STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. East Lyme Board of Education

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Appearing on behalf of the Board: Attorney Frederick Dorsey
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Appearing before: Attorney Elisabeth Borrino, Hearing Officer

FINAL DECISION AND ORDER

ISSUES

1. Whether the Board denied FAPE to the Student during the 2008-2009, 2009-2010, 2010-2011 school years; and extended school year 2009 and 2010;

2. Whether the Student requires a private day placement;

3. If the Student requires a private day placement, whether that placement should be at Solomon Schecter School at the expense of the Board;

4. Whether the Board should reimburse the Parent for related expenses, including but not limited to, transportation;

5. Whether the Board should pay for evaluations, consultations, and attendance at PPTs by Dr. Kemper and Geraldine Theodore;

6. Whether the Board should provide compensatory education;

7. Whether the IEP of 12/18/08 constitutes a stay-put placement;

8. Whether the Board failed to convene a properly constituted PPT;

9. Whether the Board failed to properly draft the 2009 IEP;

10. Whether the Board failed to consider all appropriate evaluations at the PPT;

11. Whether the Board failed to conduct an annual review;

12. Whether the Board failed to provide the Parent with a meaningful opportunity to participate in the PPT process;

13. Whether the Board has an obligation to provide special education services, including payment for the private day placement.

PROCEDURAL HISTORY

This matter is before the Hearing Officer pursuant to the Request for Due Process filed by the Parent and received by the Board on September 30, 2010.

The issues addressed during the Due Process Hearing were raised at Planning and Placement Team ("PPT") meetings on June 12, 2008, December 18, 2008 and June 17, 2009, with the exception of the placement of the Student at the Solomon Schecter Academy at the Board's expense.

By way of this request for Due Process Hearing, the Parent requested that the Hearing Officer order that the Board pay for the Student's placement at Solomon Schecter Academy ("SSA"), provide and pay for special education services by private providers, reimburse the Parent for the cost of the related expenses, reimburse the Parent for the cost of evaluations, consultations, and attendance at PPTs by Dr. Kemper and Geraldine Theodore, and provide compensatory education services. The Parent also requested that the Hearing Officer find that the Board committed multiple procedural violations.

The Board filed a Motion to Dismiss the Parents' Due Process Hearing Request. That Motion was denied.

Hearings convened on December 1, 15, and 17, 2010. The Hearing Officer directed the parties to submit their respective post hearing briefs by December 27, 2010.

The date for mailing the final decision was December 14, 2010. However, upon joint motion of the parties, in order to be able to present necessary multiple witnesses and evidence, and after careful consideration of the following factors:

(1) the extent of danger to the child's educational interest or well being which might be occasioned by the delay;

(2) the need of either party for additional time to prepare and present their position at the hearing in accordance with the requirements of the process;

(3) any financial or other detrimental consequence likely to be suffered by a party in the event of the delay;

(4) whether there has already been a delay in the proceeding through the actions of the parties.

the date was extended to January 13, 2010.

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 ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

SUMMARY

The Student is currently eleven years old. He began receiving early intensive intervention through the Birth to Three program, and was diagnosed with Autism when he was two years, seven months old. The Student entered the East Lyme Public Schools ("the Board") when he was three years old. During the 2005-2006 school year, the Student was placed in a regular education kindergarten classroom with a one to one aide. In December 2006, the Student was placed at the Hope Academy, a private special education school where he remained until June 2008.

During Spring of 2008, the Parent began exploring SSA for placement. In August 2008, the Parent advised the Board that she intended to enroll the Student at SSA for 2008-2009 by way of a verbal discussion. Because the Parent was hesitant to lose the placement at Hope if SSA was not satisfactory, the Board agreed to maintain the availability of the Student's placement at Hope for the 2008-2009 school year.

On September 2, 2008, the Student began attending SSA at the Parent's expense and remained in that placement through the date of Hearing.

During a PPT on December 18, 2008, the parties agreed that the Student would remain placed at SSA at the Parent's expense but the Board would provide certain additional related services.

Thereafter, at subsequent PPTs, the Board declined to continue to pay for the additional related services.

On June 17, 2009, a PPT convened and recommended that the Board provide an appropriate program at the Niantic Center School or the home school, Flanders Elementary School, if the Parent so desired, as well as ESY.

The Parent rejected this recommendation and maintained the unilateral placement at SSA. The Board disagreed with this placement.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute, Inc., v. S & H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985); and *Bonnie Ann F. v. Callallen Independent School District*, 835 F. Supp. 340 (S.D. Tex. 1993).

Any motions not previously ruled upon are hereby denied.

FINDINGS OF FACT

1. The Student is currently eleven years old and eligible for special education and related services under the category of Autism. (Testimony Parent, 12/1/10; Exh. B-35)

2. The Student attended the East Lyme Public Schools ("the Board") during kindergarten and first grade and had an IEP in place. During first grade, he was assigned a dedicated one to one aide in unstructured school settings. He was transported to and from school on a special needs van. (Exh. P-8)

3. During the 2007-2008 school year, the Student attended second grade at Hope Academy ("Hope"), an approved special education facility pursuant to an Individualized Education Program ("IEP") provided by the Board. (Testimony Parent, 12/1/10)

4. On December 17, 2007, a PPT was convened wherein it was recommended that the Student continue at Hope at the Board's expense. Pursuant to the recommendations of an Occupational Therapy ("OT") evaluation, the Student would receive 30 minutes per week of OT services at Hope. The Board would provide transportation. No other options were considered or rejected. The Parent was noted to be "pleased with [the Student's] progress." (Exh. B-1)

5. The Student made progress on his eleven IEP goals and objectives, including satisfactory progress in nine goals, and mastery of two. The Student also made appropriate progress in his speech and language as well as OT. He is noted by the Speech and Language Pathologist to have made "significant gains in expressive and receptive language skills, articulation and pragmatic language." (Exhs. B-2, B-3, B-4, B-5, B-6, B-9)

6. During Spring of 2008, the Parent contacted Solomon Schecter Academy ("SSA") regarding enrolling the Student at SSA. (Parent Testimony12/1/10)

7. On June 12, 2008, a Planning and Placement Team ("PPT") was convened for the Student's annual review. Therein it was determined that he would continue to attend Hope during 2008-2009 for third grade. This was based upon review of the Student's academic progress, teacher and services provider observations, and input from the Parent. (Exh. B-8)

8. Pursuant to the June 12, 2008 IEP, the Student would receive 22.0 hours of OT during the school year to be provided within the school setting on a weekly basis to the maximum extent possible. The Student would also receive 1.0 hours per week of speech and language. (Exh. B-8)

9. Pursuant to the June 12, 2008 IEP, the Student would receive ESY of 5 - one hour speech and language sessions, and two weeks of the summer session by Hope with transportation provided by the Board. The Parent requested a five week summer session at Hope, instead. This was rejected by the PPT finding that the program offered by the district was appropriate. The Parent elected the two week program at Hope in lieu of the five week district program. (Exh. B-8)

10. During the June 12, 2008 PPT, the Parent expressed concerns about the Student's reading and requested a reading evaluation at that time. The Board denied this request in that Hope assessed the Student to be reading at or above grade level, the speech and language pathologist at Hope determined that the Student was making significant progress in expressive language, and that he was using lengthier and syntactically more complex sentences with the use of conjunctions and embedded clauses "with only occasional misuse of irregular verb tenses." Grammar had improved dramatically. (Exhs. P-8, P-59, B-6)

11. On August 18, 2008, the Parent spoke with Stephen Buck regarding her concerns at Hope, which

included the Student's social development, lack of interaction with typical peers, and that the Student had reportedly been hit and harassed by another student at Hope. Mr. Buck represented that he would place the Student on a leave of absence from Hope. The Parent would then enroll the Student at Solomon Schechter Academy (SSA) on a trial basis in September, 2008. Mr. Buck informed the Parent that he had a contractual obligation to pay Hope pursuant to the June 12, 2008 IEP. However, he did not have a contract with the livery service transportation and would cancel that. (Testimony Parent 12/1/10, 12/17/10; Exhs. P-23, P-59, P-96)

12. The Parent enrolled the Student at SSA for the 2008-2009 school year. The Parent did not provide prior written notice to the Board that she was enrolling the Student at SSA; nor did she inform the Board she expected such placement to be at public expense prior thereto. When the Parent so enrolled the Student at SSA, this constituted parental placement in a private, religious school. (Parent Testimony, 12/1/10)

13. On October 2, 2008, Robert L. Kemper, Ph.D., a clinical psycho linguist, evaluated the Student at the request of the Parent. He diagnosed the Student with dyslexia and specific language impairment. This included expressive language difficulties that were primarily the result of difficulties with underlying syntactic deficits. The Parent did not provide prior notice to or consult with the Board prior to contracting with Dr. Kemper to perform this evaluation. (Testimony Parent, 12/1/10)

14. On December 12, 2008, the Parent received Dr. Robert Kemper's evaluation report. Dr. Kemper claimed that the Student would benefit from a low teacher-student ratio and enrollment in a language immersion program. Dr. Kemper concluded that the Student had an expressive language disorder, little or no ability to decode despite having a well-developed sight word vocabulary, would eventually "hit a brick wall" in reading because decoding is essential to effective reading, and that he had a Specific Language Impairment, an expressive language disorder, with syntax as the kernel of that disorder. Moreover, that the Student had to be explicitly taught innate grammatical structures. If not remediated properly, Dr. Kemper opined that the Student could not express himself effectively across contexts. The Parent provided a copy of this report to Mr. Buck. (Testimony Parent 12/1/10; Testimony Dr. Kemper; Exhs. P-26, P-35, P-81)

15. A substantial separate language emersion program is defined by Dr. Kemper as one where the goal or purpose of the program is language. The program is driven by language skills and strategies, as opposed to content, which would be the basis for a program that would be a more typical type of education program. Most include instruction for dyslexia. (Testimony Dr. Kemper)

16. After Dr. Kemper's evaluation, the Parent explored language immersion schools in four different states. The Parent was unable to find an appropriate language immersion school that was willing to accept the Student. (Testimony Parent 12/1/10)

17. On December 18, 2008, the PPT recommended that, although the Parent was responsible for tuition and transportation costs if she intended to keep the Student at SSA, the Board would voluntarily pay for software and related services for the remainder of 2008-2009, including five hours per week of Orton-Gillingham tutoring, 2.5 hours per week of speech and language, and 1.5 hours per week of combined OT and PT. The Board also agreed to provide an adaptive technology evaluation, to be reviewed in the Spring along with the results of other evaluations that the Parent stated she was planning to obtain. The Parent accepted these recommendations and did not request that the Board pay for the SSA tuition or any other costs. (Testimony Parent 12/1/10; Exhs. B-15, B-16)

18. The December 18, 2008 IEP notes that the Student "has made a smooth transition into Solomon Schechter. He is aware of social cues in the classroom and is participating in all academic areas." (Exh. B-15)

19. The December 18, 2008 PPT reviewed teacher reports as well as Dr. Kemper's Psycholinguistic Evaluation of October 2, 2008. Although Dr. Kemper recommended 4.25 hours of speech and language therapy per week in addition to the Student being in a language immersion school, the December 28, 2008 IEP provides that he was to receive 2.5 hours per week at SSA. The Board was providing such services to facilitate a transition to SSA. (Testimony Mr. Reas; Exhs. B-15, P-26)

20. By way of letter dated December 21, 2008, the Parent confirmed the agreement that the Board would provide an assistive technology evaluation, 5 hours per week of Orton- Gillingham instruction, and 2.5 hours per week of speech and language therapy to be given by a speech and language pathologist to remediate the Student's expressive language and articulation disorder. The letter also confirmed the agreement that the Parent would be responsible for the SSA tuition, transportation, extended day programing at SSA, a math aide at SSA, Dr. Kemper's evaluation, Dr. Kemper's participation in the PPT, and a neuropsychological evaluation by Dr. Synthia Brooks. (Exh. B-16)

21. On January 23, 2009, L&M Hospital administered the CELF-3 to the Student without either prior consent of or notice to the Parent. (Exhs. B-15, B-18, P-32)

22. On February 10, 2009, the Parent and the Board agreed to amend the December 18, 2008 IEP to provide for an additional .5 hours of speech and language per week beginning in the middle of February in that the bulk of the speech and language therapy began after the other related services. In the service delivery grid of the amended IEP, the start date of all the related services was changed from very early September 2008 to the middle of December 2008 or to February 11, 2009. (Testimony Parent 12/1/10; Exhs B-15, B-23)

23. On February 15, 2009, the Student's 2008-2009 IEP was revised to further increase the speech and language services to 3.0 hours per week. This was by agreement between the Parent and the Board. (Testimony Parent 12/1/10; Exhs B-15, B-23)

24. In the Spring of 2009, at Dr. Kemper's suggestion, the Parent visited the Kildonan School, a private special education facility with a program that emphasizes Orton-Gillingham instruction. The Student was accepted to this program, but the Parent chose not to enroll him there. (Testimony Parent 12/1/10, Testimony Dr. Kemper)

25. On May 15, 2009, Dr. Kemper performed a Modified Psycho linguist Evaluation on the Student. Dr. Kemper reported that the Student had made very significant gains with his dyslexia owing to 5.0 hours per week of individual Orton-Gillingham instruction. However, the Student's atypical speech was still discernible to most unskilled listeners. Written expression had regressed with a spontaneous writing quotient at the 5th percentile. Dr. Kemper changed his prior recommendation from a language immersion school to a "small, structured education program, and a two hour individual daily tutorial in oral and written expression" taught by a well-trained, experienced speech and language pathologist. Dr. Kemper further opined that the Student has "an extremely complex language- based learning disability." He recommended a significant reduction in the Student's weekly Orton-Gillingham instruction and

supported the recommendations of the assistive technology evaluation. Dr. Kemper also recommended ESY of 4.5 hours per week of speech and language and 1.5 hours of individual Orton Gillingham tutoring from a certified Orton-Gillingham tutor "to prevent loss and/or further loss of expressive language skills." (Testimony Dr. Kemper; Exhs. P-21, P-35, P-47)

26. Dr. Kemper defines a small structured education program as one where the activities are predictable and structured throughout the day. (Testimony Dr. Kemper)

27. When Dr. Kemper reevaluated the Student, at the request of the Parent, to update his prior report, he no longer recommended the separate language emersion program. One of these reasons was that the Student was not accepted to the program Dr. Kemper recommended. (Testimony Parent 12/1/10, Testimony Dr. Kemper; Exh. P-35)

28. Ms. Geraldine Theodore, MS, CCC-SLP is an associate professor of communications, and a supervisor of graduate student clinicians in speech- language pathology who specializes in the treatment of complex language disorders. (Exh. P-63)

29. In June 2009, Ms. Theodore began providing services to the Student. This included using "Framing Your Thoughts" in a very methodical, systematized way to teach the Student syntax. (Exhs. P-63, P-64, P-73)

30. On June 8, 2009, and again on June 15, 2009, the Parent met with Dr. Berglund to discuss 2009 ESY services as the Parent believed that the Student had regressed in written expression. (Parent Testimony 12/1/10; Exh. P-40)

31. During the June 8, 2009 meeting, the Parent presented Dr. Bergland with a contract for 2009 ESY language services of 4.5 hours per week with Ms. Theodore and a contract for the month of June 2009. The Board agreed to pay for the June 2009 services. (Exhs. P-31, P-38, P-39, P-47, P-61)

32. On June 17, 2009, the Board convened a PPT for the Student's annual review at SSA. Dr. Berglund administered the PPT. The PPT team considered the Student's progress at SSA, reports from the Parent, teachers and service providers, and evaluations in the areas of speech and language pathology, adaptive technology and psycholinguistics. (Exhs. B-18, B-19, B-28, B-30 through B-35)

33. During the June 17, 2009 PPT, Dr. Kemper participated via teleconference. Therein he opined that the Student required a highly structured, highly monitored school setting, two hours per day or ten hours per week of instructional language from a highly qualified speech and language pathologist, and three hours per week of Orton-Gillingham instruction. He speculated that if the Student were in a typical school setting, he would derive no benefit from his related services. He further opined that the Student's disability requires that he receive language instruction individually and that once certain skills and strategies are established that he move into a small structured group of two or three students so that he can practice on the generalization and reinforcement of those skills. (Testimony Dr. Kemper; Exh. P-47)

34. Dr. Kemper opined that the June 17, 2009 IEP has several goals and objectives that are not consistent with the Student's current level of functioning, lack specificity in terms of discussing or identifying the problem areas and are too general. Further, that some areas were completely polar opposite, or atypical

of what the Student needed. Dr. Kemper did not support the Board's speech and language recommendations. (Testimony Dr. Kemper; Exhs. P-31, P-32, P-35)

35. The June 17, 2009 PPT recommended that if the Parent continued the Student's unilateral placement at SSA, that the Board would not be responsible for the 2009-2010 program. Further, the PPT proposed a program wherein the student would have a case manager with weekly team meetings; code emphasis reading instruction that incorporates Orton-Gillingham principles 50 minutes per day provided by a Special Education Teacher delivered 1:1 and in small group; 2.5 hours of speech and language therapy per week delivered 1:1 and small group, one hour of OT per week (.5 direct and consult), Physical therapy consult and adaptive PE of 20 minutes per week delivered 1:1 and small group, Keyboarding/computer of 50 minutes per week delivered in the regular classroom, Social/behavioral of one hour per week by a psychologist delivered in small group, and transportation as appropriate. The proposed program was noted to be best implemented at Niantic Center School but would be provided at the home school - Flanders Elementary - if the Parent desired. Niantic Center School provides a small environment and, according to Dr. Berglund, probably one of the most excellent Special Education Teachers.(Exhs. B-35, P-47)

36. The Parent rejected the program recommended at the June 17, 2009 PPT. (Testimony Parent)

37. The June 17, 2009 IEP offered FAPE to the Student. (Exh. B-35)

38. The June 17, 2009 IEP offered ESY to be provided by Haynes School July 7, 2009 through July 30, 2009 of up to 36 hours; and/or August 3, 2009 through August 14, 2009 which included up to 30 hours, code emphasis reading and writing, expressive and social pragmatic language based on IEP goals, and transportation provided as needed. The June 17, 2009 IEP thereby offered FAPE to the Student for ESY 2009. (Exhs. B-35, P-47)

39. During the June 17, 2009 PPT, the Parent requested special education and related services while the Student attended SSA. The Board refused and explained to the parent that this was on the basis that it had no responsibility for the provision of services as the Student was in a unilateral placement in a private school outside the district. No other options were considered or rejected. (Exhs. B-35, P-47)

40. During the June 17, 2009 PPT, the Parent requested information on out of district placements other than SSA. Dr. Berglund offered to show the Parent what could be provided by the Board. She informed the parent that her best suggestion would be Niantic Center School because it is a small environment and has probably one of the most excellent special education teachers. Dr. Berglund also discussed Hope and the "LEARN program." Dr. Berglund referred the Parent to the superintendent for additional information. (Exh. P-47)

41. On June 26, 2009, the Parent met with the Special Education Director and the Assistant Superintendent to discuss the first version of the IEP. (Exh. P-49)

42. During the June 26, 2009 meeting, the Parent also complained that there was no OT/PT services, no ESY services, and no assistive technology listed on the IEP, despite all that the Parent and other service providers had done at and before the meeting to secure them. (Exh. P-121)

43. The Parent told the administrators that the proposed objectives to remediate the Student's syntax had

been proven to fail. She also communicated her concerns regarding the invalidity of the CELF- 3 and that it was administered without consent. The Superintendent told the Parent that the IEP would not be changed except for adding in OT services and ESY services. (Exh. P-49)

44. On July 1, July 2, and July 13, 2009, the Parent faxed a letter to the Board rejecting the proposed IEP. She outlined the services that she planned to provide for the Student along with his placement at SSA. The Parent stated that she expected that these expenses would be at public expense - including the cost of the placement at SSA. (Exhs. P-52, P-54, P-56)

45. Thereafter, the Parent sent several letters to the Board advising it of related services that she planned to secure and that she expected them to be paid at public expense. The Parent also sent copies of progress reports, report cards, and evaluations to the Board as well as three letters asking it to clarify and/or correct claimed factual inaccuracies on the June 17, 2009 IEP. (Exhs. P-59, P-60, P-62, P-66, P-67, P-69, P-70, P-72, P-75, P-76, P-82, P-92, P-100)

46. On January 7, 2010, Janet Campbell, an Orton Gillingham Practitioner, evaluated the Student and provided recommendations. Pursuant thereto, Ms. Campbell stated that "because [the Student] receives no Special Education services during his private school day, it is imperative that his significant reading and spelling skill gaps continue to be aggressively addressed outside of school, at such a rate of intensity that [the Student] achieves grade-level parity with his peers as soon as possible." (Exh. P-72)

47. On April 8, 2010, Dr. Kemper performed a full Psycholinguistic Reevaluation on the Student. Dr. Kemper noted meaningful progress regarding spontaneous communicative discourse, pragmatic skills, and phonemic decoding. Since beginning at SSA, Dr. Kemper opined that the Student was now able to carry on a conversation with the Examiner. The Student was noted to be "fairly successful in using appropriate grammar and syntax when formulating sentences during routine communicative discourse interactions." Dr. Kemper opined that the Student did not make gains in written expression, despite approximately 6.5 hours of high quality, individual language therapy. Dr. Kemper continued to recommend that the Student be educated within the context of a small, student/teacher ratio program, in which he is familiar, and feels comfortable "with participating across a variety of communicative contexts without fear of verbal competition." He recommended 7.5 hours of language therapy by a qualified, experienced clinician in expressive language disorders. (Exh. P-81)

48. On June 30, 2010, the Parent notified the Board that it had not offered any ESY services for 2010 and that she would be providing them. She expected that these services would be at public expense. (Exh. P-93)

49. On July 11, 2010, the Parent refaxed the June 30, 2010 letter. (Exh. P-94)

50. On August 15, 2010, the Parent provided written notice to the Board that she would be providing placement at SSA with specified related services for the 2010-2011 school year at public expense. (Exh. P-98)

51. SSA is a regular education facility with a 6.5 hour school day, which includes Judaic Studies for approximately 2.0 hours per day - or one third of the program. SSA provides no special education programs, does not develop or implement IEPs, and does not employ staff certified to teach special education students. No IEP goals and objectives have been implemented for the Student at SSA. The

Student received only "pull-out" speech and language therapy and Orton-Gillingham tutoring from private service providers for approximately one-third of the school day. The pullout services are not during the 2.0 hours of daily religious instruction. (Testimony Ms. Rosenberg, Testimony Parent 12/1/10, Testimony Dr. Kemper; Exhs. B-37, P-85)

52. Karen Rosenberg has been the head of SSA since 1989. She has never had a full-time teaching position prior thereto. She has been a substitute teacher in various schools as well as acting as a tutor. She holds no certifications in the State of Connecticut. (Testimony Ms. Rosenberg)

53. Ms. Rosenberg is responsible for the curriculum at SSA and its day to day operation. She teaches level four math and sixth grade organization. Sixth grade is the highest grade at SSA. (Testimony Ms. Rosenberg)

54. Approximately one-third of the school day is devoted to Judaic studies at SSA. The school day is from 8:30 a.m. to 3:00 p.m. , with a lunch break of forty-five minutes to one hour. (Testimony Ms. Rosenberg)

55. There are twenty-eight regular students and four pre-k students at SSA. There are three full time instructors of which one teaches Judaic studies, and the other three teach secular subjects. There are also up to twenty staff members who are part-time. One teacher is certified by the State; the other let her certification lapse. (Testimony Ms. Rosenberg)

56. Ms. Rosenberg is not familiar with the Rehabilitation Act of 1973. SSA does not provide a 504 Plan but has participated in the planning of such Plans when a student is being transitioned to public school. (Testimony Ms. Rosenberg)

57. The Student's curriculum at SSA is the same as all other students. However, SSA may shorten some of the Student's assignments. The Student is "out of the school for a certain amount of tutoring, and, last year, he was missing a chunk of social studies." In order to prevent the Student falling behind, the teacher worked with him individually in social studies. The Student continues to miss social studies due to being pulled out for tutoring. (Testimony Ms. Rosenberg)

58. The Student attends Spanish at SSA once per week, although the class meets twice per week. This is provided by SSA as an accommodation since the Student is pulled out of SSA for his specialized tutoring. (Testimony Ms. Rosenberg)

59. The Student also misses art, one period of math, and computer due to being picked up by his Parent for specialized instruction. The Student is poor at word processing. The computer class would teach computer skills such as keyboarding. The Student misses this instruction. (Testimony Ms. Rosenberg)

60. SSA does not provide Orton-Gillingham tutoring or any other kind of reading tutoring that was different than that provided to any other student. (Testimony Ms. Rosenberg)

61. When the Student is pulled out, the Parent picks him up on Mondays at approximately noon and he is gone for the rest of the day. He is also pulled out on Thursdays from just before lunch and returns for the last class of the day - approximately 11:30 to 2:00 p.m. When he returns, the teacher transitions the Student back. (Testimony Ms. Rosenberg)

62. The Student is affected by these transitions into and out of the classroom. However, this has occurred since the beginning of his attendance at SSA. The other students are used to him coming and going. There is no profound affect on the Student and he does not seem anxious about it. However, he is anxious if the Parent is late. (Testimony Ms. Rosenberg)

63. If the Student were enrolled in the East Lyme Public Schools, any such pull outs for services would be accomplished in a manner to prevent any disruption and would not interfere with the Student's ability to receive other instruction, including special education services, as provided by the IEP. (Testimony Mr. Reas)

64. The Student is in a small class at SSA. (Testimony Ms. Rosenberg)

65. According to the Student's 2009-2010 Report Card from SSA, he made satisfactory progress in most areas, and is noted to be "outstanding" in participation. He needs improvement in areas involving work habits and is "progressing" in many other areas. He is also noted to have been absent 7 days for the first and second marking period; and tardy 45 days. (Testimony Ms. Rosenberg; Exh. B-36)

66. During the 2008-2009, 2009-2010, and 2010-2011 school years, the Student has both progressed and regressed in his educational program. He is and has been a member of the school basketball team, a member of the school choir, and performed with the choir last year at the State Capitol. (Testimony Ms.Rosenberg; Exhs. P-37, P-85, P-124)

67. Janet Campbell is certified to provide Orton-Gillingham instruction and began working with the Student, at the Parent's request, in July 2009. Ms. Campbell has been working with the Student three times per week for one hour individual sessions at his home. The Student is serious, responsible, and diligent in these sessions. (Testimony Ms. Campbell)

68. Based upon her work with the Student, Ms. Campbell maintains that he requires individualized, not group instruction. (Testimony Ms. Campbell)

69. Ms. Campbell asserts that the goals and objectives on the June 17, 2009 IEP are not appropriate for the Student's reading needs. It lacks phonics or oral fluency goals. Oral fluency needs to be a goal for somebody who reads less quickly than others to gradually improve on that. (Testimony Ms. Campbell).

70. As regards accuracy, the Students currently reads at an early fourth grade level. In terms of fluency, he is at the third grade level. His spelling is early to mid second grade level. (Testimony Ms. Campbell)

71. Brian Reas is the Assistant Superintendent for Special Education and Pupil Personnel for the Board, and has held that position since July 1, 2010. He was formerly the Director of Support Services, which includes Special Education for the East Hampton Public Schools. As an educator, he was a special education teacher with a focus on learning disabilities and set up the program for Autism within the school to which he was assigned. (Testimony Mr. Reas)

72. The Board requires that special education staff be certified by the State of Connecticut, including training after being hired which requires approximately three to four years. Staff are also trained as regards Orton-Gillingham techniques. (Testimony Mr. Reas)

73. The Board is able to provide the Student with FAPE if the Student were enrolled. (Testimony Mr. Reas)

74. The Student excels in certain academic areas. The Board has qualified teachers in the upper grades, which SSA does not. Hence, the Board may be in a better position than SSA to accommodate the areas in which the Student excels. (Testimony Mr. Reas)

75. Pursuant to the June 2009 IEP, the Student would be pulled out fifty minutes daily for reading, two and one-half hours per week for speech and language, and one hour for social behavioral goals. Twenty minutes per week for adaptive P.E. would be done in the regular classroom. The Student would also receive one hour per week of OT. (Testimony Mr. Reas)

76. When the Student would be pulled out for reading, the goal is to provide the Student with reading that is specialized in addition to the reading that's provided in the classroom. When coordinating the Student's pull out, this is often done during transition times and other opportunities that the Student may be pulled out without hurting his/her ability to get reading instruction in class. Pull outs are performed to avoid the Student missing classroom participation or any particular classroom activity on a regular basis. This is coordinated between the special education teacher and the regular education teacher. The Board ensures that the students still receive the whole program. (Testimony Mr. Reas)

77. The Board has a no bullying policy. (Testimony of Mr. Reas)

78. SSA is a private, religious school that is located in the New London Public School District and is outside the Board's District. (Testimony Mr. Reas)

79. The Board is not required to reimburse the Parent for related expenses, including transportation.

80. Insufficient evidence was submitted upon which to find that the Board should pay for evaluations, consultations, and attendance at PPT's by either Dr. Kemper or Geraldine Theodore. The Parent did not argue this issue in her closing brief and appeared to have abandoned it.

81. Whether the IEP of 12/18/08 constitutes a stay-put placement was neither argued nor was evidence submitted regarding such claim. The issue was moot.

82. The Board did not fail to convene a properly constituted PPT. (Exhs. B-8, B-15, B-35)

83. Insufficient evidence was submitted upon which to base a claim that the Board failed to properly draft the 2009 IEP. The Parent did not argue this issue in her closing brief. (Exh. B-35)

84. The Board considered all appropriate evaluations at the PPTs. (Testimony Dr. Kemper; Exhs. B-8, b-15, B-35)

85. The Board has not conducted an annual review, proposed a program, or held a PPT for the 2010-2011 school year.

86. At all times mentioned herein and relevant thereto, the Board provided the Parent with a meaningful opportunity to participate in the PPT process. (Testimony Parent 12/1/10; Exhs. B-8, B-15, B-35)

CONCLUSIONS OF LAW

1. The Student qualifies for, and is entitled to receive, a free and appropriate pubic education with special education and related services under the provisions of state and federal laws. CGS §10-76, et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1401, et seq. The Student's identified disability is Autism.

2. IDEA opens the door of public education to children with disabilities. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982). Under IDEA, a local education association ("LEA"), such as the Board, must provide to each qualifying student a free appropriate public education ("FAPE") in the least restrictive environment ("LRE"), including special education and related services. 20 U.S.C.§1401(18).

3. The purpose of IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living" and to "ensure that the rights of children with disabilities and parents of such children are protected . . ." 20 U.S.C. §1400 (d)(1).

4. An "appropriate" education is one that is reasonably calculated to confer some educational benefit. See *Board of Educ. of the Hendrick Hudson Central Sch. Dist v. Rowley*, 458 U.S. 176, 206-7 (1982); *Walczak v. Florida Union Free Sch. Dist.* 142 F.3d 119,130 (2d Cir. 1998).

5. "Special Education" means: "specially designed instruction at no cost to parents to meet the unique needs of a child with a disability." 20 U.S.C. §1401(25).

6. "Related Services" means: transportation, and such developmental, corrective, and other supportive services (including speech/language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children. 20 U.S.C. §1401(22).

7. The standard for determining whether FAPE has been provided is set forth in *Rowley, supra*. The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Rowley, supra*, at 206-207.

8. The second prong of Rowley requires a findings that the IEP is "reasonably calculated to enable the child to receive educational benefit." The Supreme Court, has made clear that "appropriate" under the IDEA does not require that the school districts "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 142 F.3d 199, 130 (2d. Cir.1998)), citing *Rowley*, supra. Rather, school districts are required to provide, as the "basic floor of opportunity . . . access to specialized services which are individually designed to provide educational benefit to the handicapped

child." *Rowley, supra*, 458 U.S. at 201; see also *K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995) (Goal of IDEA is to provide access to public education for disabled students, not to maximize a special education child's potential). In this Circuit, the Court of Appeals has said that the proper gage for determining educational progress is "whether the educational program provided for a child is reasonably calculated to allow the child to receive "meaningful" educational benefits." *Ms. B. v. Milford Board of Education*, 103 F.3d 1114, 1120 (2d Cir.1997). The Court of Appeals has also cautioned that meaningful educational benefits are "not everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free School Dist.*, 873 F.2d 563, 567 (2nd Cir.1989). "Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985). "Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability." *Ms. B. v. Milford, supra* at 1121. When determining the appropriateness of a given placement courts will also consider evidence of a student's progress in that placement.

Here, the record establishes that the June 2008 IEP offered FAPE to the Student.
The Parent failed to alert the PPT that she in any way disputed this provision. Instead, the Parent, who had already entered into discussions with SSA for enrollment in the fall, chose to unilaterally place the Student at SSA.

The December 2008 IEP was drafted to transition the Student from Hope to SSA. It was intended as a supplement to the services the Parent had already decided to obtain. The Parent chose and agreed to pay for the tuition at SSA.

The June 17, 2009 IEP provides for a Case Manager with weekly meetings, Code Emphasis with Orton-Gillingham for fifty minutes daily, speech and language of 2.5 hours per week, OT of 1 hour per week, PT/AT of twenty minutes per week, and ESY for 2009. With the exception of the PT/AT, the Student would be pulled out and receive small group or individual instruction. The Board proposed that this program be provided at Niantic Center School or the home school of Flanders elementary. No evidence was provided that either of these two schools would be inappropriate. In fact, according to Dr. Berglund's representations during the June 17, 2009 PPT, Niantic Center School is small and staffed with a highly qualified special education teacher. The Parent's witnesses had not observed either of these schools and had no knowledge of the proposed program.

The record establishes that the Board thereby offered FAPE to the Student. Although Dr. Kemper opined that the Student requires a private day placement since he looks different and would be subject to bullying, this was not persuasive.

9. In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an Individualized Education Program. The IEP is intended to be "the result of collaborations between parents, educators, and the representatives of the school district." *Lillbask v. Connecticut Dep't of Educ.* 397 F.3d 77, 2005 U.S. App. LEXIS 1655 (2d Cir.Feb. 2, 2005). 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." *Walczak* 142 F.3d at 130. .

The Parent contended that she was denied an opportunity to participate in the PPT process. The record,

however, does not support this claim. There were PPTs held on June 12, 2008, December 18, 2008, and June 17, 2009. The Parent was afforded a full opportunity to participate as well as to provide information regarding evaluations that were performed.

10. 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 academic and functional goals, designed to (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability." 20 U.S.C. §1414(d)(1)(A)(ii); 34 CFR §300.320(a)(2)(I); *Roland M. V. Concord School Committee*, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991).

11. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parents, the results of the initial or most recent evaluations, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a)(1). Courts must also consider whether the program is "individualized on the basis of the student's assessment and performance" when determining the appropriateness of an IEP. See *A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D.Conn. 2001), aff'd 47 Fed. Appx. 615 (2d Cir.2002) (citing *M.C. ex rel. Ms. C. v. Voluntown Bd. of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D.Conn. 2000).

Both Dr. Kemper and Ms. Rosenberg participated in the December 18, 2008 PPT. Dr. Kemper, Ms. Rosenberg, and Ms. Theodore participated in the June 17, 2009 PPT. The PPT considered the evaluations and input of each of these participants.

12. The IEP must set forth goals and objectives which provide a mechanism to determine whether the placement and services are enabling the child to make educational progress. 20 U.S.C. §1401(a)(20). Connecticut courts have determined that in order for an IEP to be found appropriate, it must provide more than mere trivial advancement, it must be one that is " . . . likely to produce progress, not regress." *Mrs. B. v. Milford B.O.E.*, 103 F.2d 1114, 1121 (2d Cir 1997). 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. *Hall v. Vance County Bd. of Ed.* 774 F.2d 629, 635 (1985). 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 dispostiive. See. *Mrs. B. v. Milford Bd. of Ed.* 103 F.3d 1120, (2d Cir. 1997).

13. In order for a given alleged procedural violation to be considered sufficiently significant to render invalid a proposed IEP, a procedural violation must have resulted in a denial of FAPE to the student. IDEA provides:

(I) In general, Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
(ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies --

(I) impeded the child's right to a free appropriate public education;
(II) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child; or
(III) caused a deprivation of educational benefits.
(iii) Rule of construction. Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this subsection.

20 U.S.C. §1415(f)(3)(E); 34 CFR§300.513. As courts within this circuit have held subsequent to the 2004 amendments, "[p]rocedural flaws do not automatically require a finding of a denial of FAPE" *Matrejek v. Brewster Cent. Sch. Dist.* 471 F.Supp. 415, 419 (S.D.N.Y. 2007); see *also "M" v. Ridgefield Bd. of Educ.* No. 3:05-CV584 (RNC), 2007 U.S. Dist. LEXIS 24691, at #21n. 8 (D.Conn. Mar. 30, 2007) (citing cases from various circuits that held that a plaintiff must demonstrate that procedural errors by the district resulted in the denial of a FAPE). "Only procedural inadequacies that cause substantial harm to the child or his parents -- meaning that the individual or cumulative result is the loss of educational opportunity or seriously infringe on a parent's participation in the creation or formulation of the IEP - constitute a denial of a FAPE." *Mattrejek, supra*, at 419.

None of the alleged procedural violations were sufficiently significant to result in a denial of FAPE to the Student.

14. Procedural safeguards are set forth in 20 U.S.C. §1415 and 34 CFR §§300.500, et seq.. 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, 9th Cir (2001).

15. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation "must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child;" (emphasis added.) 34 CFR §300.502(c), 20 U.S.C. §§1415(b)(1) and (d)(2)(A). According to the record, Dr. Kemper and Ms. Rosenberg participated in the December 18, 2008 PPT. Dr. Kemper, Ms. Rosenberg, and Ms. Theodore participated in the June 17, 2009 PPT. At each PPT their input was considered. Dr. Kemper chose to not provide the Board with a copy of his evaluation since the Board did not pay for it. However, the evidence established that he was afforded a full opportunity to participate and for the Parent to provide copies of such evaluations.

16. A Board may not predetermine a placement for a student with a disability and must come to the table with an open mind and consider the unique needs of the child. *Deal v. Hamilton County Bd. of Ed.*, 42 IDELR 109 (6th Cir. 2004) Participation of Parents must be more than a mere form; it must be meaningful. W.G., 960 F.2d at 1485; see also Knox County Sch., 315 F.3d at 694-95. The preponderance of the evidence establishes that the Parent failed to advise the PPT that she desired a different placement. Instead, the Parent began discussions with SSA to enroll the Student there even prior to the June 2008 PPT. The Parent predetermined that she was so enrolling the Student. The June 17, 2009 PPT minutes indicate that the Board considered an alternative placement at Niantic Center School or would offer the Parent the option of having the program provided at the local elementary school.

17. The Board has the burden of proof by a preponderance of the evidence that the program for the 2008-2009, 2009-2010, and 2010-2011 school years, and ESY for 2009 and 2010 were appropriate. RCSA §10-76h-14(a). *See also, Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998). The Board met its burden of proof as regards the 2008-2009 and 2009-2010 school years. The Board also met its burden of proof as regards ESY for 2009. No evidence was presented that the Board held a PPT or proposed a program for the 2010-2011 school year or ESY for 2010. The Board did not conduct an annual review for 2010-2011. The Parent asserted throughout the hearing that she had an agreement with Mr. Buck that the Board would reserve the Hope 2008-2009 placement until the Parent was able to determine whether SSA was acceptable after the Student had an opportunity to attend. The Parent thereby impliedly, if not expressly, conceded that Hope was acceptable absent her being satisfied with SSA and that the 2008-2009 IEP offered FAPE.

Generally, ESY is provided for a Student in order to prevent the amount of gains achieved by a Student from being jeopardized *Student v. Preston B.O.E.*, CT DOE Case No. 06-109, p. 10 (12/27/06); *M.M. by D.M. & E.M. v. Sch. Dist. of Greenville County*, 37 IDELR 183 (4th Cir. 2002); *J.H. by J.D. & S.S. v. Henrico County Sch. Bd.*, 38 IDELR 261 (4th Cir. 2003). An ESY program cannot be arbitrarily limited by the Board. *Id.*; 34 CFR §300.309 (a)(3)(ii). The Board met its burden of proof that the 2009 ESY program provided FAPE. The Parent failed to offer any persuasive evidence upon which to base a claim that the Board failed to do so.

18. Pursuant to 34 CFR §300.342 (a), at the beginning of each school year the public agency shall have an IEP in effect for each child with a disability within its jurisdiction.

19. The least restrictive environment does not trump the requirement that a child receive FAPE. If a child's placement does not provide "significant learning" or "meaningful benefit" to the child, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in that more restrictive program. *See Dighton-Rehoboth Regional Sch. Dist.* 4 ECLPR 721 (SEA MS 2006).

20. The federal law requires that handicapped children be educated with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. §1412(a)(5); 34 CFR §300.114. However, a district must make any placement and service decisions for a child based on their individual needs. 20 U.S.C. 1401(29); 34 CFR§300.39, see also *Oberti v. Board of Education of Borough of Clementon School District*, 995 F.2d 1204,1214 (3d Cir. 1993). A comparison must be made between the educational benefits the child will receive in the regular classroom and the benefits the child will receive in a segregated program. Id. at 1220. A segregated setting may be the most appropriate and least restrictive environment for a student. Connecticut Final Decision and Order 00-180, Conclusion of Law No.6 (November 30, 2000) (citing *DeVries v. Fairfax County School Board*, 882 F.2d 876 (Cir. 1989)). Where a student demonstrates stagnant or negative progress in the mainstream, a private placement that provides appropriate supports and services for the student to make progress becomes the least restrictive environment. *W.M. and K.M. v. Southern Regional Bd. of Educ.*, 46 IDELR 101 (D.N.J. 2006), *see also, J.D. v. N.Y.C. Dept. of Educ.*, 550 F.Supp.2d 420 (D.NY 2008). It is well settled that the least restrictive environment for a child depends on his unique needs.

21. Whether the parents of a disabled child are entitled to reimbursement for the costs of a private school turns on two distinct questions: first, whether the challenged IEP was adequate to provide the child with FAPE; and second, whether the private educational services obtained by the parents were appropriate to

the child's needs. Only if a court determines that a challenged IEP was inadequate should it proceed to the second question. *M.C. ex rel. Mrs. C. V. Voluntown Bd. Of Ed.*, 226 F.3d 60, 66 (2d Cir. 2000)

22. When it is determined that the Board's program is inappropriate, the parent is entitled to reimbursement if the parent's private school placement is appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). In placing the Student at Solomon Schecter, the Parent made a unilateral placement. The Board argues that SSA fails to provide the services necessary for the Student including, but not limited to, a special education teacher in the classroom, among other things. *Sch. Comm. Of Town of Burlington v. Dept. of Educ. Mass.*, 471 U.S. 359, 370 (1985); *Tatro v. State of Texas,* 703 F.2d 823 (5 th Cir. 1983), aff'd 468 U.S. 883 (1984).

As set forth hereinabove, even if the Board's program was inappropriate, SSA provides no special education services whatsoever, does not implement the IEP, and the teachers are not special education certified. The Student was routinely removed from SSA at noon on Mondays, and from 11:30 a.m. - 2:00 p.m. on Thursdays. Further, he had to endure transitions on Thursdays which impacted the Student at various times and degrees. On Mondays, he was removed from the School and wholly missed computer instruction, social studies, and art. The only benefit to the Student is the small class size.

The Board contends that it is barred from paying SSA as such payment would have the impermissible effect of advancing religion. The Board contends that this would violate the Establishment Clause. The Board is correct that SSA consists of one-third religious studies - which was actually more than one-third for the Student since he was removed from regular class instruction, that was not religious, in order to receive outside special education instruction. However, it is not necessary to reach this issue since SSA is determined to be an inappropriate placement on other grounds. (See Final Decision and Order 07-046, Hearing Officer Strong, attached to Student's Brief). Notably, the record establishes that the Parent also does not believe the program is appropriate as regards its ability to implement the IEP. The Parent has been utilizing the services of private practitioners to provide the necessary special education services to the Student - outside of SSA - and totally separate and distinct from it.

23. Parents seeking an alternative placement are not subject to the same mainstreaming requirements as a school board. *MS. Ex rel S.S. v. Board of Education of the City of Yonkers*, 33 IDELR 183 (2nd Cir. 2000) citing *Warren G. V. Cumberland County School District*, 190 F.3d 80, 84 (3d Cir.1999). In selecting a unilateral placement, parents are not held to the same standards as are school systems *Florence County Sch. Dist. V. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). It is well settled that the unilateral placement does not have to meet the standards of a least restrictive environment (LRE), nor does the unilateral placement have to include certified instructors in special education 34 CFR §300.403(c), MS ex rel S.. v Board of Education of the City of Yonkers 33 IDELR 183 (2nd Cir. 2000) citing *Warren g. v. Cumberland County School District,* 190 F.3d 80, 84 (3d Cir.1999). The test is whether the parents' private placement is appropriate, and not that it is perfect. As set forth above, SSA is not appropriate.

24. Compensatory education is the "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he would have occupied absent the school board's failures. *Reid ex rel. Reid v. Board of Columbia*, 401 F.3d 516, 518, 524-27 (D.C. Cir. 2005). Hearing Officers have the authority to provide compensatory education as an equitable remedy for denial of FAPE. *Student v. Greenwich B.O.E.*, CT DOE Case No. 06-005 at 19; *Inquiry of Kohn*, 17

EHLR 522 (OSEP) (2/13/91) (citing with approval *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990); *Burr v. Ambach*, 863 F.2d 1071 (2d Cir. 1988), vacated, 492 U.S. 902, reaff'd, 888 F.2d 258 (2d Cir. 1989). Compensatory education has been recognized as an available remedy under IDEA for failure of the Board to provide FAPE. *See, K.P. v. Juzwic*, 891 F.Supp. 703 (D.Conn. 1995); *Burr v. Ambach*, 863 F.2d 1071 (2d Cir. 1988); *Mrs. C. v. Wheaton*, 916 F.2d 69 (2d Cir. 1990). The Parent has failed to identify what compensatory services are sought. The Parent unilaterally enrolled the Student at SSA which provides no special education services and she contracted to obtain certain services privately. The Parent did not advise the Board in writing that she desired a private day placement other than Hope at the June 2008 PPT or prior to such placement. To the contrary, she indicated that she intended to enroll and maintain the Student at SSA, and accepted financial responsibility therefore. Significantly, the Parent also agreed with Mr. Buck that the Board would reserve the placement at Hope Academy for fall 2008 in case the SSA placement did not work out. Accordingly, she impliedly, if not expressly, also acknowledged that Hope would be an appropriate placement if SSA did not work out.

25. The cost of reimbursement may be reduced or denied if at the most recent PPT Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to the child including stating their concerns and their intent to enroll their child in a private school at public expense; or at least ten business days prior to the removal of the child from the public school the parents did not give written notice to the public agency. 34 CFR §§300.148(d), *et seq.*, 20 U.S.C.§1412(a)(10)(c). The Board argues that the Parent failed to provide appropriate Notice of intent to remove the Student from the public school. The Parent contends that the Board was fully aware, and that she was advised by Mr. Buck not to put the request in writing so that the Board could reserve the placement at Hope in case it did not work out. Failure to provide such Notice is not in and of itself, a bar to reimbursement. However, as set forth hereinabove, it is not necessary to reach the issue of Notice to the Board as the placement at SSA was so inappropriate so as to deny the Parent's request for reimbursement.

26. The Parent is requesting reimbursement for evaluations and services privately obtained. No evidence was presented during the hearing on this issue nor was this issue pursued. It is also unclear to which evaluations and services this refers. Nonetheless, in order to seek reimburse for private evaluations, the Parent was required to request an independent education evaluation at public expense, the Board must either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense. 34 CFR.§300.502; 20 U.S.C.§1415(b)(1) and (d)(2)(A). There is no evidence that such request was made to the Board, hence, the Parent is not entitled to reimbursement.

27. Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities. 34 CFR §300.130; 20 U.S.C.§1412(a)(10)(A). When the Parent enrolled the Student at SSA and maintained that enrollment, it constituted such a placement within the meaning of 34 CFR §300.130; 20 U.S.C. §1412(a)(10)(A).

28. A service plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part. 34 CFR.§300.132; 20 U.S.C. §1412(a)(10)(A)(i).

29. No parentally-placed private school child with a disability has an individual right to receive some or all

of the special education and related services that the child would receive if enrolled in public school. 34 CFR §300.132; 20 U.S.C. §1412(a)(10)(A)(i). Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. 34 CFR §300.138; 20 U.S.C. §1412(a)(10)(A)(vi). Due process is not applicable except for child find. 34 CFR§300.140; 20 U.S.C. §1412(a)(10)(A).

FINAL DECISION AND ORDER

1. The Board offered the Student a free appropriate public education for the 2008-2009 school year;

2. The Board offered the Student a free appropriate public education for the 2009-2010 school year;

3. The Board did not conduct an annual review for school year 2010-2011;

4. The Board offered the Student a free appropriate public education for ESY 2009;

5 SSA is not an appropriate placement for the Student;

6 The Board is not financially responsible for the private placement of the Student at SSA;

7. The Board is not financially responsible for the cost of related expenses while the Student was enrolled at SSA;

8 The Board shall convene a PPT meeting within 15 days to conduct an annual review, and shall review possible alternative placements for the Student;

9 To the extent any procedural violations occurred, such violations were not sufficiently significant to render invalid a proposed IEP, nor did any procedural violation result in a denial of FAPE to the Student.