

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Colchester Board of Education

Appearing on behalf of the Student: Mother, *Pro Se*

Appearing on behalf of the Board: Attorney Anne H. Littlefield
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the Student graduate from high school upon completion of diploma requirements and IEP goals and objectives?
2. If not, does the Student require a residential transition program at Grove School for the remainder of the 2017/2018 School Year?

PROCEDURAL HISTORY:

The Student initiated this special education due process case on May 11, 2017. This Impartial Hearing Officer was assigned to the case on May 11, 2017. A Prehearing Conference was convened on June 2, 2017. The Student's mother appeared on behalf of the Student and Attorney Anne H. Littlefield appeared on behalf of the Board of Education. It was established that the deadline for filing the final decision in this case was July 25, 2017. Evidentiary hearings were scheduled for June 28, 2017, June 29, 2017, August 10, 2017 and August 11, 2017.

Evidentiary hearings were conducted on June 28, 2017 and June 29, 2017. Upon conclusion of the hearings, the parties requested an opportunity to submit written briefs. It was established that the briefs would be due on or before July 28, 2017.

Accordingly, the Board of Education requested a short postponement and extension of the timeline to file the final decision case to August 11, 2017. The purpose of the requested postponement and extension was to allow time to submit briefs. The Student agreed to the requested postponement and it was granted.

On July 25, 2017 and July 26, 2017, the Student requested an extension of time to file the briefs and a thirty-day extension of time for issuing the final decision in order to allow time for the Student to obtain transcripts of the hearings for use in drafting a brief. The request was granted and the deadline for issuing the final decision was extended to September 8, 2017.

The following witnesses were called to testify during the evidentiary hearings:

Andrew S. Pollak
Kevin Rosenberg
Mother
Student
Joshua Vinoski
Kelly McNamara, Ph.D.
Erica Hendrick

Hearing Officer Exhibits 1 through 3 were marked as full exhibits. In addition, Exhibits P-1 and P-2 and Exhibits B-1 through B-62 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. *See SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

A Student with a disability category of Autism claimed entitlement to continued transition services after his high school graduation with a standard diploma. The Student's Individualized Education Program (IEP), including his Transition Services, provided a Free Appropriate Public Education (FAPE) in that it was developed in compliance with procedural mandates and was reasonably designed to afford the Student educational benefit. All concerned expect that the Student will satisfy applicable requirements for high school graduation with a standard diploma in August 2017. The Student should graduate from high school upon completion of diploma requirements and receipt of those services specified in his final IEP to support any unmet annual objectives. He does not qualify for further services from the Board of Education.

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, 20 United States Code (U.S.C.) Section 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178, inclusive, Section 4-181a and Section 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 facts:

1. The Student was born on April 5, 1999, and is now eighteen years of age. (Exhibit HO-1) He was identified as eligible for special education and related services in pre-school due to problems with attention, impulsivity, learning skills and peer interactions. He was initially

categorized as a student with a specific learning disability and received specialized instruction and occupational therapy services. (Testimony of Mother (T Mother); Exhibit B-19)

2. In 2011, the Student was diagnosed with Attention Deficit Hyperactive Disorder and his disability category was changed to Other Health Impaired/ADHD. Later that same year, evaluation determined that the Student met the criteria for Asperger's Disorder and his disability category was changed to Autism. (T Mother; Exhibit B-19)

3. The Student attended the Board of Education's public elementary, middle and high schools through the tenth grade. He did relatively well until about the sixth grade, when his academic performance and behavior began to deteriorate. (T Mother)

4. By his tenth grade year, the Student exhibited significant depression, suicidal ideation and substance abuse. His grades plummeted and he had many behavior referrals at school. (T. Mother; Exhibit B-19) In 2015, following his tenth grade year, the Student was hospitalized at the Institute of Living for depression, drug abuse, self-harm and anxiety. (T Mother; Exhibit P-1)

5. A reevaluation of the Student's intellectual and social/emotional functioning in September 2015 revealed a student with a Full Scale IQ of 98 and a General Ability Index of 115, both scores within the Average to High Average range. The Student exhibited significant differences within his composite score profile and demonstrated borderline processing speed and working memory, however. (Exhibit B-19) His social/emotional functioning at that time was generally in the "at risk" and "clinically significant" ranges, indicating a tendency to become irritable quickly, to have difficulty maintaining self-control and to react negatively when faced with adversity. (Exhibit B-19)

6. Also in September 2015, the Student's psychiatrist noted the following diagnoses:
Major Depressive Disorder, Moderate with Anxious Distress, in Partial Remission
ADHD, Predominantly Inattentive Type, Severe
Social (Pragmatic) Communication Disorder
Learning Disorder
Cannabis Use Disorder, Moderate, in sustained Remission
(Exhibit B-22)

7. The Student's Planning and Placement Team (PPT) placed him in a private therapeutic program at Grove School in Madison, Connecticut in September 2015 for his junior and senior years of high school. (Exhibit B-16)

8. Grove School is a private therapeutic day and boarding school for adolescents with a variety of disorders. All students receive therapeutic services at Grove School. At the time of his entry, the Student's functioning fell within the moderate range in comparison to the Grove student body. (T Pollak)

9. At Grove School, the Student received 29.50 hours of specialized instruction per week in small group or individual settings, as well as 2.5 hours of counseling, .25 hours of medication management and .25 hours of transition services. (Exhibit B-30; Exhibit B-40; Exhibit B-55).

10. After an initial period of transition, the Student was "unbelievably successful" at Grove School. (T Mother) He developed in maturity, improved in behavior, gained the ability to sustain

attention and focus and abandoned the vision of himself as stupid. (T Pollak) The change was “remarkable”, almost like “night and day.” (T Rosenberg)

11. In its July 12, 2016 annual review of its Comprehensive Service Plan for the Student’s junior year, Grove School reported improvement in all of his presenting clinical problems and satisfactory progress in many of the objectives for his academic annual goals. (Exhibit B-34) The Student also earned passing marks in all of his academic courses except English II. (Exhibit B-35)

12. The Student progressed similarly during his senior year at Grove School. Grove School’s annual review of its Comprehensive Service Plan of June 23, 2017 reported significant improvement in nearly all areas requiring clinical intervention, noting that the Student’s ability to regulate mood increased significantly and his esteem and confidence continued to expand. Moreover, he was passing all academic classes with mostly A’s and B’s and was expected to complete all coursework and all goals and objectives before his scheduled high school graduation in August 2017. (Exhibit B-62; T McNamara)

13. By the time of the evidentiary hearings in late June 2017, it was clear and undisputed that the Student had a very successful tenure at Grove School, passing all of his courses and satisfying all credit requirements for a standard high school diploma. In addition, he mastered or made satisfactory progress on almost all of his annual goals and objectives. (Exhibit B 61; Exhibit B-62)

14. Despite this success, the Student claims entitlement to further education services from the Board of Education because, he argues, the Board of Education failed to provide appropriate transition services as part of his IEP at Grove School. Accordingly, a closer look at transition activities during this time is necessary.

15. By the time the Student entered Grove School, several age appropriate transition assessments had already been performed: ONET Interest Profiler (8/26/15); Values That are Important to Me (9/14/14); and Do What You Are (10/16/13). (Exhibit B-23; Exhibit B-30)

16. The Student’s Post-School Outcome Goal Statements for the 2016-2017 School Year were as follows:

Postsecondary Education or Training: Student “will enter a postsecondary program once he has earned his high school diploma, and study in a hands-on area that he is interested in pursuing vocationally.”

Employment: “After receiving training in a career of his choice, [Student] will be employed in the area he has been trained in.

(Exhibit B-23)

17. The Student also had an annual Employment goal and objectives and an annual Postsecondary Education/Training goal and objectives in his junior year as follows:

Employment Goal # 6: [Student] will complete a series of activities in order to prepare him to transition to competitive or supported employment.

Objective # 1: [Student] will define interests and abilities related to potential career and job opportunities.

Objective # 2: [Student] will participate in on-campus employment.

Objective # 3: [Student] will with assistance from advisor and family [sic] create a budget to save money.

Postsecondary Education/Training Goal # 7: [Student] will acquire the skills to successfully transition to a two-year or a four-year college or university.

Objective # 1: [Student] will participate in the traditional standardized tests necessary for acceptance to postsecondary institutions (PSA, SAT, ACT).

Objective # 2: [Student] will enroll in academic classes that will prepare him for the educational challenges of postsecondary education.

Objective # 3: [Student] will participate in at least two extracurricular activity [sic] in order to develop nonacademic aspects of learning.

Objective # 4: [Student] will attend postsecondary options fairs, events, and group sessions provided by the school.

Objective # 5: [Student] will describe the accommodations/modifications available to him currently in his high school program.

(Exhibit B-23)

18. These annual goals and objectives were carried over into the Student's senior year in 2016-2017 with modifications as follows:

Employment Goal # 8: [Student] will complete a series of activities in order to prepare him to transition to competitive or supported employment.

Objective # 1: [Student] will define interests and abilities related to potential career and job opportunities.

Objective # 2: [Student] will *proactively obtain and maintain* on-campus employment.

Objective # 3: [Student] will with assistance from advisor and family [sic] create a *practical* budget to save money.

Postsecondary Education/Training Goal # 9: [Student] will acquire the skills to successfully transition to a two-year college *and/or a vocational school*.

Objective # 1: [Student] will participate in at least *one on-campus club and, separately, at least one after-school activity per week*.

Objective # 2: [Student] will attend postsecondary options fairs, events, and group sessions provided by the school.

Objective # 3: [Student] will describe the accommodations/modifications available to him currently in his high school program.

(Exhibit B-30, new language in *italics*)

19. The Student's PPT consistently described his independent living skills as "Age Appropriate." Accordingly, he had no independent living skills annual goals or objectives and no Post-School Outcome Goal Statements relating to independent living skills. (Exhibit B-14; Exhibit B-16; Exhibit B-23; Exhibit B-30; Exhibit B-40; Exhibit B-55; Exhibit B-59)

20. No member of the Student's PPT, including the Student, his mother or his advocate ever recommended that the Student have any annual goals or objectives or any Post-School Outcome Goal Statements relating to independent living skills. Nor did the Student, his mother or his advocate ever suggest that different or additional assessments were necessary to evaluate the Student's independent living skills. (T Mother; Exhibit B-14; Exhibit B-16; Exhibit B-23; Exhibit B-30; Exhibit B-40; Exhibit B-55; Exhibit B-59) In fact, it was the Board of Education that

recommended an independent living skills assessment only after the Student requested placement in a program for independent living skills. (Finding of Fact No. 31)

21. During his junior and senior years, the Student received .25 hours per week of transition services in small group and individual instruction to address his Employment and Postsecondary Education/Training goal and objectives. (Exhibit B-23; Exhibit B-30)

22. He also toured the Porter and Chester Institute, a nearby private technical postsecondary school, with his Grove School therapist. (T. Pollak; Exhibit B-55)

23. The Student also had successful experiences working at the Grove School bike and board repair shop and hobby farm. (T Rosenberg; T Student)

24. The Student's advisor and PPT received regular reports on his activities and progress in meeting goals and objectives, including those relating to Employment and Postsecondary Education/Training. (T Rosenberg; Exhibit B-50)

25. The criteria for exiting, or discontinuing, special education and related services for the Student was initially stated in his IEP as follows: "Ability to succeed in Regular Education without Special Education Support". (Exhibit B-23; Exhibit B-30)

26. Early in his senior year at Grove School, the Student requested that the Board of Education place him in Grove School's Post Graduate Transition Program for a year (Post Grad Program) after graduation from high school. (T Vinoski) The PPT met to discuss this proposal on September 30, 2016. (Exhibit B-40)

27. Grove School's Post Grad Program is an exclusively residential program for graduates of its secondary school that is designed to teach independent living skills. (T Rosenberg)

28. At the September 30, 2016 meeting, the PPT acknowledged that the Student would earn nine high school credits during his senior school year and that he was on track to meet all of the requirements for a standard high school diploma and graduate in August 2017. (Exhibit B-40) The parties also stipulated at the hearing of this matter that the Student is expected to meet all requirements for high school graduation with a standard diploma in August 2017.

29. As noted above, at the time of this meeting, the Student's independent living skills were identified as "Age Appropriate" in his IEP and he had no annual goals or objectives and no Post-School Outcome Goal Statements relating to independent living skills. (Exhibit B-14; Exhibit B-16; Exhibit B-23; Exhibit B-30; Exhibit B-40; Exhibit B-55; Exhibit B-59)

30. For these reasons, Board of Education staff attending the PPT meeting were surprised that the Student expressed an interest in attending a program for independent living skills. (T Vinoski)

31. At the Board's suggestion, the PPT decided to conduct another transition assessment to examine vocational and independent living skills before making a decision on the Student's request to attend the Post Grad Program. (T Vinoski; Exhibit B-40)

32. The PPT did not, however, modify the Student's Post-School Outcome Goal Statements and Transition Services to add a goal statement for independent living skills. Nor did the PPT modify the Student's annual goals and objectives to address independent living skills. (Exhibit B-40)

33. The Board engaged the services of Project Genesis to perform the transition assessment requested by the PPT. (Exhibit B-43)

34. Project Genesis offers, among other services, a state approved transition program that caters to students with a range of disabilities. These services are often community based and can occur in a range of settings depending on student need. In addition, Project Genesis conducts transition assessments. (T Hendrick)

35. Project Genesis staff met with the Student to conduct the transition assessment commissioned by the PPT in November 2016. Unfortunately, the Student refused to cooperate with some of the activities Project Genesis attempted as part of the assessment. (T Hendrick; T Mother; T Student; Exhibit B-55)

36. The Student claimed that he had already acquired basic cooking and self care skills as well as functional financial skills. He was offended by Project Genesis' request that he demonstrate some of these abilities. (T Hendrick; T Student) Despite this, Project Genesis was able to observe the Student in a supported work setting and to gather information from the Student and his mother about independent living skills and produce a Transition Assessment Report dated November 30, 2016 (Project Genesis Report). (Exhibit B-46; T Hendrick)

37. The Project Genesis Report recommended that the Student should acquire the following skills as part of his high school education:

1. With support to open a bank account and learn to use it with a checkbook and/or debit card;
2. Estimate realistic costs of living, including rent, utilities, phone service;
3. Create a sample monthly budget using realistic estimated income;
4. Accurately fill out a job application;
5. Create a resume to use for job applications and interviews;
6. Practice role-playing job interviews;
7. Become familiar with community resources that can assist after graduation, such as Social Security, DMV and DRS;
8. Apply for services with the Department of Rehabilitation Services for vocational services after graduation.

(Exhibit B-46; T Hendrick)

38. The PPT met to discuss the Project Genesis Report on March 8, 2017 after some scheduling delays occasioned in part by the Student's mother's surgery and inclement weather. (T Vinoski; Exhibit B-48) At that PPT meeting, while agreeing that the Student would satisfy all requirements for graduation from high school in August 2017, the Student again requested that the PPT place him at Grove School's residential Post Grad Program for the 2017-2018 School Year. (Exhibit B-55)

39. The Board of Education took the position that the Student should exit from special education and related services upon graduation from high school in August 2017. (Exhibit B-55)

40. The PPT changed the Student's Exit Criteria from "Ability to succeed in Regular Education without Special Education Support" to "Graduation" in his IEP. (Exhibit B-55)

41. The Board provided Written Prior Notice of this change as well as a copy of the procedural safeguards to the Student. (Exhibit B-55)

42. The Student's Post-School Outcome Goal Statement and Transition Services, as well as his annual Employment and Postsecondary Education/Training goals remained unchanged. They continued to include no reference to independent living skills. (Exhibit B-55)

43. Again, with the exception of requesting the Post Grad Program, no one suggested that any changes should be made to the Student's IEP or that any further assessments were needed with respect to independent living skills. (Exhibit B-55)

44. The Project Genesis Report and the Copes, Cops, Caps (11/30/16) assessments were added to the list of Age Appropriate Transition Assessments that had been performed on the Student's IEP. (Exhibit B-55)

45. The PPT met again on May 22, 2017 to review the Student's status, transition needs and the Project Genesis Report. It was again discussed and agreed that the Student was on track to complete all credit requirements for a standard high school diploma in August, 2017. (Exhibit B-59)

46. The PPT also focused on the eight recommendations of the Project Genesis Report. First, it noted that the Student had passed a course in financial literacy as well as a one to one practicum at Grove School, where he learned the financial management skills targeted in recommendation numbers 1 through 3 of the Project Genesis Report. (T McNamara; Exhibit B-59)

47. The PPT next observed that the Student had also completed recommendation numbers 7 and 8 of the Project Genesis Report. (T McNamara; Exhibit B-59)

48. The PPT then asked the Student whether he completed a job application, created a resume or role-played a job interview as suggested in recommendations 4 through 6 of the Project Genesis Report. (T McNamara; Exhibit B-59) Since he had not, the PPT added a new annual Employment Goal and Objectives (Goal # 9) as well as up to 60 hours of service to be provided by Project Genesis, or another mutually agreeable vendor, to address this area if not performed by Grove School. (T McNamara; Exhibit B-59)

Employment Goal # 9: [Student] will complete 3 tasks related to job interviewing.

Objective # 1: [Student] will demonstrate the ability to accurately complete a job application, with decreasing adult support to independence.

Objective # 2: [Student] will create a resume to use for job applications and interviews, with decreasing adult support to independence.

Objective # 3: While role-playing in the classroom setting, [Student] will respond verbally to typical interview questions.

(Exhibit B-59)

49. By the time of the evidentiary hearings in this case in late June 2017, it was clear and undisputed that the Student had a very successful tenure at Grove School, and that he would pass all

of his courses and satisfy all credit requirements for a standard high school diploma by August 2017. In addition, the Student made at least satisfactory progress on almost all of his annual goals and objectives, save only Goal # 9 regarding job interviewing, which was not added until May 22, 2017. (Exhibit B-61; Exhibit B-62)

50. If the Student does not complete work on Goal # 9 at Grove School before graduation in August 2017, Project Genesis can deliver the instructional services necessary to complete work on this goal in twenty or fewer service hours in a community setting. (T Hendrick)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) and Connecticut law (Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations) require that “all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. Section 1400(d)(1)(A).

2. Under both IDEA and Connecticut law, a board of education’s duty to educate disabled students ends with the earlier of: a) the student’s high school graduation with a standard diploma; b) the student’s twenty-first birthday; or c) the student’s achievement of such other criteria as are established by his or her PPT. 34 C.F.R. Section 300.102(a)(3)(i); C.G.S. Section 10-76(d).

3. High school graduation requirements are determined by state law and school district policy. If a student with a disability meets all state and school district requirements for award of a standard high school diploma, he or she cannot be denied a diploma simply because he or she has a disability. *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994); *Sammons v. Polk County School Board*, 45 IDELR 29 (11th Cir. 2006).

4. In this case, the Student is eighteen years of age and the parties stipulated that he will accomplish all of the criteria necessary to graduate from high school with a standard diploma in August 2017. In particular, he will have earned all of the high school credits required for graduation under state law as well as the under the policies of the Colchester Board of Education.

5. Despite completing all applicable high school graduation requirements, the Student seeks an order that the Board of Education continue to educate him for an additional school year in a residential program for independent living skills. In support of this request, the Student argues that the Board of Education failed to offer appropriate transition services as part of his secondary school program.

6. It is true that even when a student has met all requirements for high school graduation, a board of education may be required to continue his or her education if the student’s program failed to provide FAPE as required by IDEA. *Doe v. Marlborough Public Schools*, 54 IDELR 283, 110 LRP 39223 (D Mass. 2010).

7. In *Board of Education v. Rowley*, 458 U.S. 176 (1982) (*Rowley*), the Supreme Court set out a two-part test for determining whether a board of education has provided FAPE. The first part of the test determines whether the board complied with the procedural requirements of IDEA. The second part determines whether, as a substantive matter, the student’s individual education plan

(IEP) was reasonably calculated to enable the student to receive educational benefits. *Rowley*, at 206-207; *Walczak v. Florida Union Free School District*, 142 F.3d 119, 130 (2d Cir. 1998).

8. While a student is entitled to both the procedural and substantive protections of IDEA, not every procedural violation is sufficient to support a finding that a student was denied FAPE. Mere technical violations will not render an IEP invalid. *Amanda J. v. Clark County School District*, 267 F.3d 877, 892 (9th Cir. 2001). In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir. 1992).

9. The decision to graduate a student is a "major change of placement" that triggers significant procedural requirements. The board of education must convene a PPT meeting and give written prior notice a reasonable time before actually graduating the student and discontinuing special education and related services. 34 C.F.R. Section 300.503 (a)(1); *Letter to Hagen-Gilden*, 24 IDELR 294 (OSEP 1996); *Letter to Steinke*, 21 IDELR 379 (OSEP 1994).

10. Failure to provide prior written notice or to conduct a PPT meeting may result in a procedural violation of the IDEA if it impedes the child's right to FAPE, significantly impedes the parent's opportunity to participate in the decision-making process, or causes a deprivation of educational benefits. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir. 1992).

11. In this case, there is no claim that the Board of Education failed to afford the appropriate procedural rights associated with the Student's graduation from high school or discontinuation of special education services. Even so, the record is clear that the Board of Education did fulfill its obligation in this regard. (Finding of Fact No. 41)

12. Next, then, is the question whether the Student's IEP satisfied IDEA's substantive requirement that it be reasonably calculated to "make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas City School District*, 137 S.Ct. 988, 999; ___ U.S. ___ (2017).

13. FAPE under the IDEA does not mean a "potential-maximizing education." *Rowley* at p. 197, fn. 21. Instead, the IEP must be one that "confers some educational benefit upon the handicapped child." *Id.* at p. 200. A FAPE is a program that is "likely to produce progress, not regression, and . . . affords the student with an opportunity greater than mere trivial advancement." *T.P. v. Mamoroneck Union Free School District*, 554 F.3d 247, 254 (2d Cir. 2009).

14. It is not necessary that "[a] child . . . improve in every area to obtain an educational benefit from his IEP." *Leighty v. Laurel School District*, 457 F.Supp.2d 546, 554 (W.D. PA 2006).

15. Whether an IEP offers the student FAPE is assessed in light of information available at the time it 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 Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Id.*)

16. The Student's claim here focuses on whether the Student's IEP provided appropriate transition services.

17. The IDEA requires that boards of education provide postsecondary goals and transition services, on an annual basis beginning when the student turns sixteen years of age:

[B]eginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter –

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; . . .

20 U.S.C. Section 1414(d)(1)(A)(i)(VIII)(aa) and (bb); *see also* 34 C.F.R. Section 300.320(b).

18. The term “Transition Services” is defined as follows:

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 C.F.R. Section 300.43.

19. It is clear that a failure to perform age appropriate transition assessments or to develop postsecondary goals violates the IDEA. *Carrie I. v. Department of Education, State of Hawaii*, 869 F.Supp.2d 1225, 1244-45 (D. Haw. 2012); *Dracut v. Bureau of Special Education Appeals*, 737 F. Supp.2d 35, 50-51 (D. Mass. 2010); *East Penn School District, Plaintiff v. Scott B., et al., Defendants*, 29 IDELR 1058, 29 LRP 5231 (E.D. Pa 1999), *aff'd* 213 F.3d 628 (3d Cir. 2000).

20. The evidence in this case demonstrated, however, that the Board of Education did provide the Student with postsecondary goals that were based upon age appropriate transition assessments related to training, education and employment while at Grove School.

21. The Student's IEP at Grove School included appropriate Post-School Outcome Goal Statements for Education or Training and Employment. (Finding of Fact No. 16)

22. The Student also had annual Postsecondary goals and objectives for Employment and Education/Training along with supporting services. (Finding of Fact Nos. 17 and 18)

23. These goals, objectives and statements were based on the several age appropriate transition assessments that were conducted and reflected in his IEP as well as informal assessments of the Student's work experiences in the Grove School bike and board repair shop and hobby farm. (Finding of Fact Nos. 15, 23 and 36)

24. The Board of Education did not provide postsecondary goals related to independent living skills because this was not an area of need for the Student. His independent living skills were age appropriate. (Finding of Fact No. 19) No member of the PPT, including the Student or his mother or advocate, ever suggested that he had needs in the area of independent living skills, except as might be inferred from the request for the Post Grad Program. (Finding of Fact No. 20)

25. Indeed, when the PPT attempted to assess the Student's independent living skills after he requested the Post Grad Program, the Student was offended, insisted that he has adequate independent living skills and refused to cooperate with the assessment. (Finding of Fact Nos. 35 and 36)

26. The PPT had ample evidence for its conclusion that the Student does not need assessment, goals or services in the area of independent living skills. Finding of Fact Nos. 19, 20, 23, 35 and 36)

27. In conclusion, the evidence demonstrated that the Student's PPT conducted adequate age appropriate transition assessments and provided postsecondary transition goals as required by IDEA.

28. The evidence also reflected that the postsecondary transition goals provided to the Student met the relatively low standard for substantive propriety set forth in *Rowley*. The Student's postsecondary goals were appropriately focused on the areas required under the law - training/education and employment. They addressed improving performance of academic and functional skills in order to facilitate the Student's movement from high school to post-school training and employment. (Finding of Fact Nos. 17 and 18)

29. The transition services that were provided to the Student were also appropriate. They included individual and small group instruction as well as vocational exploration activities and supported work experiences. (Finding of Fact Nos. 21, 22 and 23)

30. In addition, the Board of Education has agreed to provide the Student with up to 60 hours of service to be provided by Project Genesis or another mutually acceptable vendor in support of the three objectives of Goal No. 9 if those objectives are not otherwise achieved before graduation.

Project Genesis is well qualified to provide these services and can do so in a community setting well within the 60 hours offered by the Board of Education.

31. The Student's transition program as a whole was reasonably calculated to afford significant educational benefit in light of the Student's individual circumstances. It was substantively appropriate and provided the student with FAPE. As such, the Student should graduate from high school upon completion of diploma requirements and his Goal 9 objectives. He is not entitled to additional educational services from the Board of Education. *RB and MLB v. New York City Department of Education*, 69 IDELR 263 (2017).

32. Even if the Board of Education had not provided the Student FAPE and was obligated to provide additional educational services, however, the Post Grad Program would not be appropriate because it requires a residential placement.

33. Students should be educated in the least restrictive environment "to the maximum extent appropriate." 20 U.S.C. Section 1412(a)(5). It is well settled that "[t]he norm in American public education is for children to be educated in day programs while they reside at home and receive the support of their families." *Walczak v. Florida Union Free School District*, 142 F.3d 119, 132 (2d Cir. 1998). Residential placements such as the Post Grad Program are appropriate only if necessary for the student to make educational progress or essential to meet a student's needs. *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114, 1121-22 (2d Cir. 1997); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 134 (2d Cir. 1998).

33. As the Student's successful experience in Grove School's day program demonstrates, he does not need a residential program to make educational progress or to meet his needs.

FINAL DECISION AND ORDER:

The Student is not entitled to additional educational services from the Board of Education. The Student should graduate from high school and exit special education and related services upon completion of diploma requirements and the three objectives of IEP Goal No. 9.