

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 1

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Appearing before: Attorney Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

- I. Whether the local educational agency properly evaluated the child?
- II. Whether the local education agency failed to provide the child with a free and appropriate public education for the 2002-2003, regular school year?
- III. Whether the local education agency failed to provide the child with a free and appropriate public education for the 2003-2004, regular school year?
- IV. Whether the child was provided a free and appropriate program for the extended school year for the summer of 2004?
- V. Whether the child was provided a free and appropriate program for the extended school year for the summer of 2005?
- VI. Whether the child was subjected to bullying or discrimination on the basis of his disability which made him unable to participate in or benefit from his individual education program?

PROCEDURAL HISTORY

The parents made a claim for due process prior to the effective date of the IDEIA, 2004. The local education agency (LEA) moved to dismiss a claim of discrimination pursuant to Section 504 of the ADA, the discrimination is part of this hearing only to the extent that any bullying, harassment or discrimination prevented the child from access to his right to a free and appropriate public

education. The parties have properly extended the date of final decision to accommodate a lengthy hearing and briefing schedule, the date for mailing the final decision in the matter is August 10, 2006.

SUMMARY

A child with an intellectual disability had been educated in the local education agency school district from 1991 to 2004. The child is not able to make meaningful progress when the individual education plan provides for a move from a program in a self-contained program to a high school mainstream program, with support from the resource room and a teaching aide. The child required speech and pragmatic language services and more coordinated support to benefit from his program. The 2003-2004 IEP did not provide an appropriate extended school year program to meet the child's individual needs. The IEP planned for the 2004-2005 was modified to provide an appropriate program for the academic year, but failed to provide an appropriate program for the extended school year.

FINDINGS OF FACT:

1. The parties agree the child is identified as a student with an intellectual disability and eligible to receive specialized instruction and services pursuant to the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.*, as amended.
2. There is no dispute between the parties as to the child's special education identification. The child has attended the local educational agency (LEA's) schools from pre-kindergarten to the end of his freshman year of high school. The LEA school district participates in a regional school district. The parents filed for a due process action at the time the parents and the regional school district failed to reach an agreement as to the appropriate placement for the child's sophomore year of high school. (Exhibit B-39)
3. An evaluation from Boston Children's Hospital (BCH), dated April 1998, identifies the child then age 10.5 years, with cognitive abilities in the intellectually deficient range and verbal abilities in the borderline range. Physically, the child's head circumference is large and he has a slow awkward gait and motor difficulties. His speech is slow with reduced fluency including difficulty in word retrieval, oral formulation and articulation errors. Memory skills are significantly reduced. The Vineland Scales show communication, daily living and socialization are well below expectancy. The evaluation indicates the child has difficulty with controlling frustration and anger, and had difficulty processing complex social information, interpreting social cues and showed elevated levels of anxiety and depression. The evaluator states the child is at risk in the academic, social and adaptive domains, and expects he will be highly frustrated as he sees the distance between himself and other students, [in making academic progress]. (P-5, p. 10-12). To address the child's deficits the evaluator recommends continued group work on social skills in a qualitatively similar peer group, that a mainstream placement may actually

undermine his emotional adjustment as he becomes more aware of his differences with classmates, and it is strongly recommended a substantially separate educational placement for the child, one that includes a high degree of structure and emphasis on living skills, social skills, emotional well being, survival academic skills, and vocational skills with work modified for his ability level. The evaluator recommended the child be placed in a resource room or a school designed for children with significant cognitive and adaptive deficits. The LEA Director of Pupil Services (Director) testified the LEA shared the cost of the evaluation but did not receive a copy of the evaluation until May 19, 1999. At the request of the parents, the individualized education program (IEP) team, continued to consider the determinations made about the child's disabling condition in the BCH evaluation when planning the child's program. The parent's independent psychologist believed the evaluation continued to be valid when testifying about the evaluation results reviewed by the IEP team in April, 2004. (Exhibit P-5 pp. 4-8,11-13,12, Testimony, Director, 10/4/05, Tr. pp. 185-186, 196)

4. The elements of the TOTAL program incorporate much of the recommendations set out in the BCH evaluation. The child moved to the TOTAL program in part to facilitate friendships developed while the child attended the LEA's summer program. (B-2, Testimony, Director, 9/6/05)
5. To their credit, the parents are very strong advocates for their child and the LEA demonstrates a willingness to accommodate parent requests and work closely with them to provide creative solutions for educating the child. The parent's independent psychologist's testimony supports a finding that the parties worked to create solutions for the child's complicated program needs. (P-39)
6. The child's special education teacher taught special education and elementary education for 18 years. The child attended the TOTAL program for the 2000-2001, when he was thirteen years old, 2001-2002, when he was fourteen years old, 2002-2003 school years when he was fifteen years old. (Testimony, Director 10/4/05 TR. p. 163, Special Education Teacher, 7/12/05, TR. p. 57)
7. For the 2002-2003 school year the school psychologist's evaluation recommended goals, to include movement to integrate the child in the regular education population and the provision of job oriented, vocational options that prepare the child for the world of work at the high school. At the IEP planning meeting for the 2002-2003, school year, the IEP team decided to defer to the parent request to retain the child in the TOTAL program, with his friends. Speech, language and occupational therapy needs are addressed in the TOTAL program classroom. (B-7, pp. 1, 2, 4, 33; B-8, p.4; Testimony Director, Tr. 10/4/05, pp. 166, 195)
8. The school psychologist administered the 2002 triennial evaluation consisting of the Woodcock-Johnson Tests of Cognitive Ability in May 2002. The TOTAL classroom teacher administered Woodcock-Johnson Achievement Battery. (B-8) The child's performance was uneven with strength in general knowledge, with

average ability in comprehension/knowledge and significant weakness in long-term retrieval and short term memory, visual-spatial thinking, fluid reasoning and processing speed. The test clusters for “thinking ability” and the child’s overall intellectual ability is in the low range, which places the child in the intellectual deficient range of ability (B-8 pp.1-3). The achievement portions of the Woodcock-Johnson III, places the child at the following grade levels, reading, 3.5, writing 2.4, written expression 2.2, math calculation 2.4, math reasoning 1.5, with early elementary skills overall. (B-8)

9. In May 2002, the classroom teacher states the present level of performance for math is the 3rd grade level and reading for the following year was to be at the 6th grade level due to the child’s strength in decoding. (P-21, p.4) The child made progress during the 2002-2003 school year compared to the performance level stated in the IEP proposed the previous spring, (P-19, p.3). The progress notation for November, 2003 indicates the child made satisfactory progress towards the goals and objectives. (P-21 p.11). The child’s peer relationships are noted as one of his strengths. It is clear from the testimony that the IEP team individualized the child’s special education needs, weighed the child’s present level of performance, considered his peer relationships and the information the parents shared, to determine the child’s age and readiness to participate in transition goals and objectives, when the IEP team decided to place the child in the TOTAL program for 2002-2003.
10. The parents challenged the move to the high school because it required the student to skip his seventh and eighth grade year of instruction and move out of a setting where he had comfortable peer relationships. There is uncertainty as to the grade level assigned to the child. IEP records place the child in the sixth grade. (B-7 p.1) The school psychologist’s evaluation refers to the child as a 7.8 grader in May, 2002. (B-8 p.1) The PPT cover page (B-10 p.1) states the child is in the seventh grade. The parents state the child thought of himself as a sixth grade student in 2002-2003. The child participated in the sixth grade activities and field trip never having participated in the eighth grade activities and field trips. (Testimony Parent, Special Education Teacher, Dir. of Pupil Services)
11. The TOTAL teacher testified a student’s grade level is not as significant as determining what the child needs to learn for life. With a child who is intellectually disabled, the teachers begin by working on the child’s current level and build on a hierarchy of skills. Given the nature of the child’s disability it is difficult to assign a grade level to the student. The sixth, seventh and eighth grade shared lunch recess and other activities. The students are educated in a combined resource room and a self-contained classroom. The student received physical therapy in his resource room and counseling on social skills took place in the resource room led by the school psychologist. Pragmatic language skills were addressed throughout the day, through the give and take of conversation, the use of language in a social context, with turn taking in conversation. The speech therapist spent a substantial amount of time in the classroom. The TOTAL program provided the child with opportunity to interact with his peers in the sixth, seventh and eighth grade, the group participated

in recess games, sports and band. (Special Education Teacher, 7/12/05, pp 57, 60, 64, 67, 7/22/05, pp. 91, 93-92, 103, Testimony, Occupational Therapist 7/8/05, p.65)

12. Additional testimony supports a finding that the child received an individualized program which was not based on the typical curriculum assigned to the fourth through sixth grade. Special education students are not always slotted into a particular grade, but rather their placement and program is based on their ability level. (Testimony, Director, 10/4/05, pp. 165-168; TOTAL Teacher, Occupational Therapist, Tr. 7/8/05 p. 65)
13. Comparison of test results contained in the record is difficult, some evaluations state findings in terms of percentiles others in terms of grades equivalency; some of the tests were taken with the aid of calculators. The school psychologist administered the Woodcock-Johnson Tests of Cognitive Ability, in May 2002. The parent's independent psychologist administered the Stanford-Binet in 2003, to avoid practice effect. The independent psychologist deemed herself an advocate for the child. The best measure of progress in the record for the 2002-2003 school year is comparison of Exhibits P-18 and P-39. Basic reading skills improved to the 10th percentile and broad math remains at less than the first percentile.
14. The issue of placement occurred again in planning for the 2003-2004 school year. The child at sixteen was large for his age and it was inappropriate to place him with fourth through eighth graders ranging in age from 10-14 years. The school staff believed it would be appropriate to place the child in the high school where he would have better access to vocational programming. (Testimony, High School Special Education Teacher) The parents testified they were surprised by the proposal to move the child to the high school because they thought he would wait to move to the high school with his social peers. They should not have been surprised the matter had been discussed the previous year. The parents claim that the decision was made without their participation is not supported by the evidence. The parents did not claim notice of the IEP meeting which proposed the move was defective. The testimony does not support a finding that the parents did not receive prior written notice before the change in the child's placement. The child was evaluated by the school psychologist in 2002 who recommended the change in placement. The parents' attendance at the IEP meeting is noted in the record. The parents and the child visited the school. Even though the parents were reluctant to make the change, there is no finding the decision was made without their participation. Factors such as age, size, exposure to vocational opportunities; exposure to typical peers, requirements for transition planning and education in the least restrictive environment guided the team in planning the child's program. It was not unreasonable to choose the high school placement over continuation in the in the TOTAL program. The parents' independent psychologist agreed with the decision. The independent psychologist concurred in the decision to place the child at the high school. The move was appropriate even though the psychologist believed the child would learn at a different pace from his age typical peers. When cross-examined,

the psychologist was asked to envision an appropriate program for the child, she stated it would be with an age appropriate group of students with similar needs, in a program designed to meet the needs of an intellectually deficient population. The psychologist believes the child can benefit from contact with typical peers when the child is in circumstances which inherently protect him against abuse from [classmates]. The evaluation conducted June, 2003 submitted to the LEA April 2004, provides “ move” to the high school this year is appropriate for [the child] in that he can begin to move around and associate with people his own age and size. However, there is concern for a loss of companions closer to the child’s social and emotional maturity. (P-39, p.9, Testimony, 5/23/05) (Testimony psychologist, 5/23/05)

15. Overall, the child’s grade status was confusing from the time the child entered the TOTAL program at age thirteen when the other students typically start the program at age ten. The recommendation to move the child was supported by the 2002 triennial evaluation (P-18) which made recommendations for programming intended to provide vocational options and preparation for the world of work. The evaluation states the child’s overall academic achievement levels to be in the second and third grade range. (B-8 p. 3) At the parents’ request the IEP team agreed to rely on the BCH evaluation, when planning the specifics of the child’s program. (P-5, B-18 p.1) The child’s social and academic peers were not his chronological peers. A fact confirmed by evaluations performed for the child while he attended the LEA schools. (P-5, B-8, P-39, B-18 p.1)
16. To facilitate a transition to the high school the child participated in the vocational-agricultural summer camp. The chronological/socials peer issue is demonstrated by an incident when the child was teased by other campers for having his teddy bear in camp. (Testimony, 8/10/05 Tr. pp. 18, 59, 75, 83-84, 87, Testimony 9/1/05, Tr. 37, 38, 43)
17. The independent psychologist tested the child in June 2003 but did not prepare a full written report until April, 2004, nearly a year later. At the parents’ request the school team met with the independent psychologist for two informal meetings in October and November 2003. The psychologist recommended a speech and language evaluation focusing on pragmatic language skills and an adaptive behavior assessment, as well as, program changes for the child. No IEP modifications were added to address concerns until the team planned the child’s sophomore year, 2004-2005 in June 2004. The child’s 2003-2004 IEP does not have pragmatic speech and language instruction nor does it appear that a speech and language professional monitored the child as he negotiated the less restrictive environment in the high school. Meetings with the parent and independent psychologist should have alerted the IEP team that the child was struggling and that evaluations and programming were necessary.
18. Two students from the TOTAL program transitioned to the high school at the same time as the child. (Testimony, TOTAL teacher, 7/22/05 pp. 19-20, B-10, pp. 2,16, Testimony, 9/1/05 Tr. p.177)

19. The child's high school, special education teacher worked for the LEA for eleven years and has four years experience working for a regional education center and five years experience working for Connecticut's Department of Mental Retardation. The teacher appeared to understand the child well, and describes the child as a good student, with strengths in decoding but with weak reading comprehension. The child is a concrete thinker and has difficulty with abstract concepts. He must master all the components of a task before moving on to the next step. The teacher stressed the child has difficulty retaining information; it is necessary to use the spiraling teaching technique described in the BCH evaluation. The teacher used a touch math program for the child. The Stern Math program was introduced at the end of the school year. The high school special education teacher testified the meeting convened by independent psychologist, clarified that a meeting with the child's educators was not a IEP meeting but rather an opportunity to present helpful information to the staff responsible for teaching the child. The psychologist again met with the staff in March 2004 and requested the staff investigate her concerns the child was experiencing bullying. The teacher testified she immediately investigated the concerns, followed the child in the school setting and prompted discussion of the matter directly with the child. (Testimony, 8/10/05 p.25, 9/1/05 p. 151, 10/4/05 p.153-154)
20. The child participated in an agricultural program with a classroom component, laboratory, supervised agricultural experience (SAE,) and Future Farmers of America (FFA) components. The child participated in the science fair, by building a [race] car and competing in a race. A sixty-hour community project was satisfied by feeding a cat that resided in one of the administration buildings. The child appeared to lack interest in a plan to have him volunteer in a nursing home. (B-17, B-38, Testimony, 5/23/05, pp 30-31, Testimony, Agriculture Teacher, 7/7/05 Tr. pp. 69, 147-150)
21. The agricultural curriculum teacher who is the child's FFA advisor testified that the child participated in class, worked with equipment such as tractors, worked on animal science and plant science projects, the holiday store production, woodworking projects and an open house project. The FFA projects are voluntary, but the child was a willing participant and the projects are largely hands-on activities. All the students work side-by-side, the child was observed being social to the customers, during the one night he participated in sales. The child interacted with non-disabled peers in the agricultural class, other mainstream courses, physical-education, and in the cafeteria. The child participated in the activities associated with the agricultural class, field trips, the annual banquet and helped produce the products for sale. Several children in the agricultural class have mental, physical and intellectual disabilities. No evidence was presented to establish how or when the other special education students who transitioned to the high school with the child spend time with one another. (B-17, B-38, Testimony, 5/23/05, Tr. pp. 30-31, 43-44). (Testimony, Agriculture Teacher, 7/7/05 Tr. p. 161).

22. The Supervised Agricultural Experience (SAE) component, intended to be a sixty hour of outside class work experience related to agriculture or care of animals or gardening. The student attended introduction to agricultural classes and was guided by his teacher in FFA projects. The student was taught by a regular education teacher with no special education certification. The teacher stated the child was supposed to be working on supervised plant care at home. The child was not working the number of hours to meet the SAE requirements. The LEA response was to have the child assume responsibility for the cat that lives in the administrative offices. It was not explained how he can accumulate sixty hours of experience feeding or caring for a cat or the value derived from the activity.
23. The high school special education teacher stated in testimony there were no changes to the IEP resulting from the verbal recommendations of the psychologist. The high school special education teacher testified she incorporated some of the independent psychologist's recommendation in lesson plans for the child and others were in essence incorporated in the special education resource room format. The classroom strategies employed included repetitive, multi-sensory practice with experiential work woven into all aspects of the school agenda. The high school special education teacher testified the child did not know how to write his name in cursive, or write a numerical date, and he had a hard time writing and punctuating sentences. (B-13 p.7-9, B-14, 4-5, Testimony, 8/10/05 Tr. pp. 18, 59, 75, 83-84, 87, Testimony 9/1/05, Tr. 37,38,43)
24. The high school placement was viewed by a consulting psychologist as inappropriate because the child missed middle school and preparation for dealing with adolescent issues and missed additional years of social skills intervention, placing him at a disadvantage in the high school setting. (Testimony, psychologist 3/23/05 Tr. 31-34)
25. The parents requested an IEP meeting to propose placing the child in a private placement for the summer and the 2004-2005, school year. (B-19,B-13 p. 9, Testimony 5/23/05 Tr. pp.21-24)
26. Test results are consistent over the years. P-5 and P-39 both show the child is disadvantaged in social situations, felt vulnerable to victimization, and is unable to process what is coming at him and form a protective response. His adaptation is by becoming avoidant, withdrawn and unable to express what is bothering him. The psychologist was concerned the child is not socially, academically or cognitively equipped to abruptly move to the high school. (P-5, P-39, Testimony, Independent Psychologist, Tr. 5/3/05 pp. 32-34, Tr. 5/ 23/05 pp. 14-17, 21-24, 34, 74-78, 142, Tr. 5/4/05, p. 41)
27. A psychological consultant testified the 2003-2004 IEP lacked provision for social or leisure skills to be directly taught or coached, and it is not clear how domestic living skills are implemented. A self-contained/separate program with students who have similar challenges [and require similar interventions] is more appropriate for the child. (Testimony, 3/2/05, p. 28,29-30,51-65, 71-72) Some aspects of the

agricultural experience are voluntary and club-like in nature, but of limited value to the child without pragmatic language training, coaching or purposeful facilitation, the opportunity to integrate the child into the non-disabled peers and access the community-at-large. If the programs were intended to provide the child educational, vocational and community experiences and satisfy the requirements of the child's transition plan, the parents believe the child had inadequate support to meet the objectives. (Testimony 7/8/05 pp. 5,-16)

28. A physical/occupational therapy evaluation Exhibit B-16, conducted in January 2004, concludes the child is able to keep up with many of his peers for the actions required and able to perform well despite his limitation. The LEA's transition plan arranged for the child to volunteer at a nursing home across from the child's house and made arrangements for the child to go bowling with a peer on one occasion. (Exhibit B-17)
29. The independent psychologist testified the IEP for 2003-2004 reflects very limited progress towards the child's goals and objectives. Furthermore she claims the goals are inappropriate, the IEP does not make adequate provision for speech disfluency, pragmatic language skills adaptive behavior skills; and life skills; social and emotional skills; direct occupational therapy and physical therapy services; and the IEP reflects many of the goals were not mastered. (Exhibit B-10, B-12; Testimony, 5/3/04, pp.127-133)
30. The child made little or no progress 2003-2004 school year. The progress reports show regression in several of the goals and objectives. (Exhibit B-10) The student received modified grades which are reported on the PPT Summary Sheet dated 4/17//04. The high school special education teacher testified she did not believe the child had plateaued in his ability to continue to make meaningful educational progress. The teacher expressed the child's ability to learn depended the setting, structure, materials and methods used for instruction. (Exhibit B-10, Testimony, 9/6/05 Tr. 102, 9/1/05 Tr. p.3-4).
31. Overall the transfer to the regional high school, exposed the child some increased mainstream education, vocational and community experiences, but the cost for the child was regression in IEP goals and objectives for reading writing and math, the skills necessary for success in classes such as Agricultural Technology, Basic Social Studies, Science 9R, and Home Economics. (Testimony, Parent, Special Education Teacher, 7/12/05, pp 57, 60, 64, 67, 7/22/05, pp. 91, 93-92, 103, Occupational Therapists 7/8/05, p.65.) The IEP for the 2003-2004 school year does not have a speech and language component. The child has mainstream classes in social studies, science and a vocational-agricultural program. Resource room support is 10.75 or 14 hours per week depending on which of the IEPs contained in the record is the operative IEP for the 2003-2004 school year. Support time is significantly reduced and/or ineffective at a time when the child needs it to adapt to a new environment. Pragmatic language support could have capitalized on social opportunities during the time spent in FFA and SAE.

32. In the high school program the child's time in the resource room was reduced from a self-contained class predominantly managed by special education staff the previous year to 10-15 hours per week. At the TOTAL program speech and language was worked on throughout the day, with the give and take of conversation, the use of language in a social context, initiating and taking turns in conversation. The high school mainstream courses diminish the time available for basic skill instruction. The child did not have speech and language goals and objectives but the evaluations indicated the child needed to improve pragmatic language skills, practice and group experience available to him as a participant in the TOTAL program at the middle school. (Exhibits, B-1 p.26; B-10, p. 12; Testimony, middle school teacher, 7/12/05, pp.57, 85-86, 92)
33. The extended school year program a LARC is a recreation program, an academic program is necessary to avoid regression. (P-60)
34. The high school special education teacher testified the child could not fill out a date even though he had mastered the skill in a previous IEP. The child had to be re-taught basic math concepts such as more or less; before and after; one to one correspondence. One to one correspondence was taught with manipulatives, using cards with dots which lacked the three dimensional aspect of the cuisinare rods, used in the Stern Math program. Stern Math was discussed as a program suitable for the child from 1998 to 2004. The program was implemented on May 24, 2004 after the parents informed the LEA of their intent to send the child to a private placement. The special education teacher did not teach the child his math lessons. A teaching assistant, with a high school diploma, taught the child. (Testimony, 8/10/05, Tr. pp. 19,104, 120,121,123-124; 9/6/05 Tr. p.11)
35. The child's high school special education teacher stated at the end of his freshman year in high school. The child could read at a fifth or sixth grade level with fourth or fifth grade level comprehension. The child was at a fourth to fifth grade level in social studies. He could not use cursive writing or punctuate sentences or think logically. Testimony, 9/1/05 Tr. pp.3-4, 53-54, 55-56, 59)
36. The parents requested an IEP meeting to propose placing the child in a private placement for the summer and the 2004-2005, school year. (B-19,B-13 p. 9, Testimony 5/23/05 Tr. pp.21-24)
37. The private placement that the child attends prepared an initial IEP based on the child's school records. (P-42, Testimony, 5/19/05 Tr. p.117-118). The child has seven academic classes a day and physical education and after school intramural athletics, clubs and field trips. The child attends small classes with students grouped by reading levels. All students participate in the STAR reading program a graded accelerated computer reading program with an oral reading component and post test. The teacher monitors the child's reading comprehension level with the completion of each book. There is a speech and language therapist who provides speech and

pragmatic language activities in a group setting. The school focuses on teaching interpersonal relations, social competence skills and pragmatic language skills. Progress in social skills is tracked through the RISE system, in which students progress in their level of responsibility and earn special privileges. (Testimony, 5/19/05, Tr. pp. 94, 117-118, 5/26/05 Tr. pp. 41-42, 44, 120-121) (Testimony 5/19/05, Tr. pp. 106,121-12; 5/23/05 Tr. pp. 104, 133).

38. The child shows improvement since he entered the school. Initially, there was a concern about hallways and the lunchroom and avoidance of peers. He has grown more relaxed and is now initiating contact with peers. He has regularly been involved in daily discourse with many peers. The parents report the child regularly has phone contact and internet contact with other students. (Testimony, Private School Psychologist)
39. The teacher questioned some of the progress the child made in the private placement during his sophomore year of high school, but stated the writing quality was similar to that produced in the child's journal as a freshman in the LEA school. Progress in math can be explained in part by use of a calculator which would increase math performance when testing the basic math skills. (Exhibit, P-5, Testimony 8/10/05 p 36; 9/1/05, pp.160-163; 11/16/05 pp. 6- 10, 13-14, 21-22)
40. As early as October 2003, the family reported the child was without a peer group and having a hard time fitting in at the high school. He was withdrawing spending more time with isolating activities. The child spent all his after school time at home and did not participate in after-school activities. The child expressed concerns about passing in the halls at school, being pushed, watching for steel toed shoes and firecrackers. (Testimony parents, sisters, P-63, P-64)
41. On June 9, 2004 the child reported a firecracker was thrown in his vicinity. The parents removed the child from school. The school administrator assigned a staff person to be with the child for the remaining days of the school year. The event was corroborated by school staff, although the staff believes either someone else or no particular person was intended to be the target. (P-35, P-37, Testimony, Special Education Teacher, 8/29/05, Tr. p.23; Testimony, Director; Testimony, 5/23/05,)
42. The parents raise the issue of "abuse", "harassment", "teasing" and "bullying". The concern was first mentioned when the IEP team considered moving the child from the middle school to the high school to receive his special education program in 2002-2003. Prior to June 2003, the child had been educated in a contained special education class in the middle school, the type of protected environment prescribed by the independent psychologist (P-39, testimony 5/23/05). It is hard to determine from the facts, what exactly occurred with steel toed shoes, kicking and other concerns about abuse and anxiety. There are no reports of visible physical harm although the parents report of the child's elevated anxiety is credible. The independent psychologist admits never having any formal observation of the child in the high school setting. Some of the psychologist's test results indicate there is some

anxiety but there are no specific details of events in the reports. Some of the test which indicates anxiety are dated prior to the child entering the high school program. The reliability of the reports is compromised by the one year delay between testing and the psychologist issuing the written evaluation. In fact the testimony and evidence supports a conclusion the child has a long history of anxiety, occurring during a time the child was placed in contained programs. That is not to say the child did not have anxiety or fear of others, nor does it imply there were never any events that caused anxiety, concern or fear for the child, and perhaps more so for the parents however, the evidence to consider in this regard is very limited. The reports that the child was teased while attending a one week camp program intended to serve as orientation to the vocational-agricultural program are credible. The camp was attended by different groups from many schools outside the LEA school district. The teasing was not an ongoing circumstance. The child left the camp after a week and the students from the other school districts were not in the child's program or school. There is no evidence the events at camp interfered with the child's access to his education.

43. The other significant claim of bullying is a student or group of students threw a firecracker at or in the vicinity of the child on or about June 9, 2004. This is a serious issue for any school to address. The highlights of the evidence and testimony follow: The parents informed the school the child reported an incident involving a firecracker. The child stayed home from school until the parents could be assured the child was safe. The school assured the parents the child would be accompanied at all times while at school for the remainder of the 2003-2004 school year. The child returned to school immediately. The school administrator's testimony that an immediate investigation into the circumstances of a lighted firecracker in vicinity of the child is credible. There is no evidence the child was the target of the firecracker. The child returned to school without incident for the remainder of the school year. The school staff did not permit any ongoing exposure to any events of bullying or discrimination. (P-35,P-37, Testimony, Director, 5/23/05 pp.19-20)

The school administration took immediate and effective action. The child returned to school. The child's program was not altered in any way which denied him access to the school or his special education program. The evidence does not support a conclusion that the child's long term anxiety was exacerbated by the firecracker events. Testimony is inconclusive as to the source of at least a portion of the child's response to the topic of firecrackers. The independent psychologist's testimony is inconsistent as to the source of the child's anxiety in general; and the specific details of the child's exposure to firecrackers. Her testimony states the child mentioned firecracker to her in April before the event at school took place on June 9, 2004.

CONCLUSIONS OF LAW

1. The student is identified as a student with disabilities pursuant to The Individuals with Disabilities Education Act 20 U.S.C. § 1401 (1997), (IDEA), 34 C.F.R. §

- 300.7(a) and Conn. Agencies Regs., § 10-76a-1(d). There is no dispute between the parties as to the child's eligibility for special education. They agree he is entitled to a free and appropriate public education (FAPE).
2. The child was unilaterally placed in a private special education school. A dispute arose between the parties when the local education agency (LEA) proposed a program for the child's sophomore year of high school, 2004-2005. The parents claim the LEA's program is inappropriate because it fails to provide the child with a free and appropriate public education.
 3. Whether a program is appropriate is determined by the two-prong test articulated in *The Bd. of Education of the Hendrick Hudson Sch. Dist. v. Rowley*, 459 U.S. 176 (1982). The first prong requires the LEA must follow the procedural requirements of IDEA. The Supreme Court notes emphasis on the procedural requirements of IDEA reflects a conviction that adequate compliance with the prescribed procedures would in most cases assure much if not all of what congress wished in the way of substantive content in an IEP, *Walczak v. Florida Union Free School District*, 142 F.3d 119 (2d Cir. 1998) quoting *Rowley*, 458 U.S. 176, at 206.
 4. The parents claim the LEA failed to comply with the procedural requirement of IDEA, 20 U.S.C. § 1414 (f) and the Conn. Agencies Regs. § 10-76d (a)(8), when the school team recommended the child move to the high school for his program. The requests and recommendations of the parents and their representatives, often determined the actions and programs to be incorporated in the child's IEP. It is understood the parties treated each other with mutual respect and had genuine concern for the child. On many occasions decisions were difficult and at times did not result in the intended outcomes. Even though the parents are convinced the team decision to change the child's placement occurred outside the IEP process. The change complied with all legal requirements. The parents were present at the PPT meeting in which the child's program and placement was planned. If the parents did not agree with the decision to place the child at the high school, they could have prevailed upon the team to adopt their own perspective of the child's needs, as they had done, successfully, the prior year. The IEP did not become the child's program until the prior written notice document was forwarded to the parents and they either accepted the proposed program or disputed it through due process. As noted in the findings of fact, all of the procedural requirements of notice, a full opportunity to participate in the IEP process, receipt of the prior written notice documents and notice of the procedural safeguards to resolve any dispute with the LEA through due process or mediation are satisfied.
 5. The parents claim the LEA failed to comply with the procedural requirement of IDEA, because it failed to evaluate the child every three years and in all areas of suspected disability as required by IDEA 20 U.S.C. § 1414 and its regulations at 34 C.F. R. § 300.531. The claim regarding evaluations appears to be more a substantive claim rather than procedural. Overall, the child's testing schedule is outlined in the "Final Brief at Appendix 1 and Appendix 2, for the period in question. The child's condition is non-progressive. Since 1991, the child has been evaluated at the Geselle Institute, the Connecticut Children's Medical Center and Boston Children's Hospital. All known to be major centers who conduct full-scale assessments. There have been, three psycho-educational evaluations, a full neuropsychological/educational

evaluation, a physical/occupational therapy evaluation, two adaptive behavior assessments, two speech and language evaluation, annual achievement testing by the LEA classroom teachers; and evaluations by vision professionals. Since 2002, the school completed a psycho-educational evaluations, a physical/occupational therapy evaluation, an adaptive behavior assessment, a speech and language evaluation, and conducted annual achievement testing by LEA classroom teachers. Additional testing includes, two Stanford Achievement tests by the private special education school, an independent psycho-educational evaluation, and a psychological consultant reviewed the child's record. The parents commissioned many of the child's evaluations which is their right to do. The cost in some cases was assumed by the LEA. Some of the evaluations were used in lieu of triennial testing. In two of the years in question, there were long delays before the LEA received the written evaluation reports. The delays caused the timing for the next triennial date to be delayed and confused.

The child had a comprehensive evaluation in Boston Children's Hospital, (BCH) paid for by the LEA, which formed the basis of much of the child's program; its continued relevance is noted in the record. Subsequent evaluations confirmed the BCH evaluation is a useful document; and the parents obtained the agreement of the IEP team to follow its recommendations when planning the child's program as late as 2004.

6. Any dispute regarding the adequacy of any evaluation or lack thereof occurring prior to 2003 could have been resolved through due process or mediation. Connecticut General Statutes §10-76h(a)(3) provides that "a party shall have two years to request a hearing from the time the board of education proposed or refused to initiate or change the identification, evaluation, educational placement or the provision of a free and appropriate public education placement for such child or pupil ...". IDEA intends for parties to promptly assert a child's educational rights. One fundamental goal of the statutory scheme codified in the IDEA is to promote the expeditious resolution of educational programming disputes *M.D., M. and Mrs .D. v. Southington BD. of Education*, 334 F.3d 217 (2003). In conclusion there is adequate information and psychological recommendations to plan a program for the child which can provide the child with an educational benefit. So far as the need to conduct such evaluations on a triennial schedule, each of the scheduled evaluations is timed from the date of the most recent evaluation. The results of all of the child's evaluations have remained fairly consistent as stated in the most recent full evaluation presented to the IEP team in April 2004.
7. The second prong of *Rowley*, requires the individualized education program ("IEP") offered by the LEA must be reasonably calculated to enable the child to receive an educational benefit. The benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177 206-207, *Mrs. B. v. Milford Board of Education*, 103, F.3d 1114(2d Cir. 1997). Subsequent decisions elaborate on how much benefit is sufficient to be meaningful. The act requires educational *progress* rather than a program that is merely of benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 183 (3rd Cir. 1988), *cert. denied* 488 U.S. 1030 (1989) (Emphasis original). The IDEA was enacted to assure that all children with disabilities have available to them a free and appropriate

public education which emphasizes special education and related services designed to meet their unique needs, supported by such services, as are necessary to permit the child to benefit from the instruction, *Rowley*, 458 U.S. 176, 188-189. The IDEA does not require states to maximize the potential of handicapped children, *id.* at 197 n. 21, 102 S. Ct. 3034, but must be reasonably calculated to receive educational benefits, *M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Ed.*, 226 F.3d 60, 62 (2d Cir. 2000).

8. In order for FAPE to be offered, a school district must show it complied with the statutory elements of an IEP; the goals and objectives in the IEP are reasonable, realistic and attainable, yet more than trivial and *de minimus*; and the special education and related services must be tailored to reasonably accomplish the goals in the IEP. *Board of Education of the County of Kanawha v. Michael M.*, Civil Action No. 2:99-0609, USDC for the Southern District of West Virginia (April 26, 2000), at pp. 18-19. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising the IEP of a child with a disability. Each LEA shall ensure that the IEP team, review the child's IEP, no less than annually, to determine whether there is lack of progress towards the annual goals described in § 300.347(a), and in the general curriculum; or to address the results of reevaluations conducted under [the regulations]...and [review] information about the child, provided to or by the parents under § 300.533 (a)(1) or about the child's anticipated needs; or other matters, 34 C.F.R § 300.343(c) (1), (2) (ii) - (iv).
9. In 2002-2003, the parties had to weigh the benefit of the child remaining in the TOTAL program and movement to the high school. The child's issues were known to the TOTAL program staff. The special education teacher evaluated the child's academic progress and provided a program designed to meet the child's current level of performance. The child remained in the TOTAL program in lieu of having better access to transition goals and objectives. Speech disfluency and pragmatic language skills are incorporated in the TOTAL curriculum, physical therapy and occupational therapy are addressed on a collaborative basis in the classroom. The evaluations at P-5 and P-39 provide the child's deficits should be addressed in group work on social skills in a qualitatively similar peer group. The child's move to the TOTAL program was planned to facilitate relationships with peers. The parents opposed a recommendation to move the child to the high school and favored a plan for the child to remain with the peers. The 2002-2003 IEP (P-18) states the child's present level of performance places the child in grade two-three in academics. After consideration, the IEP team subordinated the transition goals. A pull-out from a cohesive program designed to weave the expertise of educational and therapeutic professionals into the child's day would not be appropriate. If the transition goals were to be addressed in the less critical parts of the child's day it would be disruptive to the relationships the program was intended to support. The evaluations and comparison of the child's current level of performance stated in the child's IEP at the beginning and end of the 2002-2003 school year establish the child made a reasonable amount of progress and benefited from the program. The LEA provided the child with an appropriate program for the 2002-2003 school year.
10. Many of the components of the 2003-2004 freshman year at the high school were appropriate. The child has mainstream classes in social studies, science and a

vocational-agricultural program. Resource room support is insufficient, whether it is 10.75 or 14 hours per week depending on which IEP in the record is the operative IEP for the 2003-2004 school year. Support time is significantly reduced and/or ineffective at a time when the child needed it more. The IEP for the 2003-2004 school year does not have a speech and language component. The related services are not adequate. If the pragmatic language needs of the child were previously satisfied by the TOTAL program concept, they are lacking in the 2003-2004 IEP. The objective of sending the child to the high school, to move around with children of his age, requires support, structure and pragmatic language skills. There is no testimony to support that the relationships with the two peers who moved to the high school at the same time as the child continued. The parents' testimony is credible when they testify the child did not have much contact with school mates.

11. The parents accompanied by the independent psychologist met with the school team to verbally report some of her test results in October and November. The psychologist made recommendations for an adaptive behavior assessment and a speech and language assessment to determine what could be done to add structure to the child's integration into the high school community and self-advocacy for coping with students who might tease the child or with whom the child does not have some level of comfort. The results of the school generated evaluations were not reviewed until June, 2004 two months after the parents notified the LEA of their intent to send the child to the private special education school.

The child participated in an agricultural program which had a classroom component, laboratory, supervised agricultural experience (SAE,) and Future Farmers of America (FFA) components. The program provided the child with many opportunities to meet transition goals and objectives. Volunteering in the nursing home and the vocational-agricultural class provided exposure to the world of work. The FFA program provided leisure activities such as gardening and participation in the holiday sale fund-raiser. The child participated in the science fair, building a [race] car and competing in a race, all appropriate activities. Aspects of the program were not well managed, the hours to complete a sixty-hour community project was satisfied by feeding a cat that resided in one of the administration buildings. The program contained the elements mandated for transition plans by 20 U.S.C. §1401(a)(20), 34 C.F.R. §§ 300.340-350 but was fragmented and not well coordinated. The IEP fails to provide the support services required by IDEA. The child has mainstream classes in social studies, science and a vocational-agricultural program. Support time is significantly reduced and/or ineffective at a time when the child needed it more. The child failed to master most of the academic goals and objective in the 2003-2004 IEP. The mastered objectives such as, will listen courteously, will participate without disrupting others, will raise hand to request information, and will participate in a small group cooperatively were likely skills obtained prior to the commencement of the school year. The objectives are not areas where the child required improvement. He has a long history of meeting goals and objectives of the type noted. Progress is *de minimus* and trivial.

12. The high school special education teacher testified the child mastered few of his math goals and objectives during his freshman year. The child could not fill out a date even though he had mastered the skill in a previous IEP. The child had to be re-taught basic math concepts such as more or less; before and after; identifying coins, along with values and equivalencies and one-to-one correspondence. One-to-one correspondence was taught with manipulatives, using cards with dots which lacked the three dimensional aspect of the cuisinare rods used in the Stern Math program. Stern Math was discussed as a program suitable for the child from 1998 to 2004. There is no conclusion herein that the only way to teach the child math was to use cuisinare rods, however, when a child experiences such severe math deficits over a number of years, and his evaluations propose the use of a particular tool, a trial of the strategy was in order, at some time during the 5-6 years period the parents continued to request the team follow the evaluation. The program was implemented on May 24, 2004, two months after the parents notified the LEA of their intent to send the child to the private placement for a summer program and the 2004-2005 academic year. The child's progress in math is *de minimus* and trivial. Overall, the program offered for the academic year in 2003-2004 is not appropriate. From the record, the need for pragmatic language skills should have been obvious. What makes the LEA failure to provide the speech and language programming egregious is that once they were alerted to the need for such a program early in the school year, no modifications were made to the child's IEP. As the year continued without progress, the goals and objectives and/or teaching strategies should have been reviewed and modified.
13. The need to re-teach previously mastered goals and objectives should have triggered a discussion of the child's need for an extended school year to avoid regression. The extended school year was proposed by the parents and rejected by the IEP team. The parties agree the child needs an extended school for 2003-2004. The parents requested the program in April 2004, which the IEP team denied. The IEP team determined the child qualified for an extended school year. The program ultimately offered is recreational and does not provide an appropriate level of academic content. The team offered an alternative program through LARC (P-60) but not until June of 2004. It was reasonable for the parents to enroll the child in the private special education program after they made the request for the extended school year and the LEA denied the request.
14. The LEA denied the parents' request to place the child at the private special education school in April, 2004. Subsequent to the date of the refusal the LEA made significant changes to the child's proposed IEP (P-34) to include 18.75 hours of special education support and .75 hours of speech and language therapy per week. The child's program incorporates language and communication goals. Several of the goals are applicable to job skills, including expressive and receptive language goals and objectives. The IEP is reasonably calculated to provide the child with skills necessary for the world of work, job interviewing, self-advocacy, give and take conversations with co-workers and peers. The child continues in the Vocational-Agriculture (Vo-Ag) program which provided many appropriate elements and

opportunities to implement classroom activities in the IEP. Vo-Ag, FFA and SAE provide the type of vocational and leisure experience lacking in many educational placements; the program is in the child's community. The child can have opportunities to work along side disabled, as well as, non-disabled peers.

15. The line of cases which provides for public school funding for education in private schools includes *Burlington v. Dept. of Educ.*, 736 F.2d 773 (1st Cir. 1984), *aff'd* 471 U.S. 359 (1985) and *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 359 (1985). Public school funding of private education requires a finding that the program offered by the LEA does not provide a free and appropriate public education. The case was commenced prior to the effective date of the IDEIA 2004, the LEA has the burden of proving by a preponderance of the evidence that the child's program is appropriate, Conn. Agencies Reg. § 10-76h-14. In this case the LEA has established by a preponderance of the evidence that they could provide a FAPE to the child for the 2002-2003 school year. The parents have proven the IEP for the 2003-2004 school year is not appropriate and that it was an egregious failure to provide the child with an appropriate program for the 2003-2004 school year. The program offered for the summer 2004 extended school year is not appropriate. The IEP offered for the 2004-2005 school year is appropriate. The program offered for the summer 2005 extended school year is not appropriate. For any of the periods in which the IEP is deemed appropriate there is no further inquiry.

16. Once a determination has been made that the LEA did not offer FAPE, it must be determined, whether the private school placement is appropriate, as is the case for the 2003-2004 school year, and the extended school year programs for 2004 and 2005. In selecting a unilateral placement, parents are not held to the same standards as are school systems. Since *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 114 S. Ct. 361, 126 L.Ed.2d 284 (1993), under the reauthorization of the IDEA in 1997, it is well settled that the unilateral placement does not have to meet the standards of a least restrictive environment (LRE), nor even does the unilateral placement have to include certified instructors in special education. *Norton School Committee v. Massachusetts Department of Education*, 768 F. Supp. 900 (D. Mass. 1991), establishes the test for unilateral placement reimbursement may not be made in a vacuum. When a school district fails to meet its obligations in providing a FAPE for a child, the choice of parents left to their own devices and resources need not be a precise fit. The least restrictive environment guarantee ... cannot be applied to cure an otherwise inappropriate placement. The child's record indicates he made progress in the private special education school (P-74), the improvement in reading is consistent with gains experienced in the past, comprehension is better than reported in the past. The progress in math is dramatic but the results are partially due to the use of a calculator when testing. The child's LEA special education teacher finds the writing to be similar to past levels. There are subject areas showing regression, social studies and spelling indicate, gains once made are lost, intelligence deficits may limit long term gains in academics. The private school program is appropriate so far as social integrations. The testimony is that the pragmatic language program is woven into the daily structure. The child is no longer isolated. The length of the school day is

different. The child spends a 12 hours a day at the school and spends 1 hour commuting to the program. He has less free time to be depressed, unmotivated and watch video games. For any period in which the LEA program is found to be inappropriate the private special education school provides an appropriate program.

The LEA properly evaluated the child. There is not a finding that bullying, teasing and discrimination on the basis of the child's disability made him unable to participate in or benefit from his special education program.

FINAL DECISION AND ORDER:

1. The local educational agency had an individualized education program for the 2002-2003 school year that could provide the child with a free and appropriate public education. The parents' request for reimbursement is denied.
2. The local educational agency did not have an individualized education program for the 2003-2004 regular school year that could provide the child with a free and appropriate public education. The parents shall receive a compensatory payment for the cost incurred for the 2004-2005 regular school year.
3. The local educational agency did not have an individualized education program for the summer 2004 extended school year that could provide the child with a free and appropriate public education. The parents shall receive a payment for cost incurred for the 2004 extended school year program.
4. The local educational agency had an individualized education program for the 2004-2005 regular school year that could provide the child with a free and appropriate public education. The parents' request for reimbursement is denied.
5. The local educational agency did not have an individualized education program for the summer 2005 extended school year that could provide the child with a free and appropriate public education. The parents shall receive a payment for cost incurred for the 2005 extended school year program.