

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Winchester Board of Education

Appearing on Behalf of the Student: Attorney Chris Barrington  
Barrington Law Center  
94 Park Terrace Avenue  
West Haven, CT 06516

Appearing on Behalf of the Board: Attorney Mark J. Sommaruga  
Sullivan, Schoen, Campana & Connon, LLC  
646 Prospect Avenue  
Hartford, Connecticut 06105-4286

Appearing Before: Attorney Justino Rosado, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

1. Was the program offered by the Board in the 2006-2007 school year appropriate and did it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE);
2. Was the program offered by the Board in the 2007-2008 school year appropriate and did it provide the Student with FAPE in the LRE;
3. Was the program offered by the Board in the 2008-2009 school year appropriate and did it provide the Student with a FAPE in the LRE;
4. Was the program offered by the Board in the 2009-2010 school year appropriate and does it provide the Student with a FAPE in the LRE; If not,
5. Should the Board pay for the program at the Berkshire School for the 2009-2010 school year, and is that program appropriate and does it provide the Student with FAPE in the LRE;
6. Did the Board commit a procedural violation in failing to convene a PPT to address the Student's poor performance?
7. Were the transition goals provided by the PPT for the 2006-2007 school year appropriate; and
8. Whether the Student is entitled to two years of compensatory education in order for the Student to graduate or pass the General Education Development examination?

**SUMMARY:**

The Student is a 21 year old young man who has been identified as entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act ("IDEIA") 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.

At a PPT meeting the Student requested that the Board provide him with compensatory education beyond his 21<sup>st</sup> birthday and placement at a residential placement at the Board's expense. The Board denied the Student's request and the Student filed for due process. On or about August 21, 2009, the Board received notice of the Student's request for due process. The parties agreed to a September 28, 2009 mediation date. The mediation was not successful.

**PROCEDURAL HISTORY:**

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 Administrative Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

An impartial hearing officer was appointed on August 19, 2009 (Hearing Officer Exhibit<sup>1</sup> #4). On or about September 8, 2009 the appointed hearing officer sent a letter of recusal (H.O. #1) and on or about September 10, 2009 another hearing officer was appointed to preside over the matter (H.O. #2). A pre-hearing conference was held on September 16, 2009. On or about September 11, 2009, the Student's attorney by electronic transmission informed the hearing officer that time was of the essence. On or about September 15, 2009, the hearing officer e-mailed the parties that if time was of the essence at the scheduled pre-hearing conference the parties could forgo a resolution meeting and/or a mediation conference and proceed directly to hearing. (H.O. #5) At the scheduled September 19, 2009 pre-hearing conference the parties agreed to continue as they had originally established and proceed to mediation. Hearing dates of October 21, November 12, December 1 and December 7, 2009 were chosen by the parties. The hearing commenced as scheduled on October 21, 2009 and reconvened four more dates as follows: October 23, 2009, November 12, 2009 and December 1 and 14, 2009. Simultaneous post trial briefs were due December 31, 2009. The Student's attorney filed a Motion for Default Judgment based on the Board not providing the Student with a resolution meeting and the Board's failure to file an answer to the Student's request for due process. A timely response was filed by the Board. On the 1<sup>st</sup> day of hearing, October 21, 2009, oral arguments were presented on the Motion. The Student's Motion for Default Judgment for failure to offer an opportunity for a resolution meeting was denied. The Motion was denied in that IDEIA, 34 C.F.R. §300.510(a)(3), establishes that a resolution meeting does not need to be held if the parties agreed to waive the resolution meeting **or** the parties agree to go to mediation. [**emphasis added**] The parties had agreed to go to mediation and did mediate the matter on September 28, 2009. Even if the parties had not mediated the matter IDEIA provides the Parent with a remedy for the Board's failure to provide the Parent with a resolution meeting. The Parent may seek the intervention of a hearing officer to begin the due process hearing timeline. 34 C.F.R. §300.510(b)(5). At the pre-hearing conference, the Parent was offered the opportunity to proceed to a hearing and did not do so, instead hearing dates were chosen beyond the timeline. (H.O. #5) *Supra* The Parent's Motion also requested Summary Judgment for the Board's failure to file an answer. This Motion was also denied and the Board cured the issue by filing an answer on or about October 22, 2009. On Or about October 22, 2009, the Student's attorney filed a Motion to Reconsider the Motion for Summary Judgment. This Motion was denied.

At the request of the parties, in order to accommodate the filing of a final order and decision after the hearing dates, the date for the filing of the Final Order and Decision was extended. The date for the mailing of the Final Order and Decision is February 1, 2010.

On the last day of hearing the Parent's attorney objected to a mailing date of February 1, 2010, the hearing officer stated if the attorney wanted an earlier mailing date for the mailing of the final order and decision, there will be no post trial briefs and the parties could make closing statements. The Student's attorney conferred with her client and agreed to the February 1, 2010 mailing date and the filing of simultaneous post trial briefs.

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. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history 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., 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 FACTS:**

1. It is undisputed that the Student is a student eligible for special education and related services. Specifically, the Student has been diagnosed as having "Pervasive Developmental Disorder, Not Otherwise Specified"(PDD NOS) a long-standing qualitative impairment of social interaction and is noted as having Autism as the primary disability. (Board Exhibit<sup>2</sup> #6)

---

<sup>1</sup> Hereafter Hearing Officer Exhibits will be noted as "H.O." followed by the number of the exhibit.

<sup>2</sup> Hereafter Board Exhibits will be noted by "B" followed by the exhibit number.

2. The Student was placed in a pre-kindergarten program in another district. The teacher questioned the Student's readiness and he was withdrawn from the district and home schooled. The Student moved into the Board's district and remained homeschooled until the middle of his sophomore year, January 2006. He was then enrolled by his parents in a state charter school. The State Charter School that the Student attended (hereinafter referred to "SCS") provides a different/non-traditional milieu when compared to the traditional public schools. The SCS has small classes, a less formal approach, and greater personal attention. The Student was always behind at the beginning of his academic year but seemed to make adequate progress as the year progressed. He had long standing social difficulties but they were not as evident because of a lack of social exposure. The SCS had difficulty determining the Student's exact grade placement upon his enrolling because he had been home schooled for so long. (Testimony of Principal of SCS, Testimony of Mother, B-6)
3. On May 30, 2006, the Student was referred to the Board for a special education evaluation by the Principal of the SCS. The reasons listed for the referral were "processing speed/delayed response, organizational skills and handwriting". (B-1)
4. A PPT meeting was convened on June 2, 2006. The PPT recommended an initial evaluation, to which agreement and consent were obtained. The father was resistant to the evaluations and did not fill out any assessments. The evaluation report noted that the Student had difficulty when first entering the SCS. The Student would get lost in a small building of 7 classrooms; he would leave a lesson in the middle of a class and rarely turned in assignments. The Student was plagued by low homework and project grades; he was noted as being withdrawn and rarely making eye contact. He also slowly processes information. There were no objections by the Parent to the evaluations recommended nor did the Parent request any additional evaluation. During the 2006-2007 school year the PPT only had one goal for the Student because they were waiting for the results of the evaluations. (B-2, Testimony of School Psychologist, Testimony of Principal of SCS)
5. The Board's school psychologist performed the initial psycho-educational evaluation to test his cognitive and academic functioning. The Student was referred to St. Francis Hospital for a comprehensive behavioral evaluation.(P-47)
6. The aforementioned evaluation was performed on June 13, 2006 by the school psychologist, and it showed that the Student's cognitive ability fell within the low range of intellectual functioning. His verbal and nonverbal reasoning ability are in the average range. The Student showed a significant weakness in his processing speed and his ability to sustain attention, and exert mental control was in the low average range. The Student's teachers were given the Behavioral Assessment System for Children (BASC) Teacher Rating Scale form to fill out. In six of the 14 areas that were rated, the Student's rating scale range was clinically significant and in two others he was found at-risk. The psychologist recommended a speech and language screener and modifications were recommended. (Testimony of School Psychologist , Parent's Exhibit<sup>3</sup> #47)
7. The PPT was held on June 20, 2006. The PPT reviewed the evaluations and determined the Student was eligible for special education under the "Specific Learning Disability" (SLD) classification. The PPT recommended that the Student be provided with special education support in the general curriculum for the 2006-2007 school year, and Extended School Year (ESY) services for the summer of 2006. There is no evidence the Student's regular education teacher was present for this meeting. The father shared with the PPT that he was having the Student evaluated by St. Francis Hospital; thus, the PPT agreed that it would reconvene upon receipt of the St. Francis evaluation results. (B-4)
8. On August 29, 2006, a PPT was convened to add special transportation to the Student's IEP. There is no evidence this PPT reviewed or revised any goals or objectives, recommended an occupational therapy or speech and language screener, or planned for transition. There is no evidence that the Student's regular education teacher was present for this meeting. (P-7)
9. On or about September 29, 2006, the Student was evaluated by St. Francis Hospital Jaycees Center. The Student showed a qualitative impairment in social interactions by poor eye contact and failure to develop peer relationships appropriate for his age level. He also showed qualitative impairments in communication, marked by an inability to initiate or sustain conversations with others. The evaluator recommended a more formal speech and language assessment by his school. The evaluator recommended social interventions. The Student was diagnosed with PDD NOS. (B-6)

---

<sup>3</sup> Hereafter Parent's Exhibits will be noted as "P" followed by the exhibit number.

10. The St. Francis report was considered and the IEP was revised on November 17, 2006 and now included a social/behavioral goal. During the 2006-2007 school year the progress in this new goal was unsatisfactory progress for the 1<sup>st</sup> two marking periods and minimal progress for the next two rating periods. The last rating period was again unsatisfactory progress. (B-30)
11. On January 17, 2007, the Student participated in a speech and language evaluation by the Board's speech and language pathologist. In this evaluation, the evaluator reports results of the "CLEF-4 Pragmatics Profile indicate inadequate communication abilities in context" and that the Student has "significant difficulty" with respect to interacting with peers. (P-8)
12. The PPT reconvened on February 28, 2007 in order to review the Student's progress and the pragmatic evaluation. The PPT determined that based upon the evaluation, the Student did not qualify for speech services at that time as the speech and language pathologist felt that the Student will continue to benefit from language exposure during the school day. The team stated that the Student continued to qualify for ESY and recommended a site for his ESY. The Parent did not object to or contest the evaluations conducted by the Board, nor did he request additional services. (B-9, Testimony of Principal of SCS)
13. On June 15, 2007, a PPT was convened to conduct an annual review, this PPT recommended that:
  - a. the Student's primary category of disability be changed to autism to reflect a diagnosis of PDD NOS derivative from the St. Francis Hospital evaluation;
  - b. that the Student be promoted to the 12th grade for the 2007-2008 academic year and
  - c. that the Bureau of Rehabilitative Services (hereinafter referred to as "BRS") be contacted in order to establish eligibility for BRS services.

The PPT identified "difficulty retaining facts, struggles with concepts, processing delays, below grade level (writing), rarely initiates conversation, poor peer interaction without prompts," as well as the Student being below grade level in Math, as areas of concern and need. The PPT reported the Student's communication, vocational transition and activities of daily living to be "age appropriate." The PPT developed five (5) goals with supportive objectives, one of which is a transitional goal with supportive objectives in the area of career and job-site programs and career interests' inventory. The PPT recommended 2 hours of specialized instruction per week with an additional 30 minutes of related social skills service per week with the school psychologist, both in the resource room. The IEP had academic goals that reference incorporating the SCS "90/80" contract, by which an SCS student must be present at least 90% of the time in his classes and pass 80% of his courses, as stated in the school's mission. The Student's goals and objectives did not address his deficiencies in math. The Student's father was happy with the Student's program and progress; he was concerned about math and was happy that the ESY program would address this issue. He also supported the "new diagnosis" of autism. (B-10, Testimony of Principal of SCS)

14. On November 27, 2007 the PPT reconvened to review the Student's progress and current program. The Student had satisfactory progress in 3 goals and minimal progress in 2 goals. The Student's resource room hours were increased to 8 hours per week. The PPT was amended to include that the Student would participate in a work internship at the local elementary school and to include a college exploration course next year. The Student did not have enough credits to graduate so an additional senior year was added. The Student was now scheduled to graduate in June 2009. (B-11, B-31, Testimony of Principal of SCS, Testimony of Director of Special Education for the Board ( Hereafter "DSE"))
15. The Board has no supervisory oversight over the staff at the SCS or the Student's program. The Board did not place the Student at the SCS, it was a parental decision. The "DSE" has no programmatic responsibility at the PPT. Her role is to facilitate the meeting and to ensure that the Student's special education needs were being met as was recommended by the PPT. It is not the role of the DSE to facilitate a conversation about a change in level in the Student's disability or to evaluate the goals and objectives of his IEP. At the PPT the DSE ensures that the goals and objectives are developed with data, information and recommendations from the staff, the Parent and the Student. The DSE physically compiles the IEP and sends it out to the parties. The Students of the SCS are not considered students of the Board. The goals and objectives are drafted by the staff of the SCS.(Testimony of DSE, Testimony of Executive Director of Shared Services(EDSS))
16. A PPT was reconvened on May 30, 2008 in order to conduct the annual review. The PPT reviewed the Student's program and progress under the current IEP. The PPT determined that the Student qualified for ESY and would participate in combination program at the SCS for academic services and Camp Jewell for vocational services. The PPT

specified that the Student would continue in a second senior year with graduation in June of 2009. The PPT did note that the Student was experiencing difficulty in completing homework assignments. The PPT noted that if the Student was able to obtain enough credit to graduate before June of 2009, he could work for part of his day. There was no objection to the IEP for 2008-2009. The PPT recommendations are identical to those listed on the November 27, 2007 IEP. (B-12)

17. The Student did not master one of the 5 goals developed in his June 15, 2007 PPT. The academic goals of his IEP noted minimal progress at the end of the 2007-2008 school year. Goal #2 which showed limited progress was removed from his IEP and was not replaced by another academic goal. The Student enjoyed his work internship at the local elementary school. He met on Fridays in an informal setting with the school psychologist at the job site. The Student still struggled with math and his transcript does not denote a grade. The IEP showed in the Academic Achievement section that the Student was struggling with math and would require support in order to succeed. The PPT did not write a math goal or objective to address his math deficiency. The Student had sufficient credits to graduate but the PPT determined he still needed an additional year. The main focus of the additional year would be vocational training and job placement. The Student's academic support in the resource room was reduced to 7.5 hours each week even though he had not mastered one goal or objective and still had deficiencies in math. There was no concern raised by the Parent. (B-12, B-27, B-31, Testimony of Principal of SCS, Testimony of DSE)
18. The special education teacher performed the Woodcock Johnson III Tests of Cognitive Abilities and Achievement. The testing showed that the Student had "high average performance in auditory processing, average performance in comprehension-knowledge and short term memory, low performance in short term memory and very low performance in long term retrieval, visual special thinking and processing speed." The evaluation also reported that the Student's cognitive performance may be influenced by his phonemic awareness working memory capacity, additional resources, cognitive fluency, and executive process." The Student's results in these areas were from limited to very limited. There was not reviewed until the May 2009 PPT.( B-13)
19. The Student was evaluated by a psychological from Shared Services. The evaluations were requested to help clarify the Student's needs going forward. There was no objection to the selection of the evaluator, nor was there any objection to his report. The Student's general intellectual ability was found to be 79. The Student had low scores with regard to his intellectual and cognitive processing abilities, as indicated by the Woodcock Johnson III Normative Update of Cognitive Ability. The psychologist summarizes that the Student's academic skills are fairly well developed given his cognitive limitations and is generally working in the average to low average range. The Student's ability to process information and solving problems was clearly an area of weakness. The psychologist summarizes that the Student's "functional adaptive skills are significantly depressed across the board rather than just predominately in the social skills realm" and his "adaptive skill functioning is seriously impaired". The evaluator recommended the Student needs additional social skills training, vocational support and training, and adaptive skills support and training. (B-14, Testimony of Psychologist from Shared Services).
20. The Student's overall Total Achievement score in the Woodcock Johnson III NU-COG was 87, which put him in the average/low average range. There was no significant discrepancy between his intellectual ability and his achievement; rather, he is performing in the low average range in his mathematics, written language. The psychologist even noted that the Student's "academic skills are fairly well developed given his cognitive limitations." The psychologist noted that the Student does not fit neatly on the spectrum, as he has variable strengths and weaknesses, but that it is important to address his individual needs, as opposed to being consumed with labels. (B-14, Testimony of Psychologist from Shared Services).
21. The PPT was reconvened on May 27, 2009. In addition to reviewing progress and recent evaluations, the Board's DSE believed that this was to be the exit PPT meeting for the Student, in light of the previous PPT meetings and the previous positions expressed by the Student with regard to graduation. The principle of the SCS stated that,"SCS had taken the Student as far as possible," and was concerned what would happen to the Student next. At the PPT, it was asserted by some that the Student should attend another year of schooling. Reference was made to a residential program (the College Internship Program, ("CIP")). The PPT was adjourned to research additional transitional options and was to be reconvened on June 11, 2009 (B-17, Testimony of DSE, Testimony of Principal of SCS)
22. On June 3, 2009, the Student advised the Board that he does not believe he is ready to be exited from special education and that he believes he needs intensive and consistent support throughout the day program for 2009-2010 academic year to prepare him for independent living, employment and post secondary education, and because of his needs, believes

such program should include a residential component. The Student asserted he believes a residential placement is the least restrictive environment for his needs. The Student also described inadequate progress monitoring of goals and objectives in place as well as raised the issue of inappropriate programming altogether for at a minimum since the May 30, 2008 IEP. ( P-26, P-46)

23. The Parent obtained an advocate to assist them at the May 27, 2009 PPT meeting. The advocate expressed concerns about exiting the Student without proper vocational training and insufficient credits to graduate. The Student's program for the 2009-2010 school year was not created for the Student but the Student was being adapted to a program. There was no discussion on an individualized program for the Student. At the May 27, 2009 PPT, the Parent did not agree to goals that they had not reviewed. The representative from Highlander Academy described the program at the PPT but she was not aware of the Student. (Testimony of Parent's Advocate)
24. On June 19, 2009, a PPT was convened for the purposes of discussing the Student's academic programming and specifically the issues of graduation and an academic program for the 2009-2010 school year. The PPT recommended that the Student needs another 1.25 credits to graduate and that an ESY at the ATLAS program would provide such credits as well as vocational training services, social skills development and the development of adaptive skills. The PPT discussed academic programming for the 2009-2010 school year, but no goals and objectives were developed for such purpose during this meeting or with any meaningful participation from either the Student or his parent. There is no evidence that either the Student's regular education or special education teacher were present for this meeting, the Principal of the SCS was participating by telephone. The Student requested an intensive academic program that included a residential component. The Student made satisfactory progress in 2 of the 3 goals of his 2008-2009 IEP. In his social/behavioral goal, he made limited progress. Although he made satisfactory progress in his transitional goal, objective 3 was not introduced. (Principal of SCS, Testimony of Mother and Student Advocate, P-30, P-32).
25. The DSE contacted the Director of Shared Services which is a public school inter-district compact that provides special education services to certain Northwestern Connecticut towns in order to ascertain the availability of a transition program run by it. Such a program includes the Highlander Transition Academy (HTA). The program at HTA provides a functional curriculum, based upon state approved curriculum and state recommended goals, with much emphasis on vocational training, social skills and adaptive skills. Indeed, the Student's mother indicated that the Student does not need to learn more about academics such as science and history, but rather it is more important for him to learn how to make a living and deal with others. (B-19, Testimony of Mother, Testimony of Program Coordinator for Shared Services (Hereafter PCSS))
26. The goals and objectives were not presented at the June 19, 2009 PPT but were written 2-3 days after the PPT. There was no input from the Parent. Based on 15 minutes with the Student and impression the program coordinator from Shared Services created some strong goals. These are general goals that students at HTA need exposure and they would be modified. The program coordinator has a bank of goals and reviews them and uses what is appropriate. If students need support for courses that could be provided. The program at Highlander Academy is a 3 year program for students 18-21 years of age. Students in this program can enroll in the community college. (Testimony of PCSS).
27. The program at HTA is a model transitional program, with, among other things, small teacher to student ratio, a program coordinator who is a leader in transitional programming and a well regarded and trained vocational coordinator/job coach and has the benefit and resources of being located on a college campus (the University of Connecticut's Torrington branch). The HTA program has experience in programming for students on the Autism Spectrum, including "high functioning" students, as well as students with greater or lesser strengths, needs, and weaknesses as the Student. (Testimony of PCSS)
28. The Student visited and is seeking placement at a College Internship Program (CIP) at Lee College in Massachusetts. The Student attended the program during the summer of 2009. The program includes job coaching, and a vocational component that starts with community service. The program varies with the level of support provided to the Student. The vocational program provides classes in math, English, reading and contains problem solving and critical thinking. Part of the exposure in the program is cooking, shopping and cleaning their rooms. If a student requires speech and language services they are obtained outside the program. The Student could take courses in the community college. (Testimony of Admissions Coordinator)

**CONCLUSIONS OF LAW:**

1. It is undisputed that the Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Student's attorney in her Post Trial Brief pgs. 11-13, once again requests reconsideration of the issues presented in their denied Motion for Summary Judgment and the denial for reconsideration of the Board's failure in not convening a resolution meeting as required in IDEIA. This is once again denied for the same reasons stated at the October 21, 2009 hearing date and as stated in the Procedural History. *Supra*.
3. The public agency has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14.
4. The Parent allege that the Student was denied FAPE for the 2006-2007 school year. A finding of any denial of FAPE or a procedural violation during this period is time barred. *Connecticut State Regulations Sec. 10-76h-4*, state that (a) A party shall have two years to request a hearing from the time the public agency proposed or refused to initiate or change the identification, evaluation or educational placement of, or the provision of a free appropriate public education to the child. If notice of the procedural safeguards, including notice of the limitations contained in this section, is not given, such two-year limitation shall be calculated from the time notice of the safeguards is properly given. The statute provides, however, that the limitations period will not begin until the school board has provided notice to the aggrieved party of certain procedural safeguards, including notice of the limitations period itself. There has been no claim that the Parent did not receive their written prior notice with their procedural safeguards and the request for due process was received on or about August 29, 2009. Therefore the allegation of a denial of FAPE for the 2006-2007 school year is dismissed as time barred.
5. During the October 23, 2009 hearing date, the Student's attorney tried to raise the issue that the Student had not received FAPE during the 2005-2006 school year. The Student's attorney alleged that they had just learned about the denial of FAPE. IDEIA clearly states , "The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under 34 CFRs §300.508(b), unless the other party agrees otherwise." 34 C.F.R. 300.511(d). The Board attorney objected to the Parent's attorney raising the issue. Even if the matter had been timely raised, the issue would have been dismissed for the same reasons as the denial of FAPE claim for the 2006-2007 school year. (*See Conclusions of Law #4*)
6. 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 is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
7. In their Post trial briefs and during the hearing the Board alleges the placement of the Student at the SCS was a unilateral placement, in a state charter school, by the Parent and that the Board could not be held responsible for the appropriateness of the placement. The decision to place the Student at the SCS was made by the Parent. In essence, the Board states, it is a "unilateral placement;" and that the Board cannot be responsible for with regard to a claim that the placement was inappropriate. Entrance, admission and attendance at this state charter school is governed and limited by Conn. Gen. Stat. §10-66bb(d)(8); specifically. The SCS has open access/open enrollment on a space available basis, with a blind lottery only occurring if there is a space limitation. It is up to the Parent to choose to enroll a student in a state charter school. (Findings of Facts #2)
8. With regard to special education at charter schools, Conn. Gen. Stat. §10-66ee (c)(2) provides:  
In the case of a student identified as requiring special education, the school district in which the Student resides shall:
  - (A) Hold the planning and placement team meeting for such student and shall invite representatives from the charter school to participate in such meeting; and

(B) pay the state charter school, on a quarterly basis, an amount equal to the difference between the reasonable cost of educating such student and the sum of the amount received by the state charter school for such student pursuant to subdivision (1) of this subsection and amounts received from other state, federal, local or private sources calculated on a per pupil basis. Such school district shall be eligible for reimbursement pursuant to §10-76g. The charter school [for] a student requiring special education attends, shall be responsible for ensuring that such student receives the services mandated by the Student's individualized education program whether such services are provided by the charter school or by the school district in which the Student resides.

9. In making a *Rowley* analysis to determine if a student has received FAPE, normally the review would only be applied to see if the Board has complied with the Rowley two-prong test. *Supra*, as the Board would be the local educational agency (LEA). In this case we have a state charter school that, "operate[s] independently of any local or regional board of education in accordance with the terms of its charter and the provisions of sections 10-66aa to 10-66ff, inclusive, provided no member or employee of a governing council of a charter school shall have a personal or financial interest in the assets, real or personal, of the school." C.G.S. §10-66aa (D). This independency with IDEA's definition of a local educational agency as, "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools," 34 C.F.R. §300.28 (a), makes the SCS the Student's LEA. C.G.S. §10-66ee, *Supra*, creates a partnership between Boards and Charter Schools. By the statute defining the responsibilities of the Board and the Charter School at a PPT, it, §10-66ee, divides the twofold *Rowley* test, *Supra*, with the Board carrying the responsibility for the Procedural prong and the State Charter School the responsibility for the 2<sup>nd</sup> prong. (Findings of Facts#15)
  
10. The IDEA's procedural requirements and safeguards are designed to assure that the Parent of a child with a disability have a full and meaningful opportunity to participate along with LEA personnel in developing, reviewing and revising their child's IEP. Compliance with the IDEA's procedural requirements is the responsibility of the Board and not the Parent. Unified Sch. Dist. v. Dept. of Ed., 64 Conn. App. 273, 285 (2001). Procedural violations alone can be deemed a denial of FAPE. Student v. Newtown B.O.E., CT DOE Case No. 07-075 (8/23/07). In order to conclude that procedural violations resulted in a denial of a FAPE, the Parent must show that the procedural errors resulted in a loss of educational opportunity. *Id.* at 22; *See, Burke County Bd. of Ed. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); Evans v. District No. 17, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988); W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484-85 (9<sup>th</sup> Cir. 1992). When a procedural violation is alleged, a Hearing Officer may find that a Student did not receive FAPE if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Parent's child, or caused a deprivation of educational benefit. 34 CFR §300.513(a) (2) (i-iii); *Id.* at 22; *See, Burke at 982; Evans at 830; W.G. at 1484-8.* Procedural violations that interfere with Parents' participation in the IEP formulation process undermine the very essence of IDEA. Amanda J. ex rel Annette J. v. Clark County Sch. Dist., 267 F.3d 877 (9<sup>th</sup> Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child's needs are not involved or fully informed. *Id.* Procedural safeguards are set forth in 20 U.S.C. §1415 and 34 CFR §§500-536 and include: the right for Parents to participate in all meetings (CFR §300.501(b); the right for Parental involvement in placement decisions (CFR §300.501(c)); the right of Parents to examine all educational records (CFR §300.501(a)); the right for Parents to obtain an Independent Educational Evaluation (IEE) of their child (§300.502(b); the requirement for Boards to consider evaluations provided by Parents at private expense in deciding FAPE (CFR §300.502(c)). IDEA expects strong Parental input at PPT meetings, Warren G. v. Cumberland County Sch. Dist., 190 F. 3d 80, 86 (3d Cir. 1993). The IEP is to be collaborative developed by the Parents of the Student, educators and other specialists and Congress repeatedly emphasized the "importance and indeed the necessity of Parental participation in both the development of the IEP and any subsequent assessments." Honig v. Doe 484 U.S. 305, 311 (1988). Failure by the Board to develop an IEP in accordance with procedures mandated by IDEA, in and of itself, can be deemed a denial of FAPE. Amanda J. ex rel Annette J. v. Clark County Sch. Dist., 267 F.3d 877 (9<sup>th</sup> Cir.2001
  
11. The Board is responsible for holding the planning and placement team meeting for the Student and inviting representatives from the charter school to participate in the meeting. At a PPT, the Board, like the Parent, has only one vote and one voice in the creation of an appropriate program for a student who attends a state charter school which is the Student's LEA. The record in this case, shows that the Board sent notice of the PPT to the Parent and to members of the planning and placement team. §300.321 (a) General. The public agency must ensure that the IEP Team for each child with a disability includes:



- (1) The Parent of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who--
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the Parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.[58]
  - (b) Transition services participants.
    - (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
    - (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
    - (3) To the extent appropriate, with the consent of the Parent or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for transition services.

In reviewing the Notice of Planning and Placement Team meetings, (P-6, P-9, P-13, P-23, P-27, P-28) in the 2006-2007 PPT meeting held on June 20, 2006 and on August 29, 2006, there was no regular education teacher invited nor was a regular education teacher present at either PPT. (Findings of Facts #7 & #8) but as stated in Conclusions of Law #3, the Parent is time barred from asserting this violation.

12. A school district such as the Board has no power to change or override a placement at a charter school; Asbury Park Board of Education, v. Hope Academy Charter School, 39 IDELR 213 (U.S. District Court, New Jersey). In Connecticut the Board's only power is to convene the PPT meetings and pay for the cost of special education being provided to a student. The Board can only regained the "right" to make placement/program decisions upon the Student's termination of his SCS placement by the Parent's withdrawal from the state charter school and/or a decision by the PPT to change the Student's placement. There was no evidence that the PPT met and changed the Student's placement to the Board or the Parent withdrew the Student from the SCS. Furthermore the SCS (not the Board) was responsible for providing the services mandated by the Student's IEP while the Student remained in SCS. "The law is specific that the charter schools have the ultimate responsibility for the provision of services..." Commissioner of Education, Circular Letter C-18 (December 1, 2002). The Board complied with its obligations under Conn. Gen. Stat. §10-66ee(c)(2).
13. During the 2007-2008 school year, the Board send timely notices of the PPT's and invited or had present the necessary parties at the PPT meeting. There was parental participation and the Parent participated at the hearing. There is no finding of procedural violations during the 2007-2008 school year.
14. The Student's attorney in their Post Trial Brief pp. 14-15, present 12 procedural violations that they allege that the Board committed during the Student's 2007-2008 and 2008-2009 school years. The Student's attorney at the first day of hearing (October 21, 2009, was told that if they were to raise any procedural violations that were not included in the original complaint, they needed to put them in writing, give them to the Board, stating that these are procedural violations that the Student was going to bring up in the course of his case and seeking a ruling from the hearing officer. The Student's attorney was to revise the complaint in order to show these procedural violations. The attorney did not submit a revised complaint or a letter stating what additional procedural violations the Student was raising. These issues raised in the Student's attorney Post Trial Brief are not issues of this hearing and are not addressed in this decision. The

party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise. 34 C.F.R. §300.511 (d)

15. I disagree with the Board's attorney's position that the SCS should not be a party in this action. That the Board chose not to implead them as a necessary party or that the Student's attorney did not include them as a defendant in this matter after my question as to why SCS was not a party, is a decision made to their detriment.
16. In addressing the 2<sup>nd</sup> prong of *Rowley*, IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children." Walczak v. Florida Union Free School District, 27 IDELR 1135 (2d Cir. 1998), citing *Rowley*, supra. An appropriate public education under IDEA is one that is likely to produce progress, not regression. Id. The goal of IDEA is not to maximize a special education child's potential, but rather to provide access to public education for such children. K.P. v. Juzwic, 891 F. Supp. 703, 718 (D.Conn. 1995) This access is considered a "basic floor of opportunity" for the Students. Banks v. Danbury Board of Education, 238 F. Supp. 2d 428 (D. Conn. 2003)
17. There is no one standard for determining what constitutes a meaningful, educational benefit. The Student's capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit to the child. See, e.g. Hall, 774 F.2d at 635. Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispositive. See, e.g., Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1120 (2nd Cir. 1997).
18. During the 2007-2008 school year the program devised by the SCS did not provide the Student with FAPE. The Student did not make any meaningful progress in his goals and objectives. The Student's math deficiencies were not addressed even though the Parent at the PPTs always expressed his concerns with this area. (Findings of Facts#
19. A review of the Student's 2008-2009 school year almost mirrors his 2007-2008 school year. The Board complied with its procedural prong of the *Rowley* test. *Supra*. Notice was sent out to all parties of the PPTs and it invited or had present the necessary parties at the PPT meeting. There was parental participation and the Parent participated at the hearing. There is no finding of procedural violations during the 2008-2009 school year.
20. The second prong of *Rowley* clearly demonstrates that the Student did not receive FAPE during the 2008-2009 school year. The Student continued to have deficiencies in math and still no goal was included to assist the Student in this subject. The Student during the 2007-2008 school year had not mastered one goal and the PPT to the Student's detriment reduced his time in the resource room. The Student's IEP had been reduced from 5 goals the prior year to 3 goals during the 2008-2009 school year. Of these 3 goals the Student made satisfactory progress in 2 goals, one on of which was his transition goal. (Findings of Facts#24) In the transition goal there were 3 objectives and one was not even introduced. The Student received less that minimal educational benefit.
21. In order to see if the program offered for the 2009-2010 school year was appropriate and would provide FAPE to the Student, we once again must perform the *Rowley* test. In the 1<sup>st</sup> prong the procedural safeguards were not adhered to. The June 19, 2009 PPT did not have the personnel present who could provide the information necessary to properly present the Student's needs in order to receive at least minimal educational benefits. 34 C.F.R. §300.321. (Findings of Facts#24) Procedural violations that interfere with Parents' participation in the IEP formulation process undermine the very essence of IDEA. Amanda J. ex rel Annette J. v. Clark County Sch. Dist., 267 F.3d 877 (9<sup>th</sup> Cir. 2001). Neither the Parent or the Student participated in writing the Student's goals and objectives (34 C.F.R. §300.322) and the goals and objectives were written 2-3 days after the PPT in violation of IDEA, 34 C.F.R. §300.320 "(a) individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324." The goals and objectives were taken from a bank of goals and objectives and were not written specifically to address the needs of the Student. These are egregious procedural violations and a denial of FAPE to the Student. Procedural violations alone can be deemed a denial of FAPE. Student v. Newtown B.O.E., CT DOE Case No. 07-075 (8/23/07). Since the procedural violations denied the Student FAPE, I do not need to review the second prong of *Rowley*.

22. 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 ORDER AND DECISION:**

1. Reconsideration of the Motion for Summary Judgment is denied.
2. The issue of FAPE for the 2006-2007 school year was not raised in a timely manner and is beyond the two year Statute of Limitations. This also applies to the appropriateness of the transitional goals.
3. The program offered for the 2007-2008 school year did not offer the Student FAPE in the LRE. In asserting the responsibility of providing FAPE to the Student C.G.S. §10-66ee divides the responsibility for the provision of FAPE between the Board and the SCS. The Board complied with their procedural requirements and was not responsible for the denial of FAPE and are therefore not liable. The SCS was responsible for the denial of FAPE to the Student. Since the SCS was not a party in this due process hearing, I cannot issue orders against the SCS.
4. The program offered for the 2008-2009 school year did not offer the Student FAPE in the LRE. In asserting the responsibility of FAPE to the Student C.G.S. §10-66ee divides the responsibility of FAPE between the Board and the SCS. The Board complied with their procedural requirements and was not responsible for the denial of FAPE and are therefore not liable. The SCS was responsible for the denial of FAPE to the Student. Since the SCS was not a party in this due process hearing, I cannot issue orders against the SCS.
5. The program offered for the 2009-2010 school year did not offer the Student FAPE in the LRE. In asserting the responsibility of FAPE to the Student C.G.S. §10-66ee divides the responsibility of FAPE between the Board and the SCS. The Board violated the Student's procedural requirements and are responsible for the denial of FAPE and therefore are liable. Since the SCS was not a party in this due process hearing, I cannot issue orders against SCS.
6. The Board is responsible for reimbursing the Parent for the cost expended for the program at Berkshire Academy.
7. The Board did not commit a procedural violation in failing to convene a PPT to address the Student's poor performance. It was the SCS's responsibility to convene a PPT since it was the Student's LEA and home school.
8. The Board will be the Student's LEA and home school and shall convene a PPT no later than 2 weeks from the mailing of this decision. The PPT shall provide the Student with a program for the 2009-2010 school year enabling him to graduate. The IEP shall address the Student's deficiencies in math, job training, social skills training, vocational support and training, and adaptive skills support and training. The Board shall consult the Psychologist from Shared Services to assist in developing these goals.
9. The program at HTA is not appropriate for the Student.
10. The Student is entitled to one year of Compensatory Education after graduation. This compensatory education can exceed the Student's 21<sup>st</sup> birthday. The Compensatory Education will be in the form of one year at CIP at LEE College in Massachusetts.

Comments:

1. There was some difficulty and problem with the accessibility of the Student's records at the SCS. The SCS procedure for the keeping of special education records and their accessibility to the Parent should be reviewed. This was probably an abnormality but a review of the procedures in place would not hurt.
2. The Student's attorney displayed a high interest in representing students in due process hearings. This interest should be cultivated by making use of seminars that are offered in representing children in special education due process hearings. A list of seminars offered throughout the country might be displayed in the special education web page, so attorneys can see what is being offered to assist them in their representation of parents and children in special education.
3. Transcripts of witness testimony should not be provided with briefs unless they are being used to actually cite testimony and not for the hearing officer to read.

