

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartland Board of Education

Appearing on Behalf of the Parent: Pro Se

Appearing on Behalf of the Board: William Connon, Esq.
Siegel, O'Connor, O'Donnell & Beck, P.C.
150 Trumbull Avenue
Hartford, CT 06103

Appearing Before: Attorney Justino Rosado, Hearing Officer

ISSUES:

1. Is the program offered by the Board for the 2005-2006 school year appropriate?
2. Is the program offered by the Board for the 2006-2007 school year appropriate?
3. Should the Board reimburse the parent for tutorial services paid by the family?
4. Should the Board reimburse the parent for medical visits paid by the parent?
5. Should the Board reimburse the parent for the behavioral therapist paid by the parent?

FINAL DECISION AND ORDER

SUMMARY:

The Student is an 11 year-old young man who has been identified as having Asperger's Disorder and classified as a student with the disability of Autism as defined in the Individuals with Disabilities Educational Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a and is entitled to receive a free and appropriate public education (FAPE). The parent accused the Board of allowing her son to be bullied in the school. This caused the student to suffer from a high anxiety and impede his ability to obtain a FAPE. The parent sent the student to a program that limited the student's school program to half day. The parent unilaterally sent the student to the Intensive Educational Academy and requested that the Board pay for the placement. The Board refused to pay for the placement.

PROCEDURAL HISTORY:

The parent requested this due process hearing in a letter dated October 2, 2006 and received by the Board on or about October 2, 2006. (Hearing Officer's Exhibit¹ -1) On or about October 27, 2006, mediation was conducted by the parties. The Board gave the hearing officer notice that a resolution of the issues was not attained at that meeting. On or about December 6, 2006, the parent's attorney e-mailed the hearing officer that she was withdrawing her appearance on this matter. The parent continued this matter Pro Se. (H.O. -2) A pre-hearing conference was held on October 16, 2006 at which time hearing dates of November 29 and December 1, 2006 were selected at the convenience of the parties. The November 29, 2006 and December 1, 2006 hearing dates were cancelled at the request of the parties and additional hearing dates were later scheduled for December 8 and 18, 2006, January 12, 19, 23, 24, 30, February 16 and March 7, 2007.

The parent called five witnesses in the direct case and one witness on rebuttal. The Board called six witnesses in their direct case and no witnesses on rebuttal. Throughout the hearing, the student was at his unilateral placement.

At the close of the evidentiary hearings on March 7, 2007, the parties were given the opportunity to file briefs. The parties had previously requested briefing schedules, but on the last day of hearing the parent withdrew their request to file briefs in order to expedite a decision. The parties instead gave closing statements. The parent had requested most of her witnesses to testify by telephonic conferences. This was denied.

The date for the filing of the Final Decision and Order was extended to April 10, 2007 in order to accommodate the hearing dates.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered and vice versa. SAS Institute Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and Bonnie Ann F.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

¹ Hearing Officer's Exhibits are referred to as "HO" followed by the appropriate exhibit number.

FINDINGS OF FACT:

1. The student is an eleven year old young man who has been diagnosed with Autism and is eligible to receive special education and related services under IDEA 20 U.S.C. 1401 et seq. and Connecticut General Statutes §10-76a et.seq.
2. The student transferred from another district and commenced kindergarten in the Board's elementary school at the beginning of the 2001-2002 school year. (Board's Exhibit²-61)
3. The student was evaluated by the Board and was classified as Learning Disabled. The student was evaluated by the School Psychologist, the Occupational Therapist, Physical Therapist, and the Speech and Language Therapist. (Testimony of School Psychologist, B-78, B-79, B-82, B-86, B-93, B-96)
4. On or about June 2004, at the request of the student's mother, the student was referred for a partial psychological evaluation. The school psychologist addressed the parent's concern that the student's anxiety was affecting his educational progress. The psychologist concluded that the student's anxiety was not pervasive but situational. The evaluator also found the student had significant deficits in social skills and social awareness. The evaluator concluded that the student's program addressed his educational needs and required inclusion in a social skills group. (Testimony of School Psychologist, B-114)
5. The student's PPT decided to provide him with preferential seating and to include the student in a social skills group with the school social worker. The parent and the Board agreed to have at least weekly e-mail communications. (B-115)
6. The student's third grade report showed that the student was promoted to the fourth grade. The student received good and satisfactory marks in all his subjects. The student made satisfactory progress in all his IEP goals and objectives. The evaluation procedures utilized to rate his progress were assessments, tests, work samples and observations. (B-123, B-124)
7. During the student's 3rd grade, he was given a sample Connecticut Mastery test. The student was given extra time as an accommodation during the test. The student's overall performance was lower than the class average and much lower than the school or district average. The student attained a 54 raw score in math while the class average was 74. The student attained a 14 raw score in reading while the class average was 36.3. (P-32, Student's Teacher)

² Board Exhibits are referred to as "B-" followed by the appropriate exhibit number.

8. On or about May 5, 2005, the student's parent complained that the student had been throwing up. The parent felt the cause of this was that two students had been teasing the student. The school principal addressed this concern with the parent by telephone. The parent did not follow up with a complaint that the issue had not been addressed. (Testimony of Principal, P-20)
9. The student's 2005-2006 IEP provide the student with 3 goals, one in language arts, one in mathematics and one in speech and language. The student was provided with 5 hours each week of direct services to remediate articulation and academic skills. The parent requested an assistive technology device called "Touch Math". This request was denied by the Board (B-130)
10. While being transported to the Summer 2004 program, it was alleged that the student was teased and bullied by another student. The parent complained to the Board about the student's bad experience. At the April 29, 2005 PPT the parent refused to allow the student to participate in the 2005 Summer Program because of his experience in the program during the Summer of 2004. (B-117, B-130, Testimony of School Principal)
11. In the beginning of the 2005-2006 school year, the parent e-mailed the principal that the student was not happy in school and that two other students had been teasing him. The parent complained that all the disruptive students were in the student's class. The parent felt that the disruption and yelling was too stressful for the student. The parent requested that the student be transferred to the other 4th grade class. The Principal investigated the complaint and did not see a problem. There were changes made to the seating arrangements with all the students and the rules of behavior were reviewed with the class. The parent changed her mind about transferring the student to the other 4th grade class. The parent requested a PPT. (P-19, P-25, Testimony of Principal)
12. A PPT was conducted on September 16, 2005. The PPT agreed to have the occupational therapist assess the student's fine motor skills and to explore alternative structured activities during recess. The student's weekly agenda was to be sent home with the student and a handwriting program was ordered for the student. Another PPT date was chosen in order to review the results of the fine motor skills assessment. (B-138)
13. On or about September 22, 2005, the parent sent an electronic transmission to the District Superintendent of Schools stating that the student was being bullied. The parent said that the student was complaining of headaches and vomiting because of the actions of other students toward her son. The parent was concerned because the student's behaviors seemed to show another diagnosis. The student had a propensity to vomiting and had

received treatment for that problem. The School Principal requested that Benhaven Learning Network ("BLN") perform a Motivational Assessment Scale of the student. (B-143, B-165, Testimony of Principal, Testimony of School Psychologist)

14. The School Principal investigated the issue and did not see any problem. The principal asked the student's teacher if they had observed any bullying or teasing of the student. They stated they had not. The principal noted a pattern with the student getting sick on Wednesday's while he was attending a new Spanish class. The principal asked the student's special education teacher to sit in with the student in the class and to be his one on one in the playground and observe the student. (Testimony of Principal)
15. After an Occupational Therapy Evaluation, the student's IEP was revised at the October 6, 2005 PPT. The evaluation found that the student presented sensory integration issues. The student's issues fluctuated between environments. In order to address the student's sensory problem the PPT made 6 recommendations. A sensory diet program was included in the student's IEP with direct support from the occupational therapist for ½ hour each week. The therapist was to provide the parent with weekly feedbacks and a communication journal was to go home with the student. An additional goal with 2 objectives was added to the student's IEP to address sensory integration. The parent agreed to an evaluation by the school psychologist. The evaluation was to assess the student's behavior and to see if the student had an Autistic Spectrum Disorder (ASD). The PPT decided who would fill out the questions for the BLN Motivational Assessment Scale. (Parent's Exhibit³-27, B-150, Testimony of BLN Evaluator)
16. The BLN Motivational Assessment Scale used a set of questions which are filled out by the people who knew the student. The Assessment found that the student's behavior was a result of escaping demands, escaping attention, attention and his sensory needs. The assessment recommended that a baseline be established of the possible function consequences that are maintaining the behavior of anxiety and upset stomach. The evaluator recommended 10 strategies to be implemented after a two week sampling for the baseline. The evaluator recommended that data should be taken to see if there is a decrease of the targeted behaviors after the implementation of the strategies. The evaluator also recommended that the parent take the student to the doctor to rule out any medical reason and that an Asperger's Rating Scale be completed by the School Psychologist. (B-165)
17. Asperger's Syndrome Diagnostic Scale (ASDS) was completed by the student's parent and his classroom teacher. The results of this diagnostic showed a significant disparity in the results of the two raters. The parent ratings showed that the student had a probability of Asperger's Syndrome.

³ Parent's Exhibits are referred to as "P-" followed by the appropriate exhibit number.

- The classroom teacher yielded a rating quotient that showed it was unlikely that the student had a probability of Asperger's Syndrome. This disparity gave the evaluator the opinion that the student was able to successfully suppress his symptoms in the school environment. The school psychologist recommended that the PPT should consider changing the student's special education disability from speech or language impaired to ASD. The changing in label did not change the student's program because the student's academic program was appropriate for the student to progress in the 4th grade. (B-158, Testimony of Special Education Teacher)
18. The student's special education teacher did not observe the student being bullied. The student never complained about being harassed. The student's program was sufficient to meet the student's needs. The student's math program was originally done by pull out but since he was progressing the pullout was no longer necessary. (Testimony of Special Education Teacher)
 19. As part of his sensory diet the student, filled out a chart, "How does Your Engine Run." This is a program for children with autism by which they do their own assessment of how they feel and evaluate their energy levels. The student would fill out the chart, do some exercise, and then fill out the chart again. There are 2 responses for each exercise session. The student's special education teacher recorded 448 responses of the student of which 93% of the time the student stated he was just right, 5% of the time the response was that he was low and the other 2% the student's response was high. This sensory diet program was so effective the teacher instituted it with other children. (Testimony of Special Education Teacher)
 20. The School Psychologist testified that the student is a highly functional autistic who can be educated and would demonstrate compulsive behavior. (Testimony of School Psychologist)
 21. The student's Child Study Team met on November 7, 2005 and requested a PPT. The speech language pathologist was concerned that the student was making minimal progress of correct speech sound production. The student was having problems with his "r" sound. (B-169, B-177)
 22. The student continued to complain to his mother that he was being teased and bullied by some students. The Principal spoke to the other students and the parent invited someone to bring an anti bullying program, "Kids on the Block" to present to the student's class. (B-170, Testimony of Principal)
 23. On December 1, 2005, the student's doctor sent an electronic transmission to the student's special education teacher stating that:
 - a. the student has a significant wide gap between verbal IQ and his performance IQ;

- b. the student manifests significant social phobias and a poor tolerance for change;
- c. school recess is a difficult time for the student; and
- d. the student met the criteria for Pervasive Development Disorder within the Autistic Spectrum, generalized Anxiety Disorder, Panic Disorder with Agoraphobia.
- e. The student has Receptive/Expressive Language Disorder.

The doctor recommended enrollment in a social skills group, meeting with school social worker once a week and full time occupational therapy. (B-179)

24. The PPT met on December 2, 2005 and changed the student's special education identification disability from speech or language impaired to ASD. The student's sensory diet had been initiated and the student was making progress. The student had problems transitioning to his new Spanish class. With his new sensory diet, the student's transition to his Spanish class was better. (B-166, B-177, Testimony of Student's 4th Grade Teacher)
25. At the December 2, 2005 PPT meeting, the parent requested mediation. In the request for mediation, the parent wanted the student moved to another school district because she felt that the student was not safe. The mediation occurred on January 6, 2006. As a result of the mediation, the parties agreed to have a team composed of the school psychologist, student's doctor and another person familiar with the student collaborate about the student's services and accommodations. The parties were to ascertain whether his program was sufficient and if the student needed a one on one aide. (B-173, B-196, Testimony of Principal)
26. The mediation team collaborated in their evaluation of the student's services and accommodations and the student's doctor did not recommend a change in placement and felt that a one on one would be a detriment to the student's growth in the school. They were not aware of the extent of services the school was providing to the student. (Testimony of School Psychologist)
27. The parent informed the Board that she did not want the student socializing or interacting with certain students. The Board agreed to monitor the student's interactions. The student initiated interactions with these students and the parent was angry that the Board did intercede. The student's class was composed of 15 students and the student at recess and lunch would sit or play with the students that the parent did not want him to associate with. The student began to isolate himself because he could not play with other students. On November 18, 2005, the student was book buddy with one of the student's the parent requested no contact. The teacher wrote in the student's journal about this contact and that she had observed the student's laughing and asked the parent if this contact could continue. The parent stated that that night the student was on the verge of tears all night because

- the student had made fun of him. There were other incidents where the student had contact with other students some initiated by the student and others by the other student. These incidents were investigated by the Principal. (B-152 pp. 36-38; pp. 89-91; pg. 114; pg. 147-150; pg. 162, Testimony of 4th Grade Teacher, Testimony of Principal)
28. The student stood up for himself and would go to his teacher if he had problems. During the second half of his fourth grade year, the student brought up his grades, raised his hand and joined in with other children to answer questions. His teacher did not see anything to show that the student was being threatened or bullied. The student never gave any indications that he did not want to be in the school. Toward the end of the school year the student wanted to participate in a school picnic but the student already was attending another out of district program in the afternoon and the parent would not give permission for the student to attend. (Testimony of 4th Grade Teacher)
29. The parent hired a tutor to assist the student in math. The tutor used the "Touch Math" to help the student with his math. The Board had refused to purchase this assistive technology device because the device was not something his teacher thought he would need in the classroom. After a mediation process, the Board bought the device and agreed to pay for half the cost of the tutor. The Board agreed to this remedy as a sign of good faith to the parent. The student needed help at home because the parent could not assist the student. The Board was of the opinion that the student's program was sufficient to meet his needs. (Testimony of 4th Grade Teacher, Testimony of Principal)
30. On March 24, 2006, a team meeting was held to review the student's progress and advise if any corrective actions needed to be done to his program. The parent did not raise any concerns about the student's anxiety or that the student was having any difficulties. The team found that it needed to work on strategies so that the student would be more assertive. It was found that the student was playing tag on recess, volunteered to read and was advocating and intervening for others. . (B-250, Testimony of 4th Grade Teacher, Testimony of BLN Consultant)
31. On March 29, 2006, the parent filed a Complaint with the Connecticut Department of Education, Bureau of Special Education alleging:
- a. That she was not provided a copy of the Procedural Safeguards;
 - b. That the director of Shared Services attended the PPT against her wishes;
 - c. That meetings were held before the PPT; and
 - d. That there was material posted on the walls of the PPT conference room that were not explained to the parent.

The Bureau of Special Education found the district in compliance with IDEA and dismissed the complaint in its entirety. (B-251, B-257)

32. On or about March 24, 2006, the parent filed a complaint with the Connecticut State Police alleging that the student had been bullied at the Board's School. The investigating Trooper interviewed the parent and school personnel. The parent provided the investigator with 84 pages of e-mails to the Board. The investigating trooper did not see any marks on the student nor did he receive any pictures of the injuries to the student. The Trooper did not see any indications of physical abuse or injury to the student while attending the Board's school. The investigation was closed as there was no criminal aspect. (B-254)
33. On or about March 24, 2006, the parent called the Hotline for the Department of Children and Families (DCF) and filed an allegation of physical abuse of the student by a school employee. The parent alleged that there had been 8 prior incidents in which the student was bullied physically and verbally by students. The investigator spoke with the parent and school personnel. Their finding was that the allegations of physical neglect will not be substantiated. The investigator found that the Board was taking the necessary steps to ensure the student's safety. The case was closed by DCF. (B-266)
34. The parent sought assistance from DCF on a voluntary basis. The reason for the referral to DCF was that the student was having a hard time in school, did not feel safe and had symptoms of depression and anxiety. In April 2006 DCF did an investigation and in May 2006 DCF placed the student in the FOCUS Program. The purpose of the program was to help the student identify his anxiety, learn social skills and how to sort through situations. The Probate Court ordered the voluntary services. (P-3, Testimony of DCF Worker)
35. DCF was paying for the student's program and transportation at FOCUS. The student left his school program each day at 11:30 am in order to attend the FOCUS Program. This program started in May and continued for the balance of the 2005-2006 school year. FOCUS was aware that the student had an IEP and services were being provided to the student at FOCUS without regard to his IEP. The student also attended FOCUS during the summer of 2006. The Focus investigator felt that the student's school environment was not safe for him. At FOCUS an Occupational Therapist comes once a week and provides services to a group and plans activities for the group but not individuals. (P-1, Testimony of FOCUS Clinician)
36. The FOCUS Program affected the student's math time. It was not an educational placement and would not offer the student a learning environment. They utilize older students to be mentors. The Board

- requested permission from the Parent to consult with the FOCUS Program, this was denied by the parent. (Testimony of Special Education Teacher, Testimony of BLN Consultant, B-277)
37. The student's current psychiatrist recommended that the student be placed in an out of district placement. Children with Asperger's Syndrome have problems with communications and anxiety. The psychiatrist was of the opinion that the Board provided the student with a safe environment. The Board put a lot of energy into understanding the student and providing the necessary services, behavior plan and sensory diet modifications in the curriculum for the student. He felt that the student would fabricate to minimize things that happen to him. The Doctor did not confer with Board personnel about the bullying and only spoke with the principal at a PPT by telephonic conference. The doctor was not surprised that there was no finding of bullying by DCF or anyone else, "autistic children are not bullied in the formal sense but it is how they interpret what is said to them." The doctor was of the opinion that if the student came back to the Board's School with the same anxiety, coming back would traumatize the student. Just an environment of trauma would reignite the student's issues. (B-266, Testimony of Student's Psychiatrist)
38. The student's 4th grade progress report showed that the student was promoted to the 5th grade. The student obtained grades of C in reading comprehension, written works, math concepts and application, spelling applications and science. The student received B in oral and reading communications, grammar, capitalization and punctuation, math basic facts and social studies. The student was commended for continuing to make progress. The last quarter marking period was based on work completed during the morning session that the student was in the Board's program. (Testimony of 4th grade Teacher, B-133)
39. The student was provided with home based counseling services at the parent's expense. The services were provided by Positive Choices a clinical counseling and tutorial service. The service began in January 2006 and in February 2006 an Initial Treatment Plan was created by the clinician for the student. Positive Choices requested the student's records and in May 2006 provided the Board with a treatment summary. There was no oral testimony provided about the program at Positive Choices. (P-14, P-16, B-194, B-274)
40. On or about June 2, 2006 an IEP was held to develop the student's 2006-2007 program. The IEP team found that the student was making progress in all his goals and objectives in his 2005-2006 IEP. An addition goal with 3 objectives was included in his 2006-2007 IEP to assist the student in his social skills. The student will spend 3.1 hours each week in the resource room and the balance of his school week will be spent in a regular education class with non disabled peers. The Board asked permission of the parent to

- contact the student's psychiatrist and this was denied. The parent requested that the Board pay for the student's placement at FOCUS, payment for tutorial services, reimbursement for clinical assessments and an out-of-district placement of the student at Cobb School or the Master's School at the Board's expense. The Board denied these requests of the parent. On June 14, 2006, the parent requested mediation to try and resolve their differences with the Board. (B-277, B-282)
41. On or about August 2006, the student was unilaterally placed at Intensive Education Academy (IEA) in West Hartford, CT, as a visitor and on October 20, 2006 was formally enrolled in IEA. The student was receiving psychotropic medication on or about May 2006. This has contributed to a positive change in the student. The student's placement at FOCUS and IEA has also been instrumental in the student's change. (Testimony of Student's Psychiatrist)
42. On or about September 21, 2006, a PPT was held for the student. The PPT reviewed the IEP that was created on June 2, 2006. The student's psychiatrist attended part of the PPT via telephone conference. The doctor recommended an out of district placement. He had not reviewed the student's school record or spoken with school staff in order to obtain their input. (B-277)

CONCLUSIONS OF LAW:

1. The parties do not dispute that the Student is eligible for a free and appropriate public education ("FAPE") with special education and related services as set forth in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Sec. 1401, et seq. and the Connecticut General Statutes Sections 10-76 et seq.
2. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including benchmarks or short term objectives related to meeting the child's individual needs." 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.347; Roland M. v. Concord School Committee, 910 F.2d 983,987 (1st Cir. 1990), cert, denied 499 U.S. 912 (1991)..
3. The standard for determining whether a school district has provided FAPE is set forth as a two part inquiry in Board of Education of the Hendrick Hudson

Central School District v. Rowley, 458 U.S. 176 (1982). First, it must be determined whether the school district complied with the procedural requirements of the IDEA and second, there must be a showing that the individualized educational plan ("IEP") is reasonably calculated to enable the child to receive educational benefit. The requirement of FAPE is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Board of Education v. Rowley, 458 U.S. at 201. This standard of educational benefit, however, contemplates more than trivial advancement. (Mrs. B. ex rel M.M. v. Milford Board of Education, 103 F.3d 1114 (2d Cir. 1997))

4. The IDEA's procedural requirements and safeguards are designed to assure that the parents of a child with a disability have a full and meaningful opportunity to participate along with LEA personnel in developing, reviewing and revising their child's IEP. The parent filed a complaint with the the Connecticut Department of Education Bureau of Special Education alleging procedural violation and after an investigation the matter was dismissed. (Findings of Facts #31) The parent did not allege any procedural violations in this hearing. There is no one standard for determining what constitutes a meaningful, educational benefit. The Student's capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit to the child. See, e.g. Hall, 774 F.2d at 635. Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispositive. See, e.g., Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1120 (2nd Cir. 1997). The student's academic grades showed he made educational advancement, and a review of his IEP goals and objectives show satisfactory progress. (Findings of Facts #38 & 40)

The district must examine the educational benefits, both academic and nonacademic. The student's social emotional growth also needs to be monitored. Before the June 2004 PPT, the Board had its school psychologist evaluate the student and he concluded that the student had social skills deficits. In that IEP, the student was included in a social skills group but no measurable goals or objectives were created for him. In December 2005, the student's psychiatrist recommended that the student be included in a social skills group because he had manifested significant social phobias and a poor tolerance for change. The student's teacher testified that the student was isolating himself. The student's social skills are a vital component of a meaningful education. The Board recognized or knew of the student's social needs but did not include a goal or objective to address this necessary educational component in his IEP. (Findings of Facts # 4, #5, # 23 & #27) The program provided to the student for the 2005-2006 school year was not reasonably calculated to provide a meaningful educational benefit.

The parent placed the student in a program called Positive Choices whose treatment plan seemed to address the student's deficits in social skills, (Findings of Facts # 39) but there was no testimony as to the effect of the program to the student or of its implementation. There was no testimony as to the frequency of the treatment or the certification of the provider. The student was also included in a program at FOCUS. DCF funded the program and provided the transportation for the program. (Findings of Facts # 35) The parent is not entitled to reimbursement for the tutorial services or reimbursement for the behavioral therapist.

5. The parent is requesting an out of district placement of the student at IEA. The IDEA requires that children with disabilities be educated, to the maximum extent appropriate, in the least restrictive environment ("LRE") and are to be removed from regular education only when "the nature and severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (34 C.F.R. Section 300.550) In order to meet this requirement, school districts must "...ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." (34 C.F.R. Section 300.551(a)) These alternative placements include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. (34 C.F.R. Section 300.551(b)(1)) Thus, the statutory scheme contemplates that there are situations, as the school parent proposes here, where students with disabilities may require an out of district placement if they are to receive FAPE.

In the current matter, the Board has made accommodations for the student (Findings of Facts #11, #14, #29) and has created a IEP which has goals and objectives that would meet the student's educational needs. The IEP includes a goal to meet the student's social needs.

The parent need not accept anything less than a safe environment where their child can receive FAPE. The Board has shown it is very concerned for the safety of the parent's child as it is for the safety of all the children in their schools and has provided the student with a safe environment. The parent has raised the issue of the child's safety with the Connecticut State Police and DCF. After thorough investigations both agencies could not substantiate the parent's allegations. (Findings Facts #31, #32) Evidence has not been provided to show that there has been peer harassment that would deprive the student of FAPE. The IDEA does not provide a remedy for peer assault claims. Only when peer harassment is so pervasive that it results in a loss of educational benefit will such conduct be deemed a denial of FAPE. *Shore Regional High School Board of Education v. P.S.*, 41 IDELR 234 (3d Cir. 2004). Even when there is proof that the student has been injured, there still

needs to be a loss of educational benefits. *Pittsburgh School District*, 46 IDELR 233 (SEA PA 2006)

There has been no showing that the Board has allowed the student's educational environment to be so pervasive as to result in a loss of FAPE. The Board has included safeguards to ensure the student's safety and his 2006-2007 IEP has goals to help the student develop social skills. (Findings of Facts # 11, # 14, # 27, # 37) The IEP for the 2006-2007 school is appropriate and has been created to provide the student with FAPE.

Since the Board's program for the 2006-2007 school year is appropriate, the issue of whether the parent's unilateral placement at IEA is appropriate is moot.

THE PARENT REQUEST PAYMENT FOR MEDICAL VISITS.

6. The request for payment of medical visits is denied. IDEA provides that the Board must provide medical services to determine a child's medically related disability that results in the child's need for special education and related services. 34 CFR § 300.24 (b)(4) There has been no evidence presented that medical visits were necessary in order for the student to receive FAPE nor what medical visits were received by the student.

To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

FINAL DECISION AND ORDER:

1. The program offered by the Board for the 2005-2006 school year was not appropriate.
2. The program offered by the Board for the 2006-2007 school year was appropriate.
3. The request for reimbursement for medical expenses, tutoring services and behavioral therapist is denied.
4. A PPT should be conducted within 10 days of the issuing of this decision to form a transition plan to return the student to the Board's school. The student's psychiatrist shall be consulted in order to obtain his input in this transition. The Board shall pay the consultation costs, if any, for the student's psychologist.