

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student and Glastonbury Board of Education

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Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board offer the Student a Free Appropriate Public Education (FAPE) from the date of the Planning and Placement Team (PPT) meeting on or about January 30, 2019 for the remainder of the 2018-2019 School Year?
2. If not, is Meliora Academy appropriate for the Student?
3. If so, should the Board be ordered to place the Student at Meliora Academy for the remainder of the 2018-2019 School Year?
4. Should the Student's program for the 2019-2020 School Year be addressed in this decision?

PROCEDURAL HISTORY:

The Student initiated this special education due process case on April 10, 2019. This Impartial Hearing Officer was assigned to the case on April 11, 2019. A Prehearing Conference was convened on May 10, 2019. Attorney Kathleen Reiser (then Werbner) appeared on behalf of the Student and Attorney Leander Dolphin appeared on behalf of the Board of Education. It was established that the deadline for filing the final decision in this case was June 24, 2019. An evidentiary hearing was scheduled for June 12, 2019 and June 28, 2019.

On May 21, 2019 the Student requested a postponement and extension of the timelines to conduct the hearing and to file the final decision in this case to July 24, 2019. The purpose of the

requested postponement and extension was to accommodate the hearing schedule. The Board of Education agreed to the requested postponement and it was granted.

The first day of the evidentiary hearing was convened on June 28, 2019. At that time, many exhibits were entered into evidence and the Student presented testimonial evidence. The parties agreed upon a schedule of further hearings to take place in October, November and December 2019. The parties also agreed that additional extensions of the deadline for issuing the final decision would be necessary to accommodate the agreed upon hearing schedule.

On July 22, 2019, August 21, 2019, September 4, 2019, October 16, 2019, November 9, 2019, December 2, 2019, January 7, 2020, February 5, 2020, March 2, 2020 and March 17, 2020 the Student requested extensions of the deadline for issuing the final decision to accommodate the hearing and briefing schedule. The Board agreed to each of the requested extensions and they were all granted. Ultimately, the deadline was extended to April 24, 2020.

Evidentiary hearings were convened on June 28, 2019, October 2, 2019, November 14, 2019, December 2, 2019, January 17, 2020, January 21, 2020 and February 12, 2020.

The following witnesses testified at the hearing:

Parent	
Diana Kelley	Former Director of Special Education
Maureen Onyrimba, M.D.	Pediatrician
Susan Argens	Special Education Teacher
Michelle Caruso	Special Education Teacher
Lynne Guilmette	Chief Administrator
Kristen Bergenty	Supervisor of Occupational and Physical Therapy
Jane Megson	Head Nurse
Jennifer Hoskins	Pediatric Speech and Language Therapist
Anita Russell	Administrator of Pupil Services

Hearing Officer Exhibits HO 1 through HO 6 were entered as full exhibits. In addition, Parent Exhibits P 1 through P 21, P 22 through P 26, P 28 through P 30, P 32 through P 38, P 40 through P 49, P 51, P 52, P 55 and P 56 were entered as full exhibits. Board of Education Exhibits B 1 through B 3, B 5 through B 41, and B 43 through B 83 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 Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

SUMMARY:

The Student filed this request for due process to challenge the Board of Education's proposal to change his special education placement from a private school to PRIDE, a self-contained public school program in his community. The Student's primary objection to PRIDE centered on the claim that he requires a private classroom for infection control and to minimize distraction.

The Hearing Officer concluded that the Student does not require a private classroom in order to receive a Free Appropriate Public Education and that the Board of Education's proposed Individualized Education Program and placement at PRIDE fulfilled the requirements of IDEA.

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.) Sections 1400 *et seq.*, 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:

1. The Student was born on May 24, 2011, and is now eight years of age. (Testimony of Mother (T Mother); Exhibit B 46)
2. The Student lives with his mother and father and three older siblings in Glastonbury, Connecticut. (Exhibit B 41)
3. The Student was diagnosed with Noonan Syndrome as an infant. Noonan Syndrome is a genetic disorder characterized by short stature, heart defects, skeletal malformation, developmental delays and other problems. The Student experienced a heart murmur and two heart defects early in life. (Exhibit B 41; T Mother; T Onyrimba)
4. Shortly before his first birthday, the Student underwent emergency surgery to repair his heart defects. Since that time, he also had other surgeries to correct physical malformations. (Exhibit B 41; T Mother; T Onyrimba)
5. Currently, the Student has medical diagnoses of Noonan Syndrome, global developmental delay, cardiomyopathy, gastroesophageal reflux, slow emptying of his bowels and lordosis. In addition, he experiences oral motor dysfunction and a feeding disorder. He continues to require use of a G-Tube to meet his daily caloric needs. He is significantly smaller than other children his age. (T Mother; Exhibit B 41; Exhibit B 2)
6. The Student received Birth To Three services due to delays in motor and language development through the Coventry Board of Education. He had speech therapy, occupational

therapy and physical therapy as well as specialized instruction in that program. (T Mother; Exhibit B 41)

7. The Student attended a Pre-Kindergarten classroom of about 25 students at the Breakthrough Magnet School in Hartford through parental choice from August 2014 until December 2015. At that time, he was placed on homebound tutoring due to a series of respiratory infections that lead to extended absences. He was educated in his home through the end of the 2015-16 School year. (T Mother; Exhibit P 2; Exhibit P 3)

8. The Coventry Board of Education placed the Student at Meliora Academy for the 2016-2017 School Year pursuant to a settlement agreement with his parents. At Meliora Academy, his disability category was changed to Other Health Impaired. (T Mother; Exhibit B 41; Exhibit B 59)

9. In the Summer of 2017, the Student's family moved from Coventry to Ellington. The Ellington Board of Education initially continued the Student's placement at Meliora Academy. By November 20, 2017, however, the Ellington Board of Education proposed to change the Student's placement to one of its in district programs. (Exhibit B 60; T Mother; T Kelley)

10. Before that placement was implemented, the family moved to Glastonbury. The Student registered with the Glastonbury Public Schools on August 28, 2018, two days before the start of the 2018-2019 School Year. The Glastonbury Board of Education convened a PPT to address the Student's transition to the district on August 31, 2018. Student's parents attended the PPT meeting and were represented by counsel. At that time, the PPT decided to continue the Student's placement at Meliora Academy while it conducted a multidisciplinary evaluation. (T Russell; T Kelley; Exhibit B 23)

11. In addition to planning the multidisciplinary evaluation, the Student's PPT developed an IEP for the Student which mirrored his program at Meliora on August 31, 2018 (2018 IEP). (Exhibit B 23; T Kelley)

12. The Student's parents endorsed the 2018 IEP as appropriate to meet his needs and continue to assert that the 2018 IEP as implemented at Meliora Academy provides the Student with FAPE. (T Mother; Exhibit HO 1; Exhibit B 23)

13. Meliora Academy is a State of Connecticut approved private self-contained program for students with autism and similar disabilities located in Meriden, Connecticut. It serves approximately 50 students, providing a highly individualized and structured transdisciplinary program that includes specialized instruction as well as physical therapy, speech and language therapy, occupational therapy and applied behavior analysis. (T Guilmette)

14. The Student is transported to and from Meliora Academy in a van with other children. The trip from the Student's home in Glastonbury to Meliora Academy takes approximately one hour each way. (Exhibit B 25)

15. The Student exhibits significant delays in cognitive function, receptive and expressive language skills, and fine and gross motor development. He experiences significant difficulty with oral motor skills and feeding. He has a limited attention span, is distractible and fatigues easily. (Exhibit B 26; Exhibit B 28; Exhibit B 40; Exhibit B 41; Exhibit P 43; T Kelley)

16. The Student's Pediatrician described his health status on July 16, 2018, as "healthy male", able to participate in the school program, including athletic activities and competitive sports, to the limit of his tolerance. (Exhibit B 10)

17. On the other hand, another of the Student's physicians, Dr. Milanese, noted on April 12, 2018 that his "genetics diagnosis" renders "his immune function . . . compromised" such that he is "extremely vulnerable to respiratory illnesses." (Exhibit P 43; see also Exhibit B 2; Exhibit P 3; Exhibit P 7; Exhibit P 11). This health problem, Dr. Milanese explained, resulted in many absences due to respiratory infections while the Student was attending the Breakthrough Magnet School in 2014 and 2015. (Exhibit P 43)

18. The evidence demonstrated, however, that the Student has been free of significant illness, including respiratory infections, for at least the last three years. (T Mother) As Dr. Milanese wrote, "the prior pattern of respiratory infections and missed school days has disappeared." (Exhibit P 11) Although the Student continues to miss school for regular medical appointments, his attendance has been good. With one exception, he has not been absent from school for more than two consecutive days during the 2016-2017, 2017-2018 or 2018-2019 School Years. (T Mother; Exhibit B 71; Exhibit P 47a; Exhibit P 15)

19. The Board of Education performed its multidisciplinary evaluation, including examination of all areas of disability, during the Fall of 2018. The reports of the evaluation, as well as the Student's progress at Meliora Academy, were presented at a meeting of the Student's Planning and Placement Team (PPT) on January 30, 2019. Student's parents attended the PPT meeting and were represented by counsel. (Exhibit B 46; Exhibit B 26; Exhibit B 27; Exhibit B 28; Exhibit B 40; Exhibit B 41; Exhibit B 43)

20. Included in the presentation of January 30, 2019 was a Psychoeducational Evaluation performed by the Board of Education. (Exhibit B 41) The Student's cognitive function was measured using the Wechsler Intelligence Scales for Children, 5th Edition (WISC-V). On this assessment, the Student earned a Full Scale IQ of 64 and a General Ability Index of 73, in the Extremely Low and Very Low categories respectively. His Verbal Comprehension Index Standard Score was 98, in the Average category, while his Visual Spatial, Fluid Reasoning, Working Memory and Processing Speed Standardized Scores ranged from 53 to 64, all in the Extremely Low category. (Exhibit B 41)

21. On the Comprehensive Executive Functioning Inventory (CEFI), the Student's Meliora Teacher rated him in the Average category in Attention, Emotional Regulation, Flexibility, Inhibitory Control, Initiation, Planning, Self-Monitoring and Working Memory, with a Low Average in Organization. The Meliora Teacher's ratings produced an overall Full Scale Score for Executive Functioning of 97, or Average. Notably, the Student's parent rated him a starkly different Well Below Average in all areas of the CEFI. (Exhibit B 41)

22. On the Social Responsiveness Scale, 2d Edition (SRS-2), data provided by the Student’s Meliora Teacher produced Average ratings for Social Awareness, Social Cognition, Social Communication, Social Motivation, Social Communication and Interaction Domain, and a Mild score for Restricted Interests and Repetitive Behavior with a Total Score of Average. By contrast, data provided by the Student’s parent produced ratings of Severe in all categories except Social Motivation, which was Moderate. (Exhibit B 41)

23. Similarly, on the Adaptive Behavior Assessment System, 3d Edition (ABAS-3), the Student’s Meliora Teacher rated him significantly higher, with a General Adaptive Composite of 78, or Low, while the Parent’s data provided a General Adaptive Composite of 48, or Extremely Low. (Exhibit B 41)

24. The Student’s academic achievement was assessed using the Weschler Individual Achievement Test, 3rd Edition (WIAT III). His scores on this assessment are summarized below:

Listening Comprehension	Low
Early Reading Skills	Below Average
Reading Comprehension	Below Average
Math Problem Solving	Low
Word Reading	Average
Pseudoword Decoding	Average
Numerical Operations	Below Average
Oral Expression	Below Average
Oral Reading Fluency	Below Average
Spelling	Below Average
Math Fluency – Addition	Low
Math Fluency – Subtraction	Low

(Exhibit B 27)

25. The Board also presented a Speech and Language Evaluation Report to the PPT on January 30, 2019. (Exhibit B 40) The speech and language assessment included administration of the Comprehensive Assessment of Spoken Language-Second Edition (CASL-2), a standardized measurement of oral language ability. On the CASL-2, the Student earned Standard Scores of Below Average on the General Language Ability Index, the Receptive Language Index and the Expressive Language Index. (Exhibit B 40)

26. In addition, the speech and language assessment relied on the Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5) to measure the Student’s basic language abilities. On this measurement as well, Student earned Standard Scores of Below Average on the Core Language, Receptive Language, Expressive Language, Language Content and Language Structure Indexes. (Exhibit B 40)

27. The Board also conducted a physical therapy evaluation. The Bruininks-Oseretsky Test of Motor Proficiency, 2d Edition (BOT-2) demonstrated that the Student’s Upper Limb

Coordination and Balance are Below Average while his Upper-Limb Coordination is Average. Assessment of the Student's physical strength revealed an Average score for running speed and agility, but a Well Below Average score for overall strength. He uses an orthotic back brace due to decreased core strength and has low muscle tone and limited range of motion of his joints. (Exhibit B 26)

28. An occupational therapy evaluation was also performed and reported as part of the multidisciplinary evaluation. On the Beery-Buktenika Developmental Test of Visual Motor, the Student was shown to have Below Average skills in Visual Motor Integration, Visual Perception and Motor Coordination. Results of BOT-2 sections for Fine Motor Control and Manual Dexterity were Well Below Average. (Exhibit B 28)

29. A Behavioral Consultation Summary performed by the Capitol Region Education Council was also presented at the 2019 PPT. This summary noted that the Student's Meliora team uses a token reward system to maintain his focus and keep him on task using two minute intervals, but that the Student's high levels of engagement were more related to genuine interest in his instruction than the reward system. At that time, the Student's interfering behaviors were occurring at a very low level. (Exhibit B 43)

30. A report of the Student's feeding program revealed that although the Student continued to experience reduced oral muscle tone and impaired oral motor skills, he was making good progress in his oral intake, calories per meal and overall acceptance of food by mouth. (Exhibit B 29) Significantly, the Student does not experience choking, gagging, aspiration or other adverse effects of feeding at school. (T Hoskins; T Guilmette)

31. The assessments performed by the Board Education as part of the multidisciplinary evaluation were conducted by staff unfamiliar to the Student. In each case, however, evaluators were able to establish rapport with the Student, and the Student was able to work cooperatively and diligently to complete the tasks asked of him. (Exhibit B 26; Exhibit B 27; Exhibit B 28; Exhibit B 40; Exhibit B 41)

32. Although Meliora staff members were surprised by a few assessment results, they do not question the legitimacy, accuracy or integrity of the assessments performed by the Board of Education. (T Guilmette; T Caruso; T Bergenty)

33. Also, as part of the multidisciplinary evaluation, the Student's educational team at Meliora Academy administered the Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP). The VB-MAPP is an assessment tool focused on language and social skill development for children with autism spectrum disorders and other developmental disabilities through age 4. (Exhibit B 37)

34. On the Milestones Assessment portion of the VB-MAPP, the data demonstrated that the Student has acquired language and social skills during his matriculation at Meliora Academy, based on comparison with a baseline assessment. The Barriers Assessment portion of the VB-MAPP revealed that the Student is not exhibiting behaviors that require intervention and that he

does not demonstrate any notable barriers to learning and participating in a more traditional educational setting at this time. (Exhibit B 37)

35. The Transition Assessment of the VB-MAPP determines if a child has acquired the necessary skills to be educated in a less restricted educational environment. The data demonstrated that while the Student will still require direct instruction and other supports, he is ready to start to experience more advanced academic and social programming in a less restrictive educational environment. (Exhibit B 37)

36. The Student's Meliora teacher and Meliora's Chief Administrator both agree that the Student is ready to be educated in an environment that is more traditional and less restrictive. (T Caruso; T Guilmette)

37. Finally, the Student's instructors and service providers reported that he was making at least adequate progress in all areas of his program and on all of his goals and objectives in his program at Meliora Academy as of January 30, 2019. (Exhibit B 38)

38. Using the multidisciplinary evaluation and other reports presented at the January 30, 2019 meeting, the Student's PPT developed an Individualized Education Program (IEP) for the second half of the 2018-2019 School Year (February 27, 2019 through June 10, 2019) (2019 IEP). (Exhibit B 46)

39. The 2019 IEP identified the Student's current levels of performance in the Present Levels of Academic Achievement and Functional Performance section. In addition, the PPT identified the following as the areas of "Concerns/Challenges/Needs" requiring specialized instruction and related services:

Academic/Cognitive: Language Arts: Inferential understanding of text, decoding unfamiliar words, tracking text with 1:1 correspondence, sustaining effort to reading tasks, fluency, writing stamina and letter formation, writing words.

Academic/Cognitive: Math: solving addition with sums greater than 5, single digit subtraction problems, counting past 50, strategies for problem solving, consistent identification of coins and values, writing and forming numbers, identifying numbers greater than 50, time concepts.

Behavioral/Social/Emotional: Student will interact with unknown adults. Other safety concerns are the lack of ability to recall details of an event as well as beginning to understand appropriate boundaries. Also, although Student's safe behaviors during feeding have increased, he still requires having continuous reinforcement. The goals are to fade the reinforcement in the upcoming school year.

Communication: Oral and/or Written Language: Student lacks attention/persistence to tasks, which often limits his progress in therapy. His language is often vague and non-specific. He has difficulty answering many

questions with logical responses and requires maximum support to develop appropriate responses.

Health and Development – Including Vision and Hearing: Student receives one G-tube feeding during school day and has an individual health care plan.¹

Fine and Gross Motor: Visual motor skills, fine motor coordination, hand strength, functional writing and material manipulation. Single limb stance, bilateral coordination, catching and throwing with a small ball. Strength well below average. Decreased core strength impacting postural control. Unable to assume a prone extension position even with legs remaining on the ground. Decreased leg strength 2+ to 3+/5 except knee extension 4/5 impacting endurance, gross motor skills, balance and interaction with peers. Appears to have challenges with motor planning and directionality.

Activities of Daily Living: Limited thorough handwashing, hygiene, dressing, fasteners, arrival/pack up routine and feeding

(Exhibit B 46)

40. The 2019 IEP also provided a set of Annual Goals and Objectives that targeted each of the Concerns/Challenges/Needs identified in the Present Levels of Academic Achievement and Functional Performance section of the 2019 IEP. (Exhibit B 46) These goals and objectives are set forth in the attached Addendum.

41. The Annual Goals and Objectives of the 2019 IEP target the same learning areas as those of the 2018 IEP. Although some language was changed and some objectives were combined or restated, the 2019 IEP reflects consistency and continuity in carrying out the goals and objectives of the Student's 2018 IEP.² (Exhibit B 46; Exhibit B 23; T Caruso)

42. The 2019 IEP also included a set of Program Accommodations and Modifications to be provided in all sites and activities. These included accommodations and modifications in the categories of Materials/Books/Equipment, Tests/Quizzes/Assessments, Grading, Organization, Behavior Interventions and Support, Instructional Strategies, and Other. (Exhibit B 46) Again, these Program Accommodations and Modifications were virtually identical to those contained in the 2018 IEP. (Exhibit B 23)

¹ This information is included in the 2019 IEP as a description of present levels of performance section.

² The modest differences between the goals and objectives of the 2018 IEP, which the Student's parents highly endorse, and the 2019 IEP reflect a difference in style of instruction and style of expression. The author of the 2018 academic goals and objectives prefers to break down the steps of instruction and write her objectives differently than does the author of the 2019 IEP academic goals and objectives. (T Caruso)

43. Among the most significant of these Program Accommodations and Modifications are Behavior Interventions and Support of an adaptive work space, clear work area, minimizing transitions and reduction of auditory or visual stimulation. (Exhibit B 46)

44. In addition, the Student’s Program Accommodations and Modifications included, under the category of Other, a specific feeding plan with 5 minute “warm up” prior to feeds, G-Tube feedings, a sterile environment, and paraprofessional support for all areas of the day. (Exhibit B 46)

45. The 2019 IEP sets forth a set of special education and related services to be provided to implement the Goals and Objectives and meet the Student’s Concerns/Challenges/Needs as follows:

Reading instruction (implemented by teacher and tutor)	300 minutes/week	Flexible instruction delivery, depending on student need
Mathematics instruction (implemented by teacher and tutor)	300 minutes/week	Flexible instruction delivery, depending on student need
Writing instruction (implemented by teacher and tutor)	220 minutes/week	Flexible instruction delivery, depending on student need
Academic/Behavioral Support (implemented by teacher and provider)	290 minutes/week	Flexible instruction delivery, depending on student need
Physical Therapy (implemented by PT)	90 minutes per week	Small group/individual instruction
Speech/Language instruction for feeding (implemented by OT)	450 minutes per week	Individual instruction
Occupational Therapy (implemented by OT)	90 minutes per week	Individual instruction
Speech/Language instruction for oral motor (implemented by OT)	150 minutes per week	Individual instruction

Speech/Language instruction for communication (implemented by SLP)	90 minutes per week	Small group/individual instruction
Counseling (implemented by school psychologist and teacher)	45 minutes per week	Flexible delivery mode, depending on student need

(Exhibit B 46)

46. The 2019 IEP included the same mix of instructional and related services as did the 2018 IEP, with somewhat less time devoted to academic instruction in order to provide more time per week for feeding and oral motor therapy. (Exhibit B 46; Exhibit B 23) This sacrifice of academic instruction in favor of feeding and oral motor therapy was suggested by the Meliora Staff and accepted by the Board of Education even against the preference of its own feeding consultant. (T Hoskins)

47. The 2019 IEP offered a total of 6.75 hours (405 minutes) per school day over five days per week of specialized instruction and related services. (Exhibit B 46)

48. Notably, the 2019 IEP offered the same number of hours of service per school day (6.75 hours) over the same five days per week as provided in the 2018 IEP. (Exhibit B 23)

49. The Student’s Annual Goals and Objectives, Modifications and Accommodations, instructional services and related services appropriately targeted each of the areas of Concerns/Challenges/Needs identified in the Present Levels of Performance section of the 2019 IEP. In addition, these services, goals and objectives and modifications and accommodations were reasonably calculated to enable the Student to receive educational benefit and progress in his program. (Exhibit B 23; T Kelley; T Russell)

50. The 2019 IEP was to be implemented at the Board of Education’s PRIDE Program (PRIDE). PRIDE a self-contained special education program that is housed at the Board of Education’s Nayaug School. Nayaug School also serves a population of about 500 mainstream students. (T Exhibit B 46; T Kelley, T Russell; T Argens)

51. PRIDE is a small, highly structured and individualized program for students in Grades Kindergarten through Five who experience autism or related disabilities. (T Kelley, T Russell; T Argens)

52. PRIDE consists of two classrooms connected by a sensory room. It has its own restroom and separate entrance, so that students need not enter or use any part of the larger school environment unless dictated by their individual needs. (T Kelley; T Argens; T Russell)

53. PRIDE currently serves ten students, eight of which work with one teacher and are based in the larger of the classrooms while the other two work with the other teacher and are based in the second classroom. The second teacher also has other responsibilities outside of PRIDE. The Student was to become part of the larger class group of about eight students. (T Argens; T Kelley)

54. Most of the eight students in the larger group spend as much as 80% of their time in the mainstream environment of Nayaug School. As a result, there are typically only a few students in the larger classroom at any one time. The larger classroom includes five cubicles, or individual work spaces with partitions, where students can work with a teacher, paraprofessional or service provider in a quiet, distraction free environment. Each student has a one to one paraprofessional to support academic, therapeutic and behavioral needs as necessary. (T Argens; T Kelley)

55. PRIDE is staffed with a transdisciplinary team consisting of the two highly experienced teachers, an occupational therapist, a physical therapist, a speech and language therapist, a board certified behavior analyst, a school psychologist and one to one paraprofessionals for each student. The team meets frequently to review data collected each day and to collaborate on student needs. (T Argens; T Kelley; T Russell)

56. PRIDE's occupational therapist and speech language therapist are trained and experienced in oral motor therapy and feeding. (T Kelley) In addition, the Board of Education hired a feeding consultant to consult with the Student's feeding team, consisting of the speech language therapist, occupational therapist and paraprofessional. (Exhibit B 42; T Hoskins). The team developed a preliminary feeding plan for the Student. (Exhibit B 42)

57. PRIDE operates between 8:40 a.m. and 3:25 p.m. five days per week, except on Wednesdays from September through December and March through June, when staff are released two hours early for staff professional development. (T Kelley; T Russell; T Argens) Due to the inflexibility of the software program used to produce IEPs (including the 2018 IEP), the 2019 IEP does not reflect a two hour (120 minute) recess each week for professional development, but instead contemplates that a full 405 minutes of service will be provided each day of the school week. (B 46; T Russell)

58. Since it is housed in a mainstream school, PRIDE offers many opportunities for students to participate with non-disabled peers. (T Kelley; T Russell; T Argens)

59. The Student's parents disagreed with the proposal to educate the Student at PRIDE. They provided the PPT with three letters from the Student's physicians recommending that his placement be continued at Meliora Academy. (Exhibit B 46; Exhibit B 35; Exhibit B 39; Exhibit B 45) The PPT accepted and reviewed these letters, even though none of the authors had visited PRIDE and none revealed knowledge of the 2019 IEP. (Exhibit B 46; T Russell; T Onyrimba) One of these physicians, in fact, incorrectly believed that the Board of Education was proposing to transfer the Student to a mainstream program. (T Onyrimba)

60. None of the physician letters submitted for the January 30, 2019 PPT meeting stated a fact based objection to placement at PRIDE. None stated that the Student requires a private classroom or that he is too immune deficient to attend public school. (Exhibit B 35; Exhibit B 39; Exhibit B 45) Moreover, one of these authors, Dr. Onyrimba, previously recommended a class size for the Student of six as a means to limit exposure to illness. (Exhibit P 7) Another author, Dr. Roberts, earlier recommended that the Student should be educated in a small classroom of no more than 10 to 15 children. (Exhibit B 2)

61. Although the letters were considered by the PPT, the parents' objection to PRIDE did not prevail. (T Kelley; T Argens; Exhibit B 46) The 2019 PPT discussed that a transition to PRIDE would take place after the April vacation, allowing time to plan transition activities in cooperation with Meliora staff and PRIDE staff at a subsequent PPT meeting. In addition, the Student's parents were invited to tour the PRIDE Program, which they did. (Exhibit B 46; T Kelley)

62. At the conclusion of the meeting on January 30, 2019, the Student's attorney announced that the Student objected to the proposed PRIDE placement, and that the Student would file a request for due process. (Exhibit B 46)

63. Although a second PPT meeting was planned to discuss transition activities, the Student's parents did not attend. No further steps were taken to plan a transition because the Student announced his intention to request due process. (Exhibit B 46; T Russell)

64. This request for due process followed on April 10, 2019. (Exhibit HO 1) In the request for due process, the Student seeks the remedy of placement at Meliora Academy. (Id.) The Student's "Stay Put" program at Meliora Academy pursuant to the 2018 IEP was thereafter continued through the remainder of the 2018-2019 School Year and to the present day.

65. At Meliora Academy, the Student belongs to a team of seven students of his general age group under the supervision of a special education teacher. He receives most of his instruction and related services in his own private classroom, but occasionally accesses the adjoining service room and other areas of the school, including the hallway and gym, where he is in the company of many other students. (T Bergenty; T Caruso; T Guilmette).

66. At least a few times each week, the Student participates with as many as six peers from his team for group activities or instruction in the Student's private classroom or the team classroom. (T Caruso) Since Meliora Academy only serves disabled students, he does not have access to nondisabled peers. (Exhibit B 23; T Guilmette)

67. The Student's private classroom arrangement was unilaterally abandoned between August 30, 2018 and October 17, 2018, when the Student was placed in a group classroom with two other students from his team. (Exhibit P 44; T Caruso; T Guilmette) Although this transition also involved a new teacher (who was later let go due to poor performance),

neither the Student's behavior nor his academic performance was negatively affected by his assignment to the group classroom. (T Guilmette; Exhibit B 30; Exhibit B 31)

68. The Student was returned to a private classroom because his parents expressed concern for his health due to exposure to other children. (Exhibit P 44) In fact, however, the Student's health, as reflected by his attendance, was not impacted by the change to a shared classroom. During the time he was in the group classroom, the Student was absent on two non-consecutive days in September 2018 and on two non-consecutive days in October 2018, a frequency consistent with his historic rate of absence during the 2018-2019 School Year as a whole. (Exhibit B 71)

69. Meliora Academy developed and implemented a Health Plan for the Student to address his cardiac and gastrostomy needs: (Exhibit B 6) The Health Plan sets forth various common sense steps that Meliora Academy implemented to protect against transmission of respiratory illness as follows:

- Staff working with [Student] will adhere to standard infection control practice – educate staff/students on purpose and technique of handwashing and respiratory hygiene (cough into elbow or tissue)
- Avoid unnecessary exposure to persons exhibiting [signs or symptoms] of illness; Staff - consult with nurse and supervisor if [signs or symptoms] of illness are present, reassignment may be necessary
- Students – as per school policy any student presenting with [signs or symptoms] of illness will be evaluated by the school nurse
- Class locations/schedule/activities may need to be temporarily adjusted to maintain [Student's] health and safety.

(Exhibit B 6)

70. The Meliora Health Plan was developed by Meliora's school nurse and is not part of the 2018 IEP. Both the 2018 and 2019 IEP's, however, include "sterile environment" as part of Program Accommodations and Modifications. (Exhibit B 46; Exhibit B 23)

71. Significantly, the Board of Education committed that it could and would follow precisely the same protocols for disease control and respiratory hygiene at PRIDE as set forth in Meliora Health Plan. (T Argens; T Kelley; T Russell; Exhibit B 46)

72. A school nurse serves PRIDE and is available to assist PRIDE staff with health education and respiratory hygiene, as well as to assess students and staff members who exhibit signs or symptoms of illness so that those who might be contagious can be excluded or segregated. (T Megson; T Argens) PRIDE regularly sanitizes all surfaces, and the floors and hallways of Nayaug School are disinfected daily. (T Argens; T Kelley)

73. The small, structured and self-contained nature of PRIDE renders the program capable of effectively implementing appropriate protocols for disease control and

respiratory hygiene, including those contained in the Meliora Health Plan. (T Argens; T Kelley; T Russell)

CONCLUSIONS OF LAW AND DISCUSSION:

Overview

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA) 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). *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982) (*Rowley*).
2. In *Rowley*, the United States Supreme Court set out a two-part test for determining whether a local board of education has offered FAPE in compliance with IDEA. The first part of the test is whether there has been compliance with the procedural requirements of IDEA. The second part is whether the student's IEP is reasonably calculated to enable the student to receive educational benefit in light of the student's individual circumstances. *Id.* at 206-207. *See also, Andrew F. v. Douglas City School District*, 580 U.S. ___, ___ (2017); *Cerra v. Pawling Cent. Sch. Dist.* 427 F.3d 186, 191 (2d Cir. 2005); *M.S. v. Board of Education of the City School District of the City of Yonkers*, 231 F.3d 96, 103 (2d Cir. 2000).
3. Significantly, IDEA also demands that each student's program be implemented in the least restrictive environment, so that children with disabilities are educated in integrated settings with non-disabled peers "[t]o the maximum extent appropriate." 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).
4. The sufficiency of an IEP under IDEA 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 Board of Education*, 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.*
5. The Board of Education had the burden to prove by a preponderance of the evidence that the IEP it offered to the Student was both substantively appropriate and in compliance with IDEA's procedural requirements. Regulations of Connecticut State Agencies (R.S.C.A.) Section 10-76h-14(a); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).
6. The first prong of the *Rowley* inquiry, whether the Board of Education complied with IDEA's procedural mandates, is a critical one. As the Supreme Court said in *Rowley*, Congress based IDEA on the "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 substantive content in an IEP." *Rowley* at 206. The procedural requirements of IDEA are designed to guarantee that the education of each student with a disability is individually tailored to meet that student's unique needs and abilities and to safeguard against arbitrary or erroneous decision-making. 20 U.S.C. Sections 1412(1) and 1415(a)-(e); *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1039, and 1041 (5th Cir. 1989).

7. From a procedural standpoint, each IEP must include: (a) a statement of the student's present level of performance in each area of disability as determined through periodic assessments; (b) a statement of measurable annual goals, including academic and functional goals, that are designed to meet each of the student's educational needs resulting from the disability; and (c) a statement of the special education and related services to be provided in order to enable the student to attain his or her goals and to progress in the general education curriculum. 20 U.S.C. Section 1414(d)(1)(A); 34 C.F.R. Section 300.320.

8. Not every procedural violation of IDEA is sufficient to support a finding that a student was denied FAPE, however. 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 student did not receive a FAPE only if the procedural violation did one of the following: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. 34 C.F.R. Section 300.513(a)(2); *L.M. v. Capistrano Unified School District*, 556 F.3d 900, 909 (9th Cir. 2008).

Procedure

9. The evidence presented here established that the Board of Education did fulfill its procedural obligations under IDEA with regard to the 2019 IEP. The Board of Education conducted a comprehensive multidisciplinary evaluation in the Fall of 2018 addressing each area of the Student's disability. Using the results of the multidisciplinary evaluation as well as observations of the Student and review of progress in his then ongoing program, the PPT developed a statement of Present Levels of Academic Achievement and Functional Performance for each area of his disability.

10. In addition, the PPT developed an IEP that included specialized instruction, related services, measurable annual goals and objectives and program accommodations and modifications that were designed to meet each of the Student's educational needs. In fact, the instructional services, goals and objectives and program accommodations and modifications set forth in the 2019 IEP are virtually identical to those of the 2018 IEP, which the Student's parents endorse as appropriate.

11. The evidence also demonstrated that the Student's parents attended the PPT meetings involved in developing the 2019 IEP and were represented by counsel. The parents participated in the process and their views were taken into account. Letters the parents procured from the Student's medical team recommending that he remain at Meliora Academy were reviewed and received as part of the record.

12. It was reasonable for the Student's PPT and the Board of Education to disagree with the conclusory claims of these physicians who were not informed about the proposed placement and who presumably had no educational expertise. Indeed, none of the physician letters provided by the parents actually recommended that the Student be educated in a private classroom or stated that he is medically unable to attend a public school. To the contrary, in other letters, the Student's physicians uniformly recommended a small, structured program with a classroom of up to six and even as many as fifteen students, entirely consistent with the 2019 IEP.

13. The fact that the Student's parents' position did not prevail does not establish that they were denied a meaningful opportunity to participate in the placement discussion or that their input was not considered. *Luo v. Baldwin Union Free School District*, 67 I.D.E.L.R. 15 (E.D.N.Y. 2016) *aff'd* 69 IDELR 88 (2d Cir. 2017). In the absence of a consensus among PPT members, as in this case, the Board of Education was responsible for the choice of a special education placement, not the parents. *Letter to Richards*, 55 I.D.E.L.R. 107 (January 7, 2010).

14. Nor did the evidence suggest that the Board of Education predetermined the PRIDE placement outside of the PPT process. Instead, the Board of Education conducted a multidisciplinary evaluation to study the Student. It maintained the Student at his parents' preferred school for six months while that evaluation was performed. The evaluation results demonstrated that the Student's needs can be met in a less restrictive public school setting within the Student's community. The Student's private school teacher and administrator agreed that the Student can be educated in a less restrictive setting.

15. The fact that the Board of Education retained the services of a feeding specialist is not evidence of predetermination. The Board of Education engaged a feeding specialist to assist in the process of planning to meet the Student's needs at a public school. This reflected a careful, conscientious exploration of the placement issue.

16. The Student's suggestion that the Board of Education committed a procedural violation by removing "areas of need" and eliminating objectives from his program without a factual basis to do so is belied by the record. The evidence was clear that the 2019 IEP addresses precisely the same areas of need as did the 2018 IEP. In addition, the 2019 IEP provides the same services at the same levels as did the 2018 IEP with the sole exception of substituting some oral motor therapy for some academic support at the recommendation of Meliora Academy staff.

17. While it is true that the 2019 IEP includes slightly fewer objectives than did the 2018 IEP, these revisions were not procedurally inappropriate. Minor changes in the wording of objectives primarily reflected differences in the style of expression and instructional techniques preferred by the staff involved rather than a change in direction for the services.

18. Nor is the Student's claim that the goals and objectives of the 2019 IEP were not measurable supported by the evidence. In this regard, the Student points to Goal 14 of the 2019 IEP for Gross/Fine Motor. He argues that a change of evaluation procedure for Goal 14, from "data collection" to "clinical observations" in the 2019 IEP, violates the IDEA procedural requirement that goals and objectives be "measurable". This argument clearly fails when one examines the 2019 IEP objectives for Goal 14.

19. Objective No. 1, for instance, states: "[Student] will assume a hands and knees position, raise his opposite arm and leg and hold for a count of 3 repeating 3 times on each side, as a measure of improved core strength." Transparently, "clinical observation" of the student raising his arm and leg is sufficient to empirically assess progress on this very measurable objective. Substitution of the term "clinical observation" for "data collection" did not render the objectives unmeasurable and does not represent a procedural violation of IDEA.

20. Finally, the Student claims a procedural violation under IDEA because the Board of

Education cannot provide the amount of service time stipulated in the 2019 IEP in light of its professional development schedule. Due to the inflexibility of the software program the Board of Education uses to produce IEPs (including the 2018 IEP), the 2019 IEP does not reflect a two hour (120 minute) recess for professional development during much of the school year.

21. This anomaly does not, however, establish a procedural violation under IDEA in this case. The 2019 IEP was never actually implemented, so the evidence does not show that the full 6.75 hours of service stipulated in the IEP were not provided each week. Under the circumstance, it would be speculative to conclude that the Board of Education would not or could not have implemented the 2019 IEP as written, with the full amount of service time offered if not for this due process filing.

22. It was presumably in the Board of Education's power to fully implement the IEP. It might, for instance, have excused a service provider from professional development on a rotating basis to service the Student on Wednesday afternoons. It might have extended the Student's school day on other days of the week or provided service during a school vacation. Speculation that a school district will not implement an IEP is not sufficient to conclude that an IEP does not offer FAPE. *M.O. v. New York City Department of Education*, 793 F.3d 236, 244 (2d Cir. 2015); *J.M. v. New York City Department of Education*, 171 F.Supp.3d 236, 251-53 (S.D.N.Y. 2016).

23. Moreover, it is not clear that a failure of the Board of Education to adhere strictly to the service hour provision of the 2019 IEP would establish a violation of IDEA even if it did occur. A two hour early recess for professional development on approximately thirty out of thirty-six school weeks, would represent only about 5% of service time over an entire school year. Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 821 (9th Cir. 2007). In order for a failure to implement an IEP to amount to a violation of IDEA, the failure must be material. *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n 3 (8th Cir. 2003); *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

24. Finally, in order for a procedural violation of IDEA to amount to a deprivation of FAPE, the violation must either impede the right to FAPE, significantly impede the parents' opportunity to participate in the process, or deprive the student of educational benefits. 34 C.F.R. Section 300.513(a)(2); *L.M. v. Capistrano Unified School District*, 556 F.3d 900, 909 (9th Cir. 2008). In this case, the evidence showed that there was no significant impact on the Student's parents' participation in the IEP process or the Student's educational benefits.

25. In summary, the evidence demonstrated that the Board of Education fulfilled its procedural obligations under IDEA when it developed the 2019 IEP for the Student, satisfying the first prong of FAPE.

Substance

26. The second inquiry under *Rowley* is whether the Student's IEP satisfied IDEA's substantive requirement that it be reasonably calculated to allow the Student to make appropriate progress in light of his individual circumstances, and that it be delivered in the least restrictive environment to the maximum extent appropriate. *Rowley* at 206-207; *Andrew F. v. Douglas City School District*, 580 U.S. __, __ (2017); *T.M. v. Cornwall Central School District*, 752 F.3d 145, 161 (2d Cir. 2014).

27. FAPE under the IDEA does not implicate a "potential-maximizing education." *Rowley* at p. 197, n. 21. Instead, the IEP must be one that "confers some educational benefit upon the handicapped child." *Id.* at p. 200. "[T]he question is whether the IEP is reasonable", not whether it is ideal. *Andrew F. v. Douglas City School District*, 580 U.S. __, __ (2017).

28. "Courts have looked to a number of factors to indicate whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA, including, inter alia, (1) whether the program is individualized on the basis of the student's assessment and performance; and (2) whether the program is administered in the least restrictive environment." *M.C. ex rel. Mrs. C. v. Voluntown Board of Education*, 122 F.Supp.2d 289, 292 n. 6 (D. Conn. 2000).

29. The evidence in this case established that the 2019 IEP was reasonably calculated to allow the Student to make appropriate progress in light of his individual circumstances, including his medical needs. The instructional and related services, accommodations and modifications and goals and objectives offered in the 2019 IEP were all highly individualized on the basis of recent evaluations of the Student's levels of performance and needs in each area of disability.

30. Indeed, the 2019 IEP is nearly identical to the 2018 IEP which the Student's parents endorse. In fact, the only significant difference between the two IEP's is that the 2019 IEP was proposed to be delivered in a less restrictive environment than the 2018 IEP: a public school in the Student's home community of Glastonbury, while the 2018 IEP was provided in a private school serving only disabled students an hour's van ride away.

31. While the 2019 IEP does not afford the Student access to nondisabled peers, its location in a public school in his community make it "less restrictive" than the private school setting in another town. IDEA requires that, when possible, students should be educated in the school they would have attended if not disabled and as close to their home as possible. 34 C.F.R. Section 300.116(d). Connecticut generally prohibits transporting special education students to schools that are more than one hour's drive away from their home. R.C.S.A., Section 10-76d-19. Moreover, PRIDE's location on a mainstream school campus will greatly facilitate introduction of opportunities for the Student to participate with nondisabled peers in the future.

32. Significantly, the Student's health would not be unreasonably threatened by attendance in the less restrictive environment of PRIDE. Like Meliora Academy, PRIDE uses reasonable infection control protocols to protect all of its students and staff from contagious pathogens. It disinfects classrooms, hallways and other facilities at least daily. It regularly sanitizes surfaces and encourages students and staff to wash their hands frequently and cough or sneeze into their sleeve. PRIDE excludes or segregates staff and students who are contagious and has a school

nurse on hand to evaluate those who exhibit signs and symptoms of illness or who are suspected to be contagious.

33. The Student would not be exposed to significantly more infectious pathogens or more potentially contagious students or staff members at PRIDE than he is at Meliora Academy. At PRIDE, the Student would be exposed to approximately the same number of staff members providing him with services as he was at Meliora Academy – teacher, paraprofessional, nurse, occupational therapist, physical therapist, and speech and language therapist. He would also have about the same number of peers in his team or classroom group - seven at PRIDE and six at Meliora Academy.

34. The small size and structure of PRIDE renders screening of students and staff for possible contagion, as well as separation of the Student from those who are suspected of being contagious roughly as feasible as at Meliora Academy. While at Meliora Academy, the Student has a private classroom, he would have a private workspace with dividers at PRIDE. At PRIDE, the Student would use a separate school entrance, therapy room and restroom available only to the ten students and staff of PRIDE. At Meliora, he shares an entrance, hallways and gym with 50 students. At Meliora, he must be transported in a van with other students for two hours each day.

35. The Student’s experience of good health and good attendance can continue at PRIDE, where he can also have the advantage of matriculating at a public school in his own community and eventually participating with nondisabled peers.

36. The Student also argues that the 2019 IEP was not calculated to produce educational progress because, due to his distractibility, the Student requires a private classroom to learn. Yet, the 2018 IEP which the Student endorses, does not provide a private classroom.

37. None of the Student’s medical team recommended a private classroom for the Student due to distractibility. Moreover, the Student’s PPT has provided an array of supports and services that are reasonably calculated to address his needs in this area. These include a one to one paraprofessional, a behavior plan, a “clear work area” and “reduction of auditory or visual stimulation” as well as a small structured learning environment to address his distractibility.

38. The PPT’s conclusion that the Student is ready for a more traditional, less restrictive setting is supported by the findings of the multidisciplinary evaluation as well as the opinions of his Meliora teacher and administrator. At the same time, the PPT’s calculation that PRIDE’s divided private workspace in a classroom with few other participants and limited distractions will afford the Student access to educational benefit is reasonable and supported by the evidence.

39. PRIDE also satisfies IDEA’s demand that, to the maximum extent appropriate, students with disabilities should be educated with children who are not disabled in the “least restrictive environment”. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).

40. Having concluded that the 2019 IEP offered the Student a Free Appropriate Public Education from both a procedural and a substantive point of view, it is not necessary to address

the question whether Meliora Academy is an appropriate placement or whether the Student should be placed at Meliora Academy.

2019-2020 School Year

41. Finally, an issue has arisen whether the scope of this hearing should include the Student's placement for the 2019-2020 School Year. The request for due process filed on April 10, 2019 addressed only the Student's challenge to the appropriateness of the 2019 IEP, which expired at the end of the 2018-2019 School Year.

42. The Impartial Hearing Officer unilaterally included consideration of the 2019-2020 School Year in her description of issues in a Memorandum and Orders dated May 10, 2019 (Exhibit HO 3). The Board of Education pointed out this problem at the first evidentiary hearing on June 28, 2019 and took the position that the issue should be limited to the 2018-2019 School Year as written in the 2019 IEP. The Student argued that the 2019-2020 School Year should also be included in the case. The controversy was deferred to this stage of the case.

43. As it happened, the evidentiary portion of this case was not completed until February 12, 2020, after most of the 2019-2020 School Year was already over. Then, on March 15, 2020, all public schools in Connecticut were closed by the Governor's Executive Order 7C due to a global pandemic. Currently, public schools are scheduled to remain closed through May 20, 2020 (Executive Order 7X). Accordingly, it is now clear that there will be at most only a very few days of the 2019-2020 School Year remaining after this Final Decision is issued. As of today, therefore, the question of the Student's program for the 2019-2020 School Year would be virtually moot even if it were included in this case.

44. In addition, as the Board of Education points out, the scope of this due process hearing cannot be stretched to include the 2019-2020 School Year. Jurisdiction was invoked by a due process request submitted on April 10, 2019 challenging only the 2019 IEP, which by its terms expired with the conclusion of the 2018-2019 School Year. Absent an agreement of the parties, only issues that are raised in the request for due process may be addressed in the hearing. 20 U.S.C. Section 1415(f)(3)(B); 34 C.F.R. Section 300.511(d). In this case, there is no agreement of the parties to address the 2019-2020 School Year as part of this case. Accordingly, the 2019-2020 School Year is not part of this case and is not addressed in this Final Decision and Order.

FINAL DECISION AND ORDER:

The Board of Education offered the Student a Free Appropriate Public Education from January 30, 2019 for the remainder of the 2018-2019 School Year.

April 21, 2020

Final Decision and Order 19-0463

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Addendum

2019 IEP Goals and Objectives

Academic/Cognitive

Goal No. 1:

[Student] will improve his reading comprehension skills as evidenced by mastery of the following objectives:

Objective # 1 Given text read aloud to him at his instructional level, [Student] will use a full sentence to answer at least 3 “Wh” questions in 4/5 given opportunities.

Objective # 2. Given text read aloud to him at his instructional level [Student] will orally identify story elements of character, setting, problem, and resolution in 4/ opportunities.

Objective # 3 Given text read aloud to him at his instructional level [Student] will give an oral summary of the story including at least one main idea and 3 details with adult support as necessary in 4/5 opportunities.

Objective # 4 [Student] will independently draw a picture of an identified important even in the story and dictate one sentence to go along with the picture in 4/5 opportunities.

Objective #5 Given an instructional level fiction text read aloud to him [Student] will draw one conclusion about the motivations of a character with adult assistance as necessary in 4/5 opportunities.

Goal No. 2

[Student] will improve his decoding skills and fluency for reading as evidenced by mastery of the following objectives:

Objective # 1 [Student] will increase his accuracy when tracking text at his instructional level by using highlighting strips reading finger and maskers to track with 1:1 Correspondence and 80% accuracy in 4/5 opportunities.

Objective # 2 [Student] will increase his knowledge of high frequency sight words by 50% over baseline assessments.

Objective #3 [Student] will accurately identify vowel sounds in single syllable VCE words in 4/5 opportunities.

Objective # 4 [Student] will independently read words containing common digraphs in 4/5 opportunities.

Objective # 5 [Student] will independently read simple 4 and 5 word sentences at his independent decoding level with no more than 1 adult prompt in 4/5 opportunities.

Objective # 6 [Student] will recognize initial consonant blends in single syllable words in 4/5 opportunities.

Objective # 7 [Student] will independently sound out CVC words with no more than one adult prompt in 4/5 opportunities.

Objective # 8 [Student] will independently sound out CCVC words with no more than one adult prompt in 4/5 opportunities.

Objective # 9 [Student] will independently read VCE words with no more than one adult prompt in 4/5 opportunities.

Objective # 10 After sound out a word, [Student] will write a letter for each sound he hears in 4/5 opportunities.

Goal No. 3

[Student] will demonstrate an increase in conceptual knowledge about mathematics and mathematics calculation skills as evidenced by mastery of the following objectives:

Objective # 1 [Student] will use a variety of strategies to solve addition problems with sums within 20 independently in 4/5 opportunities.

Objective # 2 [Student] will use a variety of strategies to solve subtraction problems with differences within 20 independently in 4/5 opportunities.

Objective # 3 [Student] will count backwards from a given number under 50 with no more than 2 adult prompts in 4/5 opportunities.

Objective # 4 [Student] will count forward by 10 from any given number with no more than one adult prompt in 4/5 opportunities.

Objective # 5 [Student] will identify and continue number patterns moving forward by 10's, 5's, 2's and 1's in 4/5 opportunities.

Objective # 6 [Student] will demonstrate understanding of place value concepts by using base 10 blocks to construct a given number within 100 in 4/5 opportunities.

Objective # 7 [Student] will use an analogue clock to tell time to the hour, half hour, quarter past, and quarter to in 4/5 opportunities.

Objective # 8 [Student] will identify coin values and use them to add like coin values to \$1 with adult support as necessary in 4/5 opportunities.

Objective # 9 [Student] will independently identify all 7 days of the week using phrases such as “today is” “tomorrow will be” “yesterday was” in 4/5 opportunities.

Objective # 10 [Student] will identify key words and operations needed to solve simple single step word problems in 4/5 opportunities.

Communication

Goal No. 4

[Student] will improve thinking and reasoning skills within life contexts and structured lessons by mastering the following objectives:

Objective # 1 [Student] will follow 2-3 step directions in 4/5 given opportunities.

Objective # 2 [Student] will provide 2 possible categories when given an item in 4/5 given opportunities.

Objective # 3 [Student] will make predictions within a multiple event story given visual support as needed in 4/5 given opportunities.

Objective # 4 [Student] will independently identify a problem in a structured activity and state at least 2 solutions in 4/5 given opportunities.

Goal No. 5

[Student] will improve feeding skills based on meeting the following objectives:

Objective # 1 [Student] will accept 10+ bites from at least 5 new foods (each across at least 5 sessions each) within structured feeding sessions without exhibiting signs of distress (vomiting/gagging).

Objective # 2 [Student] will take bites from a soft solid using his incisors, transfer the food to the molars (premolars), masticate and swallow for mastered foods without signs of distress in 100% of opportunities.

Objective # 3 When eating mastered foods, [Student] will eat 10 bites without any iPad usage, 5 times per week.

Objective # 4 [Student] will participate in a snack with a peer without exhibiting signs of distress at least 1X per month (As per approval from GI).

Objective # 5 Within his classroom, [Student] will consume a full feed (consuming more than 225 calories) in the presence of a peer at least three times per month.

Goal No. 6

[Student] will develop improved oral motor/sensory abilities as evidenced by achievement of the following objectives:

Objective # 1 [Student] will tolerate and fully participate in a 10-15 minute pre-feeding sensory/motor routine incorporating input to his lips, cheeks, tongue, face, jaw, 4/5 opportunities.

Objective # 2 In response to his cheek being stretched with a z-vibe [Student] will suck in his cheek 5 times on each side, 4/5 opportunities.

Objective # 3 [Student] will consume liquid using straw #3 of straw hierarchy with straw block without using teeth to stabilize, 10 sips, 4/5 opportunities.

Objective # 4 [Student] will remove pureed food from a spoon using his lips, when spoon is presented sideways and perpendicular to lips, 4/5 opportunities.

Objective # 5 [Student] will fully compress bilateral red chewy tubes, 5 sets of 10, support as needed, 4/5 opportunities.

Objective # 6 [Student] will fully compress unilateral red chewy tubes, 5 sets of 10, support as needed, 4/5 opportunities.

Objective # 7 [Student] will fully compress bilateral yellow chewy tubes, 5 sets of 10, support as needed, 4/5 opportunities.

Objective # 8 [Student] will fully compress unilateral red chewy tubes, 5 sets of 10, support as needed, 4/5 opportunities.

Objective # 9 When jaw is stabilized with a #6/#7 bite block, [Student] will point tongue tip to touch fine tip z-vibe, at level of incisor, canine, and molar, both sides, 5 sets, 4/5 opportunities.

Objective # 10 When jaw is stabilized with a #6/#7 bite block, [Student] will point tongue to Cheerio being held on a fine tip z-vibe at canine, and then bite Cheerio from z-vibe at molar, both sides, 5 sets, 4/5 opportunities.

Objective # 11 Given a blue Nuk brush [Student] will take 3 successive bites (incisor, canine, molar) both sides 5 sets, 4/5 opportunities.

Objective # 12 When jaw is stabilized with a #6/#7 bite block, [Student] will point tongue to Cheerio being held on fine tip z-vibe at canine and then bite Cheerio from z-vibe at molar, both sides, 5 sets, 4/5 opportunities.

Objective # 13 [Student] will take 3 successive bites of a cube or strip of new food presented to molars both sides, 5 sets, 4/5 opportunities.

Objective # 14 When a cube-shaped piece of food is held on his molars with a fine tip z-vibe, [Student] will chew 5 successive times, for 5 foods, 4/5 opportunities.

Goal No. 7

[Student] will improve his grammar and syntax as it relates to spoken language by mastering the following objectives:

Objective # 1 [Student] will use the possessive pronouns, “his/hers” accurately within structured tasks in 4/5 given opportunities.

Objective # 2 [Student] will use age appropriate prepositions to comment and direct during structured activities in 4/5 given opportunities.

Objective # 3 [Student] will use correct irregular past verb tense within structured activities in 4/5 given opportunities.

Objective # 4 [Student] will use conjunctions to comment, and answer questions during structured activities in 4/5 given opportunities.

Goal No. 8

[Student] will improve his expressive language skills across contexts by mastering the following objectives:

Objective # 1 [Student] will answer WH questions related to an event that occurred at home or at school at least 2 hours prior to the session given faded visual supports in 4/5 given opportunities.

Objective # 2 Given a description of an item that he encounters in his daily life with at least 2 relevant details [Student] will label the item in 4/5 given opportunities.

Objective # 3 [Student] will describe items that he encounters in his daily life by providing 2 relevant details about the items in 4/5 given opportunities.

Objective # 4 [Student] will use specific, descriptive language to comment on an activity or request an item with specificity in 4/5 given opportunities.

Objective # 5 [Student] will use qualifying markers “most, more, least” to express comparisons in 4/5 given opportunities.

Objective # 6 Given pictures, [Student] will sequence four steps to a routine task, or picture story using appropriate transition words (first, then, next, last) in 4/5 given opportunities.

Social/Behavioral

Goal No. 9

[Student] will decrease his overall engagement in maladaptive behaviors:

Objective # 1 [Student] will decrease his variability across less familiar staff by engaging in non-compliance no more than 2 times his typical rate across 2 instructors and 4 out of 5 opportunities.

Goal No. 10

[Student] will increase independence with individual and cooperative play skills in the school environment:

Objective # 1 [Student] will play with a toy/set of toys as designed for up to 10 minutes independently for days in 4/5 opportunities.

Objective # 2 [Student] will play a simple age-appropriate board game with a peer taking turns as required for three-minute periods with no more than 2 adult prompts for 5 games in 4/5 opportunities.

Goal No. 11

[Student] will increase social cognition skills in the school environment:

Objective # 1 [Student] will identify, label and respond to three novel emotions in real-life, literature, and pictures with 80% accuracy.

Objective # 2 [Student] will identify gradations of basic emotions in another person across pictures, videos and real life (e.g. reading facial expressions, body movements, tone) in 4/5 opportunities.

Objective # 3 [Student] will identify what is happening in basic social situations as presented in picture or video in 4/5 opportunities.

Objective # 4 [Student] will watch another person and state their intent based on his/her actions in 4/5 opportunities.

Goal No. 12

[Student] will increase independence with following routines in the school environment:

Objective # 1 [Student] will identify the names of his different school-based activities separated by morning and afternoon, then place each on a schedule strip to assemble his daily schedule in 4/5 opportunities.

Objective # 2 [Student] will work on a manipulative-based academic task for 10 consecutive minutes with no more than 2 re-directions for 5 tasks in 4/5 opportunities.

Objective # 3 Given a picture supported task/routine for a functional, academic, social, or play-based task, [Student] will follow a 3-4 step task for 10 tasks in 4/5 opportunities.

Objective # 4 Given his schedule [Student] will independently transition to 5 school locations with staff a minimum of six feet away in 4/5 opportunities.

Goal No. 13

[Student] will increase functional routines in group settings in the school environment:

Objective # 1 Within a small group activity (2-3 students) [Student] will independently follow two-step directions without requiring individual repetition of directions in 4/5 opportunities.

Objective # 2 Within the context of a group activity [Student] will raise his hand to gain the teacher's attention to answer, ask a question, take a turn, or vote without calling out in 4/5 opportunities.

Objective # 3 Within the context of a group activity, [Student] will attend to the instructor and materials for 15-minute periods with 80% of opportunities.

Objective # 4 During group and individual instruction [Student] will wait for a direction before touching or manipulating items placed in front of him in 4/5 opportunities.

Gross/Fine Motor

Goal No. 14

[Student] will demonstrate an improvement in gross motor development, postural control, strength, endurance, motor planning and balance needed to participate in classroom and physical education type activities:

Objective # 1 [Student] will assume a hands and knees position, raise his opposite arm and leg and hold for a count of 3 repeating 3 times on each side, as a measure of improved core strength.

Objective # 2 [Student] will demonstrate the ability to complete 10 prone walk outs over a therapy ball with stabilization for the ball only as a measure of improved postural control.

Objective # 3 [Student] will imitate 4 different body positions with visual cues only demonstrating an improvement in motor planning/body in space awareness.

Objective # 4 [Student] will complete a 4 step obstacle course, which includes novel tasks, after verbal instructions and visual demonstration provided once with no other cues provided showing improvement in motor planning and gross motor skills.

Objective # 5 [Student] will walk heel/toe along an 8' line with no more than 2 times stepping off the line and no cues demonstrating an improvement in balance.

Objective # 6 [Student] will perform 3 sets of 10 consecutive squats picking up a 3 pound medicine ball from the ground and throwing it with each squat demonstrating increased core strength.

Objective # 7 [Student] will climb on higher playground equipment with min assist to supervision and verbal cues as a measure of increased strength and motor planning.

Independent Living

Goal No. 15

[Student] will develop safety skills and awareness across contexts:

Objective # 1 [Student] will respond appropriately to a stranger (i.e. not grabbing their hand, not trying to sit on their lap, not engaging in conversation with a stranger without permission) for 100% of opportunities.

Objective # 2 [Student] will accurately report others and his own complex actions (agent, action, object) with a slight time delay, up to 30 minutes, for 100 % of the time across 2 instructors and 2 settings.

Objective # 3 Upon mastery of the above skill [Student] will accurately report others and his own complex actions (agent, action, object) with a moderate time delay, up to 3 hours, for 100 % of the time across 2 instructors and 2 settings.

Objective # 4 [Student] will be able to receptively and expressively identify a “good touch” from a “bad touch” 100 % of the time across 2 instructors and 2 settings.

Goal No. 16

[Student] will demonstrate improved independence with self-care and hygiene through meeting the following objectives:

Objective # 1 [Student] will demonstrate the ability to button five ½” – 1” buttons on a shirt/jacket in 4 or 5 attempts when he is wearing the garment.

Objective # 2 [Student] will demonstrate the ability to wash his hands with a visual for sequence and thoroughness as needed in 4 of 5 attempts.

Objective # 3 Given a visual sequence for a familiar arrival and pack up routine [Student] will demonstrate the ability to complete the routine with less than 2 visual prompts in 4 or 5 attempts.

Objective # 4 [Student] will demonstrate the ability to thoroughly wipe following a bowel movement with verbal cues 100% of the time.

Objective # 5 [Student] will don and doff an overhead shirt 80% of the time when presented with the correct orientation.

Objective # 6 [Student] will clean up following lunch by wiping his table and putting his dishes in the sink with a verbal reminder to do so 80% of the time.

Objective # 7 [Student] will brush his teeth with at least an average of 70% independence based on a task analysis.

Objective # 8 [Student] will fasten and unfasten his pants independently during a functional routine 80% of the time.

Objective # 9 [Student] will self-feed using a fork and spoon at least 25% of his meal with verbal cues.

Gross/Fine Motor

Goal No. 17

[Student] will improve his visual motor skills for increased participation in curriculum through meeting the following objectives:

Objective # 1 [Student] will use a tool to pick up and put in small items 80% of the time for increased hand strength and tool use.

Objective # 2 Given a 3-4 letter word at midline [Student] will locate the letters and type the word with no more than 1 prompt in 4/5 trials.

Objective # 3 [Student] will be able to use scissors to cut at least 3 simple shapes with > 80% accuracy to the line 80% of the time.

Objective # 4 [Student] will demonstrate the ability to write his first and last name within 1" lined paper or 1" high boundary in 4/5 attempts with verbal cues.

Objective # 5 [Student] will demonstrate the ability to trace 26/26 uppercase letters of the alphabet with proper letter formation when letters are in a 1" boundary 80% of the time.

Objective # 6 [Student] will demonstrate the ability to color within a simple picture, covering greater than 80% of the surface area 80% of the time.

Objective # 7 [Student] will put 10 small beads on a string as a measure of improved bilateral coordination and fine motor skills 80% of the time.

Academic/Cognitive

Goal No. 18

[Student] will increase his ability to identify grammatically correct sentences and write simple sentences as evidenced by mastery of the following objectives:

Objective # 1 [Student] will dictate a simple sentence containing a subject and verb in 4/5 given opportunities.

Objective # 2 [Student] will edit simple sentences given to him for proper capitalization in 4/5 opportunities.

Objective # 3 [Student] will edit simple sentences given to him for proper punctuation in 4/5 opportunities.

Objective # 4 [Student] will generate ideas for writing given adult support as necessary in 4/5 opportunities.

(Exhibit B 46)