

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Shelton Board of Ed

Appearing on behalf of the Board:

Attorney Craig Meuser
Meuser & Chinni
One Darling Drive
Avon, Connecticut

Appearing on behalf of the Student:

Guardian, *Pro Se*

Appearing before:

Attorney Jane Ford Shaw
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board violate Student’s rights under the Individuals with Disabilities Education Act (“IDEA”) by denying Student a free appropriate public education (“FAPE”) for the 2016-17 and 2017-18 school years?
2. Did the Board violate Student’s rights under the IDEA by not offering Student a FAPE for the 2018-19 school year?
3. If the Board did not provide Student FAPE for 2016-17 is the Wise Learning the appropriate program?
4. If the Board did not provide Student FAPE for 2017-18 is the Wise Learning the appropriate program?
5. If Board did not provide Student FAPE for 2016-17 school year, should the Student be reimbursed for the tuition and related expenses of the Wise Learning?
6. If Board did not provide FAPE for the 2017-18 school year, should the Student be reimbursed for the tuition and related expenses of the Wise Learning?
7. If Board did not offer FAPE for 2018-19 school year, is an out of district placement to a therapeutic day school with related services appropriate?
8. Is Student due reimbursement for the expense of the evaluation provided by Dr. Sue Wallington Quinlan and presented at the January 19, 2018 PPT meeting?
9. Is compensatory education an appropriate remedy?

PROCEDURAL HISTORY:

The Student initiated this special education due process case on May 11, 2018. This Impartial Hearing Officer was assigned to the case on May 15, 2018. A Prehearing Conference was convened on May 31, 2018. Attorney Feinstein appeared on behalf of the Student and Attorney Craig Meuser appeared on behalf of the Board of Education. It was established that the deadline for mailing the final decision in this case would be July 25, 2018. Evidentiary hearings were scheduled for July 12, 13, and 23, 2018. On July 8, 2018, the hearings scheduled for July 12, 2018 and July 13, 2018 were cancelled. On July 20, 2018, Attorney Feinstein withdrew his

appearance on behalf of the Student and the Guardian for the Student gave notice of his appearance *Pro-Se*. In lieu of the hearing scheduled for July 23, 2018, a second Pre-Hearing conference was held. The deadline for mailing the final decision was continued to August 24, 2018 and evidentiary hearings were scheduled for July 30, August 9, 2018 August 13, 2018 and August 20, 2018. Upon motion by counsel the mailing date of the final decision was extended to September 24, 2018. Additional evidentiary hearings were scheduled for September 10, 2018, September 21, 2018 and September 27, 2018. Upon motion by counsel, the mailing date of the final decision was extended to October 24, 2018.

The following witnesses testified:

Elizabeth Hannaway, Director of Special Education and Special Services
Kimberly Opotzner, Speech Language Pathologist
Amy Herold, Speech Pathologist
Sara Troy, Speech Pathologist
Debra Tucker, Special Education Teacher
John Danielski, Special Education Teacher
Joan Stein, School Psychologist
Rachel Santorelli, School Psychologist
Courtenay Dishian, Regular Education Teacher
Jennifer Merenda, School Psychologist
Sue Wallington Quinlan, Ph.D
Theresa Johnson, Wise Learning
Guardian
Student

The Board's Due Process Complaint/Hearing Request was admitted as HO-1. Parties submitted Stipulated Facts which were accepted into the record. The Student's exhibits 1, 3, 5, 6, 28-21, 24-31, 35-38, 39 pages 1, 2 were entered as full exhibits. Student exhibits 17, 18, 44 were entered for identification purposes. The Student exhibits 2, 4, 7, 22, 23, 32, 33, 34, 39 p.3, 40, 41, 42 and 43 were not received as full exhibits; the exhibits speak of issues not subject of the hearing, or are otherwise, irrelevant. Finally, Board Exhibits B 1-38 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Indep. Sch. Dist.*, 835 F. Supp. 340 (S.D. Tex. 1993); *SAS Inst. Inc. v. S&H Computer Sys., Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

SUMMARY

The Student alleges that he was denied FAPE in 2016-2017, 2017-2018 and was not offered FAPE by the Board for 2018-19. Student requests placement into a therapeutic day program such as Glenholme Devereaux because of the violation of FAPE. In addition, the Student seeks to be reimbursed for the cost of an independent evaluation conducted by Dr. Quinlan. The Board maintains that it provided the Student FAPE for the 2016-17, 2017-18 school years and offered the Student FAPE for 2018-19 school year. The Board further contends that placement in a therapeutic day program is not appropriate and that it is not obligated to reimburse the cost of the independent evaluation conducted by Dr. Quinlan.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) § 1400 *et seq.*, 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 the testimony of witnesses, the following facts are hereby found:

1. The Student who is presently 14 years old was referred to special education by State of Connecticut Department of Childred and Families in April 2008 because he was well below age level in all areas of functioning. (B-21) From all accounts he suffered from significant environmental and cultural deprivations. (Joint Statement of Fact (“JSF” 12). The Student is eligible to receive special education and related services under IDEA with eligibility category of Specific Learning Disability. (B-1)
2. The Student’s Guardian was appointed by order of the Shelton Probate Court on January 10, 2017. (P-20) The Guardian has been a diligent and dedicated advocate for the Student.

5th Grade –Perry Hill School -2015

3. In February, 2015, the Board’s psychologist evaluated the Student and determined that his fluid reasoning score was in the very low range, and he was unable to draw inferences, think logically or solve problems in unfamiliar situations. (B-4). The Student’s working memory score was in the extremely low range, reflecting poor concentration in classroom and inability to sustain attention, and he had an extremely low processing speed score and was not able to quickly transfer from one source to another. (*Id.*) On achievement tests, the Student scored in the extremely low range for broad reading skills, decoding, comprehension and speed, and displayed 1st grade reading abilities, he scored in extremely low range for broad math skills, computation, reasoning and number facility, and had kindergarten math abilities. (*Id.*) On the Vineland assessment of adaptive behavior skills, the Student’s composite score surpassed only 3% of his

age-group peers. (*Id.*) The Student's disability identification for IDEA purposes was intellectually disabled. (B- 5)

4. In August 2015, the school psychologist and special education teacher met with the Guardian after receiving a copy of Dr. Sue Wallington Quinlan 2014 psychological assessment. (8.20 Tr.,). The Guardian did not request a change of the Student's disability identification at this time. (8.20 Tr., 9-10, Tr) Thereafter, a telephone conference was held with District professionals and Dr, Quinlan to discuss her assessment from 2014. She did not share any remarks concerning the Student's IEP. (8-20 TR. J.S., Tr., 9-10 Tr. S.Q.).
5. PPT was convened on September 29, 2015 for the purposes of reviewing the Dr. Quinlan 2014 evaluation. (B-7)
6. Dr. Quinlan administering of the Wechsler Intelligence Scale for Children (WISC-IV), Woodcock Johnson Tests of Academic Achievement-Third Edition (Woodcock Johnson), Vineland Adaptive Behavioral Scales, (Vineland) Test of Variables of Attention (TOVA-8), Grooved Pegboard, Beery-Buktenica Development Test of Visual-Motor Integration, Test og Language Development-Intermediate Fourth Edition, Behavior Assessment System for Children, Brown Attention Deficit Disorder Scales-Child and the DSM-IV Criterion Symptom Review. (B-6, Tr 8.20 S.Q.) Dr. Quinlan concluded that the Student's "[t]ested ability is at the lower end of Low Average range, with a range of more than two and a half standard deviations among subscales and more than four standards deviations among subtests. [The Student] has a marked preference and much greater facility for thinking and learning in visual images rather than words. The perceptual reasoning index of WISC-IV is solidly in the High Average range, a signal of possible underlying intellect, especially his strength in novel reasoning...All subtests on the Verbal Comprehension index are low and moreover poorly supported by language skills indexed in the Borderline Deficient range..." (B-20)
7. Through observations, Dr. Quinlan concluded that the [Student] exhibited behaviors consistent with Autism Spectrum Disorder. Dr. Quinlan cautioned however, that an Autistic Spectrum Disorder may shift to Pragmatic Communication Disorder. She also concluded that the Student "shows features of Attention Deficit Disorder, Combined type with extreme distractibility and physical overactivity." (B-6)(8.20 SQ)
8. Members of the PPT questioned Dr. Quinlan's 2014 evaluation for failing to conduct a valid standardized autism assessment, failure to observe the Student's functional skills in school setting, failure to communicate with Student's teachers and providers and disagreed with Dr. Quinlan's conclusion regarding identifying the Student to have Autism. (8-20, Tr., 9-10 D.T.,Tr., 9.21 J.S.)
9. The PPT recommended re-evaluations of the Student in the area of physical therapy, occupational therapy, assistive technology and Speech and Language. (JSF 2, B-5) The Guardian agreed to the evaluations and agreed with the proposed changes to the Student's IEP. (JSF 4, Tr. 8-20 J.S., Tr., 9-10 D.T Tr.,9/29 E.H.)
10. The Board completed the evaluations in November 2017. (*Id.*)

11. The Student's gross motor developmental, motor planning and coordination skills were deemed age appropriate. He also demonstrated age appropriate fine motor, visual perceptual and visual motor skills, and regulated incoming sensory information appropriately. (B-8, B-10).
12. The Speech and Language evaluation indicated that the Student tested "below the average" in the areas of overall receptive and expressive skills and strengths were noted in his ability to state definitions to words and assemble scrambled sentences to be grammatically correct. The Student's expressive vocabulary skills fell within normal limits, with receptive vocabulary falling slightly below the average range. (B-11, Tr. 9.10 K.O.) The Student scored below average level in all composite areas of the CELF-5. (B-11, 9.10 K.O.)
13. The Speech and Language evaluation further reflected that the Student's formal testing measures indicated that his social pragmatic skills were within normal limits. However, social emotional questionnaires completed by the special education teacher and school psychologist rated the Student's social pragmatic skills to fall below normal limits with common weakness noted in the areas of decreased eye contact, conversational skills and regulation of emotions. (B-11, Tr. 9.10 K.O.)
14. Assistive technology evaluator concluded that the Student would benefit from access to an iPad with specific apps installed to address organization, reading, writing and math skills. (B-9)
15. At the December 3, 2015 PPT, the four evaluation reports were reviewed and it was determined that the Student was eligible for Speech and Language services. The Team added direct Speech and Language services of 1 hour per week to his IEP, revised certain IEP goals and objectives and page 8 classroom accommodations, including access to an iPad for the Student and training for staff on the use of the iPad apps. The Guardian agreed with each proposed revision and with all respects of the evaluations. He did not request a change in the Student's disability identification, nor did he object to the recommendation for access to an iPad. (JFS 6, 8-20 Tr. J.S. 9-10 Tr; D.T. B-12 P.6) The Guardian did not request that the District pay for the cost of Dr. Quinlan's evaluation. (Tr. 9-27, E.H.)

5th Grade – 2016 Perry Hill School

16. At the February 24, 2016 annual review PPT, the Team recommended that the placement of the Student in the regular education classroom for science and social studies, with paraprofessional support and adjusted curriculum setting for approximately 3.1 hours/day of specialized instruction services. The Team also recommended 50 minutes/week of direct Speech and Language services and 40 minutes per week of direct counseling services, in small group and individual instructional settings. (JSF 7; Tr., 9-10 K.O., D.T., J.S., Tr., B-13b) The Guardian agreed with the goals and objections and did not object to access to an iPad for the Student. (Id.)
17. The Student made progress on all of his IEP goals and objectives in 5th grade and improved his statewide mastery test scores: mathematics – increased from level 1 to level 4 (highest level), and language arts – continued at level 3. The Student's Scholastic Reading Inventory (SRI)

reading comprehension score improved from 1% to 25% level. (Tr. 9-10, B-14) As reported by his regular education teacher, his special education teacher, school counselor and speech therapist, by the end of 5th grade, the Student participated more with his peers in all of the school settings, demonstrated leadership and empathy with his peers, expressed his emotions better and more frequently, and reduced his displays of anger. The Student was awarded a Gold Star, a leadership award in May 2016 for his hard work, respect and responsible behavior while attending school. (B-16, P-39).

Extended School Year – Summer 2016

18. On July 15, 2016, the Guardian submitted notice he was placing the Student in an unidentified alternate program instead of the Board's proposed ESY program. (B-19, 9-27 Tr., E.H.) Members of the PPT expressed surprise at learning the Student would be unilaterally placed during the extended school year having never heard that Guardian complain about services and supports for the Student, dispute the contents of the proposed IEP goals for 6th grade or criticize the Student's academic progress. The Guardian declined an invitation to convene a PPT to address any concerns. (Tr. 9-27 D.B., Tr. 8-20, C.D.,)

6th Grade – 2016 Perry Hill School

19. On September 21, 2016, the Guardian provided written notice to the Board that the Student was being placed at the Wise Learning. (JSF 9)

20. On October 7, 2016, a PPT meeting was held in response to the Guardian's notice he was placing the Student at the Wise Learning. The Guardian, with aid of counsel, expressed concerns regarding the Student's IEP for the 2015-16 school year. Specifically, the Guardian asserted that the Student: (1) was not challenged enough academically during the prior school year; (2) the Student felt "embarrassed" while at school and (3) was allowed to misuse the school issued iPad by playing games during the school day. The Guardian again put the Board on notice that the Student was in a unilateral placement at the Wise Learning and the Guardian was seeking financial reimbursement/support from the District. The Team shared data regarding the progress the Student made during the 5th grade (2015-16 school year) and expressed disagreement regarding lack of progress while the Student attended Shelton Public Schools. Members of the PPT expressed their disagreement with the Guardian's three statements of concerns. Team members reported that the Student had made much academic progress during the 5th grade year, benefitted from his experience with disabled and non-disabled peers and used his iPad only for instructional purposes. (*Id.*, Tr. 8-20 C.D., Tr. 9-10, D.T., Tr., 9-27J.D., E.H)

21. On the morning of October 7, 2016, prior to the PPT, District members of the PPT conferred via telephone conference with Michelle Eisenberg, founder and owner of Wise Learning. The members of the PPT were provided limited information regarding the Student's program at Wise. They were told that the Student received 1:1 instruction in the areas of math, science, social studies and reading for a few hours a day, did not receive Speech and Language Therapy or counseling services, did not use assistive technology nor was there peer interaction while attending Wise Learning. (B-20; Tr. 9-10 D.T., Tr. 9-27 E.H.)

22. At the October 7, 2016 PPT, the Guardian did not inform the PPT or any other District professionals that the Student was being evaluated by Dr. Quinlan at this time. (Tr. 8-20 Tr, 9-10 Tr. 9-27) The Guardian also did not request the District to pay for a private evaluation, nor did he contest any of the four (4) evaluations conducted by the District in December 2015. (Tr. 9-27, B-20) No data collection or information regarding methodology of assessment conducted by Wise Learning was shared. (B-20)

23. The Student attended the Wise Learning program from the middle of July 2016 through the end of December 2016. (JSF 14)

24. In January 2017, Dr. Quinlan completed a second psychological evaluation of the Student (JSF 14) Over several testing sessions, Dr. Quinlan administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-5), Woodcock Johnson Test of oral Language –IV, and the Woodcock Johnson Test of Achievement-IV (Woodcock Johnson), Gray Silent Reading Test Form B, Gray Oral Reading Test Form (GORT-IV), Grooved Pegboard, Beery-Buktenica Developmental Test of Visual Motor Integration, Delis-Kaplan Executive Functioning System, Tests of Variables of Attention (TOVA-8) and DSM-5 Criterion Symptom Review. The results of the testing revealed a WISC-V Full scale IQ of 93, with academic achievement on the Woodcock Johnson Test of Achievement–IV Form A revealing a reading composite standard score of 93, Basic Reading Skills of 98, Reading Fluency score of 82, Mathematics score of 92 and Written Language score of 92.” (B-21)

25. The January 2017 evaluation by Dr. Quinlan reflected tremendous growth in the Student. Dr. Quinlan noted that the [Student] is much changed in social presentation since the previous assessment; ...Overall, [the Student] tested ability has improved almost a standard deviation (4/5th s S.D. or 12 scaled score points) over the past two years, continuing the gains of more than a standard deviation and a half (22 scaled score points) documented in 2014 relative to his school-provided assessment four years ago. These gains bring his scores from the deficient range to the lower half of average range...the [Student] continues to show as severe language disability and learning disabilities in reading, writing and mathematics...(Id.)

26. Dr. Quinlan never observed the Student in the public school setting as part of the evaluation. Dr. Quinlan did not speak to anyone with the District regarding possible benefits the Student may receive from being educated with non-disabled peers. (Tr. 8-9 S.Q., B-21) Dr. Quinlan did not observe the Student engage in any atypical, repetitive and perseverative behaviors. Dr. Quinlan did not report observing any behavior consistent with a pathological obsession with video games or any neurosis. (Tr. 8/9 S.Q.)

27. The Guardian did not inform the District that the Student was being privately evaluated by Dr. Quinlan. (Tr. 8-20 J.S., Tr 9-10 D.T., Tr. 9-27 A.H.) There is no evidence that the Guardian asked the Board to pay for the private evaluation or contest any of the prior evaluations conducted by the Board pursuant to the PPT recommendations of February 26, 2016.(Tr. 9-10, 9-27, Findings of Fact 15)

6th Grade – 2017 Perry Hill School

28. On February 8, 2017, Guardian provided written notice to the District of the intent to homeschool the Student from January 2017 through February 2017. (JSF 14, B-23, Tr. 7-30 D.B.)

29. On February 23, 2017, a PPT was held to consider the latest assessment and recommendations from Dr. Quinlan, discuss the transition of the Student back to the District and possibly changing his identification for special education. Shelton Public School professionals reviewed their questions with Dr. Quinlan regarding her evaluation and requested additional data regarding the Student’s progress at the Wise Learning. (JSF 15, Tr. 9-27 A.H.) The Guardian and his counsel requested a reduction in the time the Student was pulled out for special instruction and agreed to the proposed assessments. The Team recommended the Student be evaluated in the areas of Speech and Language, Autism and that a psychoeducational evaluation be conducted. (B-24, Tr. 8-20 J.S., 9-27 A.H., K.O.)

30. In March, 2017, a psychoeducational evaluation conducted by Joan Stein, School Psychologist administered the Test of Nonverbal Intelligence – Fourth Edition (TONI-4), Woodcock Johnson IV Test of Cognitive Abilities, The Wechsler Individual Achievement Test: Third Edition(WIAT-III), Vineland Adaptive Behavioral Scales-Third Edition, Conners-3 – an assessment of Attention-Deficit/Hyperactivity and the Autism Spectrum Rating Scales (ASRS). (B-25)(Tr. 8-20 A.S.)

31. The Stein March 2017 evaluation revealed that Student attained the following scores:

TONI-4	102	average
Woodcock Johnson IV	68	very low
WIAT-III		
Total Reading	84	
Written Expression	75	
Mathematics	76	below average
Vineland Adaptive Behavior Scales-3		
Adaptive Behavior Composite	79	moderately low
Communication	80	moderately low
Daily Living	88	adequate
Socialization	71	moderately low
Internalizing	19	elevated
Externalizing	14	average
Conners-3		
<u>Teacher Report</u>		
Inattention	53	
Hyperactivity/Impulsivity	67	
Learning/Executive Functioning	52	
Defiance/Aggression	57	
Peer relations	---	
<u>Guardian Report</u>		
Inattention	86	
Hyperactivity/Impulsivity	84	
Learning Problems	>90	

Executive Functioning	81	
Defiance/Aggression	>90	
Peer Relations	>90	
Autism Spectrum Rating Scales (ASRS)		
Teacher	59 T Score	Average
Guardian	78 T Score	Very Elevated

32. The Board’s psychoeducational evaluation concluded that the Student’s TONI score indicated that his non-verbal intelligence falls within the average range of intelligence, while the Woodcock Johnson IV Tests of Cognitive Abilities show a variability of cognitive strength and weaknesses which generally indicate that the Student will experience academic inconsistencies in his learning. (B-25) The Vineland Behavior scales from both the teachers and Guardians indicate that the Student demonstrates moderately low to low abilities in most measured areas. (B-25)(Tr. 8-20 J.S.)

33. The Board’s psychoeducational evaluation also revealed a discrepancy in scores based on ratings provided from teachers as opposed to ratings provided by the Guardian. Specifically, Conners-3 Parent short indicated very elevated scores in all measure areas while the Conners-3 Teacher short reveal elevated score in the area of hyperactivity/impulsivity. (*Id.*) Also, the Autism Spectrum Rating Scale (ASRS) revealed Parent score of very elevated suggesting the Student demonstrates many of the associated feature characteristics of Autism Spectrum Disorder while the Teacher’s score suggest that the Student only shows some of characteristics of Autism Spectrum Disorder. The Student’s behavioral profile further suggested that the Student’s self-esteem is weak. (*Id.*)

34. As a result of the psychoeducational evaluation, certain recommendations for instructional strategies/accommodations were made to the Student’s IEP including: much repetition and reinforcement of directions/concept/material for optimal retention, allowance for extra time when responding verbally to questions and/or when completing assignments, especially written, support auditory presentations with visuals and manipulatives, check work in progress, break information/directions into small chunks for better understanding, encourage the Student to ask questions when he doesn’t understand, continuation of lunch group and much encouragement and praise for both effort and academic successes. (*Id.*)

35. The Speech and Language evaluation was completed by Ms. Opotzner, M.S., CCC-SLP, Speech-Language Pathologist in March 2017. The evaluation revealed areas of weakness to include: receptive and expressive vocabulary, comprehension of semantic relationships, rote auditory memory and social pragmatic language skills. Weaknesses were noted in both the processing of language and recall of information in the area of expressive language, with weakness in both the processing of language and recall of information presented orally in the area of receptive language. In the area of social/pragmatic language, standardized testing revealed scores in the average range of functioning but observation of the Student in functional situations revealed a failure to generalize those skills across settings and difficulty in social communication and interactions. The evaluator noted improvement when information was broken down into smaller units with visual support. (B.26, Tr. 9-10, K.O.)

36. As a result of the Speech and Language evaluation, certain goals and objectives were added to the Student's IEP. (B-30, Tr. 9-10 K.O.)

37. An assessment in the area of Autism was conducted by MS. Herold, M.S. CCC/SLP, Speech Pathologist in March and April, 2017. The Autism Diagnostic Observation Schedule (ADOS-2) was administered. ADOS-2 is a research based standardized assessment that looks specifically at behaviors that are directly correlated with Autism. It is not diagnostic but largely used to inform a decision through rating scales. (9-10 Tr. A.H.) The Student's scores were consistent with a classification of Autism Spectrum Disorder, however, in functional situations the Student revealed more appropriate social reciprocity and social communication than seen during the testing. (B.27 Tr. 9-10 A.H.)

38. On June 9, 2017, a PPT meeting was held to review the evaluations, determine the Student's primary identification label for IEP services and to conduct an annual review. (JSF 18; Tr. 9-10, 8-20) The PPT reviewed eligibility criteria for four different categories: intellectual disability, learning disability, speech/language impairment and Autism. After considering the evaluations completed in the areas of Speech and Language, autism and psychoeducational, the Team including the Guardian with counsel, agreed to change the Student's identification for the purpose of eligibility for special education from intellectual disability to Specific Learning Disability¹. (B-30, Tr. 9-27 E.H., 8-20 J.S., 9-10 A.H.)

39. The PPT made recommendations for the Student's IEP placement and program for the 7th grade at Shelton Intermediate School for 2017-18 school year. (B-30, JSF 18, Tr. 8-20, 9-27) The IEP included a new social pragmatic goal based on results of the Speech and Language therapy assessment. The Guardian expressed concerns regarding: (a) Student's deficits in math skills and language structure, (b) Student's general knowledge, and (c) Student's completion of homework assignments. (JSF 18, Tr. 9-27 E.H.) The Student's proposed 7th grade IEP goals and objectives were revised to address the Guardian's concerns. (Tr. 8-20 J.S., 9-10 K.O., A.H., 9-27 E.H., JSF 18; B-30)

40. The PPT also reported that the Student made additional progress on IEP goals and objectives (Tr. 8-20 C.D., J.S., 9-10 A.H., K.O., Tr. 9-27, J.D., E.H.) The Student attended the ESY program and made progress on his IEP goals. (B-36)

41. On October 18, 2017, a PPT meeting was held to review the Student's program and transition to the Shelton Intermediate school as well as to review and revise the IEP. (JSF 19) Satisfactory progress was reported in all objectives introduced, with several being mastered. (B-31) The IEP was revised to include a goal with the focus on the Student's ability to interpret emotions in others. (9-21 Tr., R.S., 9-27 Tr., E.H.; JSF 19)

¹ As a result of the observations by Ms. Herold of the Student in different settings not all of ADOS checklist was met and therefore, Autism Spectrum Disorder was not designated as the Student's primary disability.

42. A Reading Inventory assessment of the Student reflected a score of 796 in February 2017 with growth demonstrated by a score of 818 in June 2017. In addition, the Student scored a 909 in September 2017 showing additional progress. (B-32, Tr. 9-27 J.D.).

43. The PPT recommended direct Speech and Language services in 1:1 and small group settings, in three 20 minutes sessions per week, and the school psychologist met with the Student for 20 minutes per week. Periodic updates regarding the Student's progress on agreed upon IEP goals and objectives. (B-31, Tr. 9-21) Specialized instruction in mathematics, writing and reading was provided in a small group setting, and instruction in general knowledge skills in a 1:1 setting. (Tr. 9-27 J.D.) The Student's regular education teacher reported that the Student is very respectful, transitioned well and demonstrates appropriate behavior. (B-31) The Student's Special Education Teacher also reported progress in the Student's goals and objectives. The Guardian, with Counsel, agreed with the PPT recommendations for the IEP goals and objectives. (Id, Tr. 9-30 E.H.)

7th Grade – 2017-2018 Shelton Intermediate School

44. On February 14, 2018, the Guardian provided written notice that the Student was being unilaterally placed to the WISE Learning. (B-34) The Student remained at the Wise Learning for the remainder of the year and has not returned to Shelton Public schools. (Tr. 9-10 T.J.)

45. On May 29, 2018, a PPT meeting was held to address the Guardian's concerns regarding the Student's IEP goals and objectives and to conduct an annual review. (JSF 21) The special education teacher, general education teacher, speech-language pathologist and school psychologist reviewed the Student's progress in their respective settings and his progress towards mastery of the 2017-18 IEP goals/objectives. (B-35). The Guardian did not provide any evidence of the Student's work on his academic, counseling, communication and social pragmatic goals since the Student left the Shelton Intermediate School in February 2018. (Tr. 9-27 E.H.)

46. The PPT reviewed the Student's IEP goals and objectives for summer 2018 and 2018-19 school year and shared a draft copy of same with the Guardian. (JSF 21; Tr. 9-27, B-35) The Guardian did not contest any of the proposed goals and objectives. (Tr. 9-27 E.H., B-35)

47. The Guardian, stating that the curriculum offered by the District was not appropriate and that the Student did not thrive at the Shelton Intermediate School, requested placement in a day therapeutic program at Glenholme Devereaux. (JSF 21; Tr. 9-21, 9-27) Glenholme Devereaux provides intensive therapeutic services for Students with significant emotional and/or social deficits. (Tr. 9-27 D.B., Tr., P-37).

48. Procedural safeguards were made available to the Guardian for each 6th grade PPT Meetings. Procedural safeguards were made available for each 7th grade PPTs and the 8th grade PPT. (Tr. 9-27 E.H.)

CONCLUSIONS OF LAW AND DISCUSSION:

FAPE

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* is to open the door of public education to Students with disabilities by requiring school systems to offer them a free appropriate public education (FAPE). *Bd. of Educ. v. Rowley*, 458 U.S. 176, 192 (1982).
2. The IDEA's purpose is "to ensure that all children with disabilities have available to them a free and appropriate public education." 20 U.S.C. § 1400(d)(1)(A). A FAPE, the IDEA defines it, includes both "special education" and "related services." 20 U.S.C. § 1401(9). "Special Education" is "specially designed instruction...to meet the unique needs of a child with a disability"; "related services" are support services "required to assist a child...to benefit from" that instruction. 20 U.S.C. §§ 1401(26), (29). A State covered by the IDEA must provide a disabled child with such special education and related services "in conformity with the [child's] individualized education program." 20 U.S.C. §§ 1401(9)(D).
3. The standard for determining whether a District has provided FAPE is set forth as a two-prong inquiry: first, whether the Board complied with the procedural requirements of the Act? And second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U.S., at 206-07. *Rowley* was recently further refined by the Supreme Court in *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), in which the Supreme Court made clear that the proposition that the educational benefit must be merely something more than de minimus could stand. *Id.*, at 1001.

Procedural Requirements

4. In determining whether a Student's IEP was designed to provide FAPE, one must first determine whether the District complied with the procedural requirements of IDEA. The IEP is "the centerpiece of the statute's education delivery system for the disabled children." *Honig v. Doe*, 484 U.S. 305, 311 (1988). A comprehensive plan prepared by a child's "IEP Team" (which includes teachers, school officials, and the child's Parent [or Guardian]), an IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B)(i). These procedures emphasize collaboration among Parents and educators and require careful consideration of the child's individual circumstances. 20 U.S.C. § 1414. The IEP is how the special education and related services are "tailored to the unique needs" of a particular child. *Rowley*, 458 U.S., at 181.
5. It is unrefuted that the Guardian actively participated in all of the PPTs convened in the 2015-16, 2016-17 and 2017-18 school years; he received sufficient notice of each PPT; had multiple opportunities to share his concerns and received information and documents necessary to understand each proposed IEP and was even represented by legal counsel at each PPT convened in the 2016-17, 2017-18 school years. 34 C.F.R. § 300.321 and § 300.324. (Findings of Fact 5, 15, 16, 20, 22, 29, 38, 39, 41, 43) Moreover, the evidence demonstrates that the Guardian's input was considered and often resulted in the addition and/or revision of the IEP goals and objectives for both 2015-16 and 2017-18 school years. (Findings of Fact 10, 25, 16, 29, 36, 38, 39, 41) Lastly, the evidence demonstrates that February 2017 PPT reviewed and

considered Dr. Quinlan's 2017 report and therefore, met the IDEA's consideration requirement. *T.S. v. Bd. of Educ.*, 10 F.3d 87 (2d Cir. 1993). Lastly, there was no allegation that they did not receive his procedural safeguards in a timely manner.

6. The Student's procedural rights were also not violated by the alleged failure to select a different primary disability label for the Student in the 2016-2017 school year. The Student asserts that because the IEP for the 2016-17 school year identified the Student's disability as intellectual impaired rather than specific learning disability, the IEP violated FAPE. The IDEA in fact, does not provide any specific right for a Student to be classified under a particular label, rather, the IEP must simply be designed to suit the Student's demonstrated needs. 20 U.S.C. § 1412(a)(3)(B) ("...[n]othing in this title requires that children be classified by their disabilities...") Here, the IEP in 2016-2017 was designed to suit the Student's demonstrated needs and was sufficiently individualized to meet his unique needs and provide him with educational benefits. (Statement of Facts 16-43) See *Heather S. v. Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997) ("IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [the Student's] multiple disabilities..."); *Letter to Fazio*, 21 IDELR 572 (OSEP 1994) (entitlement is not specific to a specific disability classification or label...").

Substantive Requirements

7. The second prong of *Rowley* is to determine whether the IEP is, "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U.S., at 206-7. This prong was further clarified, that the child's educational benefit must be "appropriately ambitious" and give the child a "chance to meet challenging objectives." *Andrew F.*, 137 S. Ct., at 1000. Moreover, the Second Circuit has clearly set forth that the appropriate inquiry into the substantive adequacy of an IEP under *Andrew F.* is whether the IEP was reasonably calculated to enable the child to receive educational benefits and likely to produce progress and not regression. *P. v. West Hartford Bd. of Educ.*, 885 F.3d 735 (2d Cir.). It is by this standard that the IEPs developed by the District and rejected by the Guardians are to be judged. Moreover, An IEP's sufficiency is assessed in light of information available at the time the IEP is developed; it is not judged in hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). "An IEP is a snapshot not a retrospective." *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be viewed in terms of what was objectively reasonable when the IEP was developed. *Id.*

2015-16

8. In 2015-16 school year, the PPT considered the independent assessment provided by the Guardian, conducted appropriate assessments of the Student, conferred with the Guardian regarding concerns and developed an IEP which was reasonably calculated to enable the child to receive educational benefits and likely to produce progress and not regression. (B. Ex. 13b, Tr. 8-20. Tr. 9-10 Findings of Fact) The Student made progress on all of his IEP goals, improved his statewide mastery test scores and improved his reading comprehension score. (9-10 Tr. B-14 Findings of Fact 17) In addition, his social pragmatic goals and objectives resulted in an increase in participation with peers in all school settings, demonstrated leadership and

improvement in the Student's expressions of emotions. (B-14,15,16, Tr. 8-20, 9-10, Findings of Fact)

2016-17

9. The Student was placed in the Wise Learning for much of 2016-17 school year. However, he returned to Shelton Public Schools in February 2017. (Findings of Fact 28, 29) The District promptly convened a PPT to consider Dr. Quinlan's report which was completed in January 2017 and to consider assessments recommended to determine the Student's present levels of academic functioning and to consider his disability identification for purposes of the IDEA. An annual review was also conducted. (JSF 15-16, B-24. Findings of Fact 29) With input from the Guardian and counsel, the PPT agreed to change the Student's disability identification for purposes of the IDEA to Specific Learning Disability and revised his IEP to include additional goals and objectives – i.e. social pragmatic goals and objectives based on the Speech and Language assessment, goals related to functional math based on the Guardian's concerns. (JSF 18; Tr. 9-27, 8-20, 9-10, 9-27, B-30 Findings of Fact 38) The Student made progress on IEP goals and objectives for 2016-17 school year and demonstrated additional gains in SRI reading comprehension scores during the remainder of the 2016-17 school year. (B-32, Tr. 8-20, 9-10). The Guardian did not provide any data from Wise Learning regarding the Student's instructional program and progress. Thus, the Student's 2016-17 IEP was reasonably calculated in light of the information available at the time, to enable the Student to receive educational benefits and likely to produce progress and not regression.

2017-18

10. At the October 2017 PPT the Student's IEP goals and objectives were again revised based on concerns by the Guardian regarding the Student's inability to interpret emotions of others, recommendations by the SLP evaluation and other team input. (JSF 19, B-31, Tr. 9-21, 9-27, Findings of Fact 41-43). Progress was reported on all objectives introduced including several objectives having being mastered by the Student. The Student's special education teacher testified that the Student was showing progress on his goals and objectives, demonstrating continued improvement in his SRI reading comprehension scores and was benefiting from social interaction with his peers. (Tr. 9/29, Findings of Fact 43) The Student's Speech Therapist also reported observing the Student talking and engaging more with others as the school year progress in various school settings. (B. 31, Tr. 9-20) The Student's regular education teacher reported that the Student transitioned well into Shelton Intermediate School, was very respectful and exhibited appropriate behaviors in the regular education setting, (B-31 Findings of Fact 43). The IEP for 2017-18 was thus, reasonably calculated in light of the information available at the time to enable the child to receive educational benefits and likely to produce progress and not regression.

11. Furthermore, the IDEA also requires that Students with disabilities be educated in the least restrictive environment to the maximum extent appropriate... That is, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. 34 C.F.R. § 300.114(a) Compliance with the IDEA's LRE mandate essentially requires that Students with disabilities receive their education

in the regular classroom environment to the maximum extent appropriate or, to the extent such placement is not appropriate, in an environment with the least possible amount of segregation from the Student's nondisabled peers and community. The Student in this matter was participating in small group instructions for adjusted curriculum in the areas of language arts and math with no non-disabled peers, along supported instruction in the general education curriculum science and social studies. (Statement of Facts 43) His IEPs were written and revised to give the Student "appropriate ambitious" goals and objectives which were reasonably calculated to enable the Student to make appropriate academic progress in the least restrictive environment at both Perry Hill School and Shelton Intermediate School. Moreover, each of the Student's IEPs included specialized instruction, related services and accommodations that ensured he could continue to receive educational benefit. *See* 34 CFR § 300.320.

2018-19

12. The Student was unilaterally placed back to Wise Learning in February 2018, thus having only spent September through February as a Student in the District. (Statement of Facts 44) The Board convened a PPT in May 2018 to consider the Student's IEP goals and objectives for the 2018-19 school year. The Parent with counsel attended the PPT. The goals and objectives proposed were based on the progress and assessments of the Student while he attended Shelton Public Schools earlier in the 2017-18 school year. (Tr. 9-27 J.D., Findings of Fact) Those goals and objectives did provide the Student educational benefits and had the Student remained at Shelton Intermediate School, he would be reasonably expected to continue to receive benefits. *A.S. v. Bd. of Educ. of West Hartford*, 245 F. Supp. 2d 417 (D. Conn. 2001)² Looking at the proposed IEP for 2018-19 in the context of the information available at the time of the PPT, it is clear that the goals and objectives were reasonably calculated to produce progress and not regression.

13. Accordingly, the 2018-19 IEP offered to the Student was reasonably calculated in light of the information available at the time, to enable the Student to receive educational benefits and likely to produce progress and not regression.

14. In light of the foregoing conclusions that the Board's programs were appropriate during relevant time, it is not necessary to reach the question whether the Guardian's unilateral placement is appropriate. *Sch. Comm. of Burlington v. Dept. of Educ. of Massachusetts*, 471 U.S. 359, 370 (1985).

² Further, there is no evidence that the Guardian shared any concerns regarding the Student's possible pathological addiction to video games and/or neurosis with the May 2018 PPT and therefore, should not be considered in hindsight. *Fuhrmann*, 993 F. 2d, at 1036.

Independent Educational Evaluation

15. The Guardian always had the right to obtain an Independent Educational Evaluation of the Student at his own expense. 34 CFR §§ 300.502 (a)(1); 300.502 (b)(3). However, the right to an independent education evaluation at public expense requires that the Guardian/Parent disagree with the evaluation obtained by the District. 34 CFR §§ 300.502 (b)(1)–(b)(2). There is no evidence that the Guardian prior to the commencement of the due process complaint ever disagreed with any of the assessment conducted by the Board. There is no evidence that prior to the commencement of the due process complaint that the Guardian ever requested for an independent evaluation or that Dr. Quinlan’s evaluation be paid for by the District. Accordingly, the Student is not entitled to be reimbursed for the cost of the evaluation completed by Dr. Quinlan.

FINAL DECISION AND ORDER:

The Board provided the Student a free appropriate public education for the 2016-17 and 2017-18 school years.

The Board offered the Student a free appropriate public education for 2018-19 school year.

The Student is not entitled to reimbursement for the cost of the assessment conducted by Dr. Quinlan.