

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Southington Board of Education

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Appearing before: Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board offer an appropriate program for the 2017-2018 school year and extended school year?
2. If not, is Ben Bronz appropriate?
3. If so, should the Board be required to place Student at Ben Bronz and/or reimburse Parents for tuition and education related expenses?

PROCEDURAL HISTORY/SUMMARY:

The Parent filed the Due Process Complaint/Hearing Request on June 13, 2017. The Hearing Officer was appointed on June 14, 2017 and conducted a Prehearing Conference on June 6, 2017 wherein the hearing issues above were identified. Hearings were conducted on the following dates: September 15, October 12, October 16, October 20, October 26 and November 1, 2017.

The Parents presented six witnesses. They were: Mother; Margaret Walsh, Director of Pupil and Personnel Services, Southington Public Schools; Christina Lamphere, Education Director, Ben Bronz Academy; Christina Ciocca, PhD, Neuropsychologist; Ozlem Camli, Therapist and Michelle Turek, Ben Bronz teacher. The Board presented four witnesses. They were: Amy Aresco, Southington Public Schools Special Education Coordinator; Jamie Slotnick, Special Education Teacher; Jennifer Hinckley, School Psychologist and Margaret Walsh, Director of Pupil and Personnel Services.

The Board's exhibits B-1 to B-19 were admitted as full exhibits. The Student exhibits P-1 to P-34, P-26-48; P-54; P-59; P-62; P-64-67; P-69-70; P-72-75; P-76 - page 2; P-77-81 were admitted as full exhibits. Exhibits P-50; P-52; P-53; P-57; P-58; P-61 and P-76- Page 1 were marked for identification but not admitted. Exhibits P-35; P-49; P-51; P-55; P-56; P-60; P-63 were withdrawn. The Due Process Complaint/Hearing Request was admitted as HO-1.

This Hearing Officer granted the parties' requests for extension of the mailing dates of the Final Decision as follows: On July 6, 2017, the mailing date of the Final Decision was extended to September 25, 2017 so that the parties could engage in mediation. On September 15, 2017, the mailing date of the Final Decision was extended to November 20, 2017 to add hearing dates. On November 3, 2017, the mailing date of the Final Decision was extended to December 8, 2017 for the parties to submit briefs. Both parties submitted post-hearing briefs on November 20, 2017.

This Final Decision and Order sets forth the Hearing Officer's summary and 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 the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. See *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993). All motions that were not previously ruled upon are hereby denied.

SUMMARY:

The issues in this Due Process hearing involve whether the school district failed to offer a free and appropriate public education ("FAPE") for a student who was entering the 8th grade and whose primary category of eligibility was Specific Learning Disability/Dyslexia (SLD/Dyslexia). The Student also had a diagnosis of anxiety and depression. The student had been unilaterally placed by his parents at Ben Bronz Academy, a state approved special education school, for the 6th and 7th grades. The school district and parents had entered into settlement agreements for the prior two years. The school Planning and Placement Team ("PPT") offered an Individualized Education Program ("IEP") with services provided within the public middle school. The parents rejected the IEP at the end of the PPT meeting and continued the student at the private placement.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following relevant facts:

1. Student is a resident of the School District and eligible for special education and related services under the category of Specific Learning Disability/Dyslexia. At the

time of the hearing, the Student was 13 years old (DOB: 4/20/04) and attending the 8th grade at Ben Bronz Academy (“Ben Bronz”). The Board and the Parents previously had disagreements that resulted in the filing of complaints to the State Department of Education and for Due Process. The previous complaints were eventually resolved by settlement. A Mediation Agreement placed the Student at Ben Bronz. The Parents had unilaterally placed the Student at Ben Bronz Academy for the 6th grade. Student remained at Ben Bronz in the 7th grade. The parties’ Mediation Agreement settled all issues until June 20, 2017. (Stipulated Facts)

2. Ben Bronz is an Approved Special Education Program by the State Department of Education. It primarily provides remedial services for students of average intelligence with Specific Learning Disabilities. It does not provide services to Students with mental health issues. Ben Bronz does not provide psychological or social work supports for their students. It has a limited number of clubs and does not offer the array of sports and other social activities. As of the time of the hearing, Ben Bronz’s total enrollment was 44 Learning Disabled Students in grades 2 to 12. Class sizes are small ranging from 2 or 3 to as many as 10 or 12 students. Ms. Lamphere testified that there were more children in the lower grades than the upper high school grades at Ben Bronz. The average length of stay was 2.6 years of remediation. At the time of the PPT, the Student had attended Ben Bronz for two years. (Testimony, Lamphere; P-78).

The PPT meeting and the Development of the IEP in dispute

3. The dispute in this hearing concerns the proposed 8th grade IEP for the 2017-2018 school year and extended school year. A PPT meeting was held on April 18, 2017 to review the results of the Triennial Reevaluation, conduct an Annual Review and propose a placement for the upcoming year. The participants at the PPT meeting were: Mother and Father, Administrator Margaret Walsh, Southington Director of Pupil and Personnel Services; Christine Lamphere, Ben Bronz Academy Education Director and the Student’s teacher; Jamie Slotnick, Southington Special Education Teacher; Jennifer Hinckley, Southington School Psychologist and Amy Aresco, Southington Public Schools Coordinator of Special Education. The meeting lasted from one to two hours. (B-12; Testimonies of Mother; M. Walsh; A. Aresco; C. Lamphere and J. Slotnick)
4. The Planning and Placement Team meeting summary indicates that Procedural Safeguards and Notices of Seclusion and Transition Bill of Rights were provided to the Parents. The Parents shared the Student’s progress at Ben Bronz Academy. (B-11).
5. Prior to the PPT, the school staff conducted observations of the Student at Ben Bronz Academy. School members of the PPT conducted observations of the Student in various classes and interviewed staff at Ben Bronz. Ms. Slotnick, Southington Special Education Teacher and Ms. Hinckley, Southington School Psychologists conducted interviews and assessments of the Student at different times. (Testimonies of M. Walsh, J. Hinckley, J. Slotnick)

6. The April 18, 2017 PPT reviewed eligibility and concluded that the Student remained eligible for special education and related services under the category of Specific Learning Disability/Dyslexia. (B-11)
7. The school team reviewed their evaluations and the results of their assessments. (B-11; Testimonies, M. Walsh, J. Hinckley, J. Slotnick) Christine Lamphere of Ben Bronz contributed information on the Student's academic progress. (Testimony, C. Lamphere)
8. Prior to the PPT, the Parents provided the Board with a Neuropsychological Report from Dr. Cristina Ciocca. (P-74). This report was reviewed by the school members of the PPT prior to the April 18, 2017 PPT meeting and presented at the PPT by Ms. Walsh who read the recommendations aloud. The school members of the PPT agreed with Dr. Ciocca's test results and data but did not agree with many of Dr. Ciocca's conclusions and recommendations. (Testimonies of A. Aresco and M. Walsh).
9. Among major points of disagreement between the school members of the PPT and Dr. Ciocca's report were as follows: 1) The school team did not believe that the Student has a math disability. 2) The school team did not believe that the Student has Attention Deficit Hyperactivity Disorder (ADHD). 3) The school team disagreed with Dr. Ciocca that the Student required a small school setting and should not be moved to a public school with novel academic material, "chaotic loud hallways" and shifting schedules. 4) The school team did not agree that the Student should remain at Ben Bronz. (Testimonies, M. Walsh and J. Hinckley)
10. Dr. Ciocca had recommended "a small educational setting in school with a structured, predictable, consistent schedule with similar peers (with regard to intellect and disability) to normalize the playing field and not promote undue stress, competition and comparison. Having peers either above or beneath him in his educational milieu would contribute to self-deprecation based upon his continuous appraisal/comparison, relative to his peers, that would perpetuate poor self-esteem, dejection, and anticipated failure." (Testimonies of C. Ciocca, M. Walsh; J. Hinckley and J. Slotnick). (Testimonies Walsh and Mother).
11. Ms. Walsh, the Southington Pupil and Personnel Services Director, has worked as a special education teacher, a psychotherapist and a school psychologist since 1980. From 1993-1999, Ms. Walsh was principal of The Woodstock School, which served emotionally disturbed children in grades 4-12. In her professional opinion, she disagreed with Dr. Ciocca's recommendation that the Student should remain in a setting with children of similar intellect and disability. (Testimony, M. Walsh)
12. Ms. Walsh "think[s] that students learn from the world that they're in and that's not how you enter life, with just people like you. And so there's some empathy to students who are slower learners, that's a skill that is--we would hope every student acquires. And working with peers to have a different opinion, kids come from different positions on things and so being able to come from a different lens to maybe a social studies topic is beneficial to students in my opinion." (Testimony, M. Walsh)

13. She disagreed that the Student should remain with learning disabled peers at Ben Bronz until he consolidated all of his learning skills. She testified that “he’s demonstrated some good academic gains. He participates in community activities. I think in terms of least restrictive environment putting him in our middle school with peers and the opportunity for science and electives and clubs would be wonderful for him.” (Testimony, Walsh)
14. The team proposed an IEP with placement at DePaolo Middle School with Language Arts and Math in classrooms mixed with special education and nondisabled students co-taught by a Special Education teacher and a Regular Education teacher with the assistance of an aide. The remainder of the Student’s classes would be with non-disabled peers. Whereas, Student spent all of his time with disabled peers at Ben Bronz, the PPT proposed that the Student spend most of his school time (24.5 weekly hours) with non-disabled peers. (B-11)
15. Ms. Slotnick, Southington Special Education Teacher described about how instruction is implemented in the classroom environment and how accommodations are implemented for special education. For instance, one of the accommodations proposed was the use of visual supports. Visual material provides additional support for learning disabled students who could access the material without reading and is placed alongside written material. The visual support appears to be part of the general education curriculum even though it is placed there as an accommodation to support special education students without calling attention to their status. This is an example of the integration of learning disabled students into general education classrooms. Ms. Slotnick and Ms. Aresco have been to Ben Bronz to observe Student in class. Both test testified that noise level at DiPoalo Middle School and Ben Bronz were comparable. Both denied that hallways at the district middle school were chaotic. (B-11: Testimonies of Slotnick and Aresco)
16. The PPT proposed the following services: Academic Support 5x week for 46 minutes, Code-Based instruction 5x week for 46 minutes, Social Work [counseling services] for 30 minutes per week. Academic goals that were proposed included (Annual Goal #1) includes (Objective #1) organization (Objective #2 and #3) on time completion of classwork and homework; (Objective #4) checking work in spelling, punctuation, capitalization, grammar, (Objective #5) math fluency within a 10 second time limit and (Annual Goal #2) decoding, encoding and fluency skills for reading. A Social/Behavioral goals (Goal #3) provided for weekly group support to transition to the school environment with objectives directed at helping Student identify school staff resources (such as social worker, school psychologist, school counselor, office personnel, special education case manager) when presented with novel situations (Objective #1); developing taught coping strategies such as mindfulness, breathing, self talk, when confronted with stressors (Objective #2); participate in a small peer counseling group to discuss age appropriate social interactions in group and academic settings (Objective #3). A Social/Behavioral (Goal #4) also provided for instruction in using positive strategies (e.g. perspective taking, assertive-communication, problem solving to resolve conflict with fading adult support by using respectful verbal and nonverbal behavior (Objective #1) and by seeking appropriate assistance from appropriate staff (Objective #2). (B-11) The

- direct instruction in mindfulness incorporates the recommendations of Dr. Fishbein, a psychiatrist who had evaluated the student's mental status in 2016. (P-69, Finding of Fact No. 40)
17. Accommodations included access to computer, notes when available, Chromebook, assistive technology, Bookshare (an audiobook library), extended time, oral elaboration, orally read tests/directions; clear work area, preferential seating, breaks, as needed and access to staff, as needed. Modifications included assignment pad, folders to hold work, graphic organizer, list sequential steps and structured transitions. Instructional strategies visual supports, positive reinforcement, having student restate information, cuing, prompts and direct instruction. In addition, Parents would receive progress updates by email. (B-11).
 18. The team further proposed tutoring to include code-based instruction and pre-teaching of Science and Social Studies topics and Social Work services once a week to develop a connection prior to the start of the school year. The team also proposed that the Student tour the building and meet with support class in the Spring of 2017 so that the Student could familiarize himself with the environment. The team further proposed that a PPT would be convened 4-6 weeks into the school year to review the program. (B-11).
 19. The Mother testified that the Parents contributed information but she believed that the School Team had already made up their minds. At the end of the meeting, the Parents rejected the proposed placement at DePaolo Middle School and asked the team to place the Student at Ben Bronz. The school team refused. (Testimony, Mother)
 20. Members of the school team testified that they thought the Student was doing well at Ben Bronz and could make the transition to the district school. Ms. Walsh testified that the Student's language arts skills were close to grade level. In addition, the Student was doing well in a 7th grade general education math curriculum at Ben Bronz. Assessments pinpointed the Student's problems in math to organizational deficits. Ms. Slotnick and Ms. Walsh testified that in their professional opinion, the Student did not have a math disability. The Student has facility with math concepts and problem solving. Additional testing revealed that the Student was not paying attention to signs of operation and an objective was added to an organizational goal to deal with this issue. (B-11; Testimonies of J. Slotnick and M. Walsh)
 21. Members of the school team testified that they believe the 8th grade is a good year to transition because teaching teams closely monitor student progress; and teachers meet to discuss student progress on a daily basis. Further, since academic scores would not affect college admission there would be less academic pressure. They felt that 9th grade would be a harder transition for the Student because Student would have to navigate a new larger high school environment while dealing with new academic load without the benefit of teacher monitoring and support. (Testimonies of M. Walsh and A. Aresco)

Parents' Objections to Proposed IEP

22. During the hearing, the Mother enumerated the Parents' dissatisfaction with the program that was being proposed. The Parents were dissatisfied the lack of clarity of the code based instruction methodology as well as not knowing the training of the teacher who would be instructing the Student. She described her negative experiences with the school district. The Parents were dissatisfied that the District's teachers were not sufficiently trained in their view. (Testimony, Mother)
23. The Parents were dissatisfied with the proposed placement in the public middle school and the size of the co-taught classes with 22 to 25 students. The Mother testified that the Student had thrived in a small environment. (Testimony, Mother)
24. The Mother testified that the Parents would agree with an IEP, which aligned with Dr. Ciocca and the Parents' outside evaluators recommending that the Student be educated in a small school setting. The Mother testified that she was hoping that the PPT would place the Student at Ben Bronz Academy. (Testimony, Mother)
25. The Mother responded as follows to the questions of the Hearing Officer:
- Q: Okay, so you went into this PPT wanting the school to continue your son at Ben Bronz?
- A: Yes, I guess so.
- Q: Yes. And if they suggested a public school, any public school, that would not have been acceptable to you?
- A: No, because I don't feel that [Student]-- that's the right environment for [Student] at this time.

Student's Unique Needs and Present Level of Performance

26. The record review reflects that the Student has had a history of mental health concerns. In January 2009 when the Student was four years and nine months, the Student received an occupational therapy evaluation. The Mother was concerned about his sensory processing, oral sensory processing and filtering of auditory input. Student chewed or licked non-food objects and was a picky eater with novel texture and flavors. He covered his ears in a noisy environment, such as a TV or radio. In 2011, when the Student was seven years and five months, the Student received a psychiatric evaluation. Clinical assessment was positive for lability, suicidal ideation, anxiety and obsessive thought processes. The Student was administered the WISC-IV cognitive measures. Results revealed that the Student was of average functioning in all areas. The Student did not have presentation of Bipolar Disorder but was diagnosed as having Sensory Integration Disorder and Anxiety Disorder. The Student did not show symptoms at school but was showing behaviors at home. His made threatened to kill himself and was hospitalized at the Institute of Living. Thereafter, he began treating with his psychiatrist, Dr. Cohen and his therapist Ozlem Camli. (P-70).
27. In September of 2012, the Student was determined eligible for .5 hours of occupational therapy services at school based on a diagnosis of Sensory Integration Disorder and Anxiety under Section 504 of the Rehabilitation Act of 1973. (P-70)

28. In school, the Student struggled with academics. He was diagnosed with Dyslexia in 2013 and was transferred to Thalberg Elementary School to receive specialized instruction from a trained certified reading instructor at the request of Parents. The Student was described as having a fragile self-esteem. He was easily frustrated and ill at ease anticipating and fearing failure. His emotional troubles continued with both academic and social challenges. (P-70)
29. In the 5th grade, Student was involved in an incident on the school bus with another student. Student alleged the other student had sexually assaulted him. The Parents made a complaint to the school administration. The incident was investigated and the school administration determined that the incident was not of such a serious nature as to warrant disciplinary action of the Student. The family filed a complaint against the other Student to Connecticut Department of Children and Families. Later, Student made comments that resulted in the school counselor's concern about suicidal ideations and a call to 211, an emergency mental health hotline. (Testimonies of O. Camli and Mother; P-69)
30. Student had wanted the other student to apologize to him. The Student's therapist made a recommendation that the Student be allowed to confront the other student in a supervised setting at school. The school's administration disagreed with the therapist that this was warranted. (Testimony, O. Camli; P-65; P-70)
31. Parents made complaints to the school administration. The Mother and Ms. Camli, Student's therapist testified that the school was unresponsive to the Student's safety concerns. In this hearing, the Parents alluded to concerns that the Student would be unsafe at DePaolo Middle School because he would be in the same building as the Student who allegedly sexually assaulted him. (Testimonies of O. Camli and Mother)
32. It is significant to note that the Student and the student accused of sexual assault attended the same karate studio and were in the building at the same time. The Mother testified that there were no incidents at the karate studio because the Parents had advised the karate master of the incident and the Student was kept apart from the other student. (Testimony, Mother)
33. The notes of the PPT did not indicate that this incident was discussed in detail. The Mother did not specifically indicate this safety concern when asked by the Hearing Officer to enumerate the reasons why she disagreed with the proposed program and wanted placement to be at Ben Bronz. (B-11; Testimony, Mother)
34. Sometime in the Student's fifth grade, the Parents began looking to transfer the Student to a magnet school. The evidence suggests that the Parents' negative experience with the school administration with the complaint about the school bus incident as well as the Student's emotional reactivity and struggles in school soured their confidence in school district administration and teachers. (P-70; P-74; P-75)
35. In the summer after Student's 5th grade year, Student participated in the Ben Bronz summer program. Parents reported that "he loved it" and unilaterally placed him at Ben Bronz for the 6th grade. They filed a Due Process Complaint against the School District. The parties entered a settlement agreement. (P-66; P-70)

36. Parent exhibit P-66 is entitled Cyberslate Report as requested by Mother. The report is evidence of Student's reading skills. The report was signed by Ian Spence, PhD, Headmaster Emeritus of Ben Bronz. The summer program placed Student in a Grade 5 reading book at the end of the 5th grade, which was deemed to be appropriate. (P-66)
37. The report identified two areas of skills remediation. The first area was reading fluency. The report concluded that Student was making progress in reading at faster rates. The second area was decoding. The report indicated that "[Student was] experiencing only mild difficulty decoding the words, and that neither a heavy code based remediation or rules based program is required" (P-66)
38. The fact that the Student began the summer program at a 5th grade book and Dr. Spence's statement above is evidence that Student was not far behind academically at the time. (P-66)
39. Student attended the 6th and 7th grade at Ben Bronz. (Testimonies of Mother and Lamphere)
40. In February 2016 when Student was in the 6th grade, the Student was evaluated by Ellen R. Fishbein, M.D. at the request of Ms. Walsh to assess his psychiatric status. Dr. Fishbein conducted a mental status examination. Student admitted to being anxious. He denied being depressed or having any recent suicidal ideation, intent or plan. There was no evidence of psychosis. He had insight into his situation. Since the presence of ADHD was a concern, Dr. Fishbein administered the ADDES-4 HV (Attention Deficit Disorder Evaluation Scales and noted that the results did not endorse a diagnosis of ADHD. In interviews with Parents, Dr. Fishbein wrote that Parents described Student as having organizational issues but they did not think the Student had ADHD. Dr. Fishbein noted improvements in the Student's mood and confidence. Student reported that he was happy that he was able to read books to his father instead of having his father read to him. She recommended that the Student learn mindfulness techniques to enhance his ability to concentrate and decrease stress. (P-69)
41. Student's Ben Bronz Quarter 3 grades (3/31/2017) were reviewed by the PPT. Saxton Math, a general 7th grade math curriculum, 89; Morphographs, 90; Comprehension B, 90; The Voyage of Mimi 2: Writing, 99; The Voyage of Mimi 2; 91; Literature, 88; Study Skills, 94. (B-9)
42. The Ben Bronz services plan indicates that as of 3/31/2017, Student was making satisfactory progress in the 7th grade in all areas. (B-9)
43. Ms. Turek, the Ben Bronz teacher describes the Student as a "wonderful student, inquisitive, curious, active. He has good skills and strategies. He is a dyslexic learner. He has difficulty organizing although his day-to-day organization has improved. He has difficulty recognizing pitfalls and has cognitive flexibility issues. (Testimony, Turek)
44. Jennifer Hinckley contributed the results of the psychoeducational evaluation. Her report indicated that the Student came to the testing sessions openly and quickly developed rapport with her. He appeared comfortable and was engaged in the

- various tasks in the testing. He was able to sustain his attention for the length of the evaluation. He had small breaks and was happy to engage in conversation. (B-9; Testimony Hinckley)
45. Ms. Hinkley administered the Woodcock Johnson IV, Tests of Cognitive abilities. The results show performances in the average range except with weaknesses in working memory. When presented orally with information, the Student has difficulty mentally holding and mentally manipulating the information. He also has difficulty performing automatic tasks accurately and mentally manipulating information for solve tasks and achieve a goal. (B-9; Testimony, Hinckley)
 46. Ms. Hinkley administered rating scales to Ben Bronz teachers, Parents and Student. Student's self report and Ben Bronz teachers were consistent that the Student was not anxious or depressed at school. Teachers and Student were consistent that Student was able to maintain attention at an average level and did not have difficulties with attention. Parents report of anxiety and depression varied from teachers and rated Student's anxiety and depression in a clinically significant range. (B-9)
 47. Mother, Ben Bronz staff and the Student's therapist, Ozlem Camli, testified that the Student was generally improved and was not having emotional difficulty in school. The Student recently stated that he was enjoying class. He was happy in school. However, the Mother and Ms. Camli feared in a large setting his anxiety would increase and he might end up "shutting down". (Testimonies of O. Camli, J. Turek, C. Lamphere and Mother)
 48. Dr. Ciocca's neuropsychological evaluation included an interview with of Student and the Mother. He was happy at school and did not feel stressed. He admitted to some resistance when things were difficult or he had to try something new that he was afraid to try. (P-76)
 49. The Mother reported that "[a]t home, [Student] was more reactive and emotional. Dr. Cohen [his psychiatrist] adjusted some of his medication. While his anxiety at school had improved, the parents saw symptoms at home, including presenting with negativity, anger and upset at the world. It was difficult to weed out if there was some mix of anxiety. They did not see any of these symptoms at school." (P-74)
 50. Joan Slotnick, Southington Special Education Teacher observed the Student and conducted academic testing. Ms. Slotnick was previously employed as an educational coordinator and a special education teacher at Grace Webb School, a state approved school for students with serious mental health issues associated with the Institute of Living. Ms. Slotnick testified about her observation of the Student from the point of view of someone who has worked children with emotional needs. When administering her assessments, she did not witness that the Student was frustrated or hard on himself. She had also seen children with greater emotional needs be successful in the public school setting with supports that were in place. (Testimony, Slotnick)
 51. Ms. Slotnick testified about the instructional strategies that were being implemented in co-taught classes. In the co-taught classroom, Special Education teachers work

with general education teachers to design instruction. The continuum of placements at DiPaolo also includes self-contained classrooms of 10-12 children. It is possible for students to be in self-contained classrooms for Language Arts, but the placement of the Student would be in the general education curriculum. Ms. Slotick testified that the students at DiPaolo would be placed on teams that were monitored by team teachers on a continuing basis. Co-taught classroom students are indistinguishable from other general education classrooms. There was extensive concern by Ms. Camli, Dr. Ciocca and Mother about the Student's reactivity to comparing himself, as a learning disabled student, as being less successful than other non-disabled students. The co-taught classroom and team schedule would help Student blend in with other non-disabled Students. (Testimony, Slotnick)

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et seq., and under Conn. Gen. Stat. Sec. 10-76.
2. The purpose of the 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).
3. The Act defines FAPE as special education and related services which "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. §1401 (8).
4. The Board 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. Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
5. 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). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207
6. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in *Rowley*, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans, reflects a "conviction that adequate compliance with the procedures prescribed would

in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP.” 458 US at 206. " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child’s unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5th Cir. 1989). Compliance with the IDEA’s procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273. 285 (2001). However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child’s educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the “loss of educational opportunities or seriously infringed upon the parent’s opportunity to participate in formulating the [IEP]...” Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877 (9th 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. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoinig v. Doe* 484 US 305, 311 (1988).

7. The record reveals that the Parents were provided procedural safeguards. The Parents provided an independent evaluation by Dr. Ciocca. The evidence supports a finding that Dr. Ciocca’s evaluation was considered. The Parents provided information and asked questions. The evidence supports a finding that the PPT meeting was lengthy and reviewed the Student’s then present levels of performance. The Parents participated and even though the Parents do not agree with the resulting proposed program, the Parents’ information was considered. The evidence does not support a finding of any procedural violations. *Findings of Fact No. 4, 8 and 19.*
8. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the 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.*; *KP v Juzwic*, 891 F Supp. 703, 71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful" way." *Walczak*, 142 F.3d at 130. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132.

9. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* As the Second Circuit has recently described it, this means "an education that 'afford[s] the student with an opportunity greater than mere trivial advancement.'" (*T.K. v. N.Y.C. Dep't of Educ.*, 810F.3d 869, 875 (2d Cir. 2016) quoting *M.O. v. N.Y. City Dep't of Educ.*, 793 F.3d 236, 239 (2d Cir. 2015)); accord *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001, 197 L. Ed. 2d 335 (2017) ("a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all").
10. Whether the program is "individualized on the basis of the student's assessment and performance" is also considered 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 Mrs. C. v. Voluntown Bd. of Educ.*, 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)). An IEP need not specify reading program or methodology or training in order to provide FAPE. See e.g. *WR and KR et al v. Union Beach Board of Education*, 56 IDELR 62 (3d Cir. 2011) *affirming* 54 IDELR 197 (USDC, NJ 2010)
11. In addition to providing an education likely to produce progress, tailored to the unique needs of the child, the program must be offered in the least restrictive environment. 20 U.S.C. § 1412(a)(5)(A); see *M.W. v. New York City Dep't of Educ.*, 725 F.3d 131, 145 (2d Cir. 2013)) (one of the IDEA's goals is "to provide disabled children with a public education 'while protecting them from being inappropriately sequestered in a special-education classroom'").
12. "This requirement expresses a strong preference for children with disabilities to be educated, to the maximum extent appropriate, together with their non-disabled peers." *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998)
13. "Where the IEP is substantively deficient, parents may unilaterally reject it in favor of sending their child to private school and seek tuition reimbursement from the State." *T.K.*, 810 F.3d at 875. A school district will be required to reimburse parents for expenditures made for a private school placement, if the services offered the student by the school district are inadequate or inappropriate. See *Florence Cty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 13-16, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993); *Sch. Comm. of the Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369-70, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985).
14. Parents would be entitled to reimbursement if the parents' private placement appropriate to the child's needs. "Generally, 'the same considerations and criteria that apply in determining whether the School District's placement is appropriate should be considered in determining the appropriateness of the parents' placement'; accordingly, the private placement must be 'reasonably calculated to enable the child to receive educational benefits.'" *Doe*, 790 F.3d at 451. The Parents have the burden of proving the appropriateness of the unilateral placement by a preponderance of the evidence. R.C.S.A. Sec 10-76h-14(c).

15. The evidence supports a finding that the proposed IEP provided FAPE in the least restrictive environment. The evidence supports a conclusion that the Student has matured and has successful experiences in a small setting and is ready for more challenges. Results of evaluations in levels of functioning in April of 2017 revealed that the Student was successful academically. He was able to make progress at Ben Bronz, a school without school counselors or social work support. There is a lot of opinion evidence that the small structured setting was responsible for the Students' improved mood. It is more likely that the Student felt better about school because he was successful and felt more competent. (*Findings of Fact No. 40*) The material being presented to him in Science and Social Studies most likely ignited his curiosity and enjoyment in learning. (*Findings of Fact No. 40, 43*) The same material is available in a less restrictive environment with non-disabled peers. The IEP provided an array of academic and social work support as well as providing frequent contact with Parents to help Student become successful. The Student is not in need of heavy remediation. At the same time by being at Ben Bronz, the Student will not benefit from being with non-disabled peers in a real world environment. The better option would be to transition the student with strong supports. The IEP is reasonably calculated to provide educational benefit with these supports. Ben Bronz is a remediation program that could not provide interaction with an array of clubs, teams and peer interactions to prepare Student for the world of general education. The proposed 2017-2018 IEP does. Any conclusion that the Student would not receive educational benefit from the public school middle school is merely speculative. See *SW v. New York City Dept of Education*, 92 F.Supp 3d 143 (2015) citing *R.E. v. New York City Dept of Education*, 694 F3d 165, 187 (2d Cir. 2009) *Findings of Fact No. 2, 8, 10-21*

FINAL DECISION AND ORDER:

1. The Board offered an appropriate program for the 2017-2018 school year and extended school year.
2. Ben Bronz is not an appropriate placement because it is not the Least Restrictive Environment.
3. The Board is not required to place Student at Ben Bronz and/or reimburse Parents for tuition and education related expenses.

