibility.

Discussion. The Parent’s testimony was at times contradictory or internally inconsistent. At times over the course of her testimony, the Parent appeared to be confused and distracted and to be having difficulty remembering events and sequencing of events, including events in both the more remote past (period between June 1997 and June 2002) and more recent past (June

³ This same rule applies to the arguments raised by the parties in their Post-Hearing Briefs regarding factual matters.

2002 to date) that it would be reasonable to expect the Parent to recall clearly given their significance. The transcript reflects that her answers were also sometimes non-responsive and generally reflected a thought process that was concrete and at times somewhat disconnected. The transcripts do not reflect adequately, however, that her overall response speed was slow, that her responses were rambling and punctuated by long pauses, that her speech volume frequently trailed off such that it was difficult to determine whether she had completed her answer, and that she occasionally made comments under breath or to herself that were not captured on the recording used to create the transcript. During her cross-examination the Parent suddenly stated: “I have done nothing wrong, I’m an innocent person, I like to tell the truth. And if I feel that I’m being tricked into not telling the truth that makes me very anxious . . . I don’t like to be tricked. I don’t like it.” (November 14 Trans. at 163) In the Hearing Officer’s view these statements did not relate to any objectively observed conduct of the Board’s attorney.

The Parent’s presentation prompted the Hearing Officer to inquire during her direct examination whether she was taking any medications which might be interfering with her ability to testify. She claimed that she was not. (October 2 Trans. at 221) She subsequently suggested that some of these behaviors related to being fatigued or to a desire to be certain that her testimony was 100% accurate. (December 11 Trans. at 138; 150)

It did not *appear* that the Parent was being deliberately obstructive. The Board in its Post-Hearing Brief suggests that the Parent’s behaviors described above reflected advocacy attempts and that she was being obstructive and evasive. Board Post-Hearing Brief at 14. To further support this view, the Board also points to the rather dramatic claim that the Parent made during the course of the hearing that the Board had falsified PPT minutes, a claim which proved untrue and was ultimately withdrawn. (November 14 Trans. at 187-88) The Board also points to the *ex parte* communication made by the Parent. Since the Hearing Officer has not read the contents of that communication, he cannot fully determine the validity of the Board’s argument on this point.

It is not necessary to reach a determination on why the Parent was behaving as she did. It is sufficient to note that her presentation overall raises substantial questions as to her credibility regarding historical events pertinent to resolution of this dispute.

FINDINGS BASED ON DOCUMENTARY EVIDENCE

2. The Student was born on August 18, 1982. In June 1991, emergency brain surgery was performed to remove a third of a malignant Grade II astrocytoma. The remaining portion of the tumor was inoperable. In December 1991 it was determined that the tumor had invaded the Student’s optic chiasm⁴ and she underwent chemotherapy which successfully arrested further tumor growth. As a result of the brain surgery and chemotherapy, however, the Student suffered brain damage and developed a set of behavioral, physical and cognitive

⁴ The optic chiasm is an area of the brain in which a portion of nerve fibers from the optic nerves cross to provide visual information to both sides of the brain. (B33, at 3)

disabilities and problems which are permanent in nature and which the Student continues to manifest to varying degrees. Among other things, the Student has an obsession with food, hypothyroidism, loss of internal time clock associated with sleep disturbances and atypical sleeping patterns, attention deficits, tactile sensitivity, short-term memory loss, daytime/nighttime enuresis, aggressive, impulsive, oppositional and negative behavior at times, blindness in her left eye and other visual impairments, impairment in self-care skills and perseverative thought patterns at times. *See, e.g.,* B32, B33, at 1; B48, at 1-2.⁵

3. As the result of increasingly problematic behaviors following her surgery and chemotherapy, the Student was ultimately placed at the Lakeview residential neurorehabilitation facility in New Hampshire in February 1994 on a full time-basis. The Student remained at Lakeview until June 1997. (B33, at 1; B48, at 1-2)
4. While at Lakeview, the Student’s IEP included goals in reading and language arts, writing, math, money skills, physical therapy/physical education, activities of daily living (“ADLs”), working independently within the school setting, increased awareness of her surroundings, health education/compliance with medication, and encouraging independence and appropriateness in class. *See, e.g.,* B2, B3, B4, B5, B6 and B7.
5. The Student attained the following results on a December 6, 1996 administration of the WISC-III: VIQ 90 (low average range); PIQ 57 (deficient range); and FSIQ 71 (borderline range). (B7, at 65-68)
6. The Student (then 13 years old and identified as an 8th grader) attained the following results on a 1996 administration of the Kaufman Test of Educational Achievement (“KTEA”) (B7 at 7-8):

Subtest	Grade Equivalent Score
Mathematics Applications	5.4
Reading Decoding	9.7
Spelling	5.6
Reading Comprehension	6.1
Math Computation	5.3
Composite Score	
Reading Composite	6.8
Math Composite	4.9
Battery Composite	5.9

7. A Lakeview status report dated September 3, 1996 indicates that the Student “remains a candidate for part time attendance at a local high school with a Lakeview Teacher’s Aide [a placement which] would yield valuable information in terms of her ability to function in a less structured environment with increased social pressure.” (B7, at 25) A report dated

⁵ A citation in this form refers to an exhibit number at a particular page number.

January 22, 1997, indicates that the Student “has made excellent gains over the last several years and is ready for the next step to a less restrictive environment with an emphasis on community reintegration.” (B7, at 55) The Student was described as “motivated to learn, eager to please and [...] a positive role model for the students” at Lakeview. (B14, at 2) The Student reportedly made “significant gains in self-care, management of impulsive behavior, social pragmatics, food related aggression and academic skills. Residual deficits continue in the areas of organizational abilities, visual-perceptual tasks as well as pragmatic considerations such as turn taking, listening to instructions, and interactions with peers. With moderate structure, environmental controls and specific protocols related to eating and social competence, [the Student] will continue to be successful and enjoy further gains.” (B14, at 3) Although modifications regarding academics were made to accommodate her visual handicaps, “the level and pace have not been reduced.” However, the Student “requires cues to complete work and often becomes sidetracked by what others are doing” and “experiences organizational problems which cause her to be unprepared for class activities and usually result in the need to catch up on a daily basis.” (B14, at 3)

8. For the 1996/1997 school year, her last year at Lakeview, the Student earned the following final grades:

General Math Level 6	B+
English Level 6	B+
Literature/Writing Level 6	A-
Science Level 6	B+
Art	P
Music	P
PE	P

9. In 1997, the Parent decided that the Student should be placed in the May Center, a residential neurorehabilitation facility in Massachusetts. The Board disagreed and the Parent retained counsel and commenced due process. That disagreement was resolved by an agreement pursuant to which the Board would fund the full cost of the placement at the May Center. (B10, at 2-4) The Parent, the Board and the May Center executed a “Letter of Agreement” dated May 20, 1997 which defined the contractual obligations of the Board and the May Center with respect to the Student’s May Center placement and contemplated an annual review and renewal “to ensure that [the Student] continues to require the May Center’s services.” (P6, at 1)
10. The Student entered the May Center on June 9, 1997. (B19, at 1) A PPT convened on June 5, 1997 notes that the Student’s exit criterion, consistent with her Lakeview IEPs, remained the point at which she no longer needs special education and related services. (B13)
11. A PPT was convened on May 15, 1998 for the Student, then age 15 and identified as an entering 11th grader. Among other things, that IEP recommended completion of a vocational assessment. (B20) The portion of the IEP form completed by the Board identifies four exit criterion options: (1) “Ability to succeed in Regular Education without

Special Education support;” (2) “Graduation;” (3) “Age 21;” and (4) “Other.” Option 1, rather than Option 2 is checked off, and the PPT minutes state a projected graduation date of **June 2001**. These materials identify transition back to her home as the future plan for the Student post-May Center. (B20 at 2, 5) The transition planning summary page of the PPT minutes (B20 at 9) defines the Student’s needed transition services as “graduate from high school; live independently and access community resources” and states that linkages with the CT Bureau of Education Services for the Blind (“BESB”) were taking place through the Student’s contact with a teacher for the visually impaired who was working with her through the Board. (B20 at 9)

12. Among other things, the portions of the May 1998 IEP prepared by the May Center for the period through May 1999 indicates that the Student is expected to graduate from high school in **June 2004**, and **that the criterion for graduation includes “modified curriculum, 2:1 instructional ratios and extended school day and year.”** (B21 at 19) The document also indicates the following:

- a. On a 1997 administration of the Diagnostic Achievement Battery 2 (“DAB-2”), the Student attained grade equivalent (“GE”) scores of 8 on the Alphabet/Word Knowledge task, 8.6 on the Characteristics Task, 8 on the Synonyms Task, 8.7 on the Spelling Task, 5.2 on Reading Comprehension and 5 on Mathematics. The Student reportedly enjoys reading books for a freetime activity. (B21 at 3)
- b. The Student “performs most of her activities of daily living, such as laundry and personal hygiene with minimal supervision. She currently follows a scheduled list of chores and independently completes them. [She] is extremely thorough in all of her ADLs. [She] continues to require assistance with her table manners.” (B21 at 3)
- c. Among other things, Life Skills components of the Student’s IEP will focus on meal time behavior, organizational skills with respect to activities such as room clean up, telephone conversational skills, initiating activities using a telephone, recalling emergency numbers, and improving self-esteem. (B21 at 3)
- d. The Student has been engaged in a number of vocational activities throughout the school and increasing these competencies will continue. She will be eligible to receive pay for the jobs she does at the school starting at age 16. (B21 at 3)
- e. The Student participates in weekly community outings such as going to the park, the mall, the beach, grocery shopping, errands with staff and restaurants. The Student is noted to approach strangers and engage them in conversation. To address the safety implications of that behavior, the Student’s IEP will include practice of safety skills. (B21 at 4)
- f. The Student is noted to present with minimal deficits in receptive and expressive language skills, but requires some assistance organizing herself to approach unfamiliar tasks, requires supervision and assistance due to her visual impairments,

- uses a reading machine, is easily redirected, and must be carefully monitored around food. She appears to have been a reliable reporter as to whether she can control her impulses around food when asked. (B21 at 4)
- g. The Parent will be encouraged to participate in the school program. (B21 at 4)
- h. The Student was given the Harrington-O’Shea Career Decision Making System on May 18, 1998 and showed a high interest in the Arts and on the Social parameter as measured by that assessment.
13. For the 1st quarter of the 1998/1999 school year, the Student achieved 11 objectives and was progressing toward the annual goal in 7 others; for the 2nd quarter, she achieved 9 objectives and was progressing in 8 of 9 others; for the 3rd quarter she achieved 7 objectives and was progressing in 10 of 11 others. (B25)
14. A PPT was convened on May 3, 1999 for the Student, then 16 and again identified as an 11th grader. The Student attained the following results on a July 1998 administration of the Woodcock Johnson: Broad Cognitive Ability age equivalent (“AE”) 8.2; Broad Reading AE 13.5; and Broad Math 10.4 AE. The portion of the May 3, 1999 IEP forms prepared by the Board identifies four options for “Exit Criteria” (1) “Ability to succeed in Regular Education without Special Education support;” (2) “Graduation;” (3) “Age 21;” and (4) “Other.” ***Unlike in the May 1998 PPT minutes, and for the first time in her IEPs, Option 2 (graduation) is now identified as the Student’s exit criterion.*** (B23) No graduation date is specified, however. The PPT minutes notes that the May Center had advised the Board that the Parent supported the proposed IEP prepared by the May Center. (See B26) The PPT forms also state that the “number of credits” the Student has in her “education areas” is to be updated. (B23 at 1)
15. The portions of the May 3, 1999 IEP prepared by the May Center for the Student for the period May 1999 through May 2000 indicates an ***anticipated graduation date of 2004***, and ***curriculum modifications to enable her to attain graduation as follows: modified curriculum; 2:1 instructional ratios and extended school day and year.*** (B23 at 28) This document provides, among other things, the following information:
- a. The Student is “very bright, articulate and outgoing.” She is frustrated by her vision loss and is occasionally “impatient and bossy around peers” as a result. She “enthusiastically engages peers in cooperative games and leisure activities. Since admission to the May Center, [she] has made progress in all areas. Her social skills and interactions with peers have shown improvement, yet still continue to be an area of difficulty for [her].” (B23 at 9)
- b. The Student is a “very conscientious student who works very hard to complete all academic programs on her schedule for the day. [She] is diligent about completing a daily planner to help her schedule her day . . . [She] has remarkable critical thinking skills and uses them to her advantage when answering difficult questions during

group lessons. [She] is also doing very well in writing as she uses a variety of vocabulary words to express her feelings on subjects of interest. The more difficult areas of study for [her] are math and problem solving.” (B23 at 9)

- c. Over the past year the Student had no formal vocational training other than participating in general vocational curriculum work in the classroom environment. She has recently received an internal job reporting for the school newsletter. The focus of her vocational IEP goals will be the Level 1 Vocational Academic Curriculum (how to write letters, telephone skills, vocational spelling). She will participate in mock interviews and activities to help her identify areas of interest. The Student receives a paycheck for her work on the newsletter and “has displayed enthusiasm for her job as well as her curriculum work.” (B23 at 10)
 - d. The Student is “caring and appreciative” of others and in terms of residential life, the Student is working on accepting changes of schedules and increasing her flexibility. She tends to respond to such changes with perservative outbursts. Among other things, the residential component is focusing on reducing manipulative behaviors, inappropriate speech (*e.g.*, backtalk), perseverative speech, food stealing, invasion of personal space of others, and time to compliance. (B23 at 11)
 - e. The Parent will be encouraged to participate in the Student’s school program by attending various meetings. (B23 at 12)
 - f. In terms of ADLs, table manners will no longer be a formal IEP objective even though she continues to need reminders in this area. New objectives will be added for room clean-up, meal planning, accessing public transportation, job searching, planning a social gathering, medication awareness, nutrition awareness and budgeting/money management. (B23 at 15)
16. For the 1st quarter of the 1999/2000 school year, the Student achieved 8 objectives and was progressing toward the annual goal in 8 others; for the 2nd quarter, she achieved 4 objectives and was progressing in 10 of 12 other goals; for the 3rd quarter she achieved 2 objectives and was progressing in 8 of 13 others; for the 4th quarter she achieved 7 objectives, and was progressing in 10 of 11 others. (B27, at 28)
 17. By letter dated February 9, 2000, the May Center invited both the Parent and Dr. Jacaruso to a meeting to begin planning the Student’s educational program for the 2000/2001 school year. (B28)
 18. The Student was given a “cognitive and educational” evaluation on April 18, 2000 consisting of the Woodcock Johnson Psycho-Educational Battery-Revised and the WJ-R Tests of Cognitive Abilities. That assessment permitted a direct comparison between her cognitive abilities and achievement. At the time, she was 17 years 8 months old. The results are reported as follows (B31):

<u>Area</u>	<u>AE</u>	<u>Performance Attained/Skill Assessed</u>
Broad Cognitive Ability	7-10	Very low range
Broad Reading	13-11	
Reading Skills	23	Average. Ability to identify sight vocabulary and apply phonic and structural analysis skills.
Reading Comprehension	12-10	Low average range. Comprehension of single-word stimuli and short passages.
Broad Math	7-5	
Math Skills	10-5	Low average. Computational skills and knowledge of mathematical concepts and vocabulary.
Math Reasoning	4-5	Very low range. Ability to analyze and solve practical mathematics problems.
Memory Names	2-8	Very low range. Long term memory; ability to store information and fluently retrieve it later through association of unfamiliar auditory and visual stimuli.
Memory Sentences	16-3	Average. Ability to hold information in immediate awareness and then use it within a few seconds.
Visual Matching	6-5	Very low range. Processing speed, or ability to rapidly perform automatic cognitive tasks when under pressure to maintain focused attention.
Incomplete Words	12-9	Average. Ability to analyze and synthesize auditory stimuli.
Visual Closure	6-5	Very low range. Ability to analyze and synthesize visual stimuli.
Picture Vocabulary	10-4	Low range. Breadth and depth of knowledge, including the ability to communicate verbally.
Analysis Synthesis	8-2	Low average range. Ability to reason, form concepts and solve problems using unfamiliar information or novel procedures.
L-W Identification	14-3	
Passage Comprehension	13-8	
Calculation	10-4	
Applied Problems	4-5	
Word Attack	29	
Reading Vocabulary	12-1	
Quantitative Concepts	10-6	

19. The May Center noted a significant discrepancy between the Student's performance in Broad Cognitive Ability and her Mathematics Reasoning achievement score, that her performance on Mathematics Reasoning was significantly lower than predicted and that the

score indicates that Mathematics Reasoning would be “impossible” for her. (B31 at 5)

20. The May Center completed a “Brain Injury Battery” for the Student (then 17 years 10 months old) in April 2000, consisting of speech/language, occupational and physical therapy assessments. (B33) The report indicates the following, among other things:
- a. The Student’s handwriting is adequate.
 - b. The Student is exploring and utilizing various visual aides to enhance her performance at school and in the residential component.
 - d. The Student should continue her exercise program.
 - e. The Student was cooperative and enthusiastic through the testing.
 - f. Receptive vocabulary skills are below age expectancy and should remain a focus of her program.
 - g. To reduce her frustration when communications breakdowns occur, the Student would benefit from a consistent vocabulary program to target acquisition of age-appropriate, receptive (understanding) and expressive (formation of definitions) skills, as well as contrasting spelling and definitions of homophones (pair-pear).
 - h. The Student attained a less than 11.4 AE on the Adolescent Test of Problem Solving.
 - i. The Student attained a 12.9 AE on the Peabody Picture Vocabulary Test.
 - j. The Student attained a 9.10 AE on the Oral Written Language Scale
 - k. The Student was able to participate in occupational therapy testing with minimal cueing and redirection, appeared eager to do a good job and often asked for reinforcement.
 - l. The Student would benefit from reading comprehension or problem solving activities in which she is asked to summarize, ask/recall specific information, generate alternatives, make predictions and draw conclusions.
 - m. The Student follows an eating program designed to address table manners and her tendency to “shovel” food into her mouth, secondary to her brain injury. When in a structured environment, she tends to be able to follow this program independently or with minimal cueing.
 - n. Given her limitations with auditory memory and attention to details, the Student should be encouraged to use clear visual cues to increase independence for tasks presented orally or which require interpretation from reading aloud, and to repeat

demands to assure that she has accurately interpreted the oral message.

- o. The Student benefits from a concrete course outline and statements of parameters expected for her.
21. A PPT was convened on May 11, 2000 for the Student, then 17 years old. (B34) Attendees specifically included transition planning specialists from the May Center as well as a BESB representative. On an April 2000 administration of the Woodcock Johnson, the Student attained a 13.11 AE Reading Score and 7.5 AE Math Score. The Board requested that the May Center administer a WISC-III. In terms of transitional programming, it was noted that the Student had a paying job as a school newspaper reporter at the May Center, did volunteer work at the Museum of Science, was developing banking and map reading skills, was joining the YMCA and was considering college. It was noted that the Student was using various mechanical visual aides she had been provided to good result. The Parent was provided a copy of the CTDOE Procedural Safeguards. ***The Student was noted to be working from the 11th grade curriculum***, to be enjoying school, academics and small groups and to be able to follow complex directions. Continued problems with eating and food, short term memory loss, impulsive behaviors and severe vision loss warranted continued placement in an enriched staff to student environment where behavioral management is emphasized for educational reasons. ***The PPT minutes identify “graduation” as the Student’s exit criterion with a projected graduation date of June 2003.*** The block labeled “Statement of Transition Service Needs” indicates “completion of high school.” Numerous classroom modifications and adaptations are indicated, all consistent with prior reports and the nature and extent of the Student’s disabilities and educational and behavioral needs. The following annual goals and related objectives were identified:
- a. Annual Goal # 1: “Behavior – [The Student] currently exhibits some challenging behaviors that interfere with her ability to socialize appropriately.” Objectives: (1) Decrease average rate of perseverative speech; (2) Decrease average rate of inappropriate speech; (3) Decrease average rate of food perseveration; (4) Decrease average rate of food steals. (B34, at 8-9)
 - b. Annual Goal # 2: “Academics – [The Student] will increase her general knowledge, worldliness and begin to prepare for the GED.” Objectives: (1) Reading – reading and writing assignments from age appropriate novels; (2) English – written assignments focusing on mechanics and parts of speech; (3) Writing – editing and preparing multi paragraph documents; (4) Science – 80% accuracy in assigned biology lessons; (5) Math – 80% accuracy in assignments in ***Algebra I and pre-GED math*** and problem solving skill level assignments; (6) Problem Solving/Reference Use – Student will participate in activities to solve real life or hypothetical academic or activities of daily living problems; (7) Health – Assignments in ***basic self-care, safety skills, basic sexual education, and mental health focusing on self-esteem***; (8) Social Studies – 80% accuracy in course on ***US History***; (9) Journal Use – Student will use journal to record thoughts and feelings, particularly when frustrated or upset; (10) Homework –

focus on timely completion of written assignments in math, science and social studies; (11) Spelling – increase spelling accuracy with 80% accuracy performance on tests and quizzes; (12) GED Writing – Completion of assignments focusing on Pre-GED writing skills; (B34, at 10-13)

- c. Annual Goal # 3: “Transitional Education – [The Student] will perform activities either in the community or internally which will simulate a working environment in order to help her understand values and attitudes.” Objectives: (1) Level II vocational curriculum (developing skills and interests, identifying strengths and weakness, and investigating careers); (2) Vocational Activities – Participate in activities to obtain or maintain a job in the school or community; (3) Map reading – skill acquisition and development; (4) Banking Language – Focus on becoming familiar with banking language, money management and budgeting; (5) College exploration: review college catalogues, identify appropriate opportunities and identify steps to achieve goals. (B34, at 14-15)
- d. Annual Goal # 4: “Exercise and Leisure – Currently [the Student] enjoys a variety of exercise and leisure activities. In the upcoming year [the Student] will continue to explore new ways to express her creativity and stay in shape.” Objectives: (1) Participation in formal and informal exercise and walking activities; (2) Independent leisure activities – participate in activities such as writing to pen pal, creative writing, art activities, reading or word searches. (B34, at 16)

22. On May 24, 2000, the May Center provided the following data to the Board and the Parent (B35, at 1-2):

- a. The Student’s grades in each concentration area, per her IEPs in place from September 1997 through and including May 2000, were as follows:

<u>Subject</u>	<u>Hours/week</u>	<u>9/97-5/98</u>	<u>5/98-5/99</u>	<u>5/99-5/2000</u>
Language Arts				
* Writing	2	B		
* Reading	2	B+	A-	B+
* Grammar	1	A	A	B+
* Journal	0.5	B	B	B
* Reference Use	1		B	B
Mathematics				
* Math	1	B+	A-	B+
Social Studies				
* Group Lesson	2.5	B+	A	A
* Current Events	1.5	B		
Physical Education				
* Gym	1	B	A	A
Transitional Education				
* Vocational task	1.5	B	B	B

* Vocational curriculum Life Skills	1			A
* Daily planner	1	B	B+	A
* Problem solving	1.5		B	B

- b. The May Center follows a 12 month calendar with an extended school day (8:30-5:30) such that the Student attends school 242 days per year.
23. The May Center IEP for the Student for the 2000/2001 school year includes an Individual Transition Plan (“ITP”) (B35 at 3-5) which identifies the Student’s interests in various areas related to community integration and employment, as well as steps needed to address those interests. The IEP itself (B35, at 10-38) indicates as follows, among other things:
- a. The Student is 17 years old, and will be a 12th grader in an ungraded placement. (B35, at 10)
- b. The Student attained the following results on an April 2000 administration of the Woodcock Johnson Psychoeducational Battery: Broad Cognitive Ability 7-10 AE; Broad Reading 13-11 AE; Broad Math 7-5 AE. These scores are comparable to the July 1998 administration. (B35, at 11)
- c. The Student is “conscientious” and “works hard to complete all of the assignments in her folder each date. [She] seems to truly enjoy school and her academic programs.” She enjoys reading and will select reading as a free time activity, has “remarkable critical thinking skills” and “wonderful verbal skills and advanced vocabulary which she uses to express her thoughts and ideas.” (B35 at 11)
- d. The Student is interested in many areas of study but has not previously had formal individual programs in science, social studies or health. “To increase [the Student’s] general knowledge, worldliness and to begin to prepare her for the General Education Diploma test, these programs will be included in the upcoming IEP.” (B35, at 11)
- e. The Student is able to follow complex direction, recognizes when she needs help, and raises her hand when she needs help (although she is impatient if help is not forthcoming quickly). She is able to express her basic needs and wants, but if those needs are not met she will begin to perseverate in a manner which sometimes inhibits positive social interactions. She benefits from written and verbal cues regarding her behavior. (B35, at 12)
- f. The Student has multiple long and short term memory deficits which negatively impact her learning across many areas. These problems are exacerbated by her tendency to refuse to solve problems on her own and seek teacher assistance even when the answer is already known or easily accessible. Verbal cueing to help her get started or initiate the first step of a problem solving process is generally helpful in overcoming this. She is able to block out external stimuli and concentrate on

academics for a long period of time with minimal prompting. It is helpful to allow her a lot of space to do her work. (B35 at 12)

- g. The Student is a friendly and outgoing young woman who enjoys academics and leisure activities with peers and adults, but who occasionally exhibits challenging behaviors that interfere with her ability to socialize appropriately. (B35, at 13)
 - h. The Student is able to complete all ADLs independently and has learned a variety of skills over the past year. She has learned what medication she takes and the times, how to access public transportation, various nutritional facts, and how to create her own meal. Activities for the upcoming IEP are to increase her ability and skill at organizing and locating her personal belongings, steps required to obtain employment (reviewing want ads, writing letters and filling out job applications; interview situation role plays), map reading skills to help her to access community activities, generalizing knowledge of nutritional facts, continue to learn to cook and buying supplies to prepare a meal, optimize her time and independence through use of a daily planner. (B35, at 15)
 - i. While on various community outings, the Student has demonstrated appropriate social and safety skills. Tasks in the upcoming year will involve learning to budget and bank, shopping at a local grocery store, and meal preparation. (B35, at 16)
 - j. ***The Student is expected to graduate from high school on August 18, 2003.*** The Student's curriculum has been modified as "determined by the team" to enable her to achieve that goal. (B35, at 36)⁶
 - k. May Center transition staff members participated in this PPT. As to transition services needs, the Student is interested in attending college and studying child psychology to prepare her for a job in a day care center setting. She requires enriched teacher-student ratios in all instructional areas, close supervision to ensure her health and safety, and an on-site job coach for behavioral difficulties and to assure thoroughness. (B35, at 38)
24. A PPT was convened on May 7, 2001, for the Student then age 18. The Student and Parent attended this PPT, as did a BESB representative and May Center transition planning staff. (B39) The minutes note as follows, among other things:
- a. The Student's course credits were being reviewed by the Board's Guidance

⁶ Prior to this PPT, the May Center forwarded a draft of the IEP to Dr. Jacaruso. In the original draft IEP sent to Dr. Jacaruso (B35, at 64-65) no expected graduation date was identified. In the final version of the IEP forwarded by the May Center after the PPT, August 18, 2003 was identified as the anticipated graduation date. (B35, at 36) The revision suggests a discussion of that topic at the PPT.

- Counselor. (B39, at 1)
- b. The PPT developed an Individual Transition Plan (“ITP”) for the Student. (B39, at 1)
 - c. The Student’s progress and grades in her academic courses were reviewed and the Student was noted to be making progress and earning passing grades. (B39, at 1)
 - d. The Student’s exit criterion was identified as “graduation” with an anticipated graduation date of *June 2003*. (B39, at 3)
 - e. The Student’s IEP included an academic component focusing on English in which the Student was expected to complete assignments with a specified accuracy level and “mastery dependent on passing cumulative project.” (B39, at 9)
 - f. The Student’s IEP with respect to Math indicates that she is working out of a pre-GED workbook which encompasses algebra, problem solving and other mathematical fundamentals and the emphasis on developing functional mathematical skills to prepare her for independent living. (B39, at 9) The Student’s goals are to complete assignments with increasingly stringent accuracy levels.
 - g. The Student’s IEP with respect to Science indicates that she will be focusing on animal kingdoms, energy, discovery, genetics, earth science and “age appropriate curriculum topics.” The Student is expected to complete the assignments with increasing levels of accuracy. (B39, at 10)
 - h. The Student’s IEP included a “health curriculum.” (B39, at 11)
 - i. The Student’s IEP included a vocational education and training component focusing on increasing her knowledge of various occupations and their requirements. (B39, at 16)
 - j. The IEP form prepared by the May Center states that the Parent “will begin to investigate options for [the Student’s] transition to adult services in the State of Connecticut in preparation for her graduation at *age 22*.” (B39, at 20)⁷ The Parent’s signature appears on this page below this entry.
 - k. The IEP has a vision statement identifying the Student’s desire to be able to live independently in her community with a roommate and continue to work with young children after she leaves the May Center.
25. On December 16, 2001, the May Center invited the Parent and Dr. Jacaruso to a pre-

⁷ Accordingly, the graduation date would be June 2004, which is consistent with the previous May Center IEP.

planning meeting to be held in March 2002 to begin the process of developing the Student's educational program for the 2002/2003 school year. (B42)

26. A PPT was convened on June 6, 2002 for the Student, then age 19 and identified as a 12th grader. (B45) The portion of the minutes prepared by the Board indicates the following, among other things:
- a. An “up-to-date” course and credit transcript was to be prepared by the May Center within 10 days of the PPT to enable the Board to determine her progress toward graduation. (B45, at 1-2)
 - b. The Parent has contacted the Connecticut Department of Mental Retardation (“DMR”) concerning eligibility criteria and needs updated testing results as part of that application process. (B45, at 1-2)
 - c. An ITP was developed for the 2002/2003 school year. (B45, at 1)
 - d. A return to public school was not appropriate due to the Student's needs. (B45, at 2)
 - e. The transition planning summary page indicates that the Student has expressed an interest in working with young children in a school setting and “graduation from high school” is the identified statement of transition needs. (B45, at 18)
27. The Student's 2002/2003 school year IEP prepared by the May Center (P13) and progress reports for the 2002/2003 school year as reported by the May Center (P12 and B56) indicate the following:
- a. Annual Goal 1.1: Academics: History. As of the PPT date, the Student currently works from an *American History* textbook, reads from the text and answers questions utilizing her organizational skills. Her goal for this coming year is given a public transportation schedule or map, she will determine the shortest route to a mock destination with 8 or fewer prompts. At the beginning of the year, the Student required 16 cues per assignment to complete the task. By the end of the year she was averaging 11 cues per assignment. The goal was to be able to complete the assignment with an average of 8 cues. Accordingly, although she made progress, she did not achieve this goal. (P12 at 2-3)
 - b. Annual Goal 1.2: Academics: Math. As of the PPT date, the Student currently is working on functional math skills such as budgeting, banking and checkbook skills. She requires 1:1 prompting from staff and has difficulty completing steps and keeping her numbers and checks in order. Her goal for the coming year was, given a varying amount of money, to be able to open, maintain and use a checking account with 5 or fewer prompts. At the beginning of the year, she required an average of 18 prompts per assignment. By the end of the year, she was successfully able to write checks and balance a register using a calculator; continues to need teacher

- assistance to keep track of order of the items, write legibly and neatly and determine where certain items on the check are placed. She was averaging 8 prompts per assignment, somewhat short of the average 5 prompt target. Accordingly, although she made progress she did not achieve this goal. (P12, at 4-5)
- c. Annual Goal 1.3: Academics: Art. As of the PPT date, the Student currently completes independent and group art activities, creates bead art and enjoys making things for other people. Her goal for the coming year was to create a piece of art with 0 prompts following a topic discussion. As of the end of the IEP period, the Student continues to require assistance (8 prompts per discussion) to complete the assignment, primarily attributed to her vision deficit, and continues to enjoy making art and working with her hands. Accordingly, although she made some progress, she did not achieve this goal. (P12, at 6-7)
- d. Annual Goal 1.4: Academics: English. As of the PPT date, the Student was completing exercises from a *ninth/tenth grade level grammar book*, was completing spelling exercises, was maintaining a journal, and *was reading Anne Frank and Captains Courageous*. Her goal for the coming year was to write a composition demonstrating proper syntax use and spelling with 95% accuracy given a writing assignment. In the third quarter of this IEP, the Student attained her third quarter goal of completing this assignment with 92% accuracy, but in the fourth quarter her performance had deteriorated to 82%. Among other things, the Student composes writing assignments to practice her skills, writes a rough draft, does corrections with teacher assistance and creates a final draft. She has been “more frustrated about the writing topics [in this quarter] and says she has nothing to write about.” Accordingly, although she made progress, she did not achieve this goal. (P12, at 8-9)
- e. Annual Goal 1.5: Academics: Science. As of the PPT date, the Student was reportedly reading and working from a *ninth/tenth grade level science text* and participating in science group 3 times per week, but was “struggling with the amount of reading that is necessary to understand these processes.” Her goal for the coming year was, given a reading assignment, she will answer multiple choice questions focussing on various functions of the body with 90% accuracy. She attained her first, second and third quarter goals, improving her accuracy from 95% to 85%, but was unable to attain the 90% accuracy criterion, averaging 87.5% accuracy for the fourth quarter. The Student reportedly completes the readings, highlights the important sections and answer questions. She is given a chance to answer as many questions as she can from memory and then is given the passage to finish the assignment. She has been having trouble staying on task. Although the Student progressed in this area, she did not achieve the annual goal. (P12, at 10-11)
- f. Annual Goal 2.1: Behavior – Inappropriate Social. As of the PPT date, the Student reportedly had an average daily frequency of 3.8 instances of socially inappropriate behavior over a 30 day period, such as perseverative questions regarding food,

- inappropriate and perseverative speech and invasion of personal space. The goal for this IEP was to reduce the instances of these behaviors to 2/day on average. The Student averaged 6.4 events/day over the first three quarters, increasing to 9/day in the fourth quarter, which the May Center attributed to increased anxiety over her anticipated transition out of the May Center. The Student made no progress on this goal. (P12, at 12)
- g. Annual Goal 2.2: Behavior – Food Steal. As of the PPT date, the Student reportedly had an average of 2 food steals/day for the prior 30 days in the residential setting and 1 or fewer per month in the school setting. The goal for this IEP period was to reduce the food stealing frequency to 1/day in the residential setting. The Student attained this goal. Episodes of food stealing that did occur tended to occur overnight in the residence setting. The Student reportedly has a “much better understanding about her compulsions around food and has tried to . . . follow her guidelines.” A behavior modification contracting system contributed to her success. The Student achieved this annual goal. (P12, at 13-15)
- h. Annual Goal 3.1: Independent Living/Exercise. As of the PPT date, the Student was able to participate in an exercise program designed around increasing her cardiovascular endurance. The goal for this IEP period was to increase her exercise activity. The Student attained this goal. (P12 at 16-17)
- i. Annual Goal 3.2: Independent Living/Meal Preparation. As of the PPT date, the Student required a teacher’s feedback to remind her to make healthy choices when planning a meal. She also needed teacher assistance in following the proper steps during the entire process of meal preparation. The goal for this IEP period was to decrease the level of teacher assistance from an average of 30 teacher cues/meal and to average of 15 teacher cues/meal. The Student attained this goal and expanded the repertoire of meals she is able to prepare. She still manifests perseverative speech regarding the amount of food she requires on her own plate. (P12, at 18-19)
- j. Annual Goal 4.1 (identified as one of the transition planning components): Post Secondary Education. As of the PPT date, the Student had expressed an interest in post-secondary education in the field of Early Childhood Education but had limited insight into the academic requirements necessary to enroll and complete the college coursework. The goal for this IEP period was to increase the Student’s awareness of post-secondary educational opportunities and their requirements by participation in individual and/or small group curriculum sessions focusing on post-secondary education and how to research and evaluate college options. The goal was to have the Student participate in those discussions with 90% accuracy and no more than 5 cues to complete the task. The Student attained this goal. (P12, at 20-21)
- k. Annual Goal 4.2 (identified as one of the transition planning components): Employment/Vocational. As of the PPT date, the Student was a volunteer at The Discovery Center at The Museum of Science in Boston once weekly and requires

multiple cuing to demonstrate appropriate socialization skills within a community setting. The goal for this IEP period was to increase her awareness of appropriate social skills in community settings, through participation in individual and/or small group instruction focusing on maintaining appropriate personal space, turn-taking in conversations, initiating and maintaining appropriate subject matter, refraining from volunteering inappropriate personal information as well as asking for personal information, and increasing awareness of community safety issues and self-advocacy. The criteria was successful completion of the task with a 90% accuracy and no more than 5 teacher prompts. The Student attained this goal. Among other things, it was noted that she had begun to self-correct. (P12, at 22)

1. Annual Goal 4.3 (identified as one of the transition planning components):
Employment/Vocational. As of the PPT date, the Student had an internal job as a school cleaner in addition to the volunteer work at The Museum of Science described in 4.2 above. She was working toward a community job placement. The goal for this IEP was to increase her knowledge of community employment opportunities available to her and their requirements, and participate in obtaining an employment position in the community with the assistance of a job coach. The Student began working on this task in the 2nd quarter, and was reportedly “progressing” on the goal of identifying employment positions available to her and completing the application process with 10 or fewer cues. During this quarter, she attained a job as a transportation monitor at the May Center. She was reportedly “coping” adequately with that job but having difficulty arriving on time. In the 3rd quarter, the Student was to obtain community employment or repeat the application process for other potential job sites requiring no more than 8 cues to complete the task. She is described as “progressing” on this objective, as she was holding the job as transportation monitor and was using resources in her environment to be made aware of job opportunities that may be available to her. In the 4th quarter, the Student was to maintain her community employment position. Although described as having achieved this goal, the job she had was still internal to the May Center. She was noted to have made excellent progress with her social skills program at The Museum of Science. (P12, at 23-24)
- m. The May Center IEP form notes that the Student’s vision deficit makes academic progress slower or more difficult, and that her academic performance is also impacted by short-term memory deficits, distractibility and low frustration tolerance. The Student is also disorganized and frequently loses her place, items or equipment. She benefits from various visual aides, a low stimulus classroom, a daily schedule, simplified directions, multimodal approaches to learning, and individualized instruction and repetition. (P13, at 1) The May Center notes that the Student’s social skills deficits are secondary to her visual deficits and traumatic brain injury, which have left her unable to read body language and a tendency to voluntarily share personal information with strangers, ask unrelated questions to peers and converse about inappropriate topics. She does benefit from modeling of appropriate social behaviors. (P13, at 2) Providing strict guidelines during meal times decreases her

- anxiety and frustration about food. (P13, at 2)
- n. The IEP for the 2002/2003 school year terminated in June 2003. (P13, at 13)
- o. The IEP form prepared by the May Center includes a vision statement (B45 at 4) which states in part, as follows: “[The Student] continues to show improvement with her independence and social appropriateness while at the Museum of Science. [She] expresses an interest in attending a four year college or university yet displays limited awareness of a desired field of study. [She] reports that she enjoys working with children and would like to continue to do so after academic completion at the May Center. In the future, [the Student] reports that she would like to increase her independence so that she will be able to live with peers in an apartment. [She] enjoys socializing with her peers, arts and crafts and working with children as her leisure activities.”
28. By letter dated June 25, 2002, the May Center provided Dr. Jacaruso with updated information regarding the Student’s performance and grades in each concentration area for the 2000/2001 and 2001/2002 school years. (B73 at 1) Over those two years, the content areas taken by the Student were described to include the following, among others: writing, GED writing, reading, grammar, journal, reference use, spelling, college exploration, map reading, banking language, vocational activity, independent leisure, literature, budgeting, checkbook, percentage skills and tax skills, kingdoms, energy, genetics, earth science, American history, map reading, cultures, geography, topography, meal planning, food preparation, nutrition, food choices, social skills, independent living.
29. In July and August of 2002, a neuropsychological evaluation of the Student was performed by Lifespan Neuropsychological Services, Inc. (Stephanie Monaghan-Blout, Psy.D., Pediatric Neuropsychologist) at Board request as part of the triennial evaluation and for the DMR evaluation. This evaluation was to “identify the nature of [the Student’s] disability with respect to special education classification, clarify her psychological needs for outpatient treatment, and assess her competency for semi-independent living.” The report (the “Lifespan Evaluation”) (B48) notes as follows, among other things:
- a. The Student was 19 years 11 months old as of the date of the assessment.
- b. The Parent reported that the Student’s personality has changed “dramatically” since her surgery. The Parent reported that the Student has difficulty figuring out how to do new things, doing things in the right order, completing an activity in a reasonable amount of time, switching from one activity to another, and with frustration tolerance, understanding what is read, performing math, telling right from left, finding her way in familiar places, losing her train of thought, forgetting where she leaves things, forgetting names and recent events, bumping into things, blurred vision, blank spots in her vision, brief periods of blindness, and sleep problems.
- c. The Parent reported that the Student has been given the following diagnoses over the

years following her surgery: Hypothyroidism, Hypogonadism, Optic Chiasm Glioma, Astrocytoma (Grade II), Organic Personality. The May Center was also considering a diagnosis of Prader-Willi Syndrome given her preoccupation with food and her attention problems.

- d. A 1991 WISC testing showed a VIQ of 123 and PIQ of 77. A 1994 WISC testing showed a VIQ of 106 with no PIQ attained due to her visual problems. The 1997 Lakeview evaluation showed a VIQ of 90 and no PIQ attained due to her visual problems. Significant weaknesses in complex attention and acquisition of new verbal material were noted by Lakeview, as was a significant decline in verbal reasoning as measured by prior tests.
- e. The Student was cooperative, enjoyed making jokes and puns and appeared “invested” in performing well, but required validation about her performance and was “reluctant to guess.” Her attention was generally adequate for the task in this 1-1 situation, but she was easily distracted by internal stimuli (wondering when she could eat; a stain on her shirt) and external stimuli (noises outside of the room). She could be redirected.
- f. The Student was administered a WAIS-III on which she attained a VIQ of 83 (low average) and PIQ of 63 (deficient). The VIQ-PIQ difference was significant. The results show a “significant” decline in her visual reasoning abilities in the nine years since the first reported testing, sliding from superior range to low average range performance.
- g. Her performance on the Vocabulary and Comprehension subtests of the Wechsler intelligence scales over time suggests a failure to progress, whereas her performance on the Similarities subtests over time suggest a loss of function.
- h. Results of measures of attention and self-regulation indicate difficulties with higher level function and executive function skills (behavioral regulation, response inhibition, response initiation, working memory, self-monitoring of performance, and novel problem solving skills).
- i. Language skills are an area of relative strength for the Student with her performance in the lower end of the average range. Her responses are characterized by a concrete approach to the task.
- j. Results of verbal memory tasks show “significant” difficulties with encoding and retrieval of learned information.
- l. On achievement measures, the Student’s performance overall placed her within *secondary school levels* with respect to reading and spelling, with weaker math skills noted.

- m. On the GORT-4, the Student attained the following results:⁸

Area	GE Result	AE Result
Reading fluency (rate and accuracy)	7.7 GE	12-9 AE
Reading Comprehension	10.2 GE	15-3 AE
Spelling	High school	High school
Arithmetic	4 GE	Not reported

- n. The Student attained the following results on the BASC Questionnaire/Self-Report:

Area	Adaptive Level	Age Equivalent
Adaptive Behavior Composite	Low	7-3
Communication	Low	7-11
Receptive	Adequate	7-10
Expressive	Low	7-11
Written	Low	7-10
Daily Living Skills	Low	7-3
Personal	Low	7-3
Domestic	Low	7-2
Community	Low	7-4
Socialization	Low	6-7
Interpersonal Relationships	Low	5-3
Play/Leisure Time	Moderately Low	12-3
Coping Skills	Low	5-8
Maladaptive Behavior	“Significant”	[Not reported]

- o. The Student can attend to a school lecture for more than 15 minutes and talks about her thoughts and experiences.
- p. Dr. Monaghan-Blout concluded that “This cognitive profile of low average language skills affected by difficulties with higher level reasoning, extremely weak visual reasoning skills affected by a significant visual impairment and poor organizational skills, problems with attention and higher level executive function skills, substantive deficits in encoding and retrieval of verbal information and significant impairment of adaptive functioning would certainly qualify [the Student] for special education service through her local school district until the age of 21 years.”
- q. The Student’s “good language skills mask to some degree her significant difficulties

⁸ The LifeSpan Evaluation report states that the Student preferred to use a normal print size version of this assessment, rather than a version designed for visually impaired individuals. The Evaluation does not discuss whether and to what extent that choice affected the results.

with problem solving and judgment, difficulties in caring for herself and additional limitations caused by her visual impairments.”

- r. The Student would not qualify for DMR services under a “strict reading” of the applicable regulations because of her good language skills and the confounding factor of her visual impairment. However, her low adaptive functioning and decline in cognitive skills present since before age 14 indicate that she should be reviewed for eligibility.
 - s. Given her poor executive function skills, including difficulties in adapting to changes in task demands, initiating new activities, working memory, learning new skills and information, visual impairments which cause her to miss information, and problems with compulsive behavior, it is highly unlikely that she can function on her own with only visits from supervisory staff. She requires a highly structured program with 24 hour supervision.
 - t. The Student “might also” benefit from supportive counseling and cognitive behavioral therapy, given that she works well with behaviorally based programs.
 - u. The Student should have access to home visits but the goal of the next placement should not be a permanent return home, but rather a small group home placement with 24 hour supervision and a highly structured program.
 - v. The Student should be given a vocational assessment to identify vocational skills and possible job placements.
 - w. The Student would benefit from using a small tape recorder or other auditory device to help prompt her memory and serve as an adjunct working memory.
30. On January 3, 2003, the May Center invited the Parent and Dr. Jacaruso to attend a meeting to review the Student’s progress in her IEP. (B49 at 1)
31. On January 9, 2003, the Parent executed a release authorizing the Board to provide information regarding the Student to permit the Student to be evaluated for services by the Connecticut Bureau of Rehabilitation Services (“BRS”) and on January 14, 2003, the Board provided the requested information to BRS. (B50)
32. By letter dated January 14, 2003 from Michelle Tierney (Associate Director of Education at the May Center) to Michael Forbes (the Student’s Board guidance counselor), the May Center responded to a request by Mr. Forbes that the May Center update the Student’s grades and credit hour/distribution information. The letter notes that the information is current through the end of the second quarter of the May Center 2002/2003 school year and that the Student will have two more quarters at the May Center “prior to the *anticipated graduation date.*” (Emphasis added.) The letter further indicates that updated grades will be provided at the end of each of the two “upcoming” quarters. (B70)

33. On January 16, 2003, the Board and the May Center executed a contract regarding the Student's placement at the May Center for the period July 1, 2002 through June 30, 2003. That agreement (P8) provided that the May Center was to provide the Student with "instruction suitable to his or her needs and capabilities in accordance with the provision of [the Student's] individualized education program and the requirements of [Connecticut law]" and that the Board would pay the May Center \$184,923.50 for services provided during that period. (P8, at 2)
34. By memorandum dated February 10, 2003, Mr. Forbes advised Dr. Jacaruso that in connection with the awarding of a Fitch High School diploma to the Student, the May Center should be contacted to verify the following items: (1) that in her social studies curriculum the Student has had at least 123 hours of instruction in American history; (2) that in her science curriculum the Student has had at least 123 hours of instruction in biological science and 123 hours of instructional in earth science or physics (a physical science); and (3) the Student will complete a total of 123 hours in fine arts instructions by the end of the 2002/2003 school year. Mr. Forbes further advises that "[e]verything else appears to be in good shape." (B71)
35. By memorandum dated March 20, 2003, Dr. Jacaruso advised Mr. Forbes that she had determined that the Student has met the 123 hour requirement for US history instruction, that her science instruction has met both the biology and earth sciences requirements, and that she will meet the 123 hour credit requirement for fine arts instruction (through an arts and crafts curriculum) by June 2003. (B72)
36. A PPT was convened on April 10, 2003 for the Student. The Parent and May Center transition staff attended that meeting. The minutes prepared by the Board (B53) indicate as follows, among other things:
 - a. The Student's progress in her present program at the May Center was reviewed and it was determined that the Student was making progress in all areas of her ITP and IEP, based in part on an April 2, 2003 quarterly progress report prepared by the May Center. (B53, at 1)
 - b. A representative from BESB had been scheduled to participate but was unable to attend and will contact the Parent. (B53, at 1)
 - c. The Student has met the Board's requirements for a high school diploma. (B53, at 1)
 - d. The Student "will remain at the May Center until her 21st birthday on August 18, 2003. The [Board] will no longer be responsible for [the Student's] educational needs and financial support after August 18, 2003." (B53, at 1)
 - e. The Board will support a community assessment by Futures, Inc. provided it is completed before August 18, 2003. (B53, at 1)

- f. The Prior Written Notice form states that the PPT had determined to exit the Student from special education and related services because she was “receiving high school diploma and reached her 21st birthday on August 18, 2003.” (B53, at 2)
- 37. On April 26, 2003, the Parent signed a release authorizing an evaluation of the Student’s daily living skills by Kathy Wickham of Futures, Inc. (B54) and the Board provided Ms. Wickham with the Student’s records on May 6, 2003. (B55) The results of the competency-based community assessment performed by Futures, Inc. in July of 2003 are provided in B59 and P14.
- 38. On May 27, 2003, the May Center updated the Student’s credits and grades for the Board for the period through May 2003. (B74)
- 39. Board Policy P5210, initially adopted in 1993, revised in May 1997 and revised again on January 14, 2002, provides in pertinent part as follows: “A High School diploma will be granted to each student who meets in full all graduation requirements as determined by both the State of Connecticut and the [Board] . . . Alternative assessment criteria and alternative courses of study will be established for students who have not attained those basic skills necessary for graduation.” (B60)
- 40. Board Policy P5230, initially adopted in 1996, revised in May 1997 and revised again on July 8, 2002, provides in pertinent part as follows: “A Fitch Senior High School academic diploma shall be awarded to all students who meet, in full, all requirements for graduation as determined by Connecticut State Statutes and [the Board] . . . To graduate from Fitch Senior High School, a student must earn a minimum of 24.3 credits and must have met the credit distribution requirement.” Policy P5230 identifies three Board “Performance Standards” as additional requirements for graduation, effective for the class of 2006. Policy P5230 then provides that “Students with special needs may be exempt from district performance standards for graduation as described in this policy if so indicated in their Individualized Education Plan.” (B61)
- 41. The Fitch High School 2002/2003 Handbook (B62) defines the credit hour and distribution requirements that must be met to earn a Board regular high school diploma for students graduating in June 2003. That information is also provided in the Fitch High School 2002/2003 Program of Studies (HO 3)
- 42. Pursuant to Board Policy P5230 (B61), the 2002/2003 Fitch High School Handbook (B62), and the 2002/2003 Program of Studies (HO3), an non-eligible student graduating on June 18, 2003 must meet the following credit hour and distribution requirements:

Subject Matter	Required Credits	Additional Information
English	4	
Mathematics	3	
Social Studies	3	Must include 1 credit in US History and 0.5

Science	3	credits in Civics Must include 1 credit in Biology and 1 credit in Physical Science
Physical Education	1	
Health	0.5	
Applied Arts	1	These courses include business, computer, health and life skills, technology education.
Fine Arts	1	These courses include art, music and theatre.
Electives	7.5	A student may satisfy the elective requirements by taking more than the required number of credits in, for example, English or mathematics.

43. On September 27, 2000, the CTDOE issued a bulletin explaining that under Conn. Gen. Stat. Sec. 10-221a the 0.5 credit requirement for civics will apply commencing with the class of 2004. (B79)

44. In terms of content requirements for various courses, the Fitch High School 2002/2003 Program of Studies (HO3) differentiates between a college preparatory and non-college preparatory course of study, as well as a variety of electives in each of the subjects. Among other things, the Program of Studies provides the following information:

Non-college preparatory grade 11 and 12 English courses (281/282) ⁹ are described as follows:	“This course is designed to aid each student’s individual development by raising skill levels in reading, writing, comprehension and vocabulary.”
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College preparatory grade 11 and 12 English courses (205/215) are described as follows:	The courses are designed for students who are reading at grade level and have demonstrated a competency in language skills. Units of study include composition, grammar, vocabulary, themes in American, British, contemporary and/or world literature, and SAT preparation.
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Health courses include:	Meal preparation, shopping, child development, financial planning, wellness, substance abuse and violence prevention, and human sexuality.
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Non-college preparatory grade 11 and 12 Mathematics courses (506/512) are described as follows:	Basic concepts of Algebra and Geometry, measurement, comparisons, exponents, radicals, mathematical reasoning and theory.
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College preparatory grade 11 and	Review of topics covered in Algebra I, linear and
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⁹ These citations refer to specific courses identified in the Program of Studies.

12 Mathematics courses (527/530) are described as follows: quadratic equations, inequalities, trigonometry, analytic geometry and graph analysis.

The Music Curriculum includes various offerings involving choir and instrumental music, as well as several music appreciation courses (611/612)

Non-college preparatory grade 9-12 science courses (801/809/831/832) are described as follows: Units on astronomy, geology, meteorology, oceanography, characteristics of living things, cells, kingdoms, ecology and human biology, basic chemistry and physics concepts as applied to the natural environment and resources.

The social studies curriculum is described as follows: All 9th graders must take a early civilizations history class , all 10th graders must take a civics course to graduate and US history, and all 11th graders must take a further US history course. Contents of these courses include Greek and Roman civilizations, the Middle Ages, world civilizations (China, Japan), and United States Constitution and government.

45. The 2002/2003 Program of Studies also identifies a set of special education level courses that are available to students (HO3, at 25). These courses are offered to students who have “gone through the PPT process, and have an active IEP . . . A statement of placement in Special Education classes within the IEP document is necessary for class enrollment . . . ***The curriculum parallels the regular mainstream curriculum with modifications and is individualized when necessary to meet the academic needs of the students.***” (Emphasis added.) The following 1 credit special education courses are available: Science (covers a variety of scientific topics and processes); History (explores topics in U.S. history, Geography and World History), English (emphasis on improving skill levels in writing and reading fluency and reading comprehension) and Math (reinforces basic math skills in an individualized curriculum geared to the student’s specific skill levels and needs).
46. The Fitch High School 2002/2003 Program of Studies states that Fitch High School is accredited by the New England Association of Schools and Colleges, Inc. (“NEASC”), which means “that [the institution] meets or exceeds criteria for the assessment of institutional quality periodically through a group peer review process. An accredited school or college is one which has available the necessary resources to achieve its stated purposes through appropriate educational programs, is substantially doing so, and gives reasonable evidence that it will continue to do so in the foreseeable future.” (HO3, at i)

47. A report prepared in June 2003 by BESB indicates that BESB will “provide support for [the Student] as she transitions back to CT for adult services. (B53 at 3)¹⁰
48. The cost of the Student’s May Center placement from August 19, 2003 through and including September 8, 2003, was \$10,715.67 or \$510.77/day. (P15)

ADDITIONAL FINDINGS BASED ON THE OVERALL RECORD

49. The Student remained at the May Center from June 18, 2003 through August 18, 2003 at Board expense pursuant to the terms of a unilateral offer by the Board to fund that placement made at the April 10, 2003 and accepted by the Parent at that PPT. The Board funded the May Center placement during this period pursuant to the terms of an agreement entered into between the Board and the May Center (P15) similar to the prior annual agreements entered into the Board and the May Center for this purpose over the years, and which covered the period July 1, 2003 through June 30, 2004.
50. The Board did not fund the May Center placement after August 18, 2003. As of the date of her last testimony, the Parent has received an invoice from the May Center for the Student’s placement during the period August 19, 2003 through September 9, 2003 but had not yet paid that invoice.
51. No PPT was convened for the Student after April 10, 2003.
52. On January 13, 1992, the Student was identified as eligible to receive special education and related services under the IDEA and Connecticut special education law. There is no dispute that at all times since then and through at least June 18, 2003, the Student remained eligible to receive and was receiving special education and related services from the Board pursuant to the IDEA and Connecticut special education laws. But for her graduation with a regular high school diploma on June 18, 2003, the Student remained eligible to receive special education and related support potentially through June 30, 2004 under Connecticut law.

FINDINGS BASED ON TESTIMONIAL EVIDENCE

1. Yvette Jacaruso, Ph.D.

- J1 Dr. Jacaruso earned a bachelors degree in early elementary education in 1975, a masters degree in special education in 1977, a certificate in Administration and Supervision in 1985, and a doctorate in developing programs for children and youth in leadership in 1995. She was a classroom teacher for regular and special education students in the Norwich public schools from 1977 to 1982, then an assistant elementary school principal from 1983 to 1988. She became a supervisor

¹⁰ The document is actually dated June 6, 2002, but Dr. Jacaruso believes based on its content the correct date is June 2003. (December 17 Trans. at 198)

of special education for the Board in 1988 and the Board's Director of Pupil Services and Special Education in August 2003. She has published an article regarding training special education teachers to write goals and objectives with measurable outcomes. (October 2 at 62-64; December 17 at 4-6)¹¹

- J2 Dr. Jacaruso's responsibilities over the pertinent period have included ensuring that special education laws were implemented with respect to the Student. (October 2 at 67) The Student has been assigned to Dr. Jacaruso's case load since she was in the 4th grade in 1994. (October 2 at 66; December 17 at 6) In the period 1997 through 2003, the Student was the only case Dr. Jacaruso had in which the Board was funding an out-of-district residential placement. (October 2 at 65)
- J3 The Parent's decision to unilaterally place the Student at the Lakeview Neurorehabilitation Hospital over the Board's objection was upheld in a due process proceeding. (December 17 at 8)
- J4 Dr. Jacaruso participated in all of the Student's PPTs and was responsible for completing all of the PPT minutes and IEP forms. (December 17 at 9) Dr. Jacaruso would ask during, before and after the PPT whether any of the participants had questions to identify any issues and make sure that the Parent was in agreement with what was being proposed. (December 17 at 20-21) At the PPTs, Dr. Jacaruso completed the PPT minutes and IEPs page by page, reviewing each page (including the goals, objectives and recommendations), and asking whether any of the participants had any questions regarding that page. (December 17 at 37; 40) Within one to two days, Dr. Jacaruso sent copies of the PPT minutes and IEP forms she completed to both the Parent and the May Center. (October 2 at 75, 103) Neither the Parent nor the May Center ever contacted Dr. Jacaruso to advise her that they disagreed with anything written in the PPT and IEP forms Dr. Jacaruso had completed. (December 17 at 46-48)
- J5 For the PPTs other than the May 7, 2001 PPT, the Parent participated with the May Center staff at the May Center and Dr. Jacaruso participated by telephone. Dr. Jacaruso attended the May 7, 2001 PPT at the May Center. (October 2 at 68-70)
- J6 Dr. Jacaruso sent the CT DOE Procedural Safeguards (P18) to the Parent with the invitation to the PPT. The Parent never indicated that she had any questions about the Safeguards. (December 17 at 106-107; 234) With respect to the April 2003 PPT, Dr. Jacaruso mailed the Safeguards to the Parent with the PPT invitation. (October 2 at 77-78)
- J7 Board Policy P5210 (B60) and P5230 (B61) set forth the Board's graduation

¹¹ A citation in this format refers to the transcript of that witness testimony on that hearing date.

- policy. The Board's Superintendent of Schools is ultimately responsible for determining whether a non-disabled student has met the Board's requirements for graduation. Dr. Jacaruso is not involved in that process. (October 2 at 80-86)
- J8 The Board's handbook for Fitch High School for the 2002/2003 school year (B62) identifies the credit hour and distribution requirements that a student must complete to receive a diploma from the Board. Both disabled and nondisabled students must satisfy these criteria to receive a diploma. (October 2 at 89-91)
- J9 The Board's guidance counselor is responsible for reviewing the transcripts and credits earned by both disabled and nondisabled students who transfer into the district to determine their placement in the Board's high school. (October 2 at 92)
- J10 The annual cost of the Student's placement at the May Center paid by the Board was approximately \$180,000/year. (December 17 at 132)
- J11 Dr. Jacaruso agreed to fund the Futures, Inc. assessment to help the Parent access adult services by having up-to-date information about the Student's capabilities in anticipation of her discharge from the May Center. (December 17 at 183) Dr. Jacaruso did not put any restrictions on the type of evaluation that Ms. Wickham could do. (December 17 at 176)
- J12 The report from Adela Hagerty (B53, at 3) is dated June 2002, but should be dated June 2003. (December 17 at 198)
- J13 Dr. Jacaruso had no conversation with the Parent on June 17 or 18, 2003 as testified by the Parent. (December 17 at 199) The only communication Dr. Jacaruso had with the Parent after the April 2003 PPT and before graduation was in late May or early June and concerned whether the Student would be participating in the graduation ceremony. (December 17 at 199)
- J14 The Board has not sought reimbursement for the State for the Student's placement at the May Center after June of 2003. (December 17 at 207-210)
- J15 Dr. Jacaruso had no written description from the May Center of the contents of the Student's May Center courses and no personal understanding of the content of the courses taken by the Student at the May Center. Her understanding of how the Student's May Center courses matched up with the Board's credit distribution and hour requirements comes from speaking with Mr. Forbes. (October 2 at 96-98) Dr. Jacaruso did not determine how the content of the Student's curriculum matched up to the Fitch High School curriculum because the Student's curriculum requirements were determined by her IEP. (January 23 at 14-15)
- J16 The "Transcript Credit Summary" showing the Student's course, grades and clock hour credits from 1997/1998 to 2002/2003 as of January 2003 (B63) was prepared

by the May Center at Dr. Jacaruso's request to determine the Student's credit hours and distribution to that date. The courses identified in the document are all special education level courses. (October 2 at 93-95) Dr. Jacaruso reviewed this Transcript Credit Summary with Mr. Forbes in January and February of 2003 and concluded, based on the information in the document, that the Student had met the Board's requirements for graduation with a high school diploma. (October 2 at 111-13, 129-33)

- J17 Dr. Jacaruso did not review the January 2003 Transcript Credit Summary prepared by the May Center (B63) with the Parent and does not know if it had been sent to or reviewed with the Parent by anyone from the Board. She assumes that Mr. Forbes did so. Dr. Jacaruso never had any communications with the Parent regarding the Student's completion of specific credit distribution requirements, the computation of credits, the determination of whether the Student had enough credits to graduate, the grades the Student was earning from the May Center or the content of the May Center courses. The Parent never asked Dr. Jacaruso any questions about those matters. Dr. Jacaruso assumed that Mr. Forbes or others [presumably May Center personnel] were speaking with the Parent about those issues. (October 2 at 110-116)
- J18 Document B64 is the first transcript of courses, grades and credits prepared for the Student by the Board. The Board had not previously issued a report card or transcript for the Student because the pertinent information regarding her progress and academic program was stated in her IEPs. (October 2 at 115-19)
- J19 The May Center assigned grades to the Student which the Board accepted for purposes of determining her progress toward graduation. Dr. Jacaruso assumes that each grade assigned by the May Center reflected the May Center's assessment of the Student's progress in her special education curriculum. (October 2 at 120-23)
- J20 Ms. Smith, the Student's first Board guidance counselor, designed the method described in B69 for converting the Student's May Center credit hours into Board credit hour equivalents. Mr. Forbes assumed that responsibility when Ms. Smith left the Board's employ in the summer of 2001. (October 2 at 127-31) Dr. Jacaruso did not send this to the Parent or discuss its contents with her, and does not know if anyone else from the Board did so. (October 2 at 132-33)
- J21 At no point has aging out (*i.e.*, turning age 21) been the criterion for exiting the Student for eligibility for special education and related services. When the Student entered the May Center, the exit criterion initially identified was ability to function in a mainstream environment without special education and related services support. The Student is unlikely to be able to function in a mainstream environment without special education and related services support. (October 2 at 171)

- J22 The exit criteria identified at the June 1997 PPT – “When student no longer needs Special Ed. program or related services” – reflects the conclusion of the PPT based on the Student’s functioning at the time. (December 17 at 11-12)
- J23 The exit criterion was changed to graduation based on Dr. Jacaruso’s understanding from the May Center and the Parent that the Student was interested in pursuing a career path involving teaching or working with young children and would be working for her high school diploma in light of those interests. (December 17 at 274-275) Dr. Jacaruso remembers that at the PPT attended by the Student, there “definitely was a discussion about graduation with a diploma from high school to continue on to college” in light of the Student’s expressed interest in working with little children. (December 17 at 49) At that meeting, Dr. Jacaruso recalls that “even mom said, you know, that she would need a high school diploma to go on” to work with children. (December 17 at 50) Dr. Jacaruso asked the Parent at the May 2001 PPT “a couple of times if a high school diploma, if that would be – where we should be going. And she answered yes, that she wanted [the Student] to have a high school diploma. So that’s why I went that way.” (October 2 at 139-140) Dr. Jacaruso believes that graduation as an exit criteria was established at the PPT at which Dr. Jacaruso attended at the May Center. (January 23 at 19) Dr. Jacaruso does not know whether when the Parent was asking that the Student work toward a diploma she was agreeing or asking that her daughter’s eligibility for special education and related services support be terminated by graduation. (October 2 at 167-68)
- J24 The June 2001 projected graduation date at the May 1998 PPT was based on the Student’s progress up to that point and an agreement by everyone present as reflected in the minutes. Dr. Jacaruso recalls a discussion at that PPT that the Student was on track at that time to meet a June 2001 graduation. The May Center voiced no concerns about that projected graduation date. The Parent was present but Dr. Jacaruso does not recall if she voiced any concerns or asked any questions. (December 17 at 37-39)
- J25 The May Center was aware that the Student’s exit criterion was graduation with a diploma and never indicated that that was an inappropriate exit criterion or that it was inappropriate to exit the Student from special education and related services before she turned age 21. (October 2 at 141-42; 166-67)
- J26 Once the decision was made to identify graduation from high school as an exit criterion, that decision was not revisited although the issue of graduation and the Student’s progress toward graduation (i.e., her credit status among other things) was discussed at subsequent PPTs. (October 2 at 141-42; January 23 at 20-22)
- J27 Dr. Jacaruso reviewed the results of the LifeSpan evaluation (B48), which was obtained as part of the triennial evaluation, but did not deem the information

relevant to the determination of whether it remained appropriate to exit the Student from eligibility by graduation in June 2003. (October 2 at 143-45)

- J28 There was never a discussion at the PPTs as to who (as between the Board or the May Center) would be awarding the diploma. (December 17 at 51-53) However, Dr. Jacaruso described the diploma as a “Fitch High School diploma” when speaking about graduation and credits at various of the PPTs. (December 17 at 76) Over the years, Dr. Jacaruso had periodic contacts with Michelle Tierney of the May Center regarding the need to update the Student’s grade and credit status. (December 17 at 65-67, 79) Neither the Parent nor the May Center voiced any concerns about any proposal to graduate the Student with a regular high school diploma. (December 17 at 55-53)
- J29 Other than what is reflected in the paperwork, Dr. Jacaruso does not recall if the concept of graduation with a regular high school diploma was discussed at any of the PPTs before April 2003. (December 17 at 42) Dr. Jacaruso does not recall having any conversations with the Parent about the differences between graduating with a regular high school diploma, a certificate of completion or a GED or with the May Center about those options. (December 17 at 43-44) Dr. Jacaruso disagrees with the Parent’s testimony that there was no discussion about graduation at any PPT prior to April 2003 because the documentation reflects that graduation had been discussed since 1998 and “was always the goal.” (December 17 at 44)
- J30 At the 1999 PPT, the Parent asked no questions regarding the need to update the Student’s credits. (December 17 at 70)
- J31 Dr. Jacaruso does not know if Mr. Forbes or Ms. Smith had any conversations with the May Center as to what the grades being awarded by the May Center to the Student reflected. (December 17 at 65-67; 69-70) Dr. Jacaruso does not know the extent to which the Student’s curriculum in terms of course content was modified from the Board’s curriculum and is not certain if either Ms. Smith or Mr. Forbes knew the extent of the modifications either. (December 17 at 86) The extent of the modifications was not important in Dr. Jacaruso’s opinion because the goals and objectives of the IEP governed. Mastery of course content was not required as long as the subject matter follows the CT requirements. (December 17 at 87-88; 90)
- J32 The PPT as a team was responsible for deciding when the Student would graduate. (December 17 at 136-137) The Board’s guidance counselor would ultimately be responsible for determining whether the Student had satisfied the credit requirements for graduation. (December 17 at 137)
- J33 The May Center never disagreed with the plan to graduate the Student with a regular high school diploma in June 2003. (December 17 at 137)

- J34 The first time that Dr. Jacaruso became aware that the Parent had some question about how the credits were being calculated was when Dr. Sproul (CTDOE) called in May to inquire about that issue. (December 17 at 200)
- J35 By letter dated June 25, 2002 (B66), the May Center updated the Student's course, grade and clock hour information for the 2000/2001 and 2001/2002 school years. The May Center subsequently provided the Board an update through October 2002 (B67) and through the end of the 2002/2003 school year (B68). All of these documents were prepared by the May Center at the Board's request. These documents were not shared by Dr. Jacaruso with the Parent. (October 2)
- J36 The change in exit criteria to graduation in the May 3, 1999 PPT minutes would have reflected the discussion of credits. Dr. Jacaruso does not recall if the change in exit criteria was expressly discussed at that PPT however. (December 17 at 73-74)
- J37 Dr. Jacaruso never actually observed the Student in her program at the May Center or visited or observed the group home setting in which the Student resided at the May Center. (December 17 at 27-28; January 23 at 5) Other than the information stated in the May Center progress reports, Dr. Jacaruso does not know how often the Student was able to go into the community or interact with non-disabled individuals in the community. (January 23 at 12)
- J38 The last time that Dr. Jacaruso met with the Student was at the May 2001 PPT. (October 2 at 98) The Student presented as "very personable, had a very good personality" and participated appropriately in the process. A "[y]oung lady. She sat there and waited for questions and answered." (December 17 at 113-114) Based on the Student's presentation, Dr. Jacaruso concluded that the May Center's reports that she was making progress were accurate. (December 17 at 116)
- J39 Dr. Jacaruso received regular progress reports from the May Center. (December 17 at 31) Those reports identified the Student's goals and objectives, and Dr. Jacaruso relied on that documentation to reach conclusions as to the Student's level of functioning in connection with each PPT. (January 23 at 31, 34, 45-46) Among other things, Dr. Jacaruso determined from B-21 at 3 that the Student was "handling" math word problems and reading books at the 5th grade level (January 23 at 36-37); from B-35 at 11-12 that the Student's then current level of functioning in English, spelling, writing, science and math (January 23 at 40); and from B-39 at 7 that she was completing 9th grade level work in English (January 23 at 44-45). Although Dr. Jacaruso cannot precisely state how the curriculum in her May Center courses lined up with corresponding Fitch High School courses, it was her general impression in recent years that the Student was completing a high school curriculum. (January 23 at 46)
- J40 Through reading the evaluation reports prepared by the May Center, Dr. Jacaruso

was aware that the Student's performance in reading and math was well below her chronological age. She has no reason to believe that the results reported in the LifeSpan evaluation (B48 at 6) are inaccurate. (October 2 at 107-09)

- J41 Dr. Jacaruso does not know if the Student would be able to pass a mainstream class in the Board's high school at this time if she were to walk into the class and take it without any kind of special education and related services support. (October 2 at 109-11)
- J42 The parties disagreed over the May Center placement initially and the Student was initially placed at the May Center at Board expense after the Parent stated that she would commence due process to secure funding for a placement at the May Center. For each subsequent year, however, Dr. Jacaruso concluded that the Student should remain at the May Center in a Board-funded placement based on the fact that she was "making satisfactory progress on her goals and objectives, this place was specialized, you know, in this type of disability that she had" and because the Parent was "happy" with the placement. (December 17 at 16; January 23 at 9-10)
- J43 Dr. Jacaruso concurs that the May Center "focuses on increasing community integration for membership and community organization, school transition, and learning in natural environments." (December 17 at 13) Dr. Jacaruso anticipated that the May Center would teach the Student "how to manage in a community, you know, how to find her way around a community" and that she would have "some kind of employment within that community or at school" and that she would be reinforced with these skills daily so that when she "did return back home, that she could implement those skills in her community." (December 17 at 19)
- J44 Dr. Jacaruso relied on the data about the Student being provided by the May Center. (October 2 at 150) In the normal course, the May Center would draft an IEP (including ITP) for the Student and send it to Dr. Jacaruso several days before the scheduled PPT for Dr. Jacaruso to review. At the PPT, the proposed IEP and ITP would then be reviewed. (December 17 at 23) Dr. Jacaruso relied on the May Center to generate the IEP goals and objectives. (December 17 at 25)
- J45 In formulating the Student's IEP goals and determining her special education needs, Dr. Jacaruso relied on recommendations by the May Center staff. Dr. Jacaruso does not recall anyone from the May Center advising that using graduation from high school with a diploma as an exit criterion was inappropriate for the Student at any point after the initial decision was made to use that criterion. (October 2 at 140-42)
- J46 Dr. Jacaruso infers that the Parent was pleased with the May Center placement because at no point did she ever state that she was displeased with the May Center. The only request that the Parent made with respect to additional services at the May Center was the provision of a reading machine of a certain type for the

Student. (December 17 at 21-22)

- J47 The May Center advised Dr. Jacaruso that whatever they sent to Dr. Jacaruso was sent to the Parent. (December 17 at 32)
- J48 At no point did the Parent or the May Center advise Dr. Jacaruso that the Student was not making good progress at the May Center. At all times, the May Center reports about the Student's progress were positive. (December 17 at 33-34)
- J49 The Board did not offer step-down or transitional living arrangements in anticipation of the Student's return to Groton because it was Dr. Jacaruso's understanding that these types of transitional services were being offered through the May Center and the May Center never made any recommendation for increasing the Student's activities in Groton. Among other things, the Student was working at the Museum of Science and was learning community ADL skills under the direction and supervision of the May Center. Dr. Jacaruso relied on the May Center to perform assessments, determine the Student's needs and develop appropriate programming for her. (October 2 at 147-48; 159-61)
- J50 At the April 2003 PPT, Dr. Jacaruso advised the Parent and the May Center that the Board had concluded in January-February 2003 that the Student had earned sufficient credits to graduate in June 2003 and it was the Board's intention to graduate the Student at that time. The May Center did not indicate that any kind of different or additional programming needed to be implemented in light of the confirmation of the June 2003 graduation date. (October 2 at 150-51)
- J51 Dr. Jacaruso never specifically asked BESB whether it would or could continue to provide adult services to the Student and never specifically ascertained what role they would play after the Board was no longer responsible for the Student's programming. (December 17 at 95-96)
- J52 With a projected June 2003 graduation date, Dr. Jacaruso engaged in the following transition planning to reintegrate the Student back into the Groton community. She contacted DMR and BRS before the June 2002 PPT and took steps to have the up-to-date evaluations of the Student completed so that the Parent could complete the application processes for those agencies. She attempted to secure the attendance of BRS and DMR at the June 2002 PPT so that they could review the plan for the Student and assure that the Parent knew how to access and was accessing those services. Neither DMR nor BRS would attend the PPT because the Student was residing out of state. After the PPT, Dr. Jacaruso contacted them again to discuss what needed to be done to make the linkages. Even though they would not come to the PPT, the Parent could commence the application process. At the time, the Student was already involved with BESB but Dr. Jacaruso did not have any conversation with BESB or understanding with BESB about post-graduation, adult service. BESB never advised Dr. Jacaruso, however, that their services to the

Student would cease at graduation and it was Dr. Jacaruso's understanding that they would continue to provide adult services to the Student. (December 17 at 139-147; 188) She had invited BESB to the April 2003 PPT but the BESB representative could not attend due to transportation problems. (December 17 at 189) The May Center did not make any suggestions about linkages with adult services providers. (December 17 at 147-48) Dr. Jacaruso had not heard of the ABI Waiver Program and did not consider DSS to be a potential referral. (December 17 at 148) As of the June 6, 2002 PPT, Dr. Jacaruso did not have any reason to believe that the Student would not qualify for DMR services. (December 17 at 149) *See also* Jacaruso October 2 at 146-161.

- J53 Dr. Jacaruso understood in January 2003 that the Parent was attempting to access BRS services. (December 17 at 172)
- J54 Dr. Jacaruso did not invite either BRS or DMR to the April 2003 PPT based on their prior statements that they would not attend PPTs for a student who was out of state. (December 17 at 174)
- J55 Until the Parent testified about the DMR process in this hearing, Dr. Jacaruso was not aware that DMR had denied the Student's application. (December 17 at 184)
- J56 The Student was the first residentially placed student with whom Dr. Jacaruso had worked. Dr. Jacaruso's understanding of the Board's linkage obligations with respect to transition services at the time was to attempt to secure the attendance of adult service providers at PPTs and, failing that, to provide the Parent with contact information. Dr. Jacaruso now understands that the Board's obligations are more extensive than that if the adult service providers refuse to come to the PPTs. (December 17 at 224-225; 228)
- J57 The draft IEP prepared by the May Center for the May 3, 1999 PPT (B23 at 28) identifies a projected June 2004 graduation date. The portion of the May 3, 1999 PPT prepared by Dr. Jacaruso (B23 at 1-6) identifies graduation as the Student's exit criterion and identifies the need to update the Student's credits in the "education area" but does not state a projected graduation date. The IEP prepared by the May Center for this PPT (B23 at 28) states that the team has "determined that the [Student] is expected to graduate from high school" in 2004 and that the "criteria for graduation" includes the following modifications: "modified curriculum, 2:1 instructional ratios, extended school day and year." Dr. Jacaruso does not know how or why the May Center identified that as the projected graduation date. Neither the May Center nor the Parent talked about a 2004 graduation date at the PPT. (December 17 at 84-85)
- J58 Document B34 is the minutes of the May 11, 2000 PPT. B34 at pages 1-2, 5-6 and 17-19 were prepared by the Board and at pages 3-4 and 7-16 were prepared by the May Center. (October 2 at 100-04)

- J59 The Transition Planning Summary page of the May 11, 2000 PPT minutes (B-34, at 17), identified “completion of high school” as the Student’s “Statement of Transition Service Needs,” which means that the Student would be earning a high school diploma. Dr. Jacaruso does not recall any specific conversation at the May 11, 2000 PPT regarding the June 2003 projected graduation date, but because she wrote the date on the form she knows that the subject was discussed. She does not recall that the May Center or the Parent disagreed with that projected graduation date. (December 17 at 98) Dr. Jacaruso selected that date based on the Student’s progress in her academic and transitional goals and objectives and the data available at the time. (December 17 at 105-107)
- J60 Document B39 is the minutes of the May 7, 2001 PPT. B39 at pages 1-4 and 22 were prepared by the Board and B39 at pages 5-21 were prepared by the May Center. Dr. Jacaruso mailed the entire exhibit to the Parent. (October 2 at 78-80)
- J61 At the May 7, 2001 PPT, Dr. Jacaruso remembers specifically a discussion about calculating credits for a Fitch High School Diploma and of a June 2003 graduation date. (December 17 at 129-131)
- J62 Between the May 2000 and May 2001 PPTs, the Student’s circumstances had not changed so as to warrant changing the exit criterion and graduation date. (December 17 at 131-32)
- J63 Document B45 is the minutes of the June 2, 2002 PPT. B45 at pages 1-2 and 18-19 were prepared by the Board and at pages 3-17 were prepared by the May Center. B45 at 2 is the prior written notice of the action of that PPT, which is the official notice given to parents to explain the action taken by that PPT. Dr. Jacaruso’s practice was to mail out the PPT minutes on the same day as the PPT. The Parent had B45 at 3-17 at the time of the PPT, and was mailed the entire minutes by Dr. Jacaruso. (October 2 at 72-75)
- J64 The fact that the projected graduation date was left blank on the June 2002 PPT form indicates to Dr. Jacaruso that there was no discussion at that PPT of the specific date projected for graduation and that the last previously established date remained in place. (December 17 at 72)
- J65 As of the June 2002 PPT, there was no indications or reports to Dr. Jacaruso that the Student’s circumstances had changed since the May 7, 2001 PPT such that the exit criteria identified in 2001 should be changed. (December 17 at 152)
- J66 Mr. Forbes prepared the Fitch High School transcript for the Student (B64) in 2003 as part of the documentation to support decisions regarding the Student to be made at the April 10, 2003 PPT. (October 2 at 112-13)

- J67 The issue of the Student's graduation in June of 2003 was discussed with the Parent at the April 2003 PPT. The statement in the April 2003 PPT minutes that the Student was going to be exited because she "received a high school diploma and reached her 21st birthday on August 18, 2003" reflects Dr. Jacaruso's understanding that the Board's legal obligation to provide her with special education and related services terminates on graduation. However because Dr. Jacaruso knew that the Parent was having difficulty accessing adult services for the Student, the Board offered to continue to fund services through her 21st birthday even though it was not obligated to do so. She received authorization for that expenditure from Dr. Stachowicz, then her supervisor. Dr. Jacaruso never spoke with the Parent regarding the *Board's* understanding of the distinction between the Board's obligations pre June 18, 2003 (her graduation date) and post June 18, 2003. (October 2 at 136-39)
- J68 Goal 4.3 of the Student's June 6, 2002 IEP (B45 at 13) provided that the Student was to "obtain" and "maintain" paid employment in the community. Dr. Jacaruso had written a note on the form stating that paid employment in the community outside of the May Center was to be the focus of that IEP Goal. The May Center had suggested that the Student attain paid employment in the community and they would be working to implement that as an IEP goal. Dr. Jacaruso believes that the May Center made this recommendation in response to input from the Parent who was not "pleased" with the kinds of jobs the Student had at the May Center. Dr. Jacaruso considered the job skills training to be an "important component of [the Student's] transition plan." Dr. Jacaruso did not determine at the April 10, 2003 PPT whether the Student had in fact attained that goal. There was no discussion of the issue at the April 10, 2003 PPT. (December 17 at 156-63)¹²
- J69 At the April 2003 PPT, neither the Parent nor the May Center voiced any concerns about the need to start shifting the focus of the Student's programming to functioning within the Groton community. (December 17 at 164) The May Center personnel expressed no concerns about the Student's ability to generalize to Groton the skills she had learned at the May Center to apply in Brockton and did not recommend any kind of "step down" programming such as increased home visits to Groton in light of her impending return to Groton. (December 17 at 166) Based on the services the May Center was providing and the fact that no one suggested there was a need for that kind of programming, Dr. Jacaruso did not

¹² Dr. Jacaruso suggested that the requirement to obtain paid employment in the community was something the May Center would focus on in the 2002/2003 school year. However, the IEP clearly states as follows: "Currently, [the Student] holds an internal employment position as a school cleaner in addition to her volunteer position at the Museum of Science in Boston, MA. [The Student] will work toward obtaining a community job placement." The objectives under this goal include identifying potential employment positions, completing the applications, and "obtain" and "maintain" community employment. (B45 at 13)

- explore it. (December 17 at 193)
- J70 As of the April 2003 PPT, Dr. Jacaruso did not have a firm understanding of the Student's post-May Center living arrangements. (December 17 at 165)
- J71 Based on conversations Dr. Jacaruso had with Mr. Forbes and Ms. Tierney in early 2003, she was satisfied that the Student had met the criteria for a Fitch High School diploma. (December 17 at 179-180)
- J72 The May Center personnel reviewed the Student's IEP at the April 2003 PPT and said that she was making adequate progress. The Parent was present but made no comments and asked no questions. (December 17 at 181-182)
- J73 At the time of the April 2003 PPT, Dr. Jacaruso had received and reviewed CT DOE Update No. 32. It was Dr. Jacaruso's understanding before reading Update No. 32 that the term "school year" referred to an LEA's school year, or end of August of Year 1 through August of Year 2. (December 17 at 248-250) She was not aware as of April 10, 2003 of the State statute defining school year in a particular way. (December 17 at 252) Dr. Jacaruso understood at the April 10, 2003 PPT that if the Student had not been awarded a diploma on June 18, 2003, her eligibility would have terminated in August 2004. (December 17 at 255) Prior to reviewing Update No. 32, her understanding was that if the Student was not awarded a diploma on June 18, 2003, she would not be eligible for services in the 2003/2004 school year because she had turned 21 years of age between the two school years. (December 17 at 256)
- J74 The Prior Written Notice form is the official statement to the Parent of decisions made at a PPT. (January 23 at 23) Prior to the April 10, 2003 PPT, Dr. Jacaruso did not identify on the Prior Written Notice form the decision that graduation would be the Student's exit criterion because it was not until the April 10, 2003 PPT that the IEP team determined that the Student had satisfied the identified exit criterion and that the PPT had therefore concluded that the Student may be graduated. It was the decision that she would now be graduated that triggered the requirement to identify that action on the Prior Written Notice form. (January 23 at 50-56) If the Student had not met the graduation requirements, the PPT would not have recommended proceeding with graduation. (January 23 at 52)

2. The Parent

- M1 The Parent has been the Student's conservator continuously since the Student turned age 18. (October 2 at 179-80; November 10 at 208-09)
- M2 The Student cannot read a text book at the senior high school level and has limited math abilities. The course work that the Student was completing at the May Center was "simplified." At some point in the 2002/2003 school year the Parent

- came to the realization that although the Student had made progress since the surgery she was essentially still functioning at approximately the same level as she had been immediately prior to the surgery (when she was a third grader). She did not discuss her concerns regarding that realization with the May Center. (October 2 at 192-95; November 10 at 200-203)
- M3 The Student made progress over the years at the May Center in terms of her behavioral and cognitive functioning. (October 2 at 197) The Student’s behaviors and impulse control have improved since she was placed at the May Center and the placement at the May Center had not been a “waste of the taxpayer’s money.” (November 10 at 268-69)
- M4 The Parent knows how to access the legal system regarding the Student. (November 10 at 262) She retained a lawyer to assist her in securing the initial placement at the May Center at Board expense. (October 2 at 203-204) She also contacted the Office of Protection and Advocacy (“OPA”) prior to April 2003 to secure legal assistance with the DMR application process and in June or July of 2003 raised initially with OPA concerns regarding the Student’s graduation and transition planning issues underlying this hearing. (December 11 at 204-205).
- M5 Throughout her time at the May Center, the Student has resided in a group home setting along with approximately 6 other residents. Supervision was provided by 2-3 staff members around the clock. The Parent selected the May Center for the Student because the facility was like a school setting, with small classrooms and a “good reputation” and provided the Student with a small, highly structured group home model focusing on increasing community integration. (October 2 at 206-10; November 10 at 223-224) The Board funded the May Center placement. (October 2 at 204-05)
- M6 Since she was first placed at the May Center, the Student has visited her home approximately 15 to 20 times per year. Some of the visits were overnight and some lasted five to six days. (November 10 at 267)
- M7 The Parent received the May Center reports and found them increasingly difficult to read and understand. She did not ask the May Center for clarification regarding the documentation she was receiving from them or discuss her difficulties in reading and understanding them. (October 2 at 190, 195-196)
- M8 The Parent had “good access” to information about what was going on with the Student in the May Center classrooms over the years of her attendance there and never felt at any time that the May Center was not sharing with her whatever information she wanted to have about the Student’s program at the May Center. (December 11 at 19-20)
- M9 The cost of the Student’s placement at the May Center from August 19 through

and including September 8, 2003 is approximately \$10,500. (November 10 at 206-08, referencing P9) As of the November 14 hearing date, the Parent has received a bill from the May Center for \$8,674.59 covering the period August 19, 2003 through August 31, 2003. (November 14 at 160)

- M10 Shortly after each PPT, the Parent received from Dr. Jacaruso the PPT minutes and IEPs prepared at the PPT. She does not specifically recall receiving the June 2002 PPT minutes, but has no reason to believe that she did not receive them in June 2002. She would look at the front page and flip through the remaining pages but not study them in any detail. She received quarterly progress reports from the May Center and believed they were accurate. (October 2 at 217-18; November 10 at 216-20; December 11 at 112, 133-34)
- M11 As a general matter, the Parent did not talk to the Board about her concerns regarding the Student. (October 31 at 185) The Parent expected that by raising concerns with the May Center, the May Center would address those concerns with the Board. (October 31 at 192) However, when asked whether she asked the May Center to convey those concerns to the Board, the Parent did not answer the question. (October 31 at 192-93)
- M12 The Parent first learned that the Student was going to be graduating in June of 2003 at the end of May 2003 when Mr. Forbes called her to ask about whether the Student would participate in graduation ceremonies. The Parent contacted Mrs. Sproul at the CTDOE to find a way to stop the graduation because she was in a “panic” since there were no services in place for the Student. (October 31 at 181-84) She also contacted the CTDOE and spoke to Mr. Badway about what graduating with a diploma meant legally. Prior to this hearing, she never communicated with the Board regarding these issues. (October 31 at 185)
- M13 The Parent did not attend the June 5, 1997 PPT but has attended all other PPTs since that time. She would be present at the May Center for the PPTs, which lasted approximately 1 hour on average. She had opportunities to ask questions at the PPTs but does not recall asking any specific questions or talking about concerns she had at the PPTs. Dr. Jacaruso would ask at the conclusion of the PPT whether any of the participants had any further concerns or questions. The May Center would develop the goals and objectives portions of the IEPs, review them with the Parent and review the Student’s progress either before or at the PPTs. (November 10 at 209, 211-213)
- M14 The IEPs were usually developed for the Student in advance of the PPT. The Parent would attend a pre-planning meeting with May Center staff at which she was asked “if there was anything that [she] wanted to have included in the IEP” and whether she had any “concerns or suggestions.” The Parent made contributions to the discussions at these meetings. Dr. Jacaruso did not participate in these meetings. (December 11 at 225-227)

- M15 The Parent received the CT DOE Procedural Safeguards prior to or at every PPT that had been convened regarding the Student. (December 11 at 204)
- M16 The Parent contacted Dr. Jacaruso on June 17, 2003 prior to the graduation and voiced “concerns for [the Student] coming home without supports.” The Parent recalls these events because she was keeping “notes.” On August 4, 2003, she asked for a PPT to address the results of the Futures Assessment. (December 11 at 7-9)
- M17 The Parent was “shocked” when one of the May Center teachers told the Parent that the Student could earn a diploma. After that initial conversation with this teacher, which the Parent believes occurred sometime in or before 2000, the Parent did not speak again with anyone at the May Center regarding graduation or a diploma for the Student. The Student began working toward a GED but was unable to complete the work. (October 2 at 193; 214-16)
- M18 The Parent had no conversation with the Board regarding when the Student’s eligibility for special education and related services would terminate, but always understood that the Board’s obligation to provide those services would terminate when the Student turned age 21 years. The Parent did not “ever ask [the Board] for how long [the Student] would be entitled for special education and related service” but rather assumed that the Student’s entitlement for special education and related services would terminate when she turned age 21. She had that assumption since the time the Student began attending the May Center. (October 31 at 169) Prior to June 18, 2003, the Parent had no understanding of the legal consequences of the Student being awarded a diploma before she turned age 21. (October 2 at 169, 219-220; November 10 at 234)
- M19 The Parent did not tell Dr. Jacaruso that she would like to see the Student get a high school diploma. (October 2 at 220) The Parent never asked the Board about awarding the Student a high school diploma. The Parent “figured that at some point, [the Student] would be graduating from The May Center” with a “special ed diploma or a certificate” and would be “leaving” Special Education services. (October 31 at 167, 172) Once the Student received that diploma or certificate, the Parent “had no understanding of what would happen” because she “really didn’t think about it very much.” (October 31 at 173) The Parent did not assume that the Student would continue to receive special education services after that point. “I never – I did not know. I did not know what it meant for her to get a diploma.” (October 31 at 173)
- M20 The Parent attended all PPTs from 1998 onward. There was no discussion at any of them about awarding a regular high school diploma to the Student, or exit criteria or the event which would terminate the Student’s entitlement to special education and related services. (October 31 at 166-68, 178-79) There was no discussion regarding

the criteria that the Student must meet to be exited from special education and related services eligibility, no discussion of how the Student would be transitioned into adult services in Connecticut, no discussion of how her coursework at the May Center was to be converted into credit hour equivalents under the Board's graduation policy, and no discussion regarding the Student's potential eligibility to receive services beyond her 21st birthday. (November 10 at 198-99, 203)

- M21 The Parent read the PPT minutes and IEPs sent to her by the Board. She is not certain whether she read the statement in the May 7, 2001 PPT minutes (B39 at 3) that the exit criterion for the Student was graduation with a projected graduation date of June 2003. "I cannot even say that I remember exactly reading that, because it just didn't – make an impression on me. I didn't sit there and ponder the meaning of it." (October 2 at 218-19; October 31 at 171; December 11 at 116-17)
- M22 The Parent received information from the May Center regarding the grades the Student was receiving but did not ask either the May Center or the Board why those grades were being awarded. (October 31 at 174) The Parent received B35 and understood it to be a report card that the May Center was sending to the Board. (December 11 at 13-14)
- M23 The Parent understood the term "exit criteria" as used on the IEP forms to mean the point at which the Student no longer needed to have one-to-one assistance from a teacher and could learn with materials that were not "modified or adopted." The Parent never asked the Board to explain what was meant by "exit criteria" because the Parent was "pretty sure" that the Student would not meet the identified exit criteria as she understood it. (October 31 at 176-77)
- M24 At the April 10, 2003 PPT, the Parent learned for the first time that the Student was going to be graduated with a diploma in June 2003, that she would be discharged from the May Center when she turned 21 years of age and that the Board would not be funding any services for her after that point. At that time, she had no understanding of what was going to happen after the Student was discharged from the May Center and after the April 10, 2003 was "just living with the fear of not knowing what was going to happen" to the Student after she turned age 21. (October 2 at 220-224; October 31 at 179-80) The Parent was "quite shocked when [she] heard that [the Student] met the requirements" for a diploma at the April 2003 PPT but "didn't even know what a diploma meant to tell you the truth." (October 2 at 224-225) After the "end of April" the Parent had conversations with various people and came to understand that there were legal consequences to the Student getting a high school diploma and graduating. (October 2 at 224) At the April 2003 PPT, the Parent reported on her efforts to that date with respect to adult service providers such as DSS. (December 11 at 184) The Parent was not aware as of the April 2003 PPT that the Student's eligibility could extend to her 22nd birthday. (December 11 at 224)

- M25 Although the Parent was present at the April 2003 PPT where the Student's progress to date in her IEP was discussed, and although the Parent had concerns about her progress in the vocational aspects of her IEP, the Parent did not raise that concern (or any other concern she might have had) at that PPT. (December 11 at 195-96) At the end of the April 2003, when Dr. Jacaruso asked the Parent if she had any "comments or questions," the Parent did not raise any comments or questions. (December 11 at 197) She agrees that the April 2003 PPT reviewed the Student's program at the May Center and that there was a discussion that the Student was making progress in that program and that she had met the Board's requirements for award of a high school diploma. (December 11 at 196) However, at that PPT the Parent did not realize that the diploma was going to be awarded by the Board. She states that if she had realized that she would not have "sat there and said nothing" because she had seen other students graduate from the May Center and she had not "envision[ed] that there would be any kind of presentation at a high school" and was not concerned because she assumed "that because [Dr. Jacaruso] said that [the Student] would be – remain until the 21st birthday, that [the diploma] would be awarded to her when she left the May Center." (December 11 at 198; 201)
- M26 The Parent applied to the ABI Waiver program in February or March of 2003 and advised the April 10, 2003 PPT that the Student's application had been approved. The ABI Waiver Program would provide companion services, independent living and vocational skills training, and services provided by a neurocognitive behavioral specialist. The Student began receiving ABI services in September 2003 and currently has a companion 40 hours/week during the day who works with the Student and takes her out into the community. The worker has 24 years of experience. The Parent expects that the remaining services offered through the ABI Waiver Program would begin to be provided in December 2003. (November 10 at 238-244)
- M27 The Parent first learned in June or July 2003 that the Student may be eligible to receive special education and related services beyond her 21st birthday under Connecticut law when she spoke to a representative of the OPA. (November 10 at 199)
- M28 Prior to the April 2003 PPT, the Parent and Dr. Jacaruso had already discussed an assessment by Futures and reached agreement on that assessment, so that issue was not discussed at the PPT. The Parent learned about Futures, Inc. through InfoLine and had been in contact with Ms. Wickham starting in late 2002 and by February of 2003 had asked Ms. Wickham to do the assessment. After these initial contacts between the Parent and Ms. Wickham, the Parent requested that Ms. Wickham speak directly to Dr. Jacaruso and make all of the arrangements for the assessment. (December 11 at 184-186; 192)
- M29 The Parent wanted the Futures assessment to be done because "it would show where [the Student's] weaknesses were" and "to check vocationally, because [the Parent]

was concerned that [the Student] had never had a job outside of – a paying job outside of the May Center. It was something that [the Parent had] talked about at the May Center, and it just didn't happen, so [the Student] had no experience, and [the Parent] knew that.” Prior to this hearing, the Parent “never” voiced that concern to Dr. Jacaruso. (December 11 at 187)

- M30 On June 13, 2003, Ms. Wickham met with the Parent as part of the Futures, Inc. assessment and the Parent “mentioned to her that [the Board] was giving [the Student] a diploma.” Ms. Wickham advised the Parent that the Student was still eligible for another year of services through the Board, at which point the Parent then contacted CT DOE (specifically Norma Sproul) about the Board’s plan to graduate the Student on June 18, 2003. At that point, the Parent started to “feel a sense of panic” and began to wonder whether the Student in fact was going to be receiving a regular high school diploma. She then contacted the OPA attorney who had been assigned to assist with the DMR process, but the OPA attorney could not provide assistance and referred the Parent to the OPA staff who handle educational issues, in particular Elizabeth Daley. The Parent first met with Ms. Daley on July 17, 2003. Ms. Daley reportedly advised the Parent that the Student’s transition planning was inadequate and that the IEPs were “the worst IEPs” Ms. Daley had “ever seen.” (December 11 at 206-211)¹³
- M31 The Parent began talking with May Center representatives before June 2002 about post-May Center planning, about her concerns with transition planning for the Student being inadequate and about her concern that the Student was “just going to be dropped” a circumstance she was “extremely anxious about.” (October 31 at 186-87) She was not given any answers from the May Center and “[t]here was always some kind of inference that it was my responsibility.” (October 2 at 227; October 31 at 186-88)
- M32 More specifically, prior to the start of the PPTs, the Parent would ask May Center representatives about transition planning and what the plan was for after the Student was discharged from the May Center. The Parent was very concerned about that issue since 2000 and was “very frustrated” with the May Center’s failure to address her concern. She did not receive any satisfactory answer from the May Center, but concluded based on their responses to her question that it was her responsibility. She assumed further that because it was her responsibility, she could not raise the issue with the Board. Hence she never raised her concerns regarding transition planning with the Board prior to commencing this due process proceeding. There

¹³ The Parent could have but did not subpoena Ms. Daley to testify. The Parent’s testimony as to Ms. Daley’s statements regarding the Student’s educational programming is considered by the Hearing Officer to be inadmissible hearsay if offered for the truth of the matter asserted. The Hearing Officer is considering this testimony only with respect to the Parent’s state of mind and knowledge.

was no way for the Board to know of her concerns because she did not share them with the Board. (November 10 at 226-231, 234-38, 247-48)

- M33 Before the June 2002 PPT, Dr. Jacaruso referred the Parent to DMR. (December 11 at 117-119) The Parent completed the DMR application in November 2002 when the neuro-psychological examination (the LifeSpan Evaluation) required by DMR was completed. (December 11 at 155) The Parent learned before the April 2003 PPT that DMR had determined that the Student did not meet their eligibility criteria. (December 11 at 120-21)¹⁴
- M34 In early 2003, Dr. Jacaruso referred the Parent to the Bureau of Rehabilitation Services (“BRS”). However, BRS “would not even look at [the Student’s] case until she returned to Connecticut.” (December 11 at 161-162; 164) BRS does not serve people who are legally blind and BESB provides limited services. (October 2 at 231-232)
- M35 The Parent was given referrals to DMR, BRS and BESB by Dr. Jacaruso and contacted them without success. (October 2 at 227) She contacted the Department of Children and Families (“DCF”). (October 2 at 229) In April 2003 she applied to DSS and the Student has since been determined to be eligible for services from DSS under the ABI Waiver Program. (October 2 at 230-231) The Parent also contacted Project Genesis, which is an agency that hires people to act as companions and living skills trainers. (December 11 at 169) The Parent did not communicate with the May Center or the Board about her own efforts to secure adult services. (October 31 at 195-196)
- M36 At the PPTs the Parent had opportunities to ask questions about the transition plans. Although she thought the plans in the documentation were vague and “provided little information” she did not ask any questions about them. Although she had these concerns as early as the May 2000 PPT, she kept them to herself because she did not wish to “insult anyone at the meeting.” Notwithstanding her concerns, she did not ask for any changes to be made to any of the IEP goals or objectives, the transition plan or voice any concerns regarding the vocational components of the IEPs. She did not voice her concerns to the Board either outside of or at a PPT. (November 14 at 200-02; 208-09; 219-20)
- M37 The Parent did not raise with the Board any concerns at the June 2002 PPT regarding transition planning, but believes that the Board understood her concerns about transition planning before the June 2002 PPT because of the questions that she would ask at the PPTs. “I would ask what’s [the Student] going to do? What can she do? What types of work can she do?” (October 31 at 188-91) The Parent

¹⁴ Following a DMR hearing process, she was advised in June 2003 that the Student was not eligible for DMR services. (October 2 at 228-229)

- believes that the Board knew at the April 2003 PPT that she had concerns regarding transition planning. (October 31 at 189)
- M38 Prior to this hearing, the Parent believed that the transition services that the May Center was implementing were “okay” and she relied on their expertise. (October 31 at 193)
- M39 The Parent knew that someone at the May Center was responsible for the Student’s transition planning but could not identify that person at the hearing. (November 10 at 231-233)
- M40 In the Parent’s view it was reasonable for the Board to rely on the May Center with respect to academic and behavioral IEP objectives, but not for transitional planning. (November 10 at 251, 253-54)
- M41 Starting at the end of July, the Parent began writing to Mr. Dowaliby to complain about the lack of transition planning that had been done for the Student and in August raised the issue about the lack of transition planning with the Board for the first time. (December 11 at 215-217)
- M42 The Parent disagrees with Ms. Wickham’s statement that the Student had no linkages with physicians in CT. The Student has five physicians in CT but the Parent had not yet identified a GP to replace the Student’s pediatrician. The Parent believes Ms. Wickham based her statement on information provided by the Student which was not accurate . (December 11 at 232-33)
- M43 The Student’s educational needs did not change in any significant way between the May 2001 and June 2002 PPTs. The Parent observed subtle changes in the Student such as a “slowing down in her quickness as far as her math abilities,” but these changes were not “major” and did not cause her concern. She may have told the Student’s teacher at the May Center about her concerns, but did not tell the Board and did not raise the issue at the June 2002 PPT. (December 11 at 121-24)
- M44 The Parent learned about the ABI Waiver Program either through the May Center or InfoLine and in early 2003, prior to the April 2003 PPT, contacted Barbara Nadeau at that Program. (December 11 at 157-59) Although the ABI Waiver Program did not require that the Student graduate before they would begin providing services to her, that program would not provide services until she returned to Connecticut because Medicaid would not become effective until she returned to Connecticut. (December 11 at 10-11)
- M45 In July of 2003, a “pre-planning meeting” of adult service providers organized by DSS took place at the Parent’s home. Representatives from BESB, Project Genesis, and the ABI Waiver Program were present. The purpose of the meeting was to develop a proposal to submit to the State to discuss how the ABI Waiver

Program would be able to help the Student. The Parent testified that the meeting ended “abruptly” when the representative from the ABI Waiver Program, after reviewing the Student’s records at the meeting, concluded that the Student was entitled to three more years of services from the Board because no transition planning had been done for her. (December 11 at 171-172)¹⁵ The Parent believes that a proposal or plan was developed for the Student and submitted to the State by DSS in August or September 2003. The Parent does not have a copy of that plan. (December 11 at 173-180)

- M46 In the 2002/2003 school year the Parent became dissatisfied with the lack of attention that the BESB representative who would be working with the Student as an adult service provider was paying to the Student and complained to his supervisor, following which starting in June or July of 2003, the BESB representative became much more active. (December 11 at 165, 168)
- M47 The Board did not assist the Parent in contacting DMR or DSS or participate in any meeting with DMR or DSS and there were no services in place for the Student when she left the May Center. (December 11 at 230-31)

3. George Dowaliby

- D1 Mr. Dowaliby is the CTDOE’s Bureau Chief, Bureau of Special Education. He is responsible for overseeing the implementation of the requirements and mandates of the IDEA and Connecticut law with respect to the provision of special education and related services to eligible Connecticut children. (October 31 at 61-63)
- D2 The CTDOE periodically issues Updates to advise Local Educational Agencies (“LEAs”) of developments in the law or CTDOE interpretations of compliance requirements with respect to the IDEA and its regulations, and Connecticut’s special education statutes and CTDOE Regulations. (October 31 at 63)
- D3 CTDOE Update # 32 was issued on or around March 26, 2003. The Board would have received a copy of Update # 32 from the CTDOE shortly after it was issued in the normal course of business. (October 31 at 70-71, 77)
- D4 Mr. Dowaliby is the author of the following portion of Update # 32:

The Connecticut statutes define the fiscal and school year as commencing

¹⁵ The Parent could have but did not subpoena these individuals to testify. The Parent’s testimony as to the statements of these individuals regarding the Student’s educational programming is considered by the Hearing Officer to be inadmissible hearsay if offered for the truth of the matter asserted. The Hearing Officer is considering this testimony only with respect to the Parent’s state of mind and knowledge.

July 1 and ending June 30 ([Conn. Gen. Stat. §] 10-259). In Connecticut, regulations state that students with disabilities who require special education are eligible to receive special education and related services until receipt of a high school diploma or “until the end of the school year in the event that the child turns 21 during that school year” ([CTDOE Regulation §] 10-76d-1(a)(7)), whichever occurs first. For example, a student with disabilities eligible for special education and without a high school diploma who turns 21 between July 1, 2003 and June 30, 2004 is eligible to receive services, as recommended by the PPT and stated on the IEP, through June 30, 2004. If a student turns 21 prior to July 1, 2003, eligibility for services would end June 30, 2003.

(October 31 at 70-71)

- D5 This information was included in Update # 32 following an inquiry Mr. Dowaliby received in late February or early March 2003 asking for confirmation as to the meaning of the term “school year” as used in CTDOE Regulation 10-76d-(a)(7) That inquiry was not made by the Board or anyone representing the Board. (October 31 at 70-72, 76-78)
- D6 In responding to that inquiry, Mr. Dowaliby determined that some LEAs interpreted the term “school year” to mean @ September 1 (Year 1) to @ August 30 (Year 2), whereas other LEAs interpreted it to mean July 1 (Year 1) to June 30 (Year 2) and still others to mean @ September 1 (Year 1) to June 30 (Year 2). (October 31 at 72-76)
- D7 Mr. Dowaliby concluded that the term “school year” in CTDOE Regulation 10-76d-(a)(7) had the meaning stated in Conn. Gen. Stat. § 10-259: July 1 (Year 1) to June 30 (Year 2). He issued this portion of Update # 32 to clarify the practice in the field and assure that the Regulation was being consistently applied. (October 31 at 71)
- D8 Mr. Dowaliby was not aware of any prior CTDOE guidance on that subject and no further guidance has been issued by the CTDOE on this topic since Update # 32, which reflects the current CTDOE interpretation. (October 31 at 81-82)
- D9 Mr. Dowaliby has not had any contact with the Board regarding Update # 32, the interpretation of the term “school year” as used in CTDOE Regulation 10-76d-(a)(7), the Student or this due process hearing. (October 31 at 70-72, 76-78)
- D10 The PPT, rather than the CTDOE, determines whether the appropriate exit criterion for any particular eligible child is turning age 21 or earning a high school diploma. Nothing in Update # 32 concerns that specific issue. (October 31 at 80-82, 85)

4. Michael Forbes

- F1 Mr. Forbes is a guidance counselor at the Board's high school. He has been employed by the Board since the summer of 2000. Prior to working for the Board, he had worked for 27 years as a classroom teacher and 1 year as a guidance counselor at a school district in Rhode Island. He is a certified school counselor in Connecticut, but is not a special education teacher and has never taught as a special education teacher. Over his 27 years of teaching, he did teach many students who were receiving special education and related services, and attended PPTs. Mr. Forbes earned a B.A. in secondary education in 1972 and an M.A. in secondary education in guidance and counseling in 1977. (October 31 at 14-17; January 23 at 59-61)
- F2 His general responsibilities as a guidance counselor include participating in PPTs and Section 504 meetings and assisting students on his case load to meet the Board's requirements for graduating with a regular diploma. Mr. Forbes has a case load of approximately 250 students, but does not know what percentage or how many of them are eligible children receiving special education and related services. (October 31 at 13, 17, 101; January 23 at 62)
- F3 One of Mr. Forbes' responsibilities is to assist in determining the placement of non-special education students who transfer into the Board's high school. That process involves reviewing the transferring student's transcript from the sending LEA to determine what credit and course requirements the transferring student has completed to determine what remaining courses and credits the transferring student needs to complete to attain a diploma from the Board. Using a hypothetical of a non-special education student transferring into the Board's high school from Pensacola, Florida at the beginning of the 11th grade, Mr. Forbes described the process as follows: He meets with the student and the student's parent to review the Pensacola transcript. Using the course title descriptions on the Pensacola transcript, Mr. Forbes would determine what courses at the Board's high school the student must take to earn a diploma on time. In completing this review, Mr. Forbes does not review the specific content of the courses taken by the student in Pensacola, but will ask the student about the content of a course or contact Pensacola for more information if it is unclear to Mr. Forbes from the course title what content that course covered. Based on this process, Mr. Forbes will recommend a placement and scheduling of coursework for the transferring student. (October 31 at 15-24, 27-30, 41-45, 51-55)
- F4 During the course of this review, Mr. Forbes will also review the student's grades. If the student had earned an "F" in a Pensacola course, the student would receive no credit from the Board for that course. Information regarding grading would be used to help Mr. Forbes formulate a recommendation regarding placement. Mr. Forbes noted that there might be a myriad of reasons why a student might earn an "F," only one of which is inability to master the course content. To receive credit toward the Board's diploma requirements, the transferring student must have earned a "D" or above in Pensacola. (October 31 at 29-30, 59, 117, 125-26)

- F5 The Student was assigned to Mr. Forbes' caseload in the summer of 2001 when her prior guidance counselor, Ms. Dori Smith, left the Board's employ. Mr. Forbes has never met the Student, has not reviewed any evaluation reports that have been done for her, understands that she has disabilities consistent with or reflecting a traumatic brain injury, is aware that she is placed at the May Center, does not know precisely what the May Center is, has never attended a PPT for the Student, does not know how severe the Student's disability is, does not know the Student's competencies in any subject, and had limited contact with the Parent prior to April 10, 2003. (October 31 at 18, 103-05, 108-09, 118; January 23 at 64-67)
- F6 His responsibilities with respect to the Student were to continue to calculate her progress toward completing credit hour and distribution requirements using the system created by Ms. Smith for converting her May Center credit hours to Fitch High School credit hour equivalents reflected in B69, a memorandum prepared by Ms. Smith to describe the process. (January 23 at 65-67, 107) In the late fall of 2002 and early spring of 2003, at Dr. Jacaruso's request, Mr. Forbes began determining whether and to what extent the Student had completed credit hour and distribution requirements to earn a diploma from the Board. He did this utilizing Ms. Smith's process. Mr. Forbes did not have any contact with Ms. Smith regarding the Student. He contacted the May Center to obtain up-to-date credit hour and grade information regarding the Student and applied the formula Ms. Smith had utilized to determine whether the Student had met the Board's credit hour and distribution requirements to earn a diploma. (October 31 at 106, 109-10, 112-14, 119-20)
- F7 In determining whether the Student had met the credit hour and distribution requirements, Mr. Forbes reviewed various documents and information provided by the May Center, and conferred with May Center representatives and Dr. Jacaruso in January, February and March of 2003. The documents he reviewed included B63, B65, B66, B67, B70, B71, B72 and B74, which also reflect communications he had regarding these matters. (January 23 at 67-81, 88-89) Mr. Forbes also received information from the May Center in late May 2003 (B74) indicating that the Student had in fact completed the remaining credit hour and distribution requirements that he had identified were outstanding prior to the April 10, 2003 PPT. (January 23 at 113)
- F8 The only case in which Mr. Forbes has performed the credit hour/distribution determination for a student who was not transferring in from or attending a public school or a private parochial school has been the Student. (October 31 at 106-07)
- F9 Mr. Forbes does not know the content of the May Center courses taken by the Student. He was aware generally of the content of the curriculum the Student was taking from his review of the materials and information provided by the May Center, but he does not know specifically how the content of that curriculum

matched up to the comparable courses at Fitch High School. (October 31 at 114-16, 124-25, 131, 153; January 23 at 104-105)

- F10 Mr. Forbes created the transcript marked as B64 and the document marked as B63, which summarizes information provided by the May Center. He had grade and course information, as provided by the May Center to him and previously to Ms. Smith. (October 31 at 114-16, 124-25, 131, 153) Exhibits B67-B68 are May Center documents. Exhibit B69 is a memorandum produced by Ms. Smith outlining the credit hour conversion process for the Student. (October 31 at 138-39, 160-62)
- F11 Mr. Forbes does not know whether any of the documents identified as B65 to B68 had been sent to the Parent. (October 31 at 162-63) He did not discuss those documents with the Parent or the May Center. He did not discuss with the Parent the process he was using to determine credit hour/distribution credit for the Student. (October 31 at 164) The May Center was aware that he was gathering information to determine whether the Student had earned her diploma for graduation in 2003. No one at the May Center advised him that it was inappropriate to graduate the Student. At no point in his communications with her in late 2002 or early 2003, did Ms. Tierney of the May Center indicate to Mr. Forbes any “concerns or worries about [the Student] getting a diploma.” (January 23 at 87) He received no contacts or inquiries from the Parent or anyone acting on behalf of the Parent regarding the Student’s eligibility for graduation. (October 31 at 132-34)
- F12 Mr. Forbes contacted the Parent in May and June of 2003 to inquire as to whether the Student would participate in the graduation ceremony. The Student’s step-sister was also graduating in June of 2003. (October 31 at 126-29)
- F13 The requirement that students complete 0.5 credits in Civics stated in Board policies (B61) and the 2003 Fitch High School course catalog and handbook (B62) did not apply to students graduating in 2003 but rather would become effective for the class of 2004. To the extent those documents state that the 0.5 credit hour civics requirement applied to students graduating in the class of 2003, the documents are in error. (October 31 at 136-38, 140, 144-45; (January 23 at 90-91, 93, 96, 100)
- F14 The Student was the only student in Mr. Forbes’ caseload who had been placed outside of the district. (January 23 at 107)
- F15 A student can satisfy the requirement to take various electives by taking additional credits in required courses (such as mathematics) beyond the number of credits they are required to take in those courses. (January 23 at 124-25)

5. Ernest Leo Pancsofar, Ph.D

- P1 Ernest Pancsofar, Ph.D., is currently Associate Professor and Chair of the Department of Special Education at Central Connecticut State University. He is President of the Faculty Governance Council in the School of Education. The Council oversees certification issues for both students and their certifying body, the NAESC (which assures quality standards of courses offered at member schools) and the National Association of Colleges of Teacher Education (“NCATE”), which certifies or credits teacher educators. (November 10 at 10-12)
- P2 Dr. Pancsofar earned a Ph.D. in Special Education in 1982, a Masters in Community Health Education, and a Bachelor’s in Special Education. His Ph.D. specialty was in working with individuals with severe disabilities in the area of vocational programming and transition planning. (November 10 at 12)
- P3 Dr. Pancsofar was retained in September 2003 to review the Student’s educational records. (November 10 at 12, 139, 142) He reviewed the documents marked as Board and Parent exhibits through the November 10 hearing date as well as the transcripts of the October 2 and October 31 hearing dates. (November 10 at 54-58) He spent about 20-25 hours reviewing the records. (November 10 at 146) He consulted some professional publications regarding accreditation standards and also spoke with Anne Louise Thompson at the CTDOE regarding CTDOE Update # 32. (November 10 at 56) He researched whether Carnegie Credits are to be awarded based solely on credit hours or whether the award had to be based on course content. He also researched whether Fitch High School (the Board’s high school) was accredited by NAESC and determined that it was. (November 10 at 61) He did not meet, speak or correspond with the Student, the Parent or the May Center. (November 10 at 56, 135, 137-38)
- P4 The fact that the Student’s curriculum at the May Center was modified from the normal Board curriculum requirements would not make it inappropriate to award her a regular high school diploma. The propriety of awarding a regular high school diploma would depend upon the nature of the modifications. Some modifications (such as extra time on tests or books with enlarged print) would not impact the ability to translate her performance into the equivalent course work at Fitch High School. Dr. Pancsofar could not determine whether the Student’s curriculum at the May Center had been so modified that it bore little to no relationship to the curriculum at Fitch High School. Dr. Pancsofar knows of the May Center. (November 10 at 66-67, 72)
- P5 Dr. Pancsofar applied guidelines or standards regarding transition planning issued by the CTDOE in formulating his opinion regarding the Student’s programming. (November 10 at 69-70)
- P6 The way in which a goal or objective is to be determined for transition planning purposes depends on the anticipated future environment in which the individual

- will function. There should be some type of assessment of anticipated work and living environments, and current skills and a determination of what needs to be done to bridge the gap between current skills and needed skills, and in particular what supports need to be put into place to enable the person to function as independently as possible in the anticipated environment. (November 10 at 68, 71)
- P7 Based on his review of the records, the transition planning for the Student over the entire period that she was at the May Center was “inadequate” because no person centered competency assessment identifying future goals and aspirations for the Student to which the IEP goals and objectives and transition plans were oriented had been performed. (November 10 at 73-75) Dr. Pancsofar could not identify any coordinated plan for transferring any of the in-class skills that the Student acquired to her anticipated post-May Center environment so that she could function independently in that environment. (November 10 at 75-78, 90, 92 113) The Futures, Inc. assessment is not the type of assessment that should have been performed for that purpose. (November 10 at 79) Given these inadequacies, it was not appropriate to award the Student a regular high school diploma or graduate her, since those events terminated her eligibility. (November 10 at 105, 114)
- P8 Dr. Pancsofar has not participated in any calculations of awarding Carnegie Credits at high schools. (November 10 at 121) The clock hour calculations performed by Mr. Forbes appear to be accurate. (November 10 at 123, 173)
- P9 It was “unclear” from reading the records whether the courses at the May Center matched the standards in the handbook of Fitch High School. (November 10 at 124-25) Mr. Forbes should have contacted the May Center to verify the content of the courses the Student was taking at the May Center to determine the equivalency to Board course requirements. (November 10 at 126, 175) Dr. Pancsofar’s opinion is based in part on his belief that the May Center is not accredited to the same standards as the Board’s high school. (November 10 at 126-27)
- P10 Dr. Pancsofar cannot opine on whether it was appropriate for the Student to even be working toward a regular high school diploma or to utilize that as the exit criterion because he did not “know [the Student] well enough to make that determination.” (November 10 at 128-29)
- P11 Dr. Pancsofar agreed that it would have been “meaningful” in reaching his opinions to know that the Parent had believed throughout the entire period that the Student was at the May Center that the Student was making progress and was “pleased with the May program.” (November 10 at 145-46)
- P12 Dr. Pancsofar is not certified to teach in a high school or elementary school. (November 10 at 152)

- P13 Dr. Pancsofar agrees with the LifeSpan report that the Student will need some type of assistance, although not necessarily 1-to-1 assistance 24 hours/day. (November 10 at 169)
- P14 The person-centered model or approach for transition planning advocated by Dr. Pancsofar is one of several approaches that could be used. (November 10 at 190)
- P15 Dr. Pancsofar was asked to do an educational evaluation of the Student's school records to determine whether an adequate transition plan had been in place. He was not asked to do an educational evaluation of the Student and did not review the documents to render an opinion as to the adequacy of the non-transition planning components (and, specifically, the academic and behavior management components) of her IEPs. (December 11 at 22-23; 25; 28-29; 33-34) His testimony on November 10, 2003 was limited to "programming and support" only in the area of transition planning. (December 11 at 22-23) Nonetheless, he concluded that components of the IEPs were beneficial even though the IEPs overall were "inadequate" because of the deficiencies in the transition planning components, among other things the framing of the objectives in terms of "merely stating opportunities to do something." (December 11 at 25, 27-28, 35, 87) The Student did receive educational benefits at the May Center that were more than trivial. (December 11 at 27-28) It would not be appropriate to utilize graduation as an exit criterion for any student with disabilities of the nature and extent of the Student's disabilities because of the complexity of the transition planning needs of such a student. (December 11 at 30, 59-62)
- P16 Dr. Pancsofar does not know whether NAESC had any specific standards applicable to calculating credits for a student with a modified curriculum pursuant to an IEP and cannot say one way or the other whether the Board's actions in converting the Student's May Center credits to Board high school credit equivalents was or was not consistent with NAESC standards. (December 11 at 55-56)
- P17 The transition planning process involves performing assessments and formulating the IEP and linkages to increase the probability that a student will successfully transition from school to work, recreation and community living. IEP goals and objectives are written to foster that advancement. (December 11 at 64) The process should be outcome rather than skill acquisition focused, which means that the PPT has to look at the anticipated outcomes that a person would achieve as a result of acquiring those skills – in other words, if acquiring mobility skills is the goal, what is the reason for acquiring the mobility skills? (December 11 at 70-71)
- P18 There is no required format for a transition plan. (December 11 at 64-65)
- P19 The CT guidelines for assessment of transition service needs do not mandate a

particular assessment method. Any assessment method used should have three components – identification of the student’s interests, assessment of current skills and determination of what the student, the parent and services providers view as the student’s foreseeable future circumstances. Based on his review of the documents, Dr. Pancsofar agrees that the Student’s interests were identified, there were determinations of her current skill levels annually through the IEP process, and a statement of the vision for the Student’s future circumstances. (December 11 at 93-94) He does not “know enough about [the Student] personally to be able to determine” the accuracy of the information about her set forth in the documentation. (December 11 at 96) What was missing was a “professionally adequate identification of [the Student’s] skill levels in the area of vocational, independent living and community participation” to determine what supports are needed to bridge any gaps to permit her to function in the anticipated post-school environment. (December 11 at 95) Since for a student with disabilities of the type that the Student has all of the components of the IEP are interrelated, absent this type of functional assessment, the IEP as a whole would be inadequate. (December 11 at 98) This is not to say, however, that all of the IEPs were “not appropriate.” (December 11 at 99)

6. Kathleen Wickham

- W1 Ms. Wickham has a B.A. in psychology, an M.A. in vocational special education and a certification to teach special education in Connecticut. Vocational special education is activities a student would be trained to do toward independent living, primarily in the areas of vocation, survival in their communities and independent skills. (November 14 at 4-5).
- W2 Ms. Wickham has been employed at Futures, Inc. (“Futures”) since 1996, first on a part-time basis and then on a full time basis. During that period she taught special education students in public school classrooms in collaboration with their classroom teachers and performed approximately 30 assessments of individuals with disabilities, including approximately 20-30 evaluations of individuals with disabilities comparable to those of the Student. (November 14 at 5-6; 15) She attended PPT meetings to assist in the development and implementation of transition plans for those students. (November 14 at 10-11; 19) Prior to working at Futures she worked at the Middlesex Association for Retarded Citizens, a private agency, for 11 years with adults in a community setting working on independent living skills. (November 14 at 7-9)
- W3 Futures was retained by the Board to perform a competency based community assessment of the Student’s transition skills, focusing on her independent living and community participation. Futures was not asked to do a vocational transition assessment. (November 14 at 35-36; 38, 89) Ms. Wickham reviewed the Student’s most recent IEP and the LifeSpan Evaluation, interviewed the Student and the Parent, and spent approximately 34 hours with the Student on six separate

occasions in July 2003 in various settings in Groton to assess the Student's competencies. (November 14 at 6, 45, 47, 57-58) She did not need to look at any other records to complete her assessment. (November 14 at 47) Her report was marked as P14. (November 14 at 35) She did not contact anyone at the May Center because her task was to assess the Student's functioning in Groton and there was no need for her to contact the May Center. (November 14 at 45, 68, 83) In performing her assessment, Ms. Wickham assumed that the Student would be living with her family (November 14 at 68) The Student demonstrated appropriate problem solving skills in various areas observed by Ms. Wickham, and was able to formulate solutions with prompting and on occasion without. (November 14 at 119, 124-25)

- W4 The assessments performed by Ms. Wickham evaluate the individual's vocational experience and independent living or community participation skills to determine what supports they will need and then develop a plan to help the individual attain the desired level of independent functioning. (November 14 at 17-18)
- W5 One hundred percent of the referrals Futures receives come from LEAs. Futures has been retained by the Board on two prior occasions. (November 14 at 28)
- W6 Ms. Wickham's assessment of the Student is in effect a snapshot of the Student's functioning at that point in time. (November 14 at 99) In her evaluation, Ms. Wickham determined that there were some areas in which the Student had adequate skills and experience, other areas in which she had had limited experience with the potential to learn the required skills (such as preparing a meal) and some areas in which she had had no skills or experience (such as banking, budgeting, knowledge of resources in her community, and interacting safely with people she meets in the community). In a number of areas, the Student had fewer skills than Ms. Wickham had expected the Student to have. (November 14 at 49-56; 136-37) Ms. Wickham cannot state whether the Student could perform these tasks at the May Center or how well she could perform them. (November 14 at 52; 84-85) The Student does have the capacity to learn the skills necessary for her to function independently in Groton. (November 14 at 101) Ms. Wickham cannot state with certainty whether the Student will be able to develop the capacity to live independently in an apartment with a similar aged peer or to be mobile in her community without adult supports. (November 14 at 102-3, 113-15) The Student will need a support system for the foreseeable future but Ms. Wickham is unable to state what level of support will be required. (November 14 at 138)
- W7 A good transition plan establishes linkages with agencies and individuals who could support the Student in Groton. Ms. Wickham expected the Student to have had some community connections and friends in Groton, but found that the Student did not have any such connections or links. (November 14 Test. at 62, 71) In Ms. Wickham's opinion, the Student was not "properly prepared for life after school." (November 14 at 78)

W8 The Student was looking forward to leaving the May Center and returning to Groton. She had some general apprehension about returning to live with her family and was aware of some of the stumbling blocks she may encounter in achieving that goal. She is capable of developing a plan to deal with those obstacles with assistance from an adult. (November 14 at 105-08)

CONCLUSIONS OF LAW

1. As the party challenging the educational program offered by the Board, the Parent has the “burden of going forward with the evidence” which means that she must present credible evidence to establish at the least a *prima facie* case in support of her claims. If the Parent meets that burden, the Board must then prove the “appropriateness” of the Student’s program by a preponderance of the evidence. See CTDOE Regulation § 10-76h-14(a).¹⁶

GRADUATION ISSUES GENERALLY

2. If the Student, who turned 21 years of age on August 18, 2003, was not properly graduated with a regular high school diploma on June 18, 2003, she remained eligible to receive special education and related services under the IDEA through August 18, 2003 and under Connecticut law potentially through June 30, 2004. If, on the other hand, she was properly graduated with a regular high school diploma on June 18, 2003 then, as a general matter, as of June 18, 2003 she was no longer entitled to receive special education and related services from the Board under either the IDEA or Connecticut special education law.

Discussion. Under the IDEA, the Board is required to provide FAPE to the Student “through” twenty-one years of age or until she attains a “regular high school diploma,” whichever comes first. See generally IDEA, 20 U.S.C. § 1412(a)(1)(A)-(B); IDEA Regulations 34 C.F.R. §§ 300.121, 300.122(a)(3)(i); 64 Fed. Reg. 12556 (1999) (LEA has no legal obligation to provide services beyond graduation with a regular high school diploma). The “regular high school diploma” exception does not apply, however, to an eligible child who graduates with a special education diploma or a certificate of mastery/completion. IDEA Regulation 34 C.F.R. § 300.122(a)(3)(ii).

Under Connecticut law, the Board is obligated to provide special education and related services to the Student until she is “graduated from high school or reaches age twenty-one,

¹⁶ “[F]airness requires that the party attacking [an IEP jointly developed by the parties] should bear the burden of showing why the ... IEP is not appropriate.” *John Doe v. Defendant I*, 898 F.2d 1186, 1191 (6th Cir. 1990) (citation omitted).

whichever occurs first.” Conn. Gen. Stat. § 10-76d(b). However, CTDOE Regulation § 10-76d-1(a)(7) provides that:

Each [LEA] shall provide [FAPE] for each school age child requiring special education and related services . . . (a) . . . (7) Such education shall be ***continued until the end of the school year in the event that the child turns twenty-one during that school year.***

(Emphasis added.) Conn. Gen. Stat. § 10-259 defines “school year” as the period July 1, Year 1 to June 30, Year 2. Through Update # 32, issued on March 26, 2003, the CTDOE clarified implementation issues related to CTDOE Regulation § 10-76d-1(a)(7), specifically stating by way of an example that an eligible child who turns 21 years of age between July 1, 2003 and June 30, 2004 and who has ***not*** been awarded a regular high school diploma as of June 30, 2003 remains eligible to receive special education and related services through June 30, 2004. (D2, D4, D7)¹⁷ Accordingly, if the Student had not been graduated with a regular high school diploma before June 30, 2003 (the end of school year 1) because she will turn 21 years of age between July 1, 2003 and June 30, 2004 (*i.e.*, during school year 2) she is entitled to receive special education and related services support potentially through June 30, 2004 (the end of school year 2).

3. The Student’s IEPs did not identify graduation with a regular high school diploma as either an IEP goal or objective. (11, 12, 14, 15, 21, 23, 24, 26, 27) Rather, graduation with a regular high school diploma was identified as the criterion for terminating her entitlement to special education and related services (the Student’s “exit criterion”). Where graduation with a regular high school diploma is identified as an eligible child’s exit criterion but is not an IEP goal or objective, that child is properly awarded a regular high school diploma if:

A. the choice of graduation with a regular high school diploma as her exit criterion comports with the requirements of *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 206-07 (1982);¹⁸

¹⁷ Citations in this format are to Findings of Fact.

¹⁸ Under the *Rowley* standard, the Student has received a FAPE if her IEP, including her identified exit criterion and individualized transition plan (“ITP”): (1) were developed in compliance with the IDEA’s procedural requirements; and (2) were “reasonably calculated to enable [her] to receive educational benefits,” or, in other words, “likely” to produce more than trivial or *de minimis* progress. See, e.g., *M.S. v. Bd. of Educ. of the City School Dist. of the City of Yonkers*, 231 F.3d 96, 103 (2nd Cir. 2000).

- B. she satisfied the applicable credit hour and distribution requirements for earning a regular high school diploma under Connecticut law and publicized LEA policy; and
 - C. she made something other than *de minimis* or trivial progress on completing her IEP goals and objectives.¹⁹
4. If the award of a regular high school diploma to the Student on June 18, 2003 does not satisfy these requirements, then, depending on the nature of the deficiency:
- A. the Student's graduation can be invalidated and her diploma can be rescinded,²⁰ in which case the Student
 - B. **remained** eligible to receive special education and related services from the Board under the both the IDEA and Connecticut law through her twenty-first birthday on August 18, 2003; and
 - C. therefore **remained** entitled under Connecticut law to special education and related services potentially through June 30, 2004.
5. The Student may have properly been graduated on June 18, 2003 notwithstanding that she would continue to benefit from special education and related services support, since neither the IDEA nor Connecticut law require that the Board

¹⁹ See, e.g., *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 (2nd Cir. 1997) (requirements of the IDEA are not satisfied if an IEP affords the opportunity for only “trivial advancement”); *Hall v. Vance County Board of Education*, 774 F.2nd 629, 630 (4th Cir. 1985) (same); *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988) (Congress “envisioned that significant learning would transpire in the special education classroom”). The child’s capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit on the child. Objective factors such as the achievement of passing marks and advancement from grade to grade can be indicators of meaningful educational benefits. See, e.g., *Mrs. B.*, 103 F.3d at 1120; *Hall*, 774 F.2d at 635.

²⁰ See, e.g., *Carver Public Schools*, 102 LRP 8194 (SEA MA 2000) (if the award of a diploma is improper, the diploma may be rescinded and the LEA directed to provide further educational services and/or reimburse the parent for services they had obtained on their own); *Cedarburg School District*, 36 IDELR 220 (WI SEA 2002) (directing LEA to rescind improperly issued diploma).

provide an educational program which maximizes the Student's educational potential.²¹

CLAIMS BARRED BY OPERATION OF THE STATUTE OF LIMITATIONS

6. The Parent commenced this due process proceeding on August 12, 2003. (Ex. HO1) On the facts of this case, claims (a) as to any action taken or not taken or decision made or not made at any PPT that was convened before August 12, 2001 and (b) with respect to any IEP that was developed prior to and in place as of August 12, 2001 are barred by operation of the statute of limitations ("SOL"), pursuant to Conn. Gen. Stat. § 10-76h(a)(3) and CTDOE Regulation § 10-76h-4. This bar applies to claims regarding graduation and transition planning relating to the June 9, 1997, May 15, 1998, May 3, 1999, May 11, 2000 and May 7, 2001 PPTs and claims pertaining to the formulation of IEPs in effect through the June 6, 2002 PPT.²²

Discussion. Conn. Gen. Stat. § 10-76h(a)(3) provides that the parent of an eligible child shall have up to two years from the date on which the *action to which the parent objects was taken* to commence due process, except that if the parent was "not given *notice of the procedural safeguards*, in accordance with [CTDOE Regulations] . . . such two-year limitation shall be calculated from the time notice of the safeguards is properly given." (Emphasis added.) See also CTDOE Regulation § 10-76h-4. This statute of limitations applies to challenges to graduation decisions. See, e.g., *Student v. Greenwich Board of Education*, 102 LRP 31903 (SEA CT 2002) ("*Greenwich*").

The Parent attended each of the May Center-related PPTs other than the June 9, 1997 PPT. The Parent admits that in connection with each of the May Center-related PPTs, she was timely provided a copy of the CTDOE Procedural Safeguards (Ex. P18), draft and final IEPs and final PPT minutes. Thus as to each of the May Center-related PPTs the SOL began to run on or shortly after the date of the PPT. The Board sent the May Center and the Parent the PPT minutes and final IEPs within a few days of each PPT. The Parent read and reviewed these materials as

²¹ See, e.g., *Lunceford v. District of Columbia Board of Educ.*, 745 F.2d 1577, 1583 (D.C. Cir. 1984) (IDEA "does not [require the LEA to provide] the best education money can buy"); *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2nd Cir. 1989) (IDEA does not require the LEA to provide an education "that might be thought desirable by 'loving parents'"); *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) ("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the [IDEA].")

²² In her request for hearing (Ex. HO1), the Parent specifically challenges only decisions made or actions taken at the April 10, 2003 PPT.

she received them but prior to this hearing had not raised with the Board any objections or concerns regarding the IEPs and PPT minutes. (M10, M11, M13, M15, M21, J4, J5)

The Parent did not in her Post-Hearing Brief expressly address in any way the operation of the SOL, and her argument in that Brief ignores the SOL or assumes without explaining why that the SOL does not apply. The Parent does not argue that the SOL should be tolled with respect to any of the May Center-related PPTs or IEPs, and the record affords no basis for concluding that the SOL should be tolled.

7. Based on the documentary and testimonial evidence, by no later than May 11, 2000 the parties had agreed that the Student's exit criterion would be graduation with a regular high school diploma. Since any claim as to these events had to be asserted at the very latest by May 31, 2002,²³ the Parent is barred from challenging either the process by which graduation with a regular high school diploma was identified as the Student's exit criterion or the merits of that decision. Accordingly, for purposes of this case identification of graduation with a regular high school diploma as the Student's exit criterion is *assumed* to be consistent with the procedural and substantive requirements of the *Rowley* standard.²⁴

Discussion. The parties disagree as to whether there was an agreement between them that graduation would be the Student's exit criterion. The Board contends that the Student's exit criterion was changed to graduation at Parental request or with Parental concurrence, but Dr. Jacaruso was confused as to whether that agreement was reached at the May 1999 or May 2000 PPT. (J23) The Parent denies or does not recall that she ever requested that the Student be given

²³ That date allows ample time after the May 11, 2000 PPT for the Board to have sent to the Parent and the Parent to have received the final IEP and PPT minutes for that PPT. (J4)

²⁴ To the extent that the Parent relies on Dr. Pancsofar's testimony to challenge the decision to identify graduation as the Student's exit criterion, that testimony has not been considered herein since on the facts of this case it is relevant only to claims that are barred by the SOL. In any event, Dr. Pancsofar testified that he could not render an opinion as to whether it was appropriate to utilize graduation as the Student's exit criterion because he "did not know" the Student "well enough" to make that determination. (P10) He also could not state whether the May Center curriculum was so modified as to bear little to no resemblance to the Fitch High School curriculum. (P4) His opinion that as a general rule it would be improper to identify graduation as the Student's exit criterion because children as severely disabled as the Student have such all encompassing transition needs (P15), fails to consider that the IDEA requires an individualized assessment of the Student's educational needs, capabilities and limitations in determining her educational programming, including the criterion for exiting her from from eligibility. Unlike Dr. Pancsofar, the May Center actually had had contact with the Student and was familiar with her capabilities and limitations, and concluded that the Student could earn a regular high school diploma. (M17, J33) Dr. Pancsofar also agreed that the Student had received a non-trivial educational benefit from her May Center programming. (P15)

a diploma, and denies having agreed that graduation with a diploma would be the Student's exit criterion. (M19) As explained more fully elsewhere herein, the Parent's testimony on these issues lacks credibility.

The May 15, 1998 IEP for the 1998/1999 school year prepared by the May Center states that the Student will be working toward graduation with a diploma with a target graduation date in June 2004, and that her curriculum would be modified, she would receive her academics in a 2:1 instructional ratio and would have both an extended school day and extended school year. (12, Ex. B21 at 19) The May 15, 1998 PPT minutes identify ability to function in the mainstream environment without special education support rather than graduation as the Student's exit criterion. In connection with transition planning, the minutes indicate that she is expected to graduate in June 2001 and that her transition planning goals are to "graduate from high school, live independently and access community resources." (11, Ex. B20, at 2, 5, 9)

Graduation was first identified as the Student's exit criterion in the May 3, 1999 PPT minutes at which the IEP for the 1999/2000 school year was developed. No projected graduation date was written on the minutes, however. The PPT minutes indicate that the Student's credit status needed to be updated. (14; Ex. B23 at 1, 5) The May Center IEP prepared for the May 3, 1999 PPT again states that the Student was working toward graduation with a diploma, with a projected 2004 graduation date. The IEP forms again indicate the modifications and individualized graduation criteria established at the May 15, 1998 PPT. (15, Ex. B23 at 28)²⁵

The May 11, 2000 PPT minutes again identify graduation as the exit criterion with a projected graduation date of June 2003. (21; Ex. B34 at 5) The Student attended that PPT to participate in the process of developing transition service goals for her. She identified going to college and living in her community as her transition goals. (21; Ex. B34 at 1) The transition planning summary from that PPT identifies "completion of high school" as the goal. (21; Ex. B34 at 17) The May 11, 2000 IEP prepared by the May Center for the 2000/2001 school year similarly reflects the Student's desire to go to college in the discussion of transition service needs. The IEP form again states that the Student was working toward graduation with a diploma in a program with modifications "determined by the team." The target graduation date was now August 18, 2003. (23j, 23k, Ex. B35 at 36, 38) An ITP was developed for the Student by the May Center. (23, Ex. B35 at 3-8)

The May 7, 2001 PPT minutes state that the Student's high school credit status was being reviewed by the Fitch High School guidance counselor. (24a, Ex. B39 at 1). Graduation is identified as the Student's exit criterion with a projected graduation date of June 2003. (24d, Ex. B39 at 3). The IEP prepared by the May Center for the May 11, 2001 PPT contains a vision statement identifying going to college and living independently in her community as the Student's desired post-May Center environment. (24k, Ex. B39 at 6) The IEP also states on the

²⁵ By letter dated May 18, 1999, the May Center advised the Board that the Parent was in agreement with the IEP and that the May Center would forward the Board a copy of the Student's transcript. (14; Ex. B26)

same page that the Parent's signature appears, that the Parent was to begin investigating options for the Student upon her return to Connecticut when she graduated at age 22 (August 18, 2004). (24j, Ex. B39 at 20)

The June 6, 2002 PPT minutes states that the Board had requested that the May Center submit up-to-date transcripts within 10 days, states that the Student desires to pursue post-secondary education, and identifies in the transition planning summary that the Student would be "graduating from high school." (26, Ex. B45 at 1, 12, 18)

8. As with every other component of the Student's IEP, the identified exit criterion and ITP, must be evaluated annually or more often as necessary, and modified as necessary in light of her then-current circumstances and needs. Accordingly, the decision to identify graduation as the Student's exit criterion made by no later than May 2000 was whether implicitly or expressly affirmed at both the June 6, 2002 and April 10, 2003 PPTs. To the extent that the Parent is claiming that on or after August 12, 2001, the Board should have changed but did not change the identified exit criterion, that claim lacks merit. The Student's disabilities did not change in scope, severity or nature after the May 7, 2001 PPT. The Student was making progress in her IEP goals and objectives (M2, M3, 13, 15a, 16, 23c, 24c-24h, 27a-m) and neither the Parent nor the May Center advised the Board that they had any concerns with or objections to the plan to graduate the Student in June 2003 as set forth in the May 7, 2001 IEP. (J4, J25, J28, J33, J45, J48, J50, J69, F11) Therefore, there was no need to revisit at either the June 6, 2000 or April 10, 2003 PPTs the decision that graduation would be the Student's exit criterion, and the Board proceeded with implementation of that plan. There were also no changes in her circumstances or needs after the April 10, 2003 PPT which would have warranted convening a PPT between April 10, 2003 and June 18, 2003 to determine whether her exit criterion needed to be changed. (M43, J48, J65)
9. Given that prior to commencing this hearing on August 12, 2003, neither the Parent nor the May Center had voiced any objection to or concern with the plan to graduate the Student with a regular high school diploma on June 18, 2003, and given that the Student was graduated by that time, it was reasonable for the Board to decline to convene a PPT in early August 2003 to discuss "transition planning" in response to a Parent request. (Ex. HO1; M16, M41) At that time, the Board had no further obligations to the Student under either the IDEA or Connecticut law. The Student's placement at the May Center at that time was pursuant to a unilateral offer made by the Board at the April 10, 2003 PPT, rather than pursuant to an IEP or the IDEA. That offer, which was accepted by the Parent, was limited to paying for the Student's placement at the May Center through August 18, 2003 and for Ms. Wickham's assessment. (J67, J14, 36) That offer did not extend the Board's prior obligations under the IDEA or Connecticut special education law.

PROCEDURAL VIOLATIONS WITH RESPECT TO GRADUATION

The Parent alleges various procedural violations which she claims individually and collectively invalidate the graduation of the Student with a regular high school diploma. To the extent that these claims are not barred by the SOL, they lack merit as a matter of law and/or fact.

10. The IDEA's procedural requirements as implemented through the *Rowley* standard are designed to assure that the parents of an eligible child have a full and meaningful opportunity to participate along with LEA personnel in developing, reviewing and revising the child's IEP, which is the centerpiece of the IDEA's education delivery system. Although assuring meaningful parental participation is central to the goals of the IDEA and compliance with the IDEA's procedural requirements assure such participation, not every procedural violation is sufficient to constitute a denial of FAPE or to support a finding that an IEP is invalid. Rather, the alleged procedural violation must be "gross" and result in a demonstrable harm – "there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits." *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991).²⁶
11. These principles apply to procedural challenges to graduating an eligible child with a regular high school diploma and to transition planning.

Discussion. Examples of cases illustrating this application include *T.S v. Independent School District No. 54*, 265 F.3d 1090, 1093, 1096 (10th Cir. 2001) (rejecting claim that graduation was improper where student did not meet his burden of linking the alleged procedural

²⁶ See also *Hall*, 774 F.2d at 629 (repeated failure to notify the parents of their procedural rights to challenge the proposed IEP over a several year period deprived them of a meaningful opportunity to test whether the proposed IEP complied with the IDEA); *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992) (child denied FAPE where LEA developed the IEP independently and without participation of child's parents or teachers); *O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School District No. 233*, 144 F.3d 692, 702 (10th Cir. 1998) ("technical deviations" from the IDEA's requirements do not necessarily "render an IEP entirely invalid"); *Briere v. Fair Haven Grade School Dist.*, 948 F. Supp. 1242 (D.Vt. 1996) (procedural violations resulted in denial of FAPE, where LEA inhibited meaningful parental participation, refused to discuss an alternative placement, failed to conduct supplemental evaluations, failed to advise the parent as to why a placement request was refused, delayed IEP team meetings and finalization of the IEP, and where student's teachers did not attend IEP team meetings); *Logue By and Through Logue v. Shawnee Mission Public Sch. Unif. Sch. Dist. No. 512*, 959 F. Supp. 1338, 1348 (D. Kan. 1997) (absent prejudice caused by procedural violation, IEP need not be invalidated). See also *W.A. v. Pascarella*, 35 IDELR 91 (D. Conn. 2001) (discussing the applicable principles).

violations – failure to discuss alternatives to graduation with him and to provide the required formal “prior written notice” – to a consequent loss of an education opportunity); *Department of Education, State of Hawaii*, 102 LRP 3652 (SEA HI 2001) (LEA’s failure to fully comply with the “prior written notice” requirement, although a procedural violation, did not result in denial of FAPE because “[b]ased on the prior information that had been conveyed to [the student and his parent through the PPT process], they should have been aware of [the student’s then] impending graduation and termination of services”); *Kevin T. v. Elmhurst Community School Dist. No. 205*, 2002 U.S. Dist. LEXIS 4645 (N.D. Ill. 2002) (there must be a finding that the alleged procedural violation deprived the student of an appropriate IEP or resulted in the loss of an educational opportunity); *Urban v. Jefferson County School Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (rejecting student’s claim that because his IEP did not designate a specific outcome for when he reached the age of 21 years or contain a specific set of activities for meeting that outcome, the IEP was invalid; “[a]lthough the IEP did not contain a specific statement of transition services, the student was not denied such services and the IEP contained language which addressed [the student’s] transitional needs, such as community awareness, daily living skills, and the ability to pay for purchases”); *Churan v. Walled Lake Consolidated Schools, et al.*, 839 F. Supp. 465 (E.D. Mi. 1993) (“*Churan I*”), *affirmed sub nom.*, 1995 U.S.App. LEXIS 6348 (6th Cir. 1995) (“*Churan II*”) (LEA’s failure to prepare a written transition plan was deemed an insubstantial technical defect because the student had been provided adequate transition services, agreed to at properly convened and conducted IEP meetings); *Stock v. Massachusetts Hospital School*, 555 IDELR 550 (SEA Mass. 1984) (invalidating decision to graduate a student where the student’s teachers proposed that the student graduate and prepared an IEP to that effect without convening an IEP meeting or providing any notice to the student or his parents).

12. The Parent claims that the Board failed to comply with its procedural obligations under the *Rowley* standard by failing to discuss at any PPT the issue of graduating the Student with a regular high school diploma, of the criteria that would be used to determine whether she had earned that diploma, of how her grades were being determined and her credit status, effectively excluding the Parent from the decision making process. To the extent any such claim is not barred by the SOL, the claim lacks merit as a factual matter.

Discussion. The Parent claims that prior to late-May 2003 she did not know that the Student would be graduated by the **Board** with a regular high school diploma in June 2003 because there had been no discussion of graduation, diplomas, grades or credits at any PPT. (M12, M20) This claim, which is critical to the Parent’s case overall, hinges on witness credibility and the Parent’s testimony is simply not credible. Her claim is belied by numerous comments in the PPT minutes generated by Dr. Jacaruso, the draft and final IEPs prepared by the May Center for the May 1998, May 1999, May 2000, May 2001 and June 2002 PPTs, and correspondence between the May Center, the Parent and the Board.

Dr. Jacaruso testified that the information she noted in the PPT minutes she prepared at each of the May Center-related PPTs for the Student reflected a discussion of that item at the PPT. (J4, J64) The Parent claimed that the Board falsified these documents, but subsequently withdrew that claim. (November 14 Trans. at 187-88) As to materials prepared by Dr. Jacaruso,

in the May 15, 1998 IEP/PPT minutes, the Student's Transition Plan Summary states the goal of "graduation from high school, live independently, and access community resources" with a then-projected graduation date of June 2001. (11) At the May 3, 1999 PPT, the Student's exit criterion was identified as graduation from high school. (14) At the May 11, 2000 PPT, the PPT Placement Summary reflects "graduation" as the exit criteria with a revised projected graduation date of June 2003. (21) The May 7, 2001 PPT continues to reflect graduation as the Student's exit criterion with a projected graduation date of June 2003. (24) At the May 7, 2001 PPT, it was noted that the Student's high school credits were being reviewed by the Fitch High School ("FHS") guidance counselor. (24) On June 6, 2002, the PPT discussed having the May Center provide to the Board an updated transcript of the Student's courses and credits within ten days of the PPT so that the Board could determine her progress toward graduation. (26) The transition summary page from the minutes of that PPT minutes again reflects "graduation from high school" under the heading of Statement of Transition Service Needs. (26)²⁷

The Parent's claim is also belied by materials contemporaneously generated by the May Center. The draft and final IEPs prepared by the May Center reflect graduation as the Student's exit criterion, state a target date for graduation and define the individualized criteria which would be used to assist the Student in reaching that exit criterion. (12, 15, 23j) The page of one of the final IEP forms prepared by the May Center references the plan to graduate the Student right above the Parent's signature. (24j) In May 2000, the May Center updated the Board as to the Student's credit hour and distribution status, and grades, over the preceding three year period. The Parent was copied on that letter. (22) By letter dated June 25, 2002, the May Center provided the Board with the updated credit information as requested at the June 6, 2002 PPT. (28, J47) In its Post-Hearing Brief at 14 the Board asks why the May Center would be preparing and sending these materials if in fact there was no understanding between the May Center, the Board and the Parent that the Student would be awarded a regular high school diploma by the Board. The Parent's testimony and case provide no answer to that question.

In addition to the contemporaneously generated documents in the record, the Parent acknowledges that in a conversation she had with a May Center teacher in the 1999-2000 time frame, she was "shocked" to learn *from the May Center* that the May Center believed the Student could attain a *diploma*. (M17) This is the time frame in which graduation with a regular high school diploma was identified as the Student's exit criterion. Mr. Forbes also testified that in the 2002/2003 school year he had had conversations with Ms. Tierney of the May Center in which he advised Ms. Tierney that he needed additional information to determine whether the Student had met the Fitch High School requirements for graduation and a diploma. Mr. Forbes testified that Ms. Tierney, who was responsible for the Student's May Center program, cooperated in providing the information, never asked him why he was making that determination

²⁷ Dr. Jacaruso could not recall some of these discussions beyond what was written on the documentation, and was sometimes confused about dates and sequences. However she was adamant that these discussions regarding these items had taken place at PPTs over the years. (J4, J23-J26, J29, J36, J50, J59, J61) The contemporaneously generated documentation, the accuracy of which the Parent does not dispute, is consistent with Dr. Jacaruso's testimony.

and expressed no concerns that he was making that determination. (F6, F7, F11). The Parent does not dispute that testimony, which is supported by contemporaneously generated documents exchanged between the May Center and Mr. Forbes, and Mr. Forbes and Dr. Jacaruso. (32, 34, 35, 38)

Collectively, these documents and testimony make clear that the Student's agreed upon exit criterion was graduation with a diploma, that her grades and credits were being periodically reviewed by Board personnel, including her high school guidance counselor, to determine her progress toward earning her diploma and that as early as May 2000 graduation was anticipated in June of 2003.

Crediting the Parent's testimony requires drawing the conclusion that over a six year period *both* the May Center and the Board inserted statements into the IEPs and PPTs minutes regarding graduation, the individualized criterion that would be applied to determine whether the Student was eligible for graduation, and the Student's grades and credits that did not reflect discussions at the PPTs. The Parent received and reviewed the PPT minutes and IEPs forms associated with each of these PPTs at or shortly after each PPT. (M10, M21) If the PPT had not discussed an item that was written on the PPT minutes or IEP forms sent to the Parent by Dr. Jacaruso, the Parent had ample opportunity to discover this information and question the Board and/or the May Center about it. However, the Parent read these materials when she received them shortly after each PPT and never asked the Board any questions about any of the information contained in them. (J4)²⁸

The Parent suggests that prior to "late-May 2003" she *assumed* that the graduation meant that the Student would receive a "certificate" from the May Center rather than a diploma from the Board. Parent Post-Hearing Brief at 6 n. 5. That claim is not credible in light of the record and her assumption is unreasonable. Nothing in the IEPs prepared by the May Center or PPT minutes prepared by the Board reference an award of a "certificate" or even a diploma by the May Center. The Parent never testified that she was told by the May Center or the Board that the May Center would award the Student anything. Dr. Jacaruso testified that in discussing graduation at various of the PPTs she used the term "Fitch High School diploma." (J28) Finally, the Student's sister was also graduating in the class of 2003 (F12), so that by no later than the start of the 2002/2003 school year the Parent understood or should have understood that when the Board was referring to graduation from high school, the Board meant graduation from high school with a Board-conferred diploma based on completion of the required credit hours and distribution.

To support her argument that she was improperly excluded from the decision making process with respect to determining the Student's eligibility to graduate, the Parent cites her own

²⁸ The minutes of each of these PPT's were also provided to the May Center. At no time did any representative of the May Center express any objection, concerns or questions regarding the content of the PPT minutes prepared by the Board. (J24, J25, J28, J33)

testimony and the testimony of Dr. Jacaruso that the two had no “specific conversations . . . in the spring of 2003 regarding the calculation of credits or the Student’s progress in reaching the credit criterion . . .”²⁹ Well before the spring of 2003 the Parent knew or should have known that the Student’s exit criterion was graduation and that the Board and the May Center were in regular, periodic communication with each other regarding the calculation of the Student’s credit hours and courses to determine her progress toward graduation. The record supports a finding that there was no need to have such a conversation because the Parent was aware of and understood that the plan was to graduate the Student in June of 2003. That the Parent chose not to ask questions or express the concerns she had does not mean that she was excluded from the decision making process. She had full opportunity to participate.

There is some truth to the Parent’s claim that “the *minutes* of the April 10, 2003 PPT meeting flatly state that the student has met the requirements for a diploma, but are silent as to what criteria were utilized to make that determination” and that the June 6, 2002 PPT *minutes* “similarly contains no reference to the *establishment* of graduation criteria.” Parent Graduation Brief at 9-10 (emphasis added). However, the absence of those references in those PPT minutes does not mean that no individualized criteria for graduation had ever been established by or discussed at a PPT. The decision to identify graduation as the Student’s exit criterion remained unchanged from the May 3, 1999 PPT. The IEPs prepared by the May Center do in fact state the individualized criteria that would be used: modified curriculum, 2:1 instructional ratios and extended school year and day. Since the purpose of the April 10, 2003 PPT was not to develop an IEP for the 2003/2004 academic year but rather to determine whether the Student would graduate in June 2003 as planned, it is not surprising that the PPT minutes simply state that the Student had met the individualized criteria for graduation without restating them.

13. The Parent claims that the Board failed to comply with its procedural obligations under the *Rowley* standard by failing to inform her that the Student could earn a special education diploma or a certificate of mastery/completion instead of a regular high school diploma, and/or failed to advise her of the legal implications of being awarded one or the other with respect to the Student’s entitlement to special education and related services support. That claim is barred by the SOL because it challenges decisions made or not made and/or actions taken or not taken by no later than the May 11, 2000 PPT.
14. However, to the extent that that claim involves the failure of the Board to so advise her as to her options at any point after August 12, 2001, that claim on the facts of this case lacks merit. The parties are free to agree on an exit criterion and did so in this case by no later than May 11, 2000. The Parent agrees that there was no way for the Board to have known prior to this hearing that she had any concerns about the decision to graduate the Student (M11, M32), which had first been made possibly as early as May 1998 but in any event by no later than May 2000 or more

²⁹ Dr. Jacaruso assumed Mr. Forbes was having those conversations with the Parent. (J17) He was not. (F11)

than three years before the Student was graduated. There were no changes in the Student's circumstances after August 12, 2001 which would have warranted revisiting that decision, without regard to whether the Parent raised any concerns. The May Center never advised the Board that it was inappropriate to identify graduation as the Student's exit criterion, and appears to have supported that decision. (J25, J33, J45, J48) Accordingly, there was no reason for the Board to revisit at any point after the May 11, 2000 PPT the issue of whether graduation with a regular high school diploma should *remain* the Student's exit criterion and no need on or after August 12, 2001 to talk about alternatives to the agreed-upon plan that was in place and being implemented.

15. The Parent is not claiming, and there is no evidence to support any such claim if she is in fact making one, that the Board misled her with respect to the identification of graduation as the exit criterion. If the Parent's testimony is deemed credible, at best that testimony establishes only that the Parent did not understand fully the legal consequences of awarding a regular high school diploma to the Student and made certain assumptions about the diploma that were incorrect. A mistaken assumption by the Parent about the Student's rights under the IDEA does not amount to a procedural violation.³⁰
16. The Parent claims that the Board violated the procedural requirements of the IDEA by failing at or after the April 10, 2003 PPT to notify her of CTDOE Update # 32 specifically or, more generally, to discuss with her the fact that under Connecticut law the Student's eligibility for special education and related service would not automatically terminate on August 18, 2003 (when she turned 21 years of age) and that she could continue to receive special education and related services through June 30, 2004 if she did not graduate with a regular high school diploma before June 30, 2003. The essence of this claim is that the Board failed to advise the Parent of her substantive rights under Connecticut law. The Board may be

³⁰ For example, in *Gorski v. Lynchburg School Board*, 441 IDELR 415, No. 88-3834 (4th Cir. 1989), the parent had requested that the student receive vocational education, but did not object to the LEA's suggestion that the student complete vocational education *after* graduating. The tier I state hearing officer concluded that the student was not properly graduated because his IEP did not include a vocational component and the parent's consent to the IEP was invalid because it was based on a mistaken belief as to the LEA's responsibility for paying for vocational services. The Circuit Court of Appeals for the Fourth Circuit disagreed, concluding that although the parent had not objected to the IEP "mistakenly believing that school officials had agreed to pay for her son's postgraduation vocational training," the parent was not entitled to relief because the LEA did say or do anything to mislead the parent, and therefore the parent's "misunderstanding does not equate to the [LEA's] failure to 'fully inform them of all information relevant' to [the student's] proposed IEP and their consent was not invalidated by the misunderstanding."

obligated to answer questions about how the Parent could initiate due process or about substantive rights, but has no affirmative duty to provide the Parent with what essentially would be unsolicited legal advice regarding her substantive rights or causes of action.

17. To the extent that the Parent is claiming that the issuance of CTDOE Update # 32 in March 2003 created some new duty to discuss alternatives to graduation with a regular high school diploma, that claim also lacks merit. The Parent focuses on Dr. Jacaruso's understanding of the starting and ending dates for a school year, and Dr. Jacaruso's concession that prior to CTDOE Update # 32 it was her belief that the school year ran from August to August. (J73) Dr. Jacaruso's understanding of the CTDOE Regulations before and after CTDOE Update # 32 was issued is irrelevant, however, because her understanding does not change the basic fact that the parties had agreed (1) by no later than May 2000 that the Student's exit criterion would be graduation with a regular high school diploma; and, (2) by no later than May 2001 that the anticipated target date for graduation was June 2003. Absent any objection by the Parent to that plan or a change in the Student's circumstances or needs, there was no need to discuss options in light of CTDOE Update # 32.
18. Because graduation with a regular high school diploma is a "change in placement" within the meaning of the IDEA, the Board was required to provide the Parent with "prior written notice" ("PWN") of its intent to graduate the Student with a regular high school diploma.³¹ The Parent raises multiple arguments regarding an alleged failure of the Board to provide appropriate PWN of the identification of graduation as the Student's exit criterion and of the graduation itself. To the extent they are not barred by the SOL, these claims lack merit. The Board complied with the PWN obligations of the IDEA.

Discussion. IDEA Regulation 34 C.F.R. § 300.122(a)(iii) requires that the Parent be provided with formal PWN of the Student's anticipated graduation date in accordance with IDEA Regulation 34 C.F.R. § 300.503(b), which does not define a particular format for the PWN but does specify the information that must be provided as part of the PWN. The Board utilizes standard PPT minute forms promulgated by the CTDOE. The standard CTDOE forms contain a specific page (referred to as "Form 5B") for providing PWN within the meaning of these IDEA Regulations.

³¹ See, e.g., *Independent School District No. 281*, 32 IDELR 49 (SEA MN 1999)("[g]raduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice"); *Cronin v. Board of Education of East Ramapo*, 689 F. Supp. 197 (S.D.N.Y. 1988) (same); *Clovis Unified School District*, 33 IDELR 146 (SEA CA 2000) (same).

A. The Board was not required prior to April 10, 2003 to either provide PWN of its intention to graduate the Student in June 2003 or record graduation as her exit criterion on a PPT Form 5B. The Parent confuses the act of identifying graduation as the Student's exit criterion and the act of proposing to exit the Student from special education and related services based on that criterion. The mere fact that a particular exit criterion is selected is not the same as taking any action or proposing to take any action to exit the child from special education and related services. Rather, identification of the exit criterion is simply an element of the IEP which, like every other element, must comport with the *Rowley* standard. If the parent of an eligible child disagrees with the decision as to exit criterion, the parent may challenge that aspect of the IEP along with any other aspect with which he/she disagrees. The purpose of the PWN is to put the parent of an eligible child on notice of some decision or action of a PPT which *will* result in a *change* in the child's educational placement absent some action by the parent if the parent disagrees. The Board was not required to provide PWN regarding the graduation based simply on identifying graduation as the exit criterion since that action was not a change in placement. The first time that the Board proposed to actually change the Student's placement based on the identified exit criterion was at the April 10, 2003 PPT. Accordingly, the Board was required at that time to provide PWN of that proposed action and properly did so.³²

B. Given that the Parent knew or should have known since no later than May 11, 2000 (or approximately 3 years prior to the April 10, 2003 PPT), that June 2003 was the Student's projected graduation date, the formal PWN provided by the Board on April 10, 2003 that the Student was in fact on track to be and would be graduated in June of 2003 was reasonably timely.³³ Neither the IDEA nor its Regulations, nor Connecticut special education law nor the CTDOE Regulations specify a minimum time period for providing PWN of the graduation. Accordingly, what constitutes reasonably timely notice must be determined on a case-by-case basis.³⁴

³² In any event, if the Parent's claim is that the Board was required to provide PWN of the decision to identify graduation as the Student's exit criterion, that claim relates to an event that occurred for the first time at the May 3, 1999 PPT, the PPT at which graduation was first identified as the Student's exit criterion, and is barred by the SOL.

³³ See, e.g., *Carver Public Schools*, 102 LRP 8194 (SEA MA 2000) (declining to invalidate diploma where the intended graduation date and a transition plan had been included in each of the student's IEPs starting at least two years prior to the anticipated graduation date and "the parents had accepted each of those IEPs").

³⁴ Since Connecticut does not have a defined minimum time period between the provision of prior written notice and the graduation date, several of the cases cited by the Parent to support her claim that the two month PWN provided in this case was deficient are inapposite because they are based on requirements of the laws of other states which provide for a specific notice period. For example, the three year notice period in *Quaker Valley School District*, 30 IDELR 634 (SEA PA 1999), the 18 month notice period in *Mason City Community School District*, 21 IDELR 241 (SEA IA 1994), and the 14 month notice period in *Palmyra-Eagle Area School District*, LEA-97-014 (SEA WI 1997) were mandated by state law.

The PWN in this case was timely provided. Even assuming that the Parent was *notified* for the first time at the April 10, 2003 PPT both that the Board planned to graduate the Student and that the Student would *in fact* be graduated on June 18, 2003, the Parent had ample time between April 10, 2003 and June 18, 2003 to investigate the Student's legal rights, secure counsel if she desired to do so, commence a due process proceeding and obtain either a resolution of that issue before the scheduled June 18, 2003 graduation date or interim relief that would have prevented the graduation from going forward. The Parent knew how to access the legal system to vindicate the Student's educational interests. (M4) Given the contents of the April 10, 2003 PWN and PPT minutes, her claim that she did not understand until late May 2003 that the Student would likely be graduated in 2003 is not credible. The purpose of the PWN provisions of the IDEA was therefore satisfied.

The Parent tries to link the timeliness of the PWN to a consequent harm of leaving the IEP team without time to do adequate transition planning. Parent Post-Hearing Brief at 18.³⁵ However, that was not the purpose of the PWN in this case. The purpose of the PWN in this case was to permit the Parent to assert a timely objection, if she had any, to the proposed plan to graduate the Student with a regular high school diploma. She had ample opportunity to assert such an objection before the Student graduated, but failed to do so.³⁶

C. The Parent argues that the PWN provided at the April 10, 2003 PPT was deficient because although it correctly referenced the plan to graduate the Student with a regular high school diploma in June 2003 as the basis for the action being taken it also incorrectly stated that her eligibility was being terminated because she was turning twenty-years of age. In other words, the Parent argues that the PWN was somehow invalidated because one of the *two* stated reasons why the Student was being exited from special education and related services allegedly

³⁵ This argument assumes that the Parent voiced objections to the transition planning services for the Student at that PPT. She did not.

³⁶ By her own testimony (J64), since Dr. Jacaruso did not write a specific graduation date on the PPT forms for the June 6, 2002 PPT, there was no discussion at that PPT specifically about the anticipated June 2003 graduation date which had been established at the May 7, 2001 PPT. Given that the target graduation date was the end of the school year which was the focus of the June 6, 2002 PPT, the anticipated June 2003 graduation date should have been discussed at the June 6, 2002 PPT if nothing else to confirm whether the Student was still on track to graduate. Had the Board initiated that discussion at the June 6, 2002 PPT, it is possible that what the Parent now describes as an apparent mismatch in expectations between the parties would have surfaced. That outcome was, however, by no means certain given that the Parent had repeatedly failed to raise at any of the PPTs or with the Board or the May Center any of the concerns she is raising for the first time in this hearing. In any event, if either the May Center or the Parent were concerned about graduation, either of them could have easily raised the issue at the June 6, 2002 PPT given that each also had the May 7, 2001 IEP and PPT minutes identifying the target June 2003 graduation date.

misstated the law. The undisputed fact, however, is that the PWN completed at the April 10, 2003 PPT properly identified the proposed action of exiting the Student from special education and related services by graduation and the purpose of the PWN was therefore satisfied – that the Parent be given timely *prior written notice* of a proposed change in placement so that she could object if she disagreed.

D. The Parent's claim that the PWN provided at the April 10, 2003 PPT was deficient because it failed to provide some of the required information also lacks merit. Parent Post-Hearing Brief at 17. In compliance with IDEA Regulation 34 C.F.R. § 300.503(b), the PWN along with the CTDOE Procedural Safeguards given to the Parent, provided the Parent with: (1) A description of the action proposed (graduation) by the Board; (2) An explanation of why the Board was proposing to take the action; (3) A statement of the Parent's procedural safeguards; and (4) Sources for the Parent to contact if she had any questions about the CTDOE Procedural Safeguards including the PWN.³⁷

Given that the long standing plan had been to graduate the Student in June 2003 with a regular high school diploma if she met the graduation criteria established for her by the PPT, given that the April 10, 2003 PPT determined that she would meet the requirements for graduation by June 2003 and given that the Parent at that PPT raised absolutely no objection to the plan to graduate her, there was no need to discuss at the PPT or include in the PWN a description of any other options that the PPT considered and the reasons why those options were rejected. The Student's individualized criteria for graduation were identified in the IEPs. The Board was not required to evaluate or assess the Student before terminating her eligibility for special education and related services based on graduation (IDEA Regulation, 34 C.F.R. § 300.534), so there was therefore no need to include in the PWN a description of the evaluation procedure, test, record, or report the Board used as a basis for the proposed or refused action. Dr. Jacaruso testified, and that testimony is supported by the PPT minutes, that the April 10, 2003 PPT reviewed the Student's progress in her IEP objectives and found her progress satisfactory. (J72; *see also* M25) In any event, even assuming that the PWN did not fully comply with the requirements of the IDEA Regulations, the PWN given was adequate and any such deficiencies are technical violations which do not warrant invalidating the PWN or rescinding the Student's diploma.

THE STANDARD FOR DETERMINING WHETHER THE STUDENT WAS PROPERLY GRADUATED

³⁷ In fact, prior to June 18, 2003, the Parent appears to have contacted the CTDOE due process hearing unit to determine whether the Board could properly graduate the Student. (M12; J34)

19. Whether a student, disabled or otherwise, has satisfied the credit hour and distribution requirements to attain a regular diploma is a question of state law.³⁸

20. Conn. Gen. Stat. § 10-221a(a) provides as follows:

For classes graduating from 1988 to 2003, inclusive, no local or regional board of education shall permit any student to graduate from high school or grant a diploma to any student who has not satisfactorily completed a minimum of twenty credits, not fewer than four of which shall be in English, not fewer than three in mathematics, not fewer than three in social studies, not fewer than two in science, not fewer than one in the arts or vocational education and not fewer than one in physical education.

21. Conn. Gen. Stat. § 10-221a(d) provides further that:

Determination of eligible credits shall be at the discretion of the local or regional board of education, provided the primary focus of the curriculum of eligible credits corresponds directly to the subject matter of the specified course requirements . . . ***The requirements of this section shall apply to any student requiring special education pursuant to [Conn. Gen. Stat. §] 10-76a, except when the [PPT] for such student determines the requirement not to be appropriate.*** For purposes of this section, a credit shall consist of not less than the equivalent of a forty-minute class period for each school day of a school year . . .

(Emphasis added.)

22. The applicable Board policies regarding promotion, retention and graduation of students, whether disabled or not, provides as follows:

A High School diploma will be granted to each student who meets in full all graduation requirements as determined by both the State of Connecticut and the Groton Board of Education.

³⁸ See, e.g., *Carver Public Schools*, 102 LRP 8194 (SEA MA 2000) (“local school and state officials, not courts, hearing officers, or [IEP Teams], set the academic standards for award of a regular high school diploma.”); *Greenwich*, 102 LRP at 31903 (applying Connecticut law to determine whether graduation was appropriate); *Fort Bend Independent School District*, 35 IDELR 175 (SEA TX 2001) (applying Texas law); *Quaker Valley School District*, 30 IDELR 634 (SEA PA 1999) (applying Pennsylvania law). The IDEA incorporates state substantive standards as the governing rule if they are consistent with and at least as exacting as the IDEA provisions. See, e.g., *Mrs. C. v. Wheaton*, 916 F.2d 69, 73 (2nd Cir. 1990).

The graduation requirements implemented by the Board in its policy are those set forth in Conn. Gen. Stat. § 10-221a(a). *See, e.g.*, Ex. B60; B61; B62.

23. Since for purposes of this case the decision to identify graduation as the Student's exit criterion is assumed to comport with the *Rowley* standard, the Student, whose curriculum was modified by a PPT and whose IEP did not identify graduation from high school as a goal or objective, was properly graduated if: (1) she completed the required number and distribution of course credits in her *modified* curriculum; and (2) she had made more than *de minimis* progress on achieving her IEP goals and objectives.

Discussion. The Parent argues that to properly graduate the Student the Board must demonstrate: (1) that the Student has satisfied the credit hour and distribution requirements for graduation with a regular high school diploma established for *nondisabled* children pursuant to Conn. Gen. Stat. § 10-221a and publicized Board policy (or, in other words, complete an *unmodified* curriculum); (2) that the Student has completed her IEP goals and objectives; and (3) that the Student has met any additional individualized graduation criteria adopted by the PPT. Parent Graduation Brief at 1-2, 7. That standard is not correct.

Between them, the parties have identified only two Connecticut special education cases in which the substantive standards for the award of a regular high school diploma to an eligible child were discussed. One case, *Alycia C.*, 502 IDELR 140 (SEA CT 1980), establishes that “[n]o Board, PPT parent or private school official, even in a good faith effort to [extend further] services [to the child], may alter the reality of an *earned* diploma or *deny* a student the right to an earned diploma.” (Emphasis added.)³⁹

In the second case, *Greenwich*, the award of a high school diploma to a student diagnosed with Asperger's syndrome and ADHD was upheld. In that case, the PPT had *not* modified the graduation curriculum requirements for the student as permitted by Conn. Gen. Stat. § 10-221a. On those facts, the hearing officer, citing *Churan*, 839 F. Supp. at 65 (“*Churan I*”), *affirmed sub nom.*, 1995 U.S.App. LEXIS at 6348 (“*Churan II*”), concluded that to properly be awarded a regular high school diploma, an eligible child must (1) complete credit/curriculum requirements and (2) “make progress on *or* complete IEP goals.” (Emphasis added.)

The *Churan* decisions are frequently cited for the standard to apply for determining whether an eligible child is properly graduated. The *Churan* standard must be understood in context, however. *Churan* suffered from Duchennes muscular dystrophy, a degenerative disease which severely limited his motor functions and rendered him wheelchair bound with “virtually no hand or motor function.” A PPT on May 28, 1991 determined that *Churan* (then 21 years old

³⁹ *Alycia C.* was severely hearing impaired and had, from year to year and by the end of her 12th grade year, successfully completed all of the requirements established by the LEA and the PPT to receive a regular high school diploma.

and turning 22 in October 1991) should be graduated on June 6, 1991.⁴⁰ That decision was upheld through Michigan’s two tiered special education due process administrative review procedures, by the District Court and by the Court of Appeals for the Sixth Circuit, which agreed with the District Court that Churan was appropriately graduated because he had “**complete[d]** his IEP requirements and otherwise [met state] requirements for general graduation.” *Churan I*, 839 F. Supp. at 474 (emphasis added).

There are significant factual differences between *Churan* and this case. Churan’s cognitive functioning was not impaired, the PPT did not modify his curriculum (which means that he was required to complete a regular education high school academic curriculum), and his IEP goals included passing mainstream classes and graduating from high school. *Churan I*, 839 F. Supp. at 474. In that circumstance, it is understandable why the standard stated by the Court to determine whether Churan was properly graduated would contemplate **completion or mastery** of IEP goals rather than simply “making progress.”⁴¹

In contrast, in this case the Student’s cognitive functioning is substantially impaired, her PPTs modified her curriculum, and taking mainstream classes or graduating from high school were not goals or objectives of her IEPs. Rather, graduation with a regular diploma was the Student’s identified exit criterion.

The Parent and the Board were free to agree on an exit criterion for the Student. *See, e.g., Girard School District*, 37 IDELR at 298 (where the LEA and parent/student had agreed in an IEP that the student’s eligibility for graduation would be determined by completion of credits rather than attainment of IEP goals, the student may properly be graduated notwithstanding that he had not mastered his IEP goals and objectives).⁴² Having agreed that graduation would be her exit criterion and that her curriculum would be modified to permit her to earn the credits and complete the courses necessary for graduation, the Student is not required to complete an **unmodified** curriculum to graduate. She is also not required to demonstrate mastery or completion of her IEP goals and objectives, since eligibility to graduate depends not on

⁴⁰ The Court did not conclude that that period of notice was inappropriate on the facts of the case.

⁴¹ The Parent correctly notes that although citing *Churan*, the *Greenwich* Decision framed the standard as “make progress on **or** complete” IEP goals, whereas the *Churan* court stated that the “student must **complete** his IEP requirements.” (Emphasis added.)

⁴² The exit criterion options available to the Student were: (1) ability to function in a mainstream environment without special education and related services support; (2) graduation with a regular high school diploma; or (3) aging out by turning 21 years of age. Had exit criterion (1) or (3) been utilized, the Student would have been eligible under Connecticut law to receive special education and related support services through June 30, 2004.

completion of IEP goals and objectives but rather on earning the required number and distribution of credits.

The Hearing Officer agrees that an eligible child may be denied FAPE if an inappropriate exit criterion is utilized, and agrees further that that risk is particularly acute where graduation with a regular high school diploma is the identified exit criterion because, unlike the other potential exit criteria, a child graduates not due to the inevitable progress of time or demonstrated success in overcoming his/her disabilities in the classroom but because *somebody* makes the determination that he/she has earned enough credits in the required subjects and has demonstrated the required competency through passing grades. The risk arises from the fact that an eligible child may advance from grade to grade and graduate for reasons other than demonstrating the ability to master a certain academic curriculum, as is required for nondisabled children to graduate. It is for this reason that the appropriate standard to evaluate the award of a regular high school diploma, where the child's curriculum has been modified, requires: (1) a determination of whether the modifications to the curriculum are so extensive such that the award of a diploma is a sham because the modified curriculum bears no rational or reasonable relationship to the unmodified curriculum; (2) a determination that the child's grades in that modified curriculum were based in some substantial part upon mastery of the content of that modified curriculum; and (3) a determination that the child is making progress in his/her IEP goals and objectives, which presumably promote progress toward graduation by supporting the child's functioning in the school environment.

A frequently cited example of a case illustrating these principles is *Cedarburg School District*, 36 IDELR at 220. There the hearing officer noted that in some cases the PPT will "implicitly or explicitly" adopt the graduation requirements that nondisabled students must meet but that in other cases the individualized criteria for graduation developed by the PPT may "bear little resemblance" to the graduation requirements for nondisabled students, and concluded that "[w]hatever criteria the [PPT] may develop for graduation, an LEA may issue a regular education diploma to a special education student only upon the student meeting the criteria that the IEP team has identified."

On the facts of that case, the award of the diploma was clearly a sham and the student's diploma was rescinded accordingly. The student in that case was born with lissencephalopathy, a congenital, chronic and degenerative condition affecting brain development. Although chronologically 18 years of age at the time the dispute arose, she was in "essence developmentally infantile" and functioning at a 4 month age level in terms of adaptive skills and at a 1 to 4 month age level in terms of cognitive development. Notwithstanding her disabilities and limitations, she began attending Cedarburg High School in the 1998-1999 school year as a 9th grader and four years later by the end of the 2001-2002 school year was enrolled as a 12th grader. The measurable annual goals in her IEP during this period remained "relatively unchanged from year to year" and, reflecting, her "profound disability," centered on "maintenance and improvement of motor skills." The hearing officer found that "To the extent that [her] IEPs can be regarded to include any academic component [those components were] commensurate with [her] developmental level," which was well below high school level. Although the student's IEP's did not "expressly" contemplate graduation as her exit criterion and

despite her profound disabilities, the LEA graduated her based on credits earned and passing grades consistent with the LEA's general policy regarding graduation. The hearing officer ultimately concluded that the student had been denied FAPE because her eligibility for graduation was based on criteria formulated outside of the IEP development process without parental input and not adopted by a PPT.

In *Mason City Community School District*, 21 IDELR 248 (SEA Iowa 1994), the hearing officer concluded that use of Carnegie Units as the only criteria for purposes of determining eligibility for graduation has “little or no meaning for students whose disabilities require significant changes in expected student outcomes” or course standards and “invites abuse [because a] school could arbitrarily award passing grades that result in earned credits to any special education student so that all special education students would graduate in the traditional time at the traditional age regardless of need.”⁴³ “For these students, progress and significant attainment of the IEP goals and objectives and IEP established objective criteria for graduation are the determinants.”⁴⁴

A third decision, and the one which actually states the standard that was utilized in *Greenwich*, is *Kevin T.*, 2002 U.S. Dist. LEXIS at 4645. Kevin T. was 19 years old when the due process action was commenced. He suffered from a learning disability, ADHD and bi-polar disorder, and had been receiving special education and related services from the LEA since age 6. Kevin entered the 12th grade in the 1998/1999 school year but as the result of academic difficulties did not graduate and was placed in a therapeutic day school for the 1999/2000 school year. Over the 1999/2000 school year, his reading, math and writing skills improved from the 3rd/4th grade levels to the 6th/7th grade levels, all below high school level. At the end of the 1999/2000 school year, the LEA proposed to graduate Kevin because he had completed enough credits to graduate. The Court invalidated the graduation because the PPT had failed to consider

⁴³ A Carnegie unit is a standard of measurement that represents one credit for the completion of a 1-year course. See National Center for Education Statistics, <http://nces.ed.gov/pubs2003/digest02/tables/PDF/table139.pdf>. Each state and/or local school district requires students to complete a certain number of Carnegie units in specific subject areas or portions of the curriculum in order to receive a high school diploma. See <http://nces.ed.gov/pubs2003/digest02/tables/dt152.asp>.

⁴⁴ The student in that case was a 19 year old diagnosed with cerebral palsy, mild quadriplegia, bilateral sensorineural hearing loss, and receptive-expressive language disorder among other conditions, who at the time the dispute arose was functioning at a 4th to 5th grade level in most of her academics. A December 1992 IEP identified her anticipated graduation date as June 1994. As of the date of graduation, she had not substantially completed her IEP goals and objectives but would likely be able to do so with additional educational opportunities. The hearing officer found that at no point had the LEA identified any rationale or justification related to the student's individual educational needs as grounds for graduating her if and when she attained 40 credits, the minimum number required under the LEA's policy for graduation, and that given her circumstances, the student should not have been graduated.

his progress on IEP goals and objectives. Citing *Churan*, the Court concluded that it must be established that the student had “[met] the general graduation requirements and [made] progress on or complete[d] the IEP goals and objectives.”

THE STUDENT WAS PROPERLY GRADUATED UNDER THE APPLICABLE STANDARD

24. The Student satisfied both the credit hour and credit distribution requirements under Connecticut law to earn a regular high school diploma.

Discussion. The pertinent record evidence as to the Student’s credit hour and distribution status is summarized below.

	Minimum State Carnegie Unit Requirements under C.G.S. § 10-221a(a)	Fitch High School Credit Requirements Per Board Policy P5230 (40, 42)	The Student’s Credits Earned at the May Center (Ex. B63 - B69)
English	4 credits	4 credits	14.6 credits
Math	3 credits	3 credits	5.2 credits
Social Studies	3 credits	3 credits (including 1.0 in U.S. History)	8.7 credits (including 1.0 U.S. History)
Science	2 credits	3 credits	4.5 credits
Physical Education	1 credit	1 credit	2.0 credits
Health		.5 credit	1.2 credits
Applied Arts	(1 credit in the Arts or Vocational Education)	1 credit	4.6 credits - Transitional (voc) education
Fine Arts	(1 credit in the Arts or Vocational Education)	1 credit	1.0 credit
Electives	6 credits	7.5 credits	Life Skills 3.4 + 25.3 additional credits ⁴⁵

⁴⁵ Under Board Policy, all of the Student’s credits in excess of the required minimum in a subject area can be counted as elective credits. (F15) For example, the Student’s extra 10.6 English credits can be counted as elective credits. Accordingly, the Student earned 28.7 elective credits (3.4 Life Skills credits plus 25.3 credits beyond what was required in each of the other subject areas).

TOTAL	At least 20 credits	24 credits	45.2 credits
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Conn. Gen. Stat. § 10-221a(d) provides that each “credit [to be counted toward meeting a graduation requirement] shall consist of not less than the equivalent of a forty-minute class period for each school day of a school year” which is 120 hours of class time per credit over the course of a 180 day Connecticut school year.

To determine whether the Student had satisfied the Board’s credit hour requirements for graduating, the Board converted the number of hours she spent in each course at the May Center into credit hour equivalents as if she had attended the Board’s high school by: (a) multiplying the hours per week the Student spent in each subject at the May Center by 50 weeks (the length of the May Center school year); and then (b) awarding one (1) Board credit for each 125 hours she spent in each May Center course. (F6, F7; Ex. B69)⁴⁶ Using this conversion calculation, the Board determined in January and February of 2003 that the Student would attain the requisite number and distribution of credits necessary to graduate with a regular high school diploma in June 2003 as planned. Although the Student had not as of the April 10, 2003 PPT met all of the requirements for graduation, the Board confirmed in late May 2003 that the Student had satisfied her credit requirements for graduation with a regular high school diploma on June 18, 2003. (38, F6, F7, J16, J66, J71)⁴⁷

The Board’s conversion formula was appropriate and consistent with Board policy and State law regarding credit hour determinations. Looking solely to the number of hours she spent in classes, as of her graduation the Student had completed more than a sufficient number of credit hours to be awarded a regular high school diploma.⁴⁸

⁴⁶ The Student received 5 hours per day of academic instruction at the May Center which had a 242 day school year. Students at the Board’s high school received 5 hours and 40 minutes per day of instruction over a 180 school year. (Ex. B62 at 2, 5)

⁴⁷ There was no need to convene a PPT after April 10, 2003 and prior to graduation to confirm that the Student had satisfied the remaining requirements for graduation. *See, e.g., Quaker Valley*, 30 IDELR at 634 (parents received sufficient notice to confirm that the student had met the graduation requirements even though no final IEP team meeting was held at the end of the school year). Mr. Forbes provided the Parent with confirmation when he contacted her in May 2003 to ascertain whether the Parent wanted to order a cap and gown for the Student so she could participate in the graduation ceremony, a communication the Parent described as the first point she realized that the Student would be graduating with a Board awarded diploma. Parent Post-Hearing Brief at 6 n. 5.

⁴⁸ The Parent alleges that Mr. Forbes did not take into account “the number of hours [the Student] missed due to illness or other absence as reflected in [Ex.] B41 and B51 [the Student’s May Center attendance records] in [his] calculations” of her credit hours. Parent Post-Hearing Brief at 12 n. 13. However, the Parent offers no analysis or explanation of those documents which would establish that illnesses or absences over the period June 1997 through June 2003

As to credit distribution requirements, the Student's IEPs from May 1999 forward indicate that the Student was completing a modified curriculum consisting of the required subjects over the course of a lengthened school year in a segregated setting with a very high teacher to student ratio. Review of the IEPs indicates that the Student's curriculum was not so extensively modified that she was not completing any high school level course work, such that awarding her a high school diploma was effectively a sham.

For example, the May Center quarterly progress reports for the 2001/2002 school year reviewed at the June 6, 2002 PPT (Ex. P12, B39, B45; 27a-e) indicate that over the course of the 2001/2002 school year: (a) the Student progressed in English from working "from a basic grammar book focusing on the major parts of speech" to completing work from a 9th/10th grade level grammar book and reading *Anne Frank* and *Captains Courageous* (Ex. B39 at 9; B45 at 8); (b) she worked on a pre-GED math curriculum (B39 at 9); (c) in science she started working from a general science curriculum and progressed to a 9th/10th grade level science book (Ex. B39 at 10; B45 at 19); and (d) she was working from an American history book (Ex. P12 at 2-3) The documentary record of her academic achievement shows a steady progression over time while she was at the May Center. The LifeSpan Evaluation report provides some independent corroboration of evidence in the May Center records regarding the Student's academic progress. The LifeSpan Evaluation shows that the Student's achievement was at the secondary school level in spelling and English although below secondary school level in mathematics (which has consistently been identified as an area of relative weakness for her). (29l, 29m) Those results are an improvement in some areas over the results attained in a 1997 assessment by the May Center indicating 8th grade performance in various academic areas, and 5th grade performance in mathematics. (12a) The Student's earlier IEPs at the May Center focused primarily on behavioral and social issues; later IEPs were more heavily weighted toward academic goals and objective.

The Student's grades in her courses over the years at the May Center are set forth in Attachment A. Other than with the exception of two "Ds" in math courses, the Student consistently attained grades of B or better in her May Center courses over a six year period. Her IEP goals with respect to academics required her to perform at a specified level of accuracy in order to accomplish the academic objective, and she appeared generally able to do so and to be making progress in her curriculum. (21, 21b, 27d, 27e; J39; J40)

The documentary record establishes that the Student had in fact mastered some of the substantive content aspects of a high school curriculum. In light of the nature and extent of her disabilities, the Student's achievements were not insubstantial. There is no evidence to suggest that the grades that she was awarded were based solely on factors other than mastery of academic

resulted in the Student not spending the minimum required time in each class to earn the credit hour under the conversion formula. Allegations are not evidence, and the Parent has not met her burden.

content. The fact that she did not complete any high school math is not dispositive of whether she earned her diploma. Ability to complete all aspects of a high school curriculum, whether modified or not, is not required for graduation under the applicable standard.⁴⁹

The Parent bears the burden of making a *prima facie* showing that the Student's grades were a sham or do not reflect to any degree mastery of academic content. The Parent offered no specific evidence (other than her own impressions) of the Student's current academic abilities or what the Student's grades reflected. Dr. Pancsofar and Ms. Wickham did not offer any testimony as to the Student's level of academic competencies and were not in a position to do so given the limited scope of their engagements. (P3, W3) At best, the Parent established at hearing that the Board witnesses were not able to fully describe how the Student's May Center curriculum matched up with the Board's curriculum or what the Student's grades reflected. (J15, J31, F9)⁵⁰ The Board's lack of detailed knowledge, although of concern, is not necessarily surprising. The witnesses who could testify most definitively as to the content of the courses that the Student took and how the Student's grades were determined are the May Center employees who were responsible for teaching and evaluating the Student over the years, and who developed the substantive components of her IEPs.⁵¹ That the Board witnesses did not know this information does not mean that the Student's grades were a sham or do not reflect to any degree mastery of academic content. The documentary record is sufficient along with the testimony that was offered to establish the Student's achievements.

25. The Student's progress in her IEP goals and objectives was reviewed at the April 10, 2003 PPT and the record establishes that she was making adequate progress in meeting those IEP goals and objectives.

⁴⁹ See, e.g., *Girard*, 37 IDELR at 298 (upholding graduation where IEP goal for the 2001/2002 school year was ability to function at the 6th grade level for writing, reading and math skills, even though at time of graduation the student had a 5.7 grade equivalent reading level); *Gorski*, 441 IDELR at 415 (upholding graduation even though student did not complete IEP goals for English and government courses, where the student had passed all of the five courses in which he had been mainstreamed, functioned at a 10th grade level in government, English and reading, functioned on a 7th to 8th grade level in mathematics).

⁵⁰ The Parent notes that the "Board failed to offer any proof that the courses [the Student] took at the May Center satisfied the course requirements of Fitch High School" and "that in performing his credit hour conversion analyses, Mr. Forbes did not know and was not aware of the course content at the May Center." Parent Post-Hearing Brief at 11.

⁵¹ Although the May Center may have been within its legal rights to decline to testify unless subpoenaed, it is regrettable that the May Center exercised that right given that the May Center best knew the Student's educational needs and circumstances and was relied upon and trusted by both parties.

Discussion. The Student’s May Center IEPs have consistently targeted the areas in which she needs assistance by including components to improve her academic knowledge in a modified curriculum, to improve her academic competencies (*e.g.*, organizational and metacognitive skills), to address the behavioral challenges she faces (*e.g.*, food stealing and eating), to improve her ability to complete ADLs (*e.g.*, self-care, laundry, meal preparation), to improve her social competencies and to improve her vocational competencies (subject to the discussion herein regarding transition planning deficiencies). (24, 27, Ex. B35, Ex. B39)

The April 10, 2003 reviewed the Student’s progress toward graduation, her progress on her IEP goals and objectives, and the status of her transition planning. The May Center personnel reported that the Student was making adequate progress on her goals and objectives. The Parent was present but did not disagree. (J67-J72; Ex. B53)

The Parent does not offer any specific evidence that the Student was not progressing on either the academic or non-academic aspects of her IEP goals and objectives at that time or through June 18, 2003. The Parent testified that the Student had made progress in the academic and non-academic areas of her IEPs over the years, including her IEP for the 2002/2003 school year. (M2, M3) The Parent also testified that until July 2003, she was pleased with the Student’s progress at May and that prior to the commencement of this due process proceeding, the Board would have had no reason to be aware of any unhappiness or dissatisfaction she had. (M32) The record overall shows that the Student was making slow but steady progress on, and was maintaining gains she had made on, her IEP goals over a multi-year period. Of the Student’s twelve objectives in place for her 2002/2003 school year IEP, as of February of 2003, the Student had mastered 7 objectives and was progressing on 5 objectives. In June of 2003, she continued to have mastery of 5 of her objectives and was progressing on 6 objectives (Ex. P12), notwithstanding the regressive behaviors she was showing toward the end of the 2002/2003 school year associated which were not significant and which the May Center attributed to her awareness of her potential departure from the May Center. (27f)⁵²

ISSUES RELATED TO TRANSITION PLANNING

The Parent claims that the Student should not have been graduated in June 2003 because the Board had failed to fulfill its transition service-related obligations under the IDEA. To the extent that those claims are not barred by the SOL, her claims have some merit.

The IDEA, 20 U.S.C. § 1401(30), defines “transition services” to mean a “*coordinated set of activities for a student with a disability*” which (A) “*is designed within an outcome oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community*

⁵² Her third quarter 2002/2003 school year progress report (in February 2003) shows that the Student was meeting a 90% accuracy rate in English and Science. The fourth quarter goal increased the accuracy level to 95%. (27d, 27e)

participation;” (B) “is based upon the individual student’s needs, taking into account the student’s preferences and interests;” and (C) “includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.” (Emphasis added.)

The goal of identifying the eligible child’s transition service needs and of identifying the transition services that will be provided to the child is to assure that the child will move successfully from school to adult life. Transition services help eligible children bridge the gap from school to the "real world" upon graduation by preparing them for adult life and providing them with skills that they will need to obtain gainful employment, if appropriate, or continue education or training to enable them to do so as needed to enable them to live as autonomously as possible, given their disabilities. An eligible child’s transition plan must therefore include, when appropriate, a statement of the interagency responsibilities or linkages (or both) that will be established before the child leaves the school setting to facilitate the transition from school to adult service providers.⁵³ The transition service provisions of an IEP must be reviewed at least annually. *See* 34 C.F.R. §§ 300.346(b); 300.343(c). The IDEA does not specifically require that transition plans be stated in terms of annual goals and short-term objectives.

26. The Board is ultimately responsible for ensuring that the Student’s transition service needs are identified and required transition services are provided. *See generally* IDEA, at 20 U.S.C. § 1412(a)(12)(B)(i).
27. As a general matter, the Board’s transition planning obligations starting when the Student turned 14 years of age included both identifying the Student’s transition service needs (which reflect the anticipated post-secondary school environment for the Student) and providing special education and related services support to enable her to successfully function in that environment (transition services). IDEA, 20 U.S.C. § 1414(d)(1)(A)(vii). Given that at the end of the 2002/2003 school year the Board would not only potentially exit the Student from eligibility for special education and related services support but also shift responsibility for the Student to adult service providers, the Board’s obligations under the IDEA for the 2002/2003 school year also included designing and implementing a plan to assure that there was a seamless shift from the Board as the Student’s primary service provider/coordinator to the adult service providers who would be assuming that responsibility.
28. The Board complied with its obligations under IDEA Regulation 34 C.F.R. § 300.345(b)(1)-(2), which requires that when the Student turns 14 years of age, her IEP contain a statement of “transition service needs” developed at a PPT noticed for that purpose, to which the Student was invited. The May 15, 1998 Transition

⁵³ *See* IDEA at 20 U.S.C. §§ 1414(a)(5), 1401(a)(19), 1401(a)(20), 1414(d)(1)(A)(vii); IDEA Regulations 34 C.F.R. §§ 300.18; 300.29(b); 300.346(b); 300.347(b).

Summary Plan in the IEP/PPT minutes defines the Student's needed transition services as "graduate from high school; live independently and access community resources." (11) At the May 11, 2000 PPT, which was attended by the Parent, the Student and representatives of the May Center, including transition planning specialists, the Student's transition service needs were identified as follows: "completion of high school." (21) This was consistent with the Student's expressed interest of going to college to earn a degree to permit her to work with young children in the future. (23k)

29. The Board also complied with its obligation under the IDEA Regulation 34 C.F.R. § 300.347(b) that once the Student turned 16 years of age, each of her subsequently developed IEPs must identify the "transition services" that need to be implemented to enable her to function successfully in her anticipated post-secondary school environment. Each IEP after the one developed at the May 11, 2000 PPT identify the transition services that were to be provided to the Student. (23k, 24h, 26e, 27i-27l, 270, 28) The areas that were the focus of the transition services provided to the Student and the goals and objectives with respect to the transition service components of her IEPs were developed by the May Center, agreed upon by the Board, the May Center and the Parent at duly noticed PPTs attended by the Parent and May Center representatives, and were implemented by the May Center. Dr. Pancsofar agrees that the Student's interests were identified, there was a determination of her current skill levels annually through the IEP process and that a vision statement for the Student's future had been formulated. (P19)
30. The transition service components of the Student's IEPs were reasonably calculated to provide the Student with a non-trivial educational benefit, and did so. The Student's potential post-May Center living environment was either a supervised living situation (such as a group home or an apartment) or a return to her family's home. Regardless of her ultimate living environment, she needed the same basic set of skills: impulse control around food, meal planning, shopping, budgeting, basic banking skills, ability to access public transportation, first-aid, job seeking skills, vocational skills and map reading, among others. Her IEPs addressed all of these areas. (28) The May Center reports over the years indicate that the Student was making progress on all aspects of her IEPs, including the transition service-related components. Prior to this hearing, the Parent never voiced any complaints regarding the transition service-related components of the Student's IEPs, or her progress on completing IEP goals and objectives in these areas. (M11, M29, M32, M36)⁵⁴

⁵⁴ The Parent claims that the Board knew she had objections and complaints about the transition plans because of the questions she would ask at PPTs about what the Student would be doing in the future. (M37) Asking a question is not the same as voicing an objection. In any event, the Parent did not before August 2003 act on any of the objections she now alleges that she had and does not offer a reasonable explanation for the delay.

Discussion. Dr. Pancsofar concluded that the transition service-related components of the Student's IEPs were not appropriate because the specific goals of each objective were not properly formulated. (P15) The goals as formulated required that the Student when given an opportunity to demonstrate a skill or perform a task, do so with a decreasing level of cuing over time. Stated conversely, the goals were framed such that the Student was required to perform the steps of a required task with an increasing level of independence, self-correction and self-direction. Dr. Pancsofar did not offer examples of what he would consider to be more appropriately formulated goals. The goals as formulated, although not as clear as they perhaps could have been, were not so vague as to be meaningless. Those goals, when read in the context of the specific objective to which they related and the narrative explanation of the Student's progress in the quarterly progress report prepared by the May Center more than amply describe the operation of the Student's IEP with respect to that goal and her progress. (*See, e.g., Ex. P12*)

Dr. Pancsofar also concluded that the transition service-related components of her IEPs were inappropriate because they were not oriented toward an identified, specific post-May Center environment. (P7) The options open to the Student were either a facilitated living environment (either a group home or a supervised apartment with a peer) or her home. The skills she would need in both environments were essentially the same, and the transition service-related components of her IEPs were focused on those skills.

31. The Student's transition planning starting in the 2002/2003 school year was deficient, however, in that her IEP failed to provide an organized program in which the Student was given opportunities to demonstrate in Groton the skills that she was learning at the May Center, her performance in Groton was evaluated and areas for improvement were identified and addressed over the course of the 2002/2003 school year.

Discussion. The Parent correctly claims that “[t]here were no plans to transfer any-in class skills [the Student] had obtained to the environments in which it was anticipated [the Student] might live following graduation” and that the Board failed to timely conduct an “adequate functional assessment of her skills and demands of her post school environments” to facilitate planning for the 2002/2003 school year. Parent Post-Hearing Brief at 14-16, citing Dr. Pancsofar's conclusions (P7, P15 and P17). The Board claims that the Student's IEPs did include a component for skills practice in Groton through her home visits. That claim lacks merit. The Board notes that the Student came home from the May Center on a regular basis (15 to 20 times per year for up to five and six days at a time), that the May Center provided the Parent with recommendations and strategies to be used at home and that the Student's behaviors at home improved markedly. Board Post-Hearing Brief at 17-18. However, those activities were not part of an organized or coordinated program formally incorporated into the Student's IEPs, there were no identified goals and objectives to which these home visits were expressly tied and there was no process by which her performance was evaluated to reach an identified goal or objective with respect to home visits.

The Board relied on the May Center's expertise and since the May Center did not recommend this type of transitional programming the Board did not provide it. Board Post-

Hearing Brief at 17-18. (J69) The Board may rely on the May Center but may not abdicate its responsibility. It is not clear why the May Center did not suggest a pre-discharge program of increasing the Student's activities in Groton to assess her competencies and ability to generalize her May Center skills to the Groton environment. The answer is not in the record for two reasons: (1) May Center witnesses did not testify; and, (2) the Board at a PPT never asked the May Center about this, but rather assumed it was unnecessary because the May Center did not suggest it.

32. Since the Student was not only exiting out of eligibility for special education and related services but also exiting out of the Board's responsibility, the Board's transition planning responsibilities included taking the lead in assuring that there was a smooth transition of the Student from the Board as a service provider with responsibility for her to the adult service providers who will assume responsibility for her at the point at which the Board's obligations cease. *In re Child with Disabilities*, 21 IDELR 624 (SEA CT 1994) (school districts cannot unilaterally delegate their transition responsibilities to parents). The Board essentially left the transition planning up to the Parent and failed to assure that any necessary temporary or interim arrangements were in place at the point at which the Board's responsibility ended to assure that the Student's needs were being met until the services that were to be offered by the adult service providers commenced.

Discussion. The Board is expected to take a leadership position in contacting agencies expected to provide services to the Student once she exits the school system and in acting as a liaison between the Parents and the potential adult service providers while the Student is enrolled in school.⁵⁵

In the fall of 2002, the Board began contacting potential adult service providers to invite them to participate in PPTs the focus of which would be to plan for their involvement with the Student following her anticipated graduation, which marked the end of the Board's responsibilities. The Board was advised by these providers that they would not attend PPTs for the Student prior to the time that she returned to Connecticut. Recognizing that it cannot compel attendance of these providers at PPTs or cannot compel them to engage in a transition planning process if they refuse to do so, the Board properly and timely provided the Parent with information as to how to contact these agencies. (J52, J59)

⁵⁵ See, e.g., *Yankton School District v. Schramm*, 900 F. Supp. 1182 (D.S.D. 1995), *aff'd*, 93 F.3d 1369 (8th Cir. 1996) (rejecting school district's contention that it fulfills its responsibility to develop and implement interagency participation in transition services if it communicates to the disabled student and her parents the kinds of agencies in the community that may be able to help the student in the future and provides the student and her family with "linkages" to those agencies; such a minimal approach to school district responsibility for transition services planning and implementation fails to comport with the IDEA's transition services requirements).

The Board at that point ceased being an active participant in the transition planning process for the Student, and effectively left it to the Parent to finish the transition planning. The Board did respond appropriately and promptly to Parent requests to facilitate her efforts to access adult service providers. The Board assured that required neuropsychological and psychoeducational evaluations of the Student, such as the LifeSpan Evaluation, were performed at Board expense and provided to the Parent for use in the process of applying for services from these adult service providers. (M33) The Board also agreed to the request of the Parent to fund the Futures, Inc. assessment because it would provide important data for those potential adult service providers about the Student's ability to function in her home environment. (J11) The Board also agreed unilaterally to fund a continued placement at the May Center from her graduation on June 18, 2003 (the point at which the Student graduated and at which the Board's legal obligation under the IDEA and Connecticut special education law would end) through and including her 21st birthday. The Board made this unilateral offer because the Board was aware that the Parent was having difficulty securing services from adult service providers. (J67)

At the April 10, 2003 PPT, the Parent reported that the Student had been accepted into the Acquired Brain Injury Waiver Program which would provide the Student with companion services, independent living and vocational skills training and services provided by a neurocognitive behavioral specialist. (M26)⁵⁶ She did not advise the Board at the time that the DMR had concluded that the Student was not eligible for services. (M33) Accordingly, as of the April 10, 2003 PPT the Board was aware that the Parent had made a linkage with at least one adult service provider and had not yet been approved for another, and that these adult service providers would not begin providing services to the Student until she returned to Connecticut. The Board appears to have assumed that the necessary linkages and continuity were in place. It is not clear, however, that the Board actually evaluated whether there would be any gap in service delivery to the Student between the point at which she was discharged from the May Center and the point at which those providers began providing services.

Not knowing precisely as of or after the April 10, 2003 PPT where the Student would be residing post-May Center or whether and when adult service providers would begin providing services, the Board should have made that determination and, as necessary, developed an interim plan to assure that the Parent and Student could access some adult service providers immediately upon the Student's discharge from the May Center. For example, a linkage with a private agency such as Futures, Inc. would have been appropriate. This is not to say that the Board was required to fund any such services after it was no longer responsible for the Student under the IDEA or Connecticut special education law. This is to say, rather, that the Board should have worked more closely and proactively with the Parent to assure that there was a specific transition plan in

⁵⁶ The Parent had also contacted Project Genesis, which provides companions and living skills trainers. (M35) It is not clear from the Parent's testimony when this arrangement was in place. She did testify that she did not share with either the Board or the May Center her own efforts to link with adult service providers, and it does not appear that she had advised the Board about the Project Genesis before testifying about it at hearing. (M35)

place for the Student as of the date that the Student ceased being the responsibility of the Board. No such ***Board developed*** plan was in place.

33. Finally, the Board also had an opportunity to correct at the April 2003 PPT a failure of the May Center to deliver what Dr. Jacaruso acknowledged was an “important” component of the Student’s 2002/2003 school year programming in light of her graduation: that the Student obtain and maintain paid employment in the community in the 2002/2003 school year to improve her vocational preparedness and enhance her employability in her post-May Center environment. Although aware as of the April 2003 PPT that the May Center had failed to implement this aspect of her programming (J68), the Board did nothing to assure that that deficiency was corrected or determine whether the failure to deliver that service warranted changing the projected graduation date from June 2003 to June 2004 to enable the May Center to deliver that service to the Student.

Discussion. Through the 2001/2002 school year and into the 2002/2003 school year, her IEPs provided for volunteer jobs in the community (for example at the Museum of Science) and paid jobs at the May Center, as well as training in job seeking and other vocational-related skills. The 2002/2003 IEP developed by the May Center identified as Goal # 4.3 that the Student obtain paid employment in the community. (27k, 271, Ex. B45 at 13) That step appears to have been appropriate given the Student’s level of functioning as of the end of the 2001/2002 school year and given that her planned exit date was June 2003. A note handwritten by Dr. Jacaruso on this page of the IEP form indicates that the “focus” of this Goal (which was new to the IEP) would be on paid community employment. Dr. Jacaruso testified that this Goal apparently reflected a Parental concern that the Student have some employment experience outside of the May Center context to prepare her for employment post-May Center. The April 10, 2003, although it reviewed the Student’s progress, apparently did not discuss her progress on this particular Goal. Dr. Jacaruso’s suggestion at hearing that obtaining paid employment was not actually a Goal of the IEP is belied by the written documentation. Dr. Jacaruso had no explanation as to why no action was taken regarding the failure of the May Center to deliver this component of the Student’s IEP, or to assess her progress on this “important” component of her transition services. (J68) Dr. Pancsofar concluded that the vocational training components of the Students IEPs were inappropriate inasmuch as there had been no “professionally adequate identification of [the Student’s] skill levels in the area of vocational, independent living and community participation” to determine what supports would be needed to bridge any gaps to permit her to function in the anticipated post-May Center environment. (P19) Having a paid community employment experience would have been a step in the direction of correcting that problem.

COMPENSATORY EDUCATION

34. Compensatory education is equitable relief that can be awarded to the Student even though she has graduated and turned twenty-one years of age to remedy a “gross” violation of her rights under the IDEA: (1) that occurred while she was still eligible to receive special education and related services; and, (2) which deprived her of a

FAPE.⁵⁷ To obtain compensatory education, the Parent must show by a preponderance of the evidence that the Board committed gross procedural violations. *See, e.g., In re Student with a Disability*, 27 IDELR 774 (SEA CT 1998). Factors to consider in determining whether to award such relief can include the conduct of the parties, the nature and extent of the harm and the extent to which an available remedy can remediate that harm. Compensatory education, which is at the discretion of the Hearing Officer, can take the form of either an order directing that the Board provide services to the Student or reimburse the Parent for services she obtained for the Student which the Board should have provided in the first instance.

35. Crediting the Parent’s testimony that she had concerns regarding transition planning for several years before June 18, 2003, there is no basis to conclude, given this record, that the Board would have been unresponsive to the Parent’s concerns **had** the Parent voiced them. The Parent had full opportunity to participate in all aspects of the Student’s programming and the Board may reasonably expect her to have been an active participant in that process. She was, however, a passive participant, notwithstanding by her own testimony she had “panic” and “fear” regarding the Student’s post-May Center placement and services beginning at least as early as 2000. (M24) She testified that although she expressed her concerns to the May Center, she did not get any satisfactory answer. (M31) If her testimony is credited, she then chose not to express those concerns to the Board. She acknowledges that there was no way for the Board to know prior to the time she commenced due process that she had these concerns or was dissatisfied with the Board’s transition planning or the transition service-related components of the Student’s IEP. (M11, M21, M29, M32, M41)⁵⁸

⁵⁷ *See, e.g., Mrs. C. v. Wheaton*, 916 F.2d 69 (2nd Cir. 1990); *Garro v. Connecticut*, 23 F.3d 734 (2nd Cir. 1994) (compensatory education as relief is unavailable to a claimant over 21 years of age absent “gross” procedural violations); *Fetto v. Sergi*, 181 F. Supp.2d 53 (D. Conn. 2001) (compensatory education available to student who had aged out of eligibility); *RM v. Vernon*, 208 F. Supp.2d 216 (D. Conn. 2001); *K.P. v. Juzwic*, 891 F. Supp. 703 (D. Conn. 1995) (citing cases); and *State of Connecticut Unified School Dist. No. 1 v. State Department of Education*, 45 Conn. Supp. 57 (1997). Compensatory education is available notwithstanding that the child has graduated.

⁵⁸ Crediting the Parent’s testimony in this regard, even assuming that the Parent did not fully understand her rights regarding graduation, the Parent did **nothing** regarding the “fear” and “panic” she claims she had been having since May 2000 regarding post-May Center planning. The Parent had ample opportunity to clarify any confusion she might have had and to address her “fear” and “panic” with the Board and the May Center prior to graduation, but did not do so. Notwithstanding that she was not getting any satisfactory answers from the May Center and that she knew how to access the legal system as necessary to vindicate the Student’s interests, and had done so in the past, she made no effort until July and August 2003 to access that system to address her growing “panic” and “fear” by seeing what if anything could be done.

36. Notwithstanding the Parent's contribution to the present circumstances, it is still the Board's responsibility to establish an adequate transition plan for the Student and the Board's failure to do so is a gross violation of the IDEA.⁵⁹ Particular care must be exercised with respect to transition planning when the eligible child has been in a full time residential placement over a multi-year period and is simultaneously exiting out of eligibility for special education and related services and transitioning out of the Board's sphere of responsibility and to adult service providers. The Board must in those circumstances assure that a "safety net" of adult service providers has been established so that the Student will not fall through the cracks at the point at which the Board's responsibility ends. That is particularly true in this case given that well before April 10, 2003, the Board was advised by potential adult service providers that they would not participate in transition planning before the Student returned to Connecticut, thus raising the possibility of a lag between the point at which the Board ceased delivering services and the adult service providers began providing services. The Board in this case failed to assure that there was a Board developed plan in place for the seamless transition of the Student out of the Board's responsibility, and instead simply gave the Parent telephone numbers of agencies to contact and left it to the Parent to do the rest.

Discussion. The harm caused by this failure arises largely from any gap in services and programming that the Student was receiving from the date of her discharge from the May Center to the date that adult services began to be delivered. Although there appears to have been a gap, it is unclear whether the Student's educational interests were in fact harmed. The Parent offered colorful testimony regarding a July 2003 planning meeting with the adult services providers who have assumed responsibility for providing services to the Student. That testimony suggests that some plan was put into place to commence upon the Student's return to Connecticut, although inexplicably (and incredibly) the Parent could not remember whether a plan had been developed much less what that plan was. (M45)

As of her December 2003 testimony, the Parent anticipated that the full range of services that the Student would receive from adult service providers would begin shortly. (M26) Accordingly, at best there was a partial gap in service provision to the Student for the period September 9, 2003 to at least December 11, 2003. The Parent offered no testimony or evidence, however, as to whether or how the Student has been harmed by that gap. Dr. Pancsofar never actually evaluated the Student and therefore offered no testimony that could establish whether the Student was in fact harmed by the Board's transition planning failure. The Parent testified that since the Student's return to Connecticut, the Student has had 40 hours/week of companion

⁵⁹ That failure likely reflects that the Student was the only eligible child in Dr. Jacaruso's (or Mr. Forbes') experience with the Board who had been placed in a residential out of state facility. (F14, J2)

services offered by a paraprofessional arranged through one of the potential permanent adult service providers. The companion accompanies the Student and appears, to some degree, to have been working with the Student to teach her to apply her May Center skills in Groton. (M26) It is likely that any interim service linkage the Board could have facilitated arranging would not have been much different than the one the Parent was able to arrange. That does, not, however excuse the Board's failure to fulfill its obligations.

37. In addition, common sense dictates that assuring a successful transition for the Student would require something more than having the Student demonstrate various skills at the May Center environment or with the May Center support with the expectation that she would be able to generalize those skills to environments to Groton (as her likely post-May Center environment) when she did not have those supports. The transition planning components of the Student's IEPs for the 2002/2003 school year should have provided for increasing opportunities to demonstrate her skills and abilities in her anticipated post-May Center environment, monitoring her success in doing so and developing support structures to help her overcome demonstrated deficits in that environment. The failure to provide these transition services and planning deprived the Student of an educational opportunity to which she was entitled under the IDEA – the opportunity to generalize and practice in a structured and supervised manner in her home environment the skills that she was learning to apply at the May Center environment. Had that been done in a structured systematic manner, gaps in her competencies would have been identified and could have been addressed under the May Center's supervision.

Discussion. The harm to the Student's educational interests from this failure is reflected in Ms. Wickham's assessment and conclusions. Ms. Wickham in her assessment observed the Student perform in Groton a number of the skills she had been working at the May Center over the prior few years, thus demonstrating that the Student had some ability to generalize those skills to a new environment. Ms. Wickham assessed the Student's ability to perform a number of activities in Groton and determined that the Student did not demonstrate the level of competencies Ms. Wickham would have expected her to demonstrate given her disabilities and experiences at the May Center. Ms. Wickham could not definitively state whether what she observed of the Student reflects anything other than a lack of opportunity for the Student to practice the skills in a new environment for her – Groton, Connecticut. Ms. Wickham concluded that because the Student demonstrated problem solving skills, she could learn to demonstrate the required skills in Groton. (W3, W6) The failure over the course of the 2002/2003 school year to increase the Student's level of activity in her post-May Center environment left the Student less than adequately prepared to function in that environment, and is a deprivation of FAPE.

38. In addition to the failure to systematically program into her IEP opportunities to practice her skills in Groton in a supervised and organized manner, the Board also failed at and after the April 10, 2003 PPT to actively address the May Center's failure to implement what at the time was an important element of her transition service needs – paid employment outside of the May Center. There does not appear to have been at the April 10, 2003 PPT any organized consideration of how

the failure of the May Center to implement that component of her IEP impacted the overall plan and program for the Student, including the plan to graduate her in **2003** as opposed to 2004.

39. The Parent requests that the Hearing Officer: (1) “order the Board to retain a mutually acceptable independent consultant to help the PPT formulate and implement an appropriate IEP and transition plan” for the Student; and (2) “find that [the Student] is entitled to two years of compensatory education and order that the transition planning process ordered by the [Hearing Officer] must continue until two years after the transition plan is developed with the advice of the mutually acceptable independent consultant.” Parent Post-Hearing Brief at 19. That relief, which requires rescission of the Student’s diploma, is not appropriate and is denied.

Discussion. The two year period of compensatory education presumably reflects the position of the Parent that the transition service-related and transition planning components of the Student’s IEPs have been deficient since at least August 12, 2001 (or the start of the SOL). The transition planning deficiencies identified in this Decision relate, however, to the 2002/2003 school year, and at best would allow for only one year of compensatory education (assuming that an award of compensatory education must correspond on a month to month basis for the period of “deprivation”).⁶⁰

In addition, it has been approximately 8 months since the Student returned to Connecticut. She is now involved with the adult service providers who are now responsible for providing her with the services that she needs. There is no longer a need to do transition planning in the sense contemplated by the IDEA.⁶¹

40. The Student is entitled to some relief, however. The appropriate relief in the circumstances is for the Board to pay for the costs of the Student’s placement at the May Center from and including August 19, 2003 through and including

⁶⁰ See, e.g., *In Re: Child with a Disability*, 27 LRP at 4790 (in awarding compensatory education, there is no requirement that the period of compensatory education correspond day-for-day to the period of deprivation).

⁶¹ Moreover, it is likely that there will be a further delay of several weeks before any such assessment is done and services actually begin. Given the nature of the relief requested, it is curious that the Parent declined to follow an approach suggested by the Hearing Officer which would have provided that record and would have facilitated more timely delivery of services. At the PHC, the Hearing Officer suggested that the parties convene a PPT to determine what transition services, if any, the Student needed in light of her discharge from the May Center so that any dispute over transition services could be addressed in this hearing process as well should the Hearing Officer conclude that the Student was entitled to receive such services.

September 9, 2003.⁶²

Discussion. Through her own effort and hard work under the supervision and direction of a placement identified by the Parent and funded by the Board, the Student has earned her diploma. The Board's failure to fully discharge its transition planning obligations concerns non-academic components of her IEPs and, on the facts of this particular case, provides no basis to rescind her diploma which as awarded reflects academic accomplishments.

However, her graduation provides no basis to excuse the Board from its obligations and does not preclude an award of compensatory education if such an award is necessary to remedy a deprivation of FAPE.⁶³ Had the Parent commenced this due process proceeding on a more timely basis (*i.e.*, before June 18, 2003), the Board may have been precluded from graduating the Student on June 18, 2003 to permit remediation of the transition service/planning deficiencies identified above and would therefore have been required to continue to fund services for the Student either at the May Center or some other placement potentially, under Connecticut law, through June 2004.

Recognizing that the remedy proposed by the Parent would be redundant given the involvement of adult service providers with the Student, reimbursing the Parent for the costs of

⁶² That the Parent was denied Board funding for the May Center placement during this period as "stay put" relief has no bearing on whether she is entitled to reimbursement for those costs as a form of compensatory education.

⁶³ *See, e.g., Puffer v. Reynolds*, 761 F. Supp. 838 (D.Mass. 1988) (award of compensatory education appropriate notwithstanding that the student was properly graduated); *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489 (9th Cir. 1994) (reaching the merits of a compensatory education claim for a student who graduated from high school). *But see In re Child with a Disability*, 27 LRP at 4790 and *Bean v. Conway School Dist.*, 18 IDELR 65 (D.N.H. 1991), which cite the award of a "bona fide" diploma to a child who thereafter claimed to have been denied a FAPE as evidence that the child had received a FAPE thereby precluding an award of compensatory education. The child in *In Re Child with a Disability* had been receiving special education and related services support prior to graduating, and the CTDOE hearing officer in that case concluded that the parent had not met her burden of establishing procedural violations warranting an award of compensatory damages. The child in *Bean* had not been identified as an eligible child before graduating with a regular high school diploma. In denying the parent's request for an award of compensatory education in the form of payment for educational services for the student in college, the Court concluded that it was not appropriate "to grant compensatory education to a student who has received a bona fide high school diploma and whose parents have never requested an IEP, where the school district's violation . . . was not gross or extreme." *Bean*, 18 IDELR 65 at 8.

the May Center placement in this period strikes a balance which holds the Board accountable for its failure to provide the required services and holds the Parent accountable for failing to vindicate on a timely basis and proactively the concerns she claims she had been having since 2000 regarding the Student's post-May Center planning.

FINAL ORDER AND DECISION – ON THE MERITS

1. The Student was properly graduated from high school with a regular high school diploma on June 18, 2003 and there is no justification or reason to invalidate her graduation or rescind her diploma.
2. The Board failed to comply with its obligations to the Student under the IDEA with respect to the discrete aspects of transition planning identified herein, as a result of which the Student was denied a FAPE.
3. The appropriate remedy for that denial of FAPE is an award of compensatory education in the form of payment by the Board of the costs of the Student's placement at the May Center for the period August 19, 2003 to and including September 9, 2003. To the extent that the Parent has not already paid the May Center for this placement, the Board is directed to do so. To the extent that the Parent has already paid the May Center for this placement, the Board is directed to reimburse the Parent. Any such reimbursement shall be made within 20 calendar days of the date on which the Parent or the May Center provides documentation to the Board of the total costs of the May Center placement for that period, of any payment made by the Parent to that date and of any balance due to the May Center for services provided during that period.
4. Other than the payment obligation set forth in Paragraph (3) above, the Board has no further obligations to provide or fund services to the Student.

RECORD EVIDENCE REGARDING STUDENT'S GRADES¹

Subject	1997/1998 School Year			1998/1999 School Year			1999/2000 School Year			2000/2001 School Year			2001/2002 School Year			2002/2003 School Year		
	Credits Earned	Clock Hours	Final Grade	Credits Earned	Clock Hours	Final Grade	Credits Earned	Clock Hours	Final Grade	Credits Earned	Clock Hours	Final Grade	Credits Earned	Clock Hours	Final Grade	Credits Earned	Clock Hours	Grades ²
SE English	2.6	325	B+	1.8	225	A-	1.8	225	B+	3.5	425	A	2.4	300	B	2.0	250	B/B
SE Math	0.4	50	B+	0.4	50	A-	0.4	50	B+	0.8	100	D	1.2	150	D	1.6	200	C/B+
SE Social Studies	1.6	200	B+	1.0	125	A	1.0	125	A	2.8	350	B+	0.8	100	A-	1.2	150	B/B
SE Science										0.8	100	B	1.2	150	B	2.0	250	A/A-
Physical Education	0.4	50	B	0.4	50	A	0.4	50	A	0.8	100	A	1.2		B			
Transitional/ Vocational Education	0.6	75	B	0.6	75	B	1.0	125	A-	0.4	50	P	1.8		P			
Life Skills	1.0	125	B	1.0	125	B+	1.0	125	B+	0.4	50	B						
Health										0.4	50	A	0.8	100	A			B/B
Fine Arts ³																0.8	100	B/B-

¹ Based on Exhibits B63 to B68.

² These grades are reported in two semesters and not as a final grade.

³ Includes applied arts.