

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on Behalf of the Parent: Pro Se

Appearing on Behalf of the Board: Michelle C. Laubin, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Ct 06460

Appearing Before: Attorney Justino Rosado, Hearing
Officer

FINAL DECISION AND ORDER

ISSUES:

1. Were the program and related services offered by the Board for the 2006-2007 appropriate and provide the Student with FAPE according to 20 USC 1401 et seq?
2. Should the Board reimburse the Parent for the cost of the unilateral placement at Card Camp for the summer of 2006?
3. Should the Board be required to pay for an Independent Educational Evaluation of the Student?

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186

SUMMARY:

The Student is a 10 years 3 month young man who has been identified as Other Health Impaired having ADHD/OCD and Tourette's Syndrome and is entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.

The Parent rejected the program offered to the Student for the 2006-2007 school year. The Parent requested a day placement of the Student at the Arch Bridge

School, Bethlehem, Connecticut and reimbursement of the unilateral placement at the C.A.R.D. therapeutic camp for the summer of 2006. The Board refused the Parent's request and the Parent requested a Due Process Hearing.

PROCEDURAL HISTORY:

The Parent requested this due process hearing in a letter dated April 13, 2007 and received by the Board on or about April 16, 2006. (Hearing Officer's Exhibit¹ -2) A resolution meeting was not conducted by the parties. On or About May 11, 2007, the Board filed a Motion to Dismiss (HO-3) the due process hearing without prejudice based on the Parent's refusal to participate in a resolution meeting. The Parent filed a timely objection to the Board's motion.

The IDEA provides that, "Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent." 34 CFR §300.510(a) The Board did not convene a resolution meeting in a timely manner and the parent requested that the due process hearing timeline begin. 34 CFR §300.510(b)(5) The Board's Motion to Dismiss was denied.

A pre-hearing conference was held on April 20, 2007 at which time hearing dates of May 24, 2007 and June 6, 2007 were selected at the convenience of the parties. At the request of the parties, additional hearing dates of June 19, June 29 and July 3, 2007 were later scheduled. The July 3, 2007 hearing date was cancelled as the parties concluded the evidentiary part of the hearing on June 29, 2007.

On April 17, 2007, a Hearing Officer was appointed. At the conclusion of the evidentiary hearings on June 29, 2007, the parties were given the opportunity to present their closing statements. The parties requested that they be allowed to present their closing statements in writing. The Hearing Officer granted the request and the parties were given until July 3, 2007 to submit closing statements. The Final Decision and Order date was extended by agreement of the parties until August 7, 2007 to accommodate the additional hearing dates and the submission of the closing statements.

Parent's exhibits # 26, 28, 35 were not accepted as exhibits for this hearing. The Board's Exhibits # 132-134 were not received as exhibits for this hearing. This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S, & H. Computer Systems, Inc.*,

¹ Hearing Officer's Exhibits are referred to as "HO" followed by the appropriate exhibit number.

605 F.Supp. 816 (M.D.Tenn. 1985) and *Bonnie Ann F.v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student is a 10 years and 3 month young man who has been identified as Other Health Impaired having ADHD/OCD and Tourette's Syndrome. and is entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.
2. The Parent placed the Student in an out of district school for the 2002-2003, 2003-2004 and 2004-2005 school years. While the Student attended the out of district school, he was not identified as a student requiring special education and related services as defined in IDEA but was placed under a 504 plan as defined in the Rehabilitation Act of 1973. The plan addressed the Student's anxiety and compulsive disorders. (Testimony of Mother, Board's Exhibit² -4)
3. During the 2004-2005 school-year, the Student started to exhibit suicidal ideations and the Parent requested a PPT meeting in order to enroll the Student in the 3rd grade at the Board's school. (B-6). The Student's report card showed that he made progress during his second grade in his out of district placement in his reading, written expression and verbal expression. (B-9)
4. Dr. Andrea Nathans, a clinical psychologist, has been treating the Student since March 2004. The Student showed difficulties cooperating and his depression had led to three episodes of suicidal ideations. The Student has difficulties staying on task and problems completing tasks. The psychologist diagnosed the Student with OCD and anxiety. (Testimony of Dr. Nathans)
5. In July 2005, the Student's neurologist referred the student to Dr. Nathans to assist in managing his emotional-behavioral difficulties. The doctor recommended that:
 - a. the Student be given a neuropsychological evaluation to assess any potential learning difficulties,
 - b. that the Student be provided with modifications to deal with his difficulties in working with substitute teachers; and
 - c. that he be given support and instruction in building better social skills. (B-13)

² Board's Exhibits are referred to as "B" followed by the appropriate exhibit number.

6. In August 2005, the Student was evaluated by Robert King, M.D., Professor of Child Psychiatry. The evaluator diagnosed the Student with Tourette's Syndrome, Attention Deficit Hyperactive Disorder (ADHD) and Obsessive-Compulsive Disorder (OCD) The evaluator recommended that the Board conduct psychological testing, language assessment in order to rule out nonverbal learning disorder and to obtain a better understanding of the Student's receptive and expressive language. The doctor recommended additional medicine to the Student's medical regimen to help control his Tourette's Syndrome and OCD. (B-15)
7. A 504 Student Accommodation Plan was created for the Student prior to his starting in the Board's school. The Student's accommodations included weekly contact with the school psychologist or lead teacher, breaks during the day as needed, extended time for testing and ignoring his tics. (Testimony of Mother B-18, B-20)
8. At the October 18, 2005 PPT meeting, the team reviewed psychological, achievement and occupational evaluations that were conducted of the Student. The team concluded that the Student is a student requiring special education and related services as defined in IDEA. The Student was classified as OHI-ADHD. Goals and objectives were created for the Student. A behavioral plan was also discussed and included in his individualized education program ("IEP"). The Student was to be provided with 20 ½ hour sessions of group counseling. The Parent testified that these sessions did not occur because there was not a psychologist available. (B-29, Testimony of Mother)
9. The student's educational achievement evaluation placed him in the superior range for reading and written language and high average in mathematics and oral language. The Student's overall achievement was in the superior range. The evaluator concluded that the Student needed classroom accommodations. The Student required organizational supports, warning of transitions, frequent breaks and other activities that required movement. The evaluator recommended special education services take place in the resource room. (Testimony of Special Education Teacher, B-24)
10. At a January 6, 2006 PPT, the Parent informed the team that the Student's psychologist had decided that the Student's diagnosis should be Pervasive Developmental Disorder (PDD) NOS. There was no change to the Student's IDEA identification or his IEP and a Comprehensive Assessment of Spoken Language (CASL) was planned. (B-34)
11. On or about January 17, 2006, the Student was evaluated by his psychologist, Dr. Nathans. The evaluator had the Parent complete the Autism Diagnostic Inventory-Revised (ADI-R), the Gilliam Asperger's

Disorder Scale and the Social Responsive Scale (SRS). In the Gilliam Asperger's Disorder Scale the Student's Asperger's Quotient was 107 which placed him in the 68th percentile. This placed the Student in the likely Asperger's disorder range. The evaluator concluded from the Parent's checklist, a review of the Student's records and her knowledge of the Student that the Student's symptom profile was consistent with a Pervasive Developmental Disorder, Not Otherwise Specified (NOS). The evaluator relied on the Parent to whom the checklists should be distributed. The checklist evaluation reflected the home setting. The evaluator did not receive checklist responses from the Student's teachers. The evaluator opined that it is better to have the Student checked in more than one setting in order to give a Pervasive Developmental Disorder (NOS) diagnosis. (Testimony of Psychologist, B-35)

12. In January 2006, the Student, over a 4 day period, was administered the CASL. The evaluation is composed of 6 subtests:
- a. Antonym subtest to assess his ability to identify words that are opposite in meaning and express the opposite in a verbal expression.
 - b. Syntax Construction subtest to assess his ability to generate sentences using morphological and syntactical rules.
 - c. Paragraph Comprehension subtest to assess his ability to comprehend syntax by means of the spoken word.
 - d. Nonliteral Language subtest to assess his ability to comprehend the intended meaning of spoken language in situations where the literal meaning does not convey the message.
 - e. Supralinguistic Processing Category to assess his ability to integrate, through inference, appropriate world knowledge with the information provided in the spoken messages.
 - f. Pragmatic Judgment subtest to assess his knowledge of pragmatic rules in conversation.

The Student received scores in the average and above average range. The evaluator also made observations of the Student in his classroom environment and concluded that the Student's language skills are within normal limits of his chronological age and that he was developmentally appropriate. The evaluator did not recommend speech and language services. (P-1)

13. In January 2006, the Student was exhibiting behavioral issues which were impacting his education classroom. The Student was having difficulties with his classroom routines. He would utilize sensory breaks to avoid certain tasks in the classroom. The staff allowed this avoidance but sent work home with him. He was also touching the other student's property

- and invading their physical space. The Parent was not in agreement with the student's current behavior plan. (Testimony of Resource Room Teacher, Speech Pathologist and Mother, B-127 pp. 89, 104-108)
14. On February 28, 2006, the PPT met to review Dr. Nathans' report and the CASL speech and language evaluation. The team did not change the Student's IDEA category but agreed to have an independent evaluation of the Student. The Student was also referred to ACES Behavior Services Center for a Functional Behavioral Assessment (FBA). (Testimony of Mother, B-37 & B-38)
 15. ACES collected baseline data over several school day settings. Three issues were noted from the data collection. The Student showed a high rate of non-compliance and elopement. (Elopement was defined by the resource room teacher as the Student leaving the classroom ahead of the educational assistant and/or the Student getting ahead of his class and not stopping when called.) The baseline data showed that the Student's aggressions were minimal. A new behavioral plan was created presenting antecedent strategies to assist in avoiding his behaviors, a reward system to reinforce positive behaviors and safety management strategies. These strategies were put in place. The Parent was in agreement with the plan, but still had concerns about the Student's behavior and program. (B-41, B-53, B-54, Testimony of 4th grade Classroom Teacher)
 16. Although the Parent did not feel that an additional evaluation of the Student was necessary, she was concerned that the independent evaluation had not been scheduled. The Board e-mailed the evaluator, and he informed the Board that he had no record of the Parent's attempting to contact him. The evaluator gave the Board availability dates and these were given to the Parent. The Board informed the Parent that she needed to contact the evaluator for an appointment. In January 2007, the Parent met with the evaluator for a 6 hour session. At the evaluation, the evaluator informed the Parent that he did see significant difficulties in social and communication. He found the Student to have difficulties in pragmatic language. (Testimony of Mother, B-88 & B-89, P-3)
 17. The PPT met on May 30, 2006 in order to program the Student's 2006-2007 school year. The PPT decided to continue the Student's current IEP for the remainder of the 2006-2006 school year. During the 2006-2007 school year the Student would receive 2.5 hours each week of writing support from the special education teacher, ½ hour each week of group counseling and the balance of his school time would be in a regular education classroom with non-disabled peers. The Student would receive behavioral support in the classroom from the educational assistant. The Student's IEP contained one academic goal to address his writing

- communication and 2 social skills goals. The Student's Goal # 2 addressed the elopement issue. (B-52)
18. The Student was promoted to the 4th grade. His report card showed progress throughout the year in his academic subjects. In his 2005-2006 IEP, the Student showed satisfactory progress in his first academic goal and in his second academic goal the Student showed satisfactory progress in objectives 1, 2 & 5 and limited progress in objectives 3 and 4. In his social goal the school psychologist stated that he was able to master the two objectives and made overall very good progress in the goal.(B-59, B-129 & B-57)
 19. The Student's 3rd grade Mastery Test (CMT) showed that the Student was within goal range in all three sections, mathematics, reading and writing. The Student's mathematics results were in the advanced level. (B-40)
 20. During the summer of 2006, the Parent placed the Student in a summer program. The Student's 2005-2006 IEP did not require an extended school year nor did the Parent request an extended school year for the Student. The Parent did not inform the Board that they were going to unilaterally place the Student in a therapeutic summer program for 2006. (Testimony of Parent, B-52)
 21. The Parent agreed to change the Student's IDEA category from Other Health Impaired due to ADD/ADHD to Other Health Impaired due to Tourette's Syndrome. This change was done by agreement of the parties without convening a PPT. (B-60 & B-62)
 22. At the beginning of the 2006-2007 school year, the Student was exhibiting vocal tics, acting unruly and other inappropriate behaviors. The Student's medication was increased and support groups assisted him in coping. The Student's class was informed about the Student's disability and during the class he spoke about Tourette's Syndrome and answered any questions that were presented to him. This received a positive response from his peers. (Testimony of 4th grade Classroom Teacher, B-128 p. 36)
 23. The 4th grade teacher collected data about her impressions of the Student's in the classroom. The teacher observed that the Student was bored with routine tasks, did not follow directions, lacked self confidence, and did not take the initiative. The teacher felt that the effort and progress in reading and writing was poor because he did not enjoy those subjects. The Student's interim progress report for the beginning of the 4th grade showed he was making progress in his academic subjects and needed improvement in his work habits and homework. The Student required assistance in establishing peer relationships.(B-66 & B-67)

24. At a October 13, 2006 PPT meeting, the Student's May 30, 2006 IEP was changed in order for him to receive his writing instructions in the regular classroom rather than the resource room. The Student needed assistance to improve elaboration in writing within the classroom. The IEP showed that the Student had excellent skills in solving math problems and contributed to class discussions in science. The Student's behavior was improving and he had a positive connection with his teacher. The Student's disabilities could interfere with his classroom performance. The Student was now spending 30.5 hours of his school week with non-disabled peers. (B-69 pp. 2-5)
25. The Parent sought a gifted and talented identification for the Student and his inclusion in a gifted and talented pull out program. The Student was tested and evaluated for the program. After reviewing all the data, the screening team determined that he was not eligible. The Parent was dissatisfied with the results and asked for copies of the data used to make the determination in order to review them. The Student was placed in the talented and gifted program as an "unidentified gifted student". (Testimony of Mother, B-74, H.O-2)
26. The Parent requested a PPT Meeting. The team met on December 6, 2006 and added an additional goal to improve the Student's social communication. The Student would also attend a social skills group with the school social worker and would include the participation of the speech pathologist. The group would meet for 12 ½ hour weekly sessions. (Testimony of Parent, B-83)
27. The Parent felt that the Student was being punished for exhibiting vocal tics. In the classroom the Student had tics and made facial expressions. When they became disruptive the Student was redirected by giving him something to do. This reduced the disruption and allows the Student to rejoin the class. The Student was never punished for exhibiting vocal tics. (Testimony of 4th Grade Teacher)
28. The Student was evaluated by Mark Greenstein, M.D., Professor of Pediatrics at the University of Connecticut. The doctor is certified by the American Board in Autism and has lectured and developed autistic programs. The doctor was presented with the issue whether the Student had Autistic Spectrum Disorder (ASD). The doctor as part of the evaluation:
 - a. met with the Parent and Student
 - b. reviewed two reports, speech and language evaluation and a psychological report
 - c. observed the Student and teacher in the classroom setting, and
 - d. spoke with his teacher 45 minutes before class and 45 minutes after class. (Testimony of Dr. Greenstein)

29. During the observation, the doctor observed the Student asking his peers for help and interacting with his teacher. During the observation, the student-teacher interactions went well. The Student's needs fall within the scale of OCD Tourette's Syndrome. All ASD have deficits in three cardinal areas social, communications and unusual acts. The Student did not meet the criteria for ASD. The doctor added a pragmatic language disorder to the Student's diagnosis. The evaluator noted that the Student had difficulties with the education assistant. She was instructive but the Student did not want her. There needs to be adjustments in the use of education assistant not the removal of the education assistant. The Student needs to learn that if his tics are affecting the people around him and being disruptive, he needs to leave the room. The Student requires pragmatic language and social skills training. A day treatment program is not a placement for children with pragmatic language disorders. There is no need to remove the Student from his district placement. (Testimony of Dr. Greenstein)
30. From November 2006 to January 2007, the Student was exhibiting aggressive behaviors. In the lunch room he was taking other Student's food. This behavior was also being observed at home by the Parent. The Student struck his special education teacher. At home, the Student verbalized he struck the teacher by accident. He was frustrated and raised his hands and accidentally struck her. B-97, B-128 pp 49-50)
31. In the spring of 2007 the Student showed some concerns about having an education assistant. The Student wanted to be like the other Students. This was brought to a team meeting in which the Parent participated by telephone. The team agreed to allow the Student to be without the education assistant present but to have her on call by a walkie talkie and call her when the Student needed a break. This was in agreement with Dr. Greenstein's recommendation. The Student seemed happier and more relaxed during this trial period. Other parents had spoken with the teacher on how enjoyable the Student was for their child. Dr. Greenstein stated that the Student is in an appropriate environment. (Testimony of 4th Grade Teacher)
32. The Parent complained that the Student was being removed from his classroom because of his tics. The teachers and aide were trained to ignore the tics when possible. If they became loud and impeded instructions, the Student was offered the option to leave the room and run an errand. The education assistant would also take the Student to the special education teacher's room for occupational therapy. This break consisted of physical activities that aided in relaxing the Student. This reduced the Student's anxiety since anxiety could increase the tics. The Student was not being punished for exhibiting vocal tics. The Student's

- behavior plan does not address tics. The modifications that are in place for the Student were successful and sufficient for the Student to receive FAPE. The Parent was appraised that the Board had created activities outside of the classroom for when the Student needed a break. (Testimony of 4th Grade Teacher, Resource Room Teacher and Mother, B-95, B-128 pp 60-61)
33. On or about February 3, 2007, the Parent requested a PPT. The PPT was convened on February 16, 2007. The evaluation of Dr. Greenstein was reviewed and changes were made to the Student's IEP. This was not a written evaluation but an oral presentation of the evaluation. A 10 session ½ hour each week of speech and language services were added to his IEP as well as an additional ½ hour each week of psychological services in the classroom. The Student's classroom time with non disabled peers was reduced to 27 hours each week. (B-98, Testimony of Parent)
34. The Student's 4th grade report card should that the Student was progressing in all of his academic subjects. The teacher remarked that the Student enjoyed assisting his classmates. He is accepted by his peers. (B-101)
35. Since the Student did not have an education assistant with him, the Parent was concerned for the safety of the Student and on March 23, 2007 requested a PPT. The Parent agreed to changes to the Student's IEP without the need of convening a PPT. In Goal # 3, at the request of the Parent, the end of the last objective was changed to read "and an improvement in working with others in a partnership team". In Goal # 4, an objective was added to improve his ability to request/communicate what he need/wants in order to prevent a disruptive social situation. (B-102, B-105)
36. The Parent still had concerns about the safety of the Student and created an agenda for an April 4, 2007 PPT. The Parent requested an out-of-district placement for the Student at Arch Bridge School. The district refused the change in placement. The team agreed to:
- a. ½ hour bi-monthly collaborative meetings,
 - b. Social worker to make 3 home visits to evaluate/consult with Parent regarding Student's transition from home to school. (The Parent refused to allow the visits)
 - c. To continue the providing educational assistant support to monitor the Student's movements in the school,
 - d. Continue implementation of the Student's 2/16/2007 IEP. (B-114, B-115 & Testimony of Mother)
37. The school psychologist complied baseline data of the Student's working in partnership with other students and found that he only had difficulty

9.99% of the time. The baseline data for conflicts in the classroom showed that the Student had conflicts only 3.37% of the time. Baseline data compiled of the Student's work completion with the educational assistant showed that the Student only completed 20% of his work with the education assistant and 57.5% of the work without the education assistant. (B-118, B-122)

CONCLUSIONS OF LAW:

1. The parties do not dispute that the Student is eligible for a free and appropriate public education ("FAPE") with special education and related services as set forth in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Sec. 1401, et seq. and the Connecticut General Statutes Sections 10-76 et seq.
2. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including benchmarks or short term objectives related to meeting the child's individual needs." 20 U.S.C. Section 1414(d)(l)(A)(ii); 34 C.F.R. Section 300.347; *Roland M. v. Concord School Committee*, 910 F.2d 983,987 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991).

Free Appropriate Public Education

3. The standard for determining whether a board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the individualized educational program [IEP] is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
Procedural flaws do not automatically require a finding of a denial of a free appropriate public education [FAPE]. Procedural inadequacies resulting in the loss of educational opportunity or seriously infringe on the parents' opportunity to participate in formulating the individualized education program [IEP], clearly result in a denial of FAPE. *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F. 3d 1072, 38 IDELR 91 (9th Cir. 2003), citing *W.G. v. Board of Trustees of Target Range School*

District No. 23, 960 F. 2d 1479, 18 IDELR 1019 (9th Cir. 1992), *accord*, *W.A. v. Pascarella*, 153 F. Supp. 2d 144, 35 IDELR 91 (D. Conn 2001)

The Parent received her procedural safeguards and was fully capable of reading and understanding these safeguards. During the 2006-2007 school year there were 4 PPT's held at the Parent's request in which the IEP was changed. (Findings of Facts 24, 26, 33 & 36) The IEP was also changed once by agreement of the parties. (Findings of Facts 35) The Parent was an active participant in the Student's education and at times created the agenda for the PPT. (Findings of Facts # 36) The Parent alleges that an independent educational evaluation was requested at the April 4, 2007 PPT (H.O. # 2) but no testimony or evidence was presented of the request or its denial. There were no procedural inadequacies which resulted in any denial of a free appropriate public education.

In determining whether the second prong of *Rowley* is met, the requirement of a free appropriate public education [FAPE] is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Education v. Rowley*, 458 U.S. at 201 Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. *Board of Education v. Rowley*, 458 U.S. at 203

The IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Hendrick Hudson v. Rowley* 458 U.S. at 204 When the child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade is one important factor in determining educational benefit. *Mrs. B. ex rel M.M. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2d Cir. 1997), citing *Board of Education v. Rowley*, *Id.* In determining whether the IEP was reasonably calculated to confer educational benefits, it must be determined whether the IEP states (1) the child's present level of educational performance; (2) the annual goals for the child; (3) the specific educational services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs; (4) the transition services needed for a child as he or she begins to leave a school setting; (5) the projected initiation date and duration for proposed services; and (6) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *M.S. v. Yonkers*, 231 F. 3d 96 (2nd Cir. 2000), *citing Walczak v. Florida Union Free School*, 142 F. 3d 119, 122. Findings of Facts #23, #34

While the IEP does not have to maximize the child's educational potential, it must provide "meaningful" opportunities and the possibility for more than "trivial advancement." The Student has made progress on many of his goals and objectives and was making progress in his academic classes. The Board clearly showed that the IEP provided meaningful opportunities for the Student to receive FAPE. At the request of the Parent, the Student was placed in a gifted and talented after school program. A behavioral plan was in place when the Student had behavioral and anxiety issues in the classroom. The Parent despairs because the Student does not have play dates or invitations to parties from his peers. The Board cannot control or interfere in his private personal life after school. The Board can only assist providing him with proper social instructions in the classroom which can be projected into his out of school social life. The social skills program could be enhanced and generalization of these skills fostered. The PPT should consider such suggestions in the light of his whole educational program. The PPT had 3 goals to address the Student's social and behavioral issues. The Student showed that he was progressing in his goals. The PPT on two occasions added to the Student's social goals and had the psychologist as well as the social worker work on his goals and objectives in the classroom. (Findings of Fact # 26 & #33) The Student's, 2006-2007 school year, IEP provided the Student with FAPE in the least restrictive environment.

EXTENDED SCHOOL YEAR

4. The Parent requested reimbursement for the unilateral placement at a summer program for the summer of 2006. There was no evidence presented that a summer program was necessary or that a summer program was requested by the Parent. The Parent states that the Student's PPT did not raise the issue of a summer program. The IEP is clearly marked that the PPT team did not feel that a summer program was necessary and the Parent as part of the PPT did not object. The Parent did not inform the Board that she was placing the Student in a summer program. (Findings of Fact # 20) The Board is not responsible for reimbursing the parent for the summer program at C.A.R.D.
5. There was extensive testimony on the issue about the Student's identification. The Parent was of the opinion that the Student should be classified as PDD. This was not an issue raised for this Due Process Hearing. Even though a hearing officer has the authority to change the identification of a student, testimony and evidence presented does not show that the Student's identification should be changed to PDD.
6. The Parent claims that certain student records were not provided to them. The Board claimed that all the Student's school records were provided to the Parent. Testimony does not show that there are records that were not

provided. This decision does not preclude the Parent from filing a FERPA claim for the records that the Parent alleges were not provided.

7. To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

FINAL DECISION AND ORDER:

1. The individualized education program provide by the Board for the 2006-2007 school year provided the Student with FAPE in the LRE.
2. The Board is not required to reimburse the Parent for expenses incurred for the unilateral placement of the Student, for the summer of 2006, at C.A.R.D.
3. The Parent is not entitled to an Independent evaluation of the Student at the Boards expense.
4. The issue of placement at Arch Bridge School is MOOT.
5. The Board shall have ACES review the Student's behavior plan to advise if it needs modifications to address the Student's tics.