

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Parent: Jennifer D. Laviano, Esq.  
77 Danbury Road, Suite C-6  
Ridgefield, CT 06877

Appearing on behalf of the Board: William R. Connon, Esq.  
Sullivan, Schoen, Campane  
& Connon, LLC  
646 Prospect Avenue  
Hartford, CT 06105-4286

Appearing before: Mary H.B. Gelfman, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Was the program/placement offered to Student for the 2003-2004 school year appropriate to his special education needs in the least restrictive environment?
2. Was the program/placement offered to Student for the 2004-2005 school year appropriate to his special education needs in the least restrictive environment?
3. Was the extended year program for the summer of 2004 offered by the Board appropriate to Student's needs?
4. Did the Board comply with the procedural requirements of IDEA and related state law in dealings with Student and Parents? (Specific allegations of violations to be provided by Parents.)
5. If the special education program offered by the Regional School District is not appropriate to Student's needs, is placement at Ben Bronz appropriate?
6. Is the Board responsible for funding Student's placement at Ben Bronz?

**PROCEDURAL HISTORY:**

The hearing was requested on November 5, 2004 and this hearing officer was appointed November 8, 2004. A pre-hearing conference was held by conference telephone call on November 15, 2004. The parties requested time for settlement negotiations: the deadline for mailing the final decision and order was extended from December 20, 2004, to January 19, 2005. The hearing was scheduled for January 12, 20, 21 and 28, 2005. The deadline was extended again, to provide for additional hearing dates, and was set at February 18, 2005.

The first hearing date, January 12, was cancelled because schools were closed by a snowstorm. The second hearing date, January 20, opened 90 minutes late due to delayed school opening related to another snowstorm. When additional dates were needed, the parties agreed to February 7 and March 4, 2005, and the deadline was again extended, from February 18 to March 20, 2005. The February 7 hearing session was cut short by the illness of an attorney, and an additional session was scheduled for March 9, 2005. To accommodate this additional session, proposed submission of briefs, and the writing of the decision, the deadline was again extended from March 20 to April 19, 2005.

The March 9 session started 90 minutes late due to delayed school opening related to yet another snowstorm. At the March 9 hearing session, the attorneys for both parties agreed that briefs would not be necessary, and the session concluded with oral closing arguments.

**SUMMARY:**

The Parents complained for several years that their son was not achieving; they were especially concerned about his reading. The elementary school had provided support through Title I tutoring in reading and math. Eventually, Parents placed Student at Ben Bronz Academy, where he has done well. Parents ask for the placement to be funded by the Board; the Board disagrees and argues that their program was appropriate.

**FINDINGS OF FACT:**

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

(Student entered the Regional School District in 7<sup>th</sup> grade, in September, 1999. His earlier record, identified as "Board", is included in this decision in order to trace his school history and academic development.)

1. When Student was in 1<sup>st</sup> grade, his teacher requested a meeting concerning his difficulties with reading and math. She mentioned "much difficulty following directions, is frequently inattentive, easily distracted and appears very tired". (Ex. B-3)

2. The Child Study Team met on May 20, 1994, to discuss Student's problems. Student's Mother was also concerned Student's attention. The Team notes "easily distracted but not hyperactive". The Team's report concluded with:
  1. Teacher gets Student to focus his attention by getting him to maintain eye contact with her before she instructs him.
  2. Teacher points out things to him – 1:1 support to get task started.
  3. Evaluated for TLC – serious difficulty.Decisions: Refer for complete evaluation in September. (Ex. B-4; Parent, Tr. 1/20/05 pp. 24-26)
3. On June 24, 1994, Student was referred for special education because of concerns regarding reading (word analysis), math (concepts), and spelling (written work for spelling tests –OK). Difficulty following directions, easily distracted, difficulty sustaining attention, comprehension difficulties, weak application of phonic skills, and difficulty utilizing decoding strategies were listed as problem areas. Strengths included memorizing spelling words, fine motor skills. He had been on a waiting list for TLC. (Ex. B-5)
4. Student was evaluated in September, 1994. The evaluators reported his major difficulties as "reading, following directions, and maintaining attention in class". Test scores ranged from average to well below average, with a full scale I.Q. on the WISC-3 characterized as borderline. Evaluators commented:

... seems to process and retain some information, both spoken and visual, inconsistently. Inadequate attention/concentration may be a factor which should be further evaluated. Weak visual-motor and spatial organization skills often make writing tasks difficult and frustrating for him. Test results show that [Student] has acquired a fund of general information which is solidly average for a second grade student. Throughout this portion of the evaluation, [Student] presented himself as a very passive student who cooperated but had low interest in any of the activities.

The evaluators recommended specific techniques for improving focus, attention, and structure for written tasks, and academic support in a smaller group setting. Ex. B-7, B-8)
5. A speech/language evaluation conducted in October, 1994, resulted in a report of weak language skills, commensurate with his recently tested ability level. (Ex. B-10)
6. A Planning and Placement Team (PPT) meeting held on October 21, 1994, and attended by both Student's parents, found Student ineligible for special education and recommended support from Chapter I and START. (Ex. B-11; Parent, Tr. 1/20/05 pp. 32-34)
7. Student's 2<sup>nd</sup> grade report card noted his "struggle with reading and math" and his need for "support and encouragement". (Ex. B-12)

- 8. Student continued with support for reading and math in 3<sup>rd</sup> through 5<sup>th</sup> grades. Both teachers and his Parents noted schoolwork was a “struggle”. He did best in one-to-one settings, with adult support. (Ex. B-14, B-16, B-17, B-19, B-20)
- 9. In his 4<sup>th</sup> grade Connecticut Mastery Test, Student scored below statewide goals in every area tested. Student’s 6<sup>th</sup> grade Connecticut Mastery Test scores were again below the mastery level. (Ex. B-15, B-22)

10. The report of a language evaluation performed by the Board at parental request in December, 1998, described Student’s behavior:  
 [Student] worked hard throughout testing. Often he showed a lack of confidence on a given task but could be encouraged to keep on trying. With support, [Student] was able to persevere to a reasonable level, though many tasks were clearly a struggle for him. He took the testing seriously and put in his best effort. The evaluator noted that on the CELF-R, Student showed weakness in auditory memory and listening to paragraphs. On the PPVT, Student’s vocabulary was in the low average range. (Ex. B-27)

11. The report of a psycho-educational evaluation performed by the Board at parental request in January, 1999, when Student was 11 years, 7 months old, includes scores on the WISC-III:

Verbal Scale IQ Score:	85	16 <sup>th</sup> percentile
Performance Scale IQ Score:	64	1 <sup>st</sup> percentile
Full Scale IQ Score:	73	4 <sup>th</sup> percentile.

Scores on the Woodcock-Johnson-Revised included:

Cluster/test	Age Equivalent	Standard Score 68% Band (90-110=average)
Broad Reading	10-2	90-98
Reading Skills	9-1	88-94
Broad Math	10-0	82-90
Math Reasoning	9-7	83-95
Broad Written Language	9-0	77-87
Broad Knowledge	10-1	89-97
Skills	9-2	81-87

On the Slingerland Screening Tests for Identifying Children with Specific Language Disabilities, Form D, Student’s performance was reported as :

	Number of Errors	% Correct
Visual Perception:		
Memory	1	93%
Memory & Kinesthetic-Motor	4	73%
Auditory Perception:		
Memory & Kinesthetic-Motor	19	56%
Memory & Visual Perception/Discrimination	0	100%

(Ex. B-32-6)

12. The January, 1999, evaluation ends with a summary:

[Student] is a 6<sup>th</sup> grade student who was referred for an evaluation due to concerns about his academic progress. Results of intelligence testing indicate that [Student's] ability to think and reason with words is within the low average range. His ability to interpret and organize visually-perceived material is significantly below average. [Student] also has trouble attending to and recalling auditory information as compared to other children his age. Results of academic testing indicate that [Student's] academic achievement levels are commensurate with his overall cognitive ability. When compared to others at his age level, [Student's] performance is within the average range in Broad Reading, Basic Reading Skills, and Broad Knowledge; however, he will find the performance demands of age-level tasks in these areas difficult. In Broad Mathematics, Mathematics Reasoning, Broad Written Language and Skills, his performance is low average and age-level tasks involving these areas will be very difficult for him. No significant inter-achievement discrepancies were found. [Student] shows weaknesses in processing and remembering information when required to integrate information and give a written response. He also demonstrates a weakness in phonemic awareness both in decoding (reading nonsense words) and encoding (writing/spelling). Results of this evaluation indicate that [Student] would have difficulty mastering grade-level material without support. (Ex. B-32)

13. The record of a PPT meeting attended by both parents and six school staff members and held to consider evaluation results on January 20, 1999, described Student as "struggling academically" and getting along well with his peers. His strengths were listed as: cooperative; math computation; and well-liked by peers. Concerns/needs were listed: lacks confidence; difficulty reading grade level material; following oral directions; and handwriting. This meeting adjourned and the PPT re-convened on February 24, 1999, with both parents and four school staff members, to consider Student's status. On February 24, 1999, the PPT determined that Student was eligible for special education as learning disabled, and developed an Individualized Education Program (IEP) for him. His single IEP goal was:

[Student] will demonstrate an increase in writing skills by meeting grade level expectations on written assignments when given support.  
This IEP would be implemented with 10 hours/week of individual and small group support throughout academic areas. (Ex. B-34, B-38)

14. On April 7, 1999, the PPT met again to revise and expand Student's IEP. Neither parent attended this meeting, and there were four school staff members present. In anticipation of Student's move from elementary school to the Regional School District's middle school, a representative from that middle school attended this meeting. The program planned for Student's 7<sup>th</sup> grade year provided self-contained classes with an adapted curriculum for math, English and social studies; resource room, and mainstream reading and science classes with a special education teacher supporting instruction. A summer program was also offered. (Ex. B-41)

15. Goals and objectives for 7<sup>th</sup> grade were:

To demonstrate improved reading comprehension using materials at instructional level.

Will respond to literal comprehension questions.

Will respond to inferential comprehension questions.

Will make predictions based on material read.

To demonstrate an improvement in writing skills by obtaining passing grades on written assignments.

Will demonstrate use of important elements of narrative, expository and persuasive writing.

Will edit work for grammar, syntax and mechanics.

Will demonstrate accurate spelling of frequently used words in all written work.

To demonstrate an improvement in math skills by obtaining passing grades on assignments.

Will read, write and compare whole numbers, fractions and decimals.

Will estimate and find sums, differences, products and quotients of fractions and decimals.

Will write a number sentence (equation) to represent a real world or problem situation with an unknown.

To demonstrate increased commitment to school work through work completion and organization.

Will keep track of daily and long term assignments in an organized manner.

Will complete assignments on time with accuracy.

Will arrive on time and be prepared with required materials for each class.

To demonstrate an increase in reading vocabulary using materials at instructional level.

Using instructional level materials, will decode words.

Using instructional level materials, will determine unfamiliar vocabulary through contextual strategies.

Using instructional level materials, will recognize sight vocabulary.

The summary of services showed self-contained classes taught by special education teachers for Math, English and Social Studies, totaling 11.4 hours per week, and Resource Room, 3.8 hours per week. Total special education per week, 14.4 hours; regular education, 15.6 hours (as shown on form). (Ex. B-41)

16. Modifications/adaptations in all regular education classes were listed in the IEP for Student's 7<sup>th</sup> grade year.

Materials/books/equipment: alternative text, tape recorder, modified worksheets, spell check, access to computer, calculator.

Tests/quizzes/time: alternative tests, extra-time tests, pace long-term projects, preview test procedures, shortened tasks, simplify test wording, modified tests, retake tests as needed, oral testing.

Grading: grade effort + work, modified grades.

Organization: daily assignment list, folders to hold work, daily homework list, assignment pad.

Environment: preferential seating.

Behavior management/support: positive reinforcement, parent/guardian sign homework if needed.

Instructional strategies: check work in progress, use manipulatives, review sessions, modified content, pre-teach content, repeat instructions. (Ex. B-41-13)

17. Student participated in the Stanford Achievement Test at the beginning of 7<sup>th</sup> grade.

The report of his scores shows:

Content Clusters Below Average	15	Process Clusters Below Average	13
Content Clusters Average	8	Process Clusters Average	3

(Ex. B-45-3)

18. Analysis of Student's objectives on the Connecticut Mastery Test given in October, 1999, his 7<sup>th</sup> grade year, showed:

Mathematics	11 objectives mastered of a possible 34 mastered
Reading	1 objective cluster mastered of a possible 3
Listening comprehension	Did not take
Written Communication	0 clusters mastered of a possible 3
Writing sample	Scored 6 on a range of 2 to 12. (Ex. B-46)

19. Student's progress on his goals and objectives for 7<sup>th</sup> grade (listed at Finding of Fact # 15) was recorded four times that year. Progress was satisfactory on all items except for two unsatisfactory in reading and two not introduced in math, both in the first two quarters of the school year. No goals or objectives were "mastered". (Ex. B-47)

20. The PPT met on June 6, 2000, with one parent, Student, and four school staff members present, to review Student's progress and plan for his 8<sup>th</sup> grade year.

Student's present level of educational performance were:

Academic/cognitive: Silent comprehension is weak. Written expression is difficult. In math, his computation is stronger than understanding.

All other areas were age appropriate.

Strengths: wants to do well; will ask for help; and works well with others.

Concerns/needs: lacks self-confidence; distracted by social happenings. (Ex. B-49)

21. Goals and objectives for 8<sup>th</sup> (2000-2001) were:

Will continue to improve his written expression skills within his special education English curriculum.

Will write complete sentences and edit for punctuation, grammar and spelling.

Will write a paragraph with a topic sentence and supporting details.

Will utilize appropriate tools such as a spell check, dictionary and word processor when writing.

Will exhibit responsible personal and social behavior while he participates in his 8<sup>th</sup> grade classes.

Will come to class with appropriate books and materials.

Will regularly complete and hand in homework and assignments on time and study for tests and quizzes.

Will maintain an organized notebook, agenda and folders for each class.

Will ask for help when needed.

Will begin tasks independently without prompting from adults.

Will be successful in his special education math class.

Will accurately perform the four basic operations on integers, decimals and fractions.

Will accurately make conversions among fractions, decimals and percents.

Will accurately read, interpret and gain information from various types of graphs.

Will accurately solve one- and two-step variable equations.

Student's IEP would be implemented in self-contained special education classes for English and Math; Resource Room one period a day, and regular classes for Reading and Science, with special education support. The summary of services showed English, Math and Resource Room with special education teachers, 10.2 hours per week, and Reading and Science co-taught (regular and special education teachers collaborating), 6.8 hours per week. The total given on the form was 17 hours of special education per week and 15 hours of regular education. (Ex. B-49)

22. Modifications/adaptations in all regular education classes were listed in the IEP for Student's 8<sup>th</sup> grade year.

Materials/books/equipment: access to computer, spell check, calculator, modified worksheets.

Test/quizzes/time: prior notice of tests, oral testing, hands-on projects, extra response time, preview test procedures, limited multiple choice, reduce reading, extra time- written work, modified tests, test study guide, student write on test, alternative tests, extra time – tests, pace long-term projects, simplify test wording, shortened tasks, objective tests, extra time- projects, rephrase test questions/directions.

Grading: no spelling penalty, no handwriting penalty, grade effort + work.

Organization: provide study outlines, pocket folder for work, assignment pad, folders to hold work

Environment: preferential seating.

Behavior management: positive reinforcement.

Teaching strategies: check work in progress, extra drill/practice, use manipulatives, monitor assignments, multisensory approach, visual reinforcement, number line, review sessions, modified content, provide models, highlight key words, pictures/charts, concrete examples, review directions, repeat instructions, oral reminders, visual reminders, have student restate information, computer-assisted instruction, support auditory presentation with visuals, display key vocabulary, provide student with vocabulary word bank, personalized examples. (Ex. B-49-14)

23. A PPT meeting held on September 27, 2000, was not attended by either parent; four school staff members attended. The only action recorded is a decision that Student take the Connecticut Mastery Test on the 8<sup>th</sup> grade level. (Ex. B-52)

24. Student's scores on the Connecticut Mastery Test in 8<sup>th</sup> grade were:

Mathematics three out of twenty-three content strands mastered

Reading 181 of 400 possible, needs intervention

Writing 183 of 400 possible, needs intervention (Ex. B-50)



25. Student's progress on his goals and objectives for 8<sup>th</sup> grade (listed at Finding of Fact # 21) was recorded four times that year.

- 1<sup>st</sup> quarter: six satisfactory progress, five limited progress, two unsatisfactory progress, one objective mastered, one not introduced, two too dependent on adults.
- 2<sup>nd</sup> quarter: six satisfactory, seven limited progress; two too dependent on adults, one unsatisfactory progress, one objective mastered.
- 3<sup>rd</sup> quarter: nine satisfactory, five limited progress, three objectives mastered.
- 4<sup>th</sup> quarter: ten satisfactory, one limited progress, six objectives mastered. (Ex. B-53)

26. In 7<sup>th</sup> and 8<sup>th</sup> grades, Student had a reading class, receiving B's both years. His 7<sup>th</sup> grade IEP had a reading goal, but his eighth grade IEP did not. The 7<sup>th</sup> grade reading class appears to have been "regular education", though the 8<sup>th</sup> grade reading class was co-taught by special and regular education teachers. (Ex. B-41, B-49, B-101)

27. The PPT met on May 11, 2001, with one parent, Student, and three school staff members present, to review Student's progress and plan for his 9<sup>th</sup> grade year. One parent and Student attended this meeting. It was noted that Student was taking medication for attention at this time. Plans were made for his triennial evaluation, scheduled for January, 2002. His present levels of educational performance were given: Health & development: Student continues to have difficulty staying focused, sitting still, waiting his turn, and listening.

Academic/cognitive: Student's comprehension difficulties have impacted his understanding in Science and Social Studies. He will ask for help but has difficulty attending for any length of time. He wants to get everything done quickly with minimal effort.

Social/emotional: Student's high activity level impacts on his academics. All other areas age appropriate.

Strengths: sense of humor, computer knowledge, and hands-on projects. Concerns/needs: highly distractible, lacks self-confidence, written expression, reading comprehension and vocabulary, following directions. (Ex. B-55)

28. Goals and objectives for 9<sup>th</sup> grade were to be:

The student will demonstrate success in the general education standards associated with the 9<sup>th</sup> grade English curriculum with accommodations described in this plan.

The student will increase written and oral vocabulary.

The student will increase oral and written comprehension (both literal and inferential).

The student will increase his reading skills, both oral and independent.

The student will demonstrate success in the general education standards associated with the 9<sup>th</sup> grade math curriculum with accommodations described in this plan.

The student will improve problem-solving skills by applying learned strategies to solve problems from within and outside mathematics.

The student will become familiar with expressing mathematical ideas orally and/or in writing.

The student will be able to demonstrate competencies in calculating order-of-operation mathematical problems.

The student will demonstrate success in the general education standards associated with the 9<sup>th</sup> grade science curriculum with accommodations described in this plan.

The student will be able to solve problems using scientific methods.

The student will be able to make correct and meaningful lab drawings.

The student will be able to organize class presentations into meaningful notes.

The student will demonstrate success in the general education standards associated with 9<sup>th</sup> grade social studies with accommodations described in this plan.

The student will identify relevant information and supporting evidence in given academic materials.

The student will identify the five themes of geography and apply them to a chosen country.

The student will be able to develop an organized note-taking system.

The student will demonstrate success in the resource room setting with accommodations described in this plan.

The student will utilize the resource room to complete academic assignments.

The student will come to his assigned resource room ready to engage in work production.

The student will come to the resource room with necessary materials including writing implements, textbooks, and additional academic support materials.

The student will exhibit responsible personal and social behavior as he participates in the 9<sup>th</sup> grade curriculum with accommodations described in this plan.

The student will accept feedback and consequences regarding his behavior with an open manner.

The student will arrive to class on time.

The student will exhibit respect toward himself, peers and adults in authority.

Student's program included Science co-taught by regular and special education staff; English, Math, and Social Studies in self-contained special education classes, and daily Resource Room. The service summary showed English, Math and Social Studies in self-contained special education classes, total 12 hours per week; Resource Room, four hours per week, and Science co-taught, four hours per week. The totals were given as 20 hours of special education and twelve hours of regular education per week. (Ex. B-55)

29. Modifications/adaptations in all regular education classes listed in the IEP for Student's 9<sup>th</sup> grade year:

Materials/books/equipment: access to computer, spell check, and calculator

Tests/quizzes/time: prior notice of tests, hand-on projects, reduced reading, modified tests, test study guide, pace long-term projects, simplify test wording, and rephrase test questions/directions

Grading: no spelling or handwriting penalty

Organization: provide study outlines, post assignments, pocket folder for work, assignment pad agenda, and post routines

Environment: preferential seating

Behavior management: daily feedback to student, positive reinforcement, proximity/touch control

Teaching strategies: check work in progress, extra drill/practice, immediate feedback, review sessions, provide models, concrete examples, review directions, repeat instructions, visual reminders, have student repeat information, provide lecture note/outline to student, support auditory presentation with visuals, display key vocabulary, provide student with vocabulary word bank. (Ex. B-55-15)

30. The PPT convened on November 20, 2001, to review his program and plan his triennial evaluation. Both parents and six school staff members attended this meeting. Parents expressed concern about his problems in school:

... [concerns about] academic and social needs. [Student] appears to have difficulty with reading and writing, avoiding tasks that involve these skills.

Further, [Student] has separated from his peers, choosing to no longer participate in sports and social activities. [Parents] asked that [Student's] eligibility for services be explained. [School Psychologist] responded to [Student's] eligibility.

(Ex. B-59)

31. The Regional District School Psychologist, who has both a B.A. and an M.A. in school psychology and has been employed by the Regional School District for five years, performed a psychological evaluation of Student on December 9, 2001. On the Woodcock-Johnson III Test of Cognitive Abilities, Student's scores on the Broad Cognitive Clusters were:

Cluster	Standard Score	Percentile	Range
Verbal ability	87	20 <sup>th</sup>	Low Average
Thinking ability	94	34 <sup>th</sup>	Average
Cognitive efficiency	91	27 <sup>th</sup>	Average
General intellectual ability	92	29 <sup>th</sup>	Average

Student's strongest scores were in the areas of Visual Spatial Thinking (69<sup>th</sup> percentile, average range) and Short Term Memory (63<sup>rd</sup> percentile, average range). His weakest area was Processing Speed (7<sup>th</sup> percentile, low average range). The evaluator commented that some of the variance between his WISC scores in 1999 and the current results might be attributed to the fact that the Woodcock-Johnson is not a timed test. (Ex. B-61, 4 and 5, B-139; School Psychologist Tr. 3/4/05, p. 93)

32. On the BASC, also administered on December 9, 2001, Student rated average for emotional adjustment. (Ex. B-61-5)

33. The School Psychologist summarized Student's situation:

[Student's] weaker intellectual abilities will continue to place him at risk in more demanding academic settings. Although he appears to present age-appropriate personality traits, he most likely stands apart from his peers due to his lower overall maturational profile. His level of proficiency on typical 9<sup>th</sup> grade tasks will continue to lag behind his peers, which will no doubt affect his relative standing and ultimately his self-perceptions.

And made recommendations:

[Student] should remain in his current setting with the same modifications, pending the results of the achievement testing and the PPT review of his overall profile.

A vocational program should be considered per results of the vocational inventory in conjunction with his specific academic curriculum. Job shadowing and independent work projects would help to advance [Student's] self-esteem in addition to providing a venue for him to excel in the nonverbal problem-solving domain.

Extracurricular activities should be encouraged to promote social skills and to build self-confidence.

Opportunities that involve independent and critical thinking should be embedded in activities both in and outside the school setting. (Ex. B-61-6)

34. An educational evaluation was performed on January 29, 2002. Student's scores in Broad written language, Broad reading, and Broad math were characterized as low average, and math calculation as very low to low range. The discrepancy between his cognitive ability and his math calculation skills was identified as significant. The Multidisciplinary Evaluation Report for Students Suspected of Having a Learning Disability, completed on January 30, 2002, identified discrepancies between ability and achievement in written expression, reading comprehension, and mathematics reasoning. (Ex. B-63, 63a, 64)

35. The PPT convened on February 11, 2002, to review evaluation results. One parent and five school staff members were present. After discussion of the evaluation, Student's eligibility for special education as learning disabled was confirmed. (Ex. B-66)

36. The PPT convened on May 20, 2002, for an annual review. One parent, Student, and four school staff members were present. Teachers reported a positive year, with Student's grades ranging from A's to C's. Present levels of educational performance were:

Health & development: typical.

Academic/cognitive: [Student] has performed well academically. He can be easily distracted and will often engage in conversations at inappropriate times.

Social/emotional/behavioral: [Student's] high activity level impacts his academic performance and often interferes with other students' learning.

Other areas: age appropriate.

Strengths: sense of humor, friendly, sociable, enjoys hands-on projects.

Concerns/needs: highly distractible; written expression, reading comprehension and vocabulary; does not work independently. (Ex. B-68)

37. Student's progress on goals and objectives for 9<sup>th</sup> grade (listed at Finding of Fact #28) were given as Satisfactory, all except four in English first quarter, "still struggling". No goals or objectives were "mastered". (Ex. B-69)

38. IEP Goals and objectives for Student's 10<sup>th</sup> grade year were developed:

The student will demonstrate success in the general education standards associated with the 10<sup>th</sup> grade English curriculum with accommodations described in this plan.

[Student] will increase oral and written comprehension.

[Student] will improve study and research skills.

[Student] will improve written and oral communication skills.

The student will demonstrate success in the general education standards associated with the 10<sup>th</sup> grade math curriculum with accommodations described in this plan.

[Student] will be able to create word problems using mathematical concepts.

[Student] will be able to extract key words and their meanings to develop mathematical equations from word problems.

[Student] will improve and extend computational skills.

The student will demonstrate success in the general education standards associated with the 10<sup>th</sup> grade social studies curriculum with accommodations described in this plan.

[Student] will identify relevant information and supporting evidence in given academic materials.

[Student] will identify and use new vocabulary and terminology associated with the social studies curriculum.

[Student] will demonstrate proficiency in the annotation of text, magazine, internet and newspaper sources.

The student will demonstrate success in the general education standards associated with the 10<sup>th</sup> grade science curriculum with accommodations described in this plan.

[Student] will be able to organize class presentations into meaningful notes.

[Student] will organize dates into graphs and express the graphed information.

[Student] will work effectively as a member of a laboratory team and class.

[Student] will begin to address post-secondary issues/options..

[Student] will meet with his case coordinator and guidance counselor at least once a year to discuss post-secondary issues/topics.

[Student] will participate in all 10<sup>th</sup> grade guidance activities.

This program would be provided by special education staff in English, Math and Resource Room, and in team-taught (special education and regular education teachers working together) Social Studies and Science. The summary of services showed English, Math, Social Studies and Resource Room, special education staff, sixteen hours per week; Science co-taught, four hours per week.. The totals given were 20 hours of special education and twelve hours of regular education per week. (Ex. B-68)

39. Modifications/adaptations in all regular education classes were listed in the IEP for Student's 10<sup>th</sup> grade year.

Materials/books/equipment: access to computer, spell check, calculator.

Tests/quizzes/time: prior notice of tests, hands-on projects, reduced reading, modified tests, test study guide, pace long-term projects, simplify test wording, rephrase test questions/directions.

Grading: no spelling penalty, no handwriting penalty.

Organization: provide study outlines, post assignments, pocket folder for work, assignment pad, post routines.

Environment: preferential seating.

Behavior management: daily feedback to student, positive reinforcement, proximity/touch control.

Teaching strategies: check work in progress, extra drill/practice, immediate feedback, review sessions, provide models, concrete examples, review directions, repeat instructions, visual reminders, have student restate information, provide lecture notes/outline to student, support auditory presentation with visuals, display key vocabulary, provide student with vocabulary word bank. (Ex. B-68-14)

40. The PPT convened on March 3, 2003, to review and modify Student's IEP. Neither parent attended this meeting, and five school staff members were present. Student's English class was changed from a special education class to a co-taught class. (Ex. B-71)

41. The PPT convened on March 28, 2003, for an annual review. One parent, Student, and five school staff members attended this meeting. Student was described by his teachers as doing well, with the exception of his "struggling" in math, distracted and lacking confidence, and struggling with written expression in civics class. His current levels of educational performance were:

Health & development: typical.

Academic/cognitive: [Student] has performed well academically. He can be easily distracted and will often engage in conversations at inappropriate times.

Social/emotional/behavioral: [Student's] high activity level impacts his academic performance and often interferes with other students' learning.

All other areas age appropriate.

Strengths: sense of humor, friendly, sociable, enjoys hands-on projects. Concerns/needs: highly distractible; written expression, reading comprehension and vocabulary; does not work independently. (Ex. B-73)

42. Student's report of progress on IEP goals and objectives (listed at Finding of Fact #38) for his 10<sup>th</sup> grade year showed all items "satisfactory", but none "mastered". (Ex. B-79, pp. 4-8)

43. The PPT developed an IEP for Student's 11<sup>th</sup> grade year:

The student will demonstrate success in the general education standards associated with the 11<sup>th</sup> grade social studies curriculum with accommodations described in this plan.

The student will utilize maps, charts and graphs.

The student will identify relevant information and supporting evidence in given academic materials.

The student will be able to develop an organized note-taking system.

The student will demonstrate success in the general education standards associated with the 11<sup>th</sup> grade math curriculum with accommodations described in this plan.

The student will improve and extend computational skills.

The student will improve problem-solving skills by applying learned strategies to solve problems from within and without mathematics.

The student will be able to apply geometric formulas to authentic/real world situations.

The student will demonstrate success in the resource room setting with accommodations described in this plan.

The student will utilize the resource room to complete academic assignments.

The student will utilize the resource staff as a source of support in completing assignments.

The student will follow resource room staff directions immediately.

The student will begin to address post-secondary issues/options.

The student will meet with his case coordinator and guidance counselor at least once a year to discuss post-secondary issues/options.

The student will participate in all 11<sup>th</sup> grade guidance activities.

Student's 11<sup>th</sup> grade special education program was to include: U.S. history and Applications of Algebra in co-taught classes, and "up to 4 hours per week" in the resource room. Other classes would be in general education classes. A total of 12 hours a week of special education services were planned, with 28 hours in classes with students who did not have disabilities. (Ex. B-73)

44. Modifications/adaptations in all regular education classes "as necessary" were listed in the IEP for Student's 11<sup>th</sup> grade year.

Materials/books/equipment: access to computer, spell check, calculator.

Tests/quizzes/time: prior notice of tests, hands-on projects, reduced reading, modified tests, extra time – tests, extra time-projects.

Grading: no spelling penalty, no handwriting penalty.

Organization: post assignments, assignment pad.

Environment: preferential seating.

Behavior management: daily feedback to student, positive reinforcement.

Teaching strategies: check work in progress, immediate feedback, review sessions, concrete examples, review directions, repeat instructions, oral reminders, visual reminders, have student restate information, support auditory presentations with visuals.

(Ex. B-73-15)

45. By e-mail dated June 11, 2003, Parent requested copies of Student's school records, more discussion of goals and objectives and more information about transition services. A PPT was requested "before year end". (Ex. B-74)

46. In testimony, Parent and the Executive Director of Shared Services (hereinafter Director) described a Conference they had in July, 2003, to discuss Parent's concerns about transition. Both agreed that there was no PPT meeting before the end of the 2002-2003 school year or during the summer of 2003. The Director felt that he had been able to "allay [Parent's] concerns". This school administrator has served in his current position for ten years. Shared Services provides services to several local school districts and to Regional District 7. The Director had attended PPT meetings for Student on November 20, 2001, October 31, 2003, September 10, 2003, October 24, 2003, January 7, 2004, and July 20, 2004. (Ex. B-59, B-79, B-83, B-85, B-96, B-106; Parent Tr. 1/20/05 pp. 145-147; Director Tr. 3/9/05 pp.5, 23-27)

47. The PPT convened on September 10, 2003, to review and modify Student's IEP, at parental request. Parents had requested more information about transition planning for Student. Both parents and seven school staff members attended this meeting. An additional goal with objectives was added to the IEP:

The student will improve organizational and study skills.

The student will document all homework assignments and plan a time line for long-term assignments with teacher support.

The student will participate in study skills course and complete all assignments and activities as assigned by instructor.

The student will apply strategies from study skills across curriculum.

The earlier IEP Resource Room, "up to 4 hours per week" was replaced with Academic Skills Seminar, up to 4 hours per week, and Study Skills, 4 hours per week. (Ex. B-79)

48. The PPT met again on October 24, 2003, to discuss Student's progress. One parent, Student, and eleven school staff members attended this meeting. Parents had requested discussion of possible missing goals from the IEP, data from reading fluency, and evaluation. Teachers reviewed Student's progress. The English teacher mentioned how well Student had done on a test on A Raisin in the Sun: in testimony, Parent reported that she had read that book aloud to Student to help him with his homework. (Ex. B-83; Parent, Tr. 1/20/05 p.92)

49. Student's Study Skills teacher reported that he "seeks the path of least resistance", coming late to class and trying to do his homework there. While he had demonstrated average silent reading speed, he has difficulties with 14 of the 360 fluency words. He had only attended his Skills Seminar three times since early September. There was discussion of an in-depth reading evaluation. (Ex. B-83-2)

50. At the October 24, 2003, PPT meeting, an additional transition goal with twelve objectives was added to his IEP, as well as a self-advocacy goal with nine objectives. (Ex. B-83)

51. Another PPT meeting was held on October 31, 2003. Both parents attended this meeting, one by telephone, and four school staff members were present. Parents requested an independent evaluation, to include educational, reading, psychological, and communication assessments, which was rejected by the Board. Instead, an evaluation by school staff would be done, with an independent reading assessment. Parents questioned the content and instruction in the Student Skills class. (Ex. B-85)

52. Student's special education progress report for the first quarter of his 11<sup>th</sup> grade year, dated 11/03, showed 20 items satisfactory, six limited progress, twelve not introduced and none mastered. Goals and objectives measured are provided in Ex. B-43. (Ex. B-89)

53. By letter dated November 13, 2003, Parents made an addendum to the record of the October 31, 2003, PPT record. Parents noted that they had compromised in their request for an independent evaluation by agreeing to in-house evaluations except for reading.



This communication also included comments about the Parents' dissatisfaction with the reading fluency program and its instructor. (Ex. B-85-16; Parent Tr. 1/20/05 p. 157))

54. A school psychology assessment was administered to Student on November 21 and 25, December 3, 4, and 8, 2003. The same school psychologist performed this assessment as the December, 2001, evaluation. This evaluator noted similarities to the earlier evaluation, and commented on the impact of Student's slow processing speed, weak short-term memory, and attention problems on many tasks. His difficulties with reading comprehension, math and written expression were also identified earlier and continue to hold him back:

In the final analysis, the data discloses that he maintains significant deficits in generalizing his knowledge and translating previously learned skills to new learning situations.

The ADD screening results were inconclusive: this evaluator recommended consultation with a physician. Concerns about social and emotional functioning were also addressed: ... notes tendencies toward withdrawal and social isolation. Relative to this are [Student's] cognitive deficiencies that serve to limit his problem solving capabilities in complex social situations. Seemingly slow in the uptake, [Student] may not be successful in the reciprocal "give-and-take" of social interactions and perhaps chooses to remain on the periphery. (Ex. B-90)

55. An independent reading evaluation was performed on November 24, 2003. Student, who was an 11<sup>th</sup> grader when tested, demonstrated:

reading and spelling skills from the mid-5<sup>th</sup> to early 6<sup>th</sup> grade level, with some variation in particular decoding and spelling skills. His written expression is representative of 3<sup>rd</sup> grade level. Overall, [Student] is functioning below expectation and demonstrates characteristics of a reading disability.

The evaluator recommended specific areas requiring reinforcement or direct teaching, with a list of appropriate materials. (Ex. B-91)

56. An in-house language/speech/hearing assessment was performed on December 9 and 11, 2003. This evaluator noted Student's difficulty maintaining attention, poor auditory processing skills, and receptive language skills significantly lower than his expressive skills. Strategies for Student and for his teachers were listed; many (but not all) of these strategies were already listed in his IEP as accommodations. (Ex. B-92)

57. Student's IEP progress report for the second quarter of 2003-2004, dated January, 2004, showed fifteen satisfactory, eight limited progress, one not introduced, and seventeen pending completion of assessment: no items were mastered. (Ex. B-95)

58. The PPT convened on January 7, 2004, to review evaluations. This meeting was attended by both parents, six school staff members, and a Parent Advocate. The reading evaluator attended by telephone. It was agreed that reading support services were needed. The evaluator was asked to serve as a consultant to the school district in developing services for Student, and she agreed to provide that service. After discussion in which the Parents expressed lack of confidence in the proposed reading program and

the teacher proposed for this program, Parents told the PPT that they planned to place Student in a private special education school and asked for school district funding. This request was rejected. (Ex. B-96, pp. 2-3)

59. At the January 7, 2004, PPT meeting, Student's present levels of educational performance were reported:

Health & development: typical.

Academic/cognitive: [Student] has performed well academically. His grades have ranged from B's to C's in general and co-taught classes.

Social/emotional/behavioral: [Student's] inattentive behaviors can impact his academic performance and sometimes interferes with other students' learning. [Student] continues to make growth in his social interactions with his peers.

Other areas: age appropriate.

Strengths: sense of humor; friendly, sociable; enjoys hands-on projects; participates in extracurricular activities.

Concerns/needs: highly distractible; written expression, reading comprehension and vocabulary; does not always work independently. (Ex. B-96-5)

60. Reading goals and objectives in great detail were added to Student's IEP at the January 7, 2004, PPT meeting, and his transition goals were also amended.. (Ex. B-96)

61. The January 7, 2004, revised IEP noted two co-taught classes at four hours per week, Academic Skills Seminar as up to four hours per week, and Reading Skills four hours per week. Related services totaled 8.25 hours per week. Time with non-disabled peers was given as up to 24 hours per week. (Ex. B-96-28)

62. Modifications/adaptations in all regular education classes "as necessary" were listed in the IEP for the remainder of Student's eleventh grade year. All content area teachers were to meet one time every two weeks with modifications consultant until the end of the 2003-2004 school year:

Materials/books/equipment: access to computer, spell check, calculator.

Tests/quizzes/time: prior notice of tests, hands-on projects, extra response time, reduced reading, extra time- written work, modified tests, extra time – tests, pace long-term projects, extra time – projects.

Grading: course credit, no handwriting penalty, grade effort + work, must submit written work incorporating teacher edits.

Organization: post assignments, assignment pad, list sequential steps.

Environment: preferential seating.

Behavior management: daily feedback to student, positive reinforcement, cue expected behavior, once a month language assessment timed reading passage – fluency words presented in isolation, editing a written passage, reading comprehension. (Ex. B-96-31)

63. The transcript of Student's career at the Regional School District showed grades of B and C, with A's in Science 7, Phys Ed 8, Math 8, and PE 9. (Ex. B-101)

64. By letter dated January 21, 2004, Parent notified the Director that Student would begin attending Ben Bronz, a private special education school, on January 27, 2004. (Ex. B-100)

65. The Education Director at Ben Bronz described Student upon his entry to her school: He's quiet, and a reluctant risk taker. Has a lot more skill than he gives himself credit for. So he's definitely not confident in his abilities. But he does struggle with reading comprehension overall. So while his decoding skills are – or were close to grade level, he was not fluent, and he didn't use those decoding skills to get information from text very efficiently.

He is a very passive participant in the classroom. And that teachers would provide information, and discussions would be going on, he would be an observer, rather than a participant.

...

We believed that given the Woodcock-Johnson III test of cognitive abilities profile, that [Student] had at least average ability. There are a number of scores there that fall solidly within the average range that gave us a sense that potential for average learning was there.

There are even a couple of areas that score in the above average range that perhaps could be strengths that we could tap into instructionally.

Also, academically, there were – seemed to be evidence of pretty – some pretty significant educational delays, primarily in mathematics, in written language, in reading, and in spelling. (Education Director Tr. 1/28/05 pp. 8-11)

66. Education Director was candid about her school's program and role. She described the program as "intensive comprehensive special education, primarily remedial". The average stay of students there is 2-1/2 years. (Education Director Tr. 1/28/05 p. 7)

67. Student's Written Service Plan (IEP) at Ben Bronz for January through June, 2004, showed his progress:

You will improve your cognitive and perceptual skills, as measured on at least one standardized test. Measure: Raven's Standard Matrices, 8<sup>th</sup> percentile to 36<sup>th</sup> percentile Mastered.

\*When presented with a difficult task, you will make a plan to help solve it.

Measure: Plan 80% complete 91% on exam Mastered.

\*When presented with a task of finding new information, you will be able to demonstrate the use of Systematic Search. Measure 85% accuracy 96% on exam Mastered.

You will improve your reading one Grade level in one year as measured in at least one area of decoding, vocabulary or comprehension. Measure: Gates-MacGinitie, WRAT scores. G-M: vocabulary, GE 5.2 to 6.9; Comp. GE 4.2 to 4.2; WRAT-3: decoding SS 83 to SS 83 Satisfactory progress.

\*You will increase your fluency in reading so that you complete at least one grade level of daily reading fluency passages within that year at a passing rate of 150 words per minute. Measure Daily reading fluencies. Began level I in sixth grade WJ-III Reading Fluency SS 89, to level 44 in Jamestown 8 (Grade 11).

\*You will learn names for the mouth positions required for producing 30 sounds, and track these in sound combinations as a means of strengthening your decoding. Measure Decoding Fluencies. Began on Level 1 in Tracking, mastered all names and mouth positions in FAD in a short amount of time. Mastered.

\*Given a paragraph, you will be able to determine the main idea and justify your decision with support details, 80% of the time. Measure curriculum tests. Beginning, main idea [was] difficult for you; 75% on the main idea section of the exam. Satisfactory progress.

You will improve your written language skills. Measure writing products. Writing probe. Median grade level score on initial probe: <3, end of year score 5-6. Satisfactory progress.

\*You will be able to write a five paragraph essay independently using seven writing steps, with an average of 175 mature words, and an average sentence length of 10 to 14 words. Measure writing probe. Paragraphs, 1 to 5; Sentence length, 14 to 18; Mature words, 46 to 337; Words/error, 8 to 33; and Holistic score, 4 to 6. Satisfactory progress.

\*You will learn touch typing to a speed of 35 wpm with fewer than three errors. You will use the Word Processor for most written assignments. Measure computer typing scores. >30 wpm to 50 wpm. Satisfactory progress.

\*You will proof-read and edit your papers at least 3 ways to increase your ability to detect your errors. You will increase your editing ability to a score of better than 25 words per error. 8 words per error to 33 words per error end of year probe.

You will improve your mathematics skills one grade level in one year as measured in at least one area of computation or problem solving. Measure CDMT, CTBS, WRAT, Curriculum Test. From WJ-III SS Calculation 75, Fluency,86, Applied Problems 91, to WJ-III SS Calculation 92, Fluency 96, Applied Problems not administered. Mastered.

\*You will gain fluency in simple arithmetic operations completing the Novice Rank in all four operations. Measure Computer Speed Probe. From Add 1, Subtract 1, Multiply 1 and Division 1 to Add 31-User, Subtract 12-User, Multiply 3-Pro, Division 38-User.

\*When given an equation with one variable, you will be able to solve for that variable with 85% accuracy. Measure criterion reference tests. New skill to 100% on solving equations with whole numbers, fractions and decimals. Mastered.

You will be an active, independent learner. Measure feedback, independence points. New demand to Average 7 independence points per class; aim is for >6. Mastered.

\*You will control the flow of auditory input by stopping the speaker, asking for repeats, or by selecting fewer bits of information to absorb (gating). Measure feedback, gates. You do not ask for clarification when you do not understand something new to your earned 45 gates this trimester. Aim is >25. Mastered.

\*You will double the number of transfer points earned each semester by applying learned skills in other classes and subjects. Measure class observation. New demand to six transfer points have been noted. Bridge skills from class to class. Satisfactory progress.

\*When you are handed back homework on which errors have been marked, you will independently analyze, correct and hand in the corrected product. Measure error repairs contract. New demand to You are learning how to analyze your errors. You require guidance to repair work. Satisfactory progress.

You will explore interests and opportunities for post-secondary education and/or employment. Measure mastery on objectives. New demand to Your completed a goal attainment scale in which you planned for your future. Mastered.

\*You will complete an interest inventory. Measure task completion. Mastered.

\*You will complete a vocational interview. Measure task completion. Mastered.

(Ex. P-11)

68. The May 18, 2004, report of a meeting concerning Student's Service Plan at Ben Bronz listed recommendations for Student's educational program:

Provide clear expectations for all academic tasks. When [Student] knows precisely what type of response is required, he is often able to produce quality work. If he is uncertain, he will produce lesser-quality responses.

Continued regular practice in fluency, especially for reading rate.

Introduce new concepts slowly, and plan for repetition and guided practice as he works toward mastery.

Plan for at least twice as much practice on new skills as the typical learned needs. Check his work in progress, to be sure that [Student] has not misinterpreted some aspect of the task.

Choose small class sizes when possible, with seating close to the speaker.

Require use of a calculator in higher level math classes (i.e. algebra, chemistry).

Provide access to a spell-checker and insist on its use as part of the editing process.

Provide extended time on writing tasks.

Provide outlines for note-taking during classes, requiring [Student] to add additional details as he reads or listens to lectures.

Assistance in planning the completion of long-term assignments, including setting intermediate goals for smaller "chunks" of large tasks, and scheduling completion dates for each piece.

Use of an assignment or plan book to keep track of responsibilities.

Instruction in completion of research papers.

Instruction in active reading strategies, using authentic texts (e.g. from his history, science and literature classes). Include strategies for previewing text, reviewing, comprehension checks throughout reading e.g. paraphrasing, summarization, use of graphic organizers, and vocabulary acquisition.

Consider trial of using books on tape to facilitate reading comprehension and fluency.

Instruction in developing plans for post secondary education and/or employment.

Math instruction should be supported with an additional period each day for review and guided practice. (Ex. P-2)

69. Ben Bronz reported Student's grades for the balance of the 2003-2004 school year:

Health and Human Sexuality 83

Math Enrichment

98

Instrumental Enrichment	93	Literature	82
Literature writing	84	United States History	86
Pre-algebra	94	Science inquiry	90
Astronomy Research Week	83	Physical Education	100
Keyboarding	S	Coached fluencies	S

(Ex, P-8, P-9, B-136)

70. In Student's Final Narrative Report from Ben Bronz for his 11<sup>th</sup> grade year, goals and objectives developed by Ben Bronz scored twelve mastered and nine satisfactory progress. (Ex. P-10)

71. Upon the recommendation of Ben Bronz, Student attended a summer program there starting in July of 2004. (Parent, Tr. 1/20/05 pp. 124-126)

72. The PPT met on July 20, 2004, to review Student's progress and plan for his 12<sup>th</sup> grade year. This meeting was attended by Student and both his parents, six school staff members, the Education Director of Ben Bronz and the Parents' educational consultant. The Education Director had agreed to consult with the Regional District in developing a program for Student's anticipated return to the District. Parents asked that the Ben Bronz summer program be funded by the Regional District; the Director postponed his response. The Regional District offered a summer program in August, to include individualized tutoring in reading and preparation for material to be assigned when school started. The proposed program for 12<sup>th</sup> grade included Cyberslate, a computer program that Student had used at Ben Bronz. Student presented a list of classroom modifications that he would need: most of them had been included in the modifications listed each year for Student. (Ex. B-106; Parent Tr. 1/20/05 pp. 127, 174)

73. IEP goals and objectives for 2004-2005 were developed: many were the same as those used in 2003-2004. The reading goals and objectives were slightly reduced, but very specific. The summary of services for this IEP listed Skills Seminar 1.6 hours per week and reading/writing enhancement 2.4 hours per week. Related services were to be vocational consultation 1 hour per week, job shadowing/coaching 2 hours per week, and speech/language consultation .5 hours per week. (Ex. B-106)

74. Program modifications/adaptations for "all classes as needed to support student success" for twelfth grade were listed:

Materials/books/equipment: access to computer, spell check, calculator.

Tests/quizzes/time: prior notice of tests, hands-on projects, extra response time, test read (as needed), extra time- tests, rephrase test questions/directions.

Grading: course credit, grade effort + work.

Organization: graphic organizers, assignment pad, list sequential steps.

Environment: preferential seating.

Behavior management: daily feedback to student, positive reinforcement, cue expected behavior.

Teaching strategies: check work in progress, monitor assignments, multisensory approach, provide models, highlight key words, concrete examples, review directions,

repeat instructions, have student restate information, provide student with vocabulary word bank. (Ex. B-106-26)

75. The Regional District contracted with Reading Teacher to provide reading services to Student in August, 2004, and for the upcoming school year. She had eighteen years of experience as a reading teacher in secondary schools. In addition to consulting the Education Director at Ben Bronz, the Regional District teachers who would be assigned to Student for the fall semester and Student's records in preparation for working with him, she had several telephone conversations with Student's Parent. There were also e-mail communications concerning Student's program. The Education Director of Ben Bronz advised her that Student had good decoding skills. (Ex. B-110, B-111, B-112, B-113, B-115, B-116, B-117, B-118, B-138; Reading Teacher, Tr. 2/7/05 pp. 3-18, 22)

76. This Reading Teacher developed a plan for the August, 2004, reading program, which was to be scheduled cooperatively by Student and Reading Teacher. (Ex. B-107)

77. By e-mail, Parent confirmed that the Regional District had declined their request to fund the Ben Bronz summer program by telephone on July 30, 2004. (Ex. B-108)

78. Student met with the Regional District's Reading Teacher for the first time on August 20, 2004. There were two more sessions, on August 24 and 26, 2004. (Ex. B-115, B-122; Parent Tr. 1/20/05 p. 135; Reading Teacher Tr. 2/7/05 p. 5, 28)

79. After testing, the Reading Teacher determined that Student was reading on the 8<sup>th</sup> grade level. (Ex. B-114; Reading Teacher Tr. 2/7/05 p. 19)

80. When school started, Student did not appear as planned. He had returned to Ben Bronz. (Ex. B-130; Parent Tr. 1/20/05 p. 138; Reading Teacher Tr. 2/7/05 pp. 36-38)

81. The Parents offered a letter from their attorney dated August 26, 2004, and addressed to an attorney in the same law firm as the attorney who represented the Regional District in this hearing as notice of their intent to return Student to Ben Bronz for the 2004-2005 school year. This letter also includes a request for Student's school records. It cannot be determined whether the Regional District's action of sending the school records to the Parents' attorney with a cover letter dated September 13, 2004, establishes that the August 26 letter was received by the Regional District. (Ex. P-14, B-135)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. During elementary school in prior school districts, Student was not classified as in need of special education. After teacher referral and parental concerns, he was provided with individualized tutoring support in reading and math in 2<sup>nd</sup> through 5<sup>th</sup> grades. Whether he might have benefited from special education or a more specialized reading program at that time is moot: however, individualized help with reading can legitimately be offered without special education identification. The question to be asked is whether

the Student is progressing. By 6<sup>th</sup> grade, a prior Board agreed to an evaluation and identified Student as learning disabled. Thus, he entered the Regional District 7<sup>th</sup> grade identified as a special education student and with an IEP that provided for daily resource room and three self-contained special education classes. There has been no dispute that he is eligible for special education with learning disabilities.

2. The standard for determining whether a free appropriate public education (FAPE) has been provided begins with the two-prong test established by the Supreme Court in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176 (1982). First, the procedural requirements of the IDEA must have been met by the school district. Second, the IEP must be reasonably calculated to enable the child to receive some educational benefit. The IEP must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988), cert. Denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993)) To the maximum extent appropriate to the student, education should be provided with students who are not disabled, pursuant to 34 C.F.R. § 300.550(b).

3. Parents made claims of procedural errors concerning the timing of evaluations and PPT meetings and timeliness of IEPs. The record does show some sloppiness in these areas. Pursuant to *Amanda J. v. Clark County School District*, 267 F.3d 877, 35 IDELR 65 (9<sup>th</sup> Cir. 2001), a procedural error becomes substantive when it either results in an inappropriate IEP or interferes with parents' opportunity to participate in IEP (PPT) meetings. Student's access to FAPE was limited by the perception of school staff members that he was doing as well as could be expected. The IEPs were inappropriate to the extent that until his reading evaluation in 11<sup>th</sup> grade, the PPT did not have specific information about Student's reading problems. This lack of information could be seen as the result of failure to evaluate reading in depth at an earlier date. However, the Regional District's procedural compliance overall was well documented.

4. Careful review of goals and objectives, special education progress reports, and subsequent goals and objectives reveals that very few skills were mastered by Student in 7<sup>th</sup> through 10<sup>th</sup> grade. When we narrow the focus to reading, there is a real question of how the 7<sup>th</sup> and 8<sup>th</sup> grade regular education reading classes addressed Student's problems, why there were no reading goals after 7<sup>th</sup> grade until after the reading evaluation in 11<sup>th</sup> grade, and what Student's actual year-to-year reading levels were.

5. In the case of a unilateral placement, in order to secure public funding parents must prove 1) school district placement was not appropriate and 2) unilateral placement is appropriate (*Burlington v. Department of Education*, 736 F.2d 773 (1<sup>st</sup> Cir. 1984)).

6. Parents question whether Student's grades accurately reflect his progress, or lack of progress. Testimony from several school staff members included reassurance that his grades were "authentic". However, a close examination of the modifications to be made in all his classes in 7<sup>th</sup> through 9<sup>th</sup> grades and in all his classes "as necessary" in 10<sup>th</sup> and 11<sup>th</sup> grades, shows "modified tests", "reduced reading", "simplify test wording" "oral



testing”, “alternative tests”, “rephrase questions/directions”, and similar adaptations indicating that Student was NOT taking the same tests in the same conditions as his classmates. While his grades may not have been “modified”, everything that led up to computation of his grades was modified. While this is fairly standard procedure in special education when a student needs support, reporting the grades produced as “authentic” is somewhat misleading.

7. There was confusion about whether a “co-taught” class is regular education or special education for Student. If the content and/or instruction has been individualized, should it be considered special education? A more basic discussion of what co-taught meant and how this applied to Student might have earned parental confidence.

8. The program offered to Student by the Regional School District for 11<sup>th</sup> grade (the March 28, 2003, IEP, Ex. B-73) was not appropriate to his needs, because it did not stress reading and Student’s other weaknesses. After PPT meetings on September 10, October 24 and 31, 2003, and the evaluations, Parents were still being reassured that Student was doing well. The independent reading evaluation was a shock, confirming their fears. A January mid-course correction (PPT of January 7, 2004, Ex. B-96) was too late.

9. The program provided at Ben Bronz for the remainder of Student’s 11<sup>th</sup> grade year was appropriate to Student’s needs. Incorporating many elements of prior IEPs, this program also provided for systematic measurement of Student’s progress.

10. Although the Regional District was slow in holding the PPT for twelfth grade, the program proposed did address Student’s needs and was appropriate. However, to hold a PPT in late July proposing a summer program is not reasonable. While there is no record that Parents requested funding for the Ben Bronz summer program prior to enrolling Student, the July 20, 2004, PPT confirmed that an extended year program was required. The program of individual tutoring, to be scheduled by the Student in August, was an excellent individualized program, but it had the same “if necessary” or “as needed” quality that had appeared in prior IEPs. Ben Bronz clearly informed Student that it was time to buckle down to work, and he responded well. While the Regional District’s summer program might have been equally effective if implemented, it left too much to discretion, too late in the summer.

11. The writing of goals and objectives is both an art and a science, and there is no one style to be preferred. The Regional District’s goals of “display progress ... 10<sup>th</sup> grade curriculum” may be clear to teachers and measurable by tests (given with modifications in this case), but they sounded generic to Parents. The detailed reading goals developed at the January 7, 2004, PPT meeting and the Ben Bronz goals for 2004 both sound easily measurable to an ordinary person. This is an important issue, since both Student and his Parents had lost confidence in the Regional District’s ability to figure out Student’s problems and how to address them effectively. Many of the aspects of the Ben Bronz program were similar to aspects of the Regional District’s program, with better explanation and detailed measurement shown to Parents. It is also likely that the

atmosphere at Ben Bronz, where all students have some problems, was more supportive for Student than that found in a competitive regular high school.

12. The prior Board staff and the Regional District staff have argued frequently that Student's achievement has been "commensurate with his ability". Such a comparison is too simplistic. The comment in 2001 by the Regional District's School Psychologist that his improved cognitive scores might be due in part to a change from a timed test to an untimed test is significant for a student with identified problems in processing speed.

13. All motions and objections not previously ruled upon, if any, are hereby overruled.

14. To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

#### **FINAL DECISION AND ORDER:**

1. The special education program and placement offered by the Regional District to Student for the 2003-2004 school year was not appropriate to his needs in the least restrictive environment.
2. The program provided by Ben Bronz for the remainder of the 2003-2004 school year was appropriate to Student's needs.
3. The Regional District is responsible for reimbursing the cost of the January through June, 2004, Ben Bronz program, upon Parents' production of appropriate documentation.
4. The special education program and placement offered by the Regional District to Student for the 2004-2005 school year was appropriate to his needs in the least restrictive environment. Therefore it is unnecessary to address the Ben Bronz program for that year.
5. The extended year program for 2004 offered by the Board was compromised by the late date of the PPT meeting and scheduling difficulties. The Regional District is responsible for reimbursing the cost of the 2004 Ben Bronz summer program, upon Parents' production of appropriate documentation.
6. While there are some procedural errors on the record, neither individually nor collectively did these errors prevent Parents from participating in the PPT process or directly invalidate Student's IEPs.