

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 6

Appearing on behalf of the Parents and the Student: Mother, pro se

Appearing on behalf of the Regional School District No. 6: Atty. Anne H. Littlefield, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

The following issues for the hearing were determined following rulings on two Motions to Dismiss:

1. Did the Board offer the Student a free appropriate public education (“FAPE”) for the 2005-2006, 2006-2007 and 2007-2008 school years?

2. Was the Student’s placement at Cedarhurst School appropriate during these school years?

3. Was the Student receiving services in the least restrictive environment (“LRE”) during these school years?

4. Did the Board violate the Student’s procedural safeguards by convening a Planning and Placement Team (“PPT”) meeting on September 10, 2007?

5. Is the Student entitled to compensatory education for any period of time?

SUMMARY:

The Student is an 18 year-old student at Cedarhurst School in Hamden. The Student, also referred to as E., is a young woman with specific learning disabilities who has been attending Cedarhurst, an out-of-district school for students with serious emotional and learning difficulties, since 2004. In May 2005 the Student was accepted at ACES Educational Center for the Arts (“ECA”) in New Haven for a program from 1:00 p.m. to 4:00 p.m. daily to study visual arts. E.’s academic instruction remained at Cedarhurst. The ECA program is a regular education magnet school program for students who excel in the arts. The Student has continued in the two schools through the hearing process in this case. The Student’s Mother filed for due process on

August 3, 2007. On the first day of the hearing, she signed a statement indicating that she wished to have her Mother represent her in this hearing. Hearing Officer (“HO”) Exhibit 4. The Mother claims that the Student has not received a FAPE because she has not been provided with psychotherapy services and an educational consultant. The District claims that these issues are moot because it has provided the services. The District also contends that the Parents and Student have never raised objections to the Cedarhurst placement and that, in any event, it is appropriate and is the LRE for the Student.

PROCEDURAL HISTORY:

The Parent (Mother) requested this hearing by sending several e-mails to the State Department of Education (SDE) and copies to several Board employees. Exhibit HO-1. This Hearing Officer was assigned to the case on August 3. The Regional School District (hereinafter referred to as the “Board” or “District”) received a copy of the e-mails on August 6. On August 15, Atty. Littlefield filed an appearance and a motion to dismiss on behalf of the District. A prehearing conference was held on August 17, 2007. The mailing date of the final decision was established as October 17, 2007. Hearing dates were agreed on for September 17 and October 2. The Parent agreed to file an amended complaint by August 24. The District’s attorney was given until August 31 to file a response to the amended complaint. The parties were directed to file witness lists and exhibits by September 10.

The Parents and Student filed an amended complaint on August 23. Exhibit HO-2. On August 29, the Mother filed a request to add a proposed resolution of \$1 million money damages to the complaint. Exhibit HO-3. On August 31, the District’s attorney filed a motion to dismiss the amended complaint. The Mother filed an objection on September 4. On September 7, a ruling was issued granting in part and denying in part the motion. Exhibit HO-5. Matters raised in the amended complaint, which were prior to August 6, 2005, were dismissed as beyond the two-year statute of limitations. The claim for money damages was dismissed as beyond the jurisdiction of the Hearing Officer. The District’s motion was denied as to the mootness and compensatory education claims without prejudice to their consideration at the hearing.

The Parent filed Exhibits P-1 through P-17 and the District filed Exhibits B-1 through B-100 and its witness list on September 10. On September 11, the Parent sent a copy of an e-mail to Atty. Littlefield stating that she had no witnesses. The hearing convened on September 17. All Board exhibits were entered as full exhibits without objection. Exhibits B-101 and B-102 were filed, but not entered into evidence. Exhibits P-7, P-10, P-11, P-15 and P-17 were admitted as full exhibits without objection. The remainder of the Parent exhibits were marked for identification. The Student was present at the beginning of the hearing. The Mother’s request that the Student be interviewed privately by the Hearing Officer was denied, as was the request that the Student be allowed to testify without cross-examination. The Student left the hearing to go to school. The Mother was given the oath and gave direct testimony. Exhibits P-1, P-2, P-3, P-8, P-9, P-12, P-13, P-14 and P-16 were excluded from evidence. P-4, P-5 (after redaction of another student’s name) and P-6 (after redaction) were admitted as full exhibits. Since the Mother’s evidence did not show the existence of any dispute within the parameters of the issues in the September 7 ruling, the Mother was given until September 24 to provide additional

evidence. The October 2 hearing date was postponed, and the Board was given until then to respond to the Mother's evidence.

On October 2, the Board filed another motion to dismiss. On October 5, the Hearing Officer received the Mother's response. A ruling was issued on October 10 granting in part and denying in part the motion. Exhibit HO-7. The claims concerning the Parent's purported December 2005 complaint to the Board regarding alleged bullying of the Student at the Wamogo middle/high school in 2004 were dismissed as beyond the statute of limitations. The Parent was permitted to raise claims concerning a PPT meeting on September 10, 2007 and to call additional witnesses on October 18. The Board's request to exclude the Mother from the hearing because she sent two obscene e-mails to the Board's attorney and its Director of Special Services was denied, however, the Mother was advised that no inappropriate behavior would be permitted at the hearing pursuant to Regs. of Conn. State Agencies Section 10-76h-13(a).

The hearing continued on October 18 with discussion of new exhibits. Exhibits B-101 through B-123 were entered as full exhibits without objection. Exhibits P-18 through P-28, P-30 through P-35, P-37, P-39 through P-44, P-46, P-49, P-50 and P-52 were entered as full exhibits without objection. Exhibits P-29, P-36, P-38, P-39, P-45, P-47, P-48 and P-51 were marked for identification. The Mother continued her direct testimony. During her testimony, Exhibits P-29 and P-48 were admitted into evidence as full exhibits. Exhibits P-36, P-38, P-39, P-45 and P-47 were excluded from evidence. Exhibit P-51, a letter from Dr. Markle was excluded subject to her testimony. The Mother completed her testimony and additional dates were scheduled. The hearing continued on November 20 with testimony from Cathy Markle, Ph.D., the Student's private therapist. Her resume was entered into evidence as Exhibit HO-6. The Mother filed new exhibits P-53 through P-84. Following Dr. Markle's testimony, the exhibits were ruled on. Exhibits P-54, P-57 through P-61, P-67, P-70 through P-72, P-75, P-77, P-78, P-80, P-82 and P-84 were admitted as full exhibits. The others were excluded from evidence. The Mother stated that she wanted to call three additional witnesses. An additional hearing date was added for December 20 and the mailing date for the final decision was extended to January 15, 2008 by agreement of the parties.

The hearing continued on November 29 with testimony from Sharon Bremner, Ed.D., Director of Special Services appointed by the District on August 14, 2007; and Deborah S. Wheeler, Ph.D, former Director of Special Services for the Board. Exhibits P-85 and P-86 were admitted into evidence without objection. Following the direct testimony of Dr. Wheeler, the Mother was excluded from the hearing for repeated disruptive and disrespectful behavior. She was advised that she would need to apologize for her behavior. The Board then cross-examined Dr. Wheeler and rested its case unless the Parent offered further evidence. The Board's attorney requested four weeks to file briefs.

The Hearing Officer sent the parties a letter on December 3, 2007 advising the parties that if the Parents and the Student wished to offer further evidence on December 20, the Mother must provide the Hearing Officer with a written statement by December 10 containing the names of the witnesses and the questions she wanted to ask each witness. If the Hearing Officer found that the Parent had additional relevant evidence to offer, she would notify them, otherwise the hearing would be canceled and a briefing schedule set. On December 12, the Hearing Officer

notified the parties that the hearing was canceled, that simultaneous briefs were due on January 11 and that the mailing date for the decision was extended to February 4, 2008. The Parents and Student did not submit any brief, although the Mother has left several voice mail messages regarding her view of the case. The Board's brief was filed on January 11, 2008.

The Findings of Fact incorporate various portions of the Board's Proposed Findings of Fact. To the extent that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. Bonnie Ann F. v. Callahan Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993). The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record. Id.

FINDINGS OF FACT:

1. The Student has a birth date of September 3, 1989, is 18 years old and has been attending Cedarhurst since August 2004. Testimony of Mother, Dr. Markle and Dr. Wheeler; and Exhibit B-1.

2. Prior to her placement at Cedarhurst, E. attended Wamogo Regional Middle/High School ("Wamogo") as an 8th grade student. Testimony of Dr. Wheeler. Wamogo is the middle/high school for students who reside in the towns comprising Regional School District No. 6.

3. Cedarhurst is a small, specialized State Approved Special Education facility that provides E. with a therapeutic milieu as well as academic services. Id.

4. E. is eligible for special education under the category of specific learning disabilities. Exhibit B-102. In addition to her learning disabilities, she has been diagnosed with attention deficit disorder, combined and mood disorder. She has a lengthy history of self-injurious behavior, primarily cutting, but also burning herself. Her cutting behavior has been the most prominent symptom for the last three years. She receives medication management from a psychiatrist, Dr. Lesley Siegel. Exhibit P-17. She receives twice weekly psychotherapy treatment for depression. Testimony of Dr. Markle.

5. Dr. Markle recommended the placement at Cedarhurst because E. needed emotional support in order to learn. E. "hibernated in the hallways, in classes, and she separated, isolated, and then became very self-destructive [at Wamogo]." Id.

6. E.'s Parents had requested placement at Cedarhurst "due to the fact that [E.'s psychotherapist]'s office is within a mile or so . . . which made it much easier for them for -- for [the Student] to have accessibility to Dr. Markle on a regular basis." Testimony of Dr. Wheeler. The District had explored the possibility of placement at closer therapeutic schools, but agreed to the Cedarhurst placement as an accommodation to E.'s Parents. Id. The PPT initially placed E. at Cedarhurst at Parents' request. Id.

7. Dr. Wheeler holds a Bachelors Degree in Secondary Education with certification in History and Social Studies from Edinbrough University of Pennsylvania; certification in

comprehensive Special Education from Central Connecticut State University; a Masters Degree in Early Childhood Special Education from Southern Connecticut State University; a Sixth-year degree in Educational Leadership, which included certification as a School Administrator from Southern Connecticut State University; and an earned Doctorate in Educational Leadership which included certification as a Superintendent of Schools from the University of Hartford. Id.

8. Dr. Wheeler exercised supervisory responsibility for the Student's program from the time of her initial placement at Cedarhurst through August 2007. Id.

9. On May 25, 2005, the District held a PPT to discuss E.'s program and placement. Exhibit B-101. Concerns about the Student's functioning at that time included her skills in asking for help, low self-esteem, slow processing time and self-injurious behavior. Id. at 3.

10. The PPT developed an individualized education program ("IEP") for the Student that included goals and objectives to provide both academic support to address E.'s learning disability as well as to address her emotional needs. Id. at 5. At this PPT, the Student's Parents did not request any additional goals or objectives. Testimony of Dr. Wheeler.

11. The PPT reached a consensus that the Student was doing well at Cedarhurst and recommended that the Student continue in the therapeutic milieu at Cedarhurst. Id.; and Exhibit B-101 at 1. In order to provide emotional support, the Student's IEP included individual and group therapy sessions within the context of her program at Cedarhurst. Id.; and Exhibit B-101 at 19. The PPT also agreed to enroll the Student in a program at the ACES Educational Center for the Arts ("ECA") in New Haven, CT for 12 hours per week.

12. ECA is not a special education school, it is a magnet school. The Student is educated with typical non-disabled peers. Testimony of Dr. Bremner and Dr. Wheeler.

13. E.'s Parents did not request any additional services for the Student at the PPT held on May 25, 2005. Testimony of Dr. Wheeler. No member of the PPT suggested or requested a return to Wamogo for the Student. Testimony of Dr. Markle.

14. On or around Jan. 10, 2006, Dr. Markle sent a letter to Dr. Wheeler concerning psychotherapy services for the Student. Exhibit P-10. The PPT reconvened on February 6, 2006. Exhibit B-2. Dr. Markle did not participate in this PPT. Id. The PPT added psychotherapy two times per week to the Student's IEP. Id. at 4.

15. The PPT rejected the Parents' request for psychiatric services and scar removal, noting in the PPT recommendations the medical nature of these services. Id. at 2-4. At that PPT, no members of the PPT, including E.'s Parents, requested that the PPT consider returning the Student to Wamogo. Testimony of Dr. Wheeler.

16. The PPT did agree that beginning on February 6, 2006, the District would pay for two one-hour sessions per week for the Student's psychotherapy from Dr. Markle as a related service provider, implementing the Student's IEP. Id.; and Exhibit B-2 at 4. This continued through the time period at issue here. Testimony of Dr. Wheeler and Dr. Bremner.

17. Dr. Markle, who does not participate in any insurance plans, provided monthly invoices to the Mother. Testimony of Dr. Markle; and Exhibit P-46. At the Parents' request, the Department of Children and Families ("DCF") paid for psychotherapy services for the Student until she turned 18 years of age in September 2007. Dr. Markle received payments directly from DCF. Testimony of Dr. Markle; and Exhibit P-80. She also received one payment from the District in September 2006 in the amount of \$1,120.00. Testimony of Dr. Markle and Dr. Wheeler; and Exhibit P-84 at 10. The District made clear to the Parents its willingness cover the costs of these services, and promptly paid the only invoice presented to it for payment. Testimony of Dr. Wheeler. The Parents provided copies of canceled checks as proof that they incurred out-of-pocket expenses for psychotherapy since February 6, 2006. Exhibit P-79. A review of these documents shows only 8 of the 23 checks were payable to Dr. Markle. Id. at 13-20. On January 23 and 30, 2007, the Mother wrote checks to Dr. Markle for \$150.00. Id. at 13 and 14. On February 6, 8 and 21, 2007, the Mother wrote checks to Dr. Markle for \$150.00. Id. at 15, 16 and 20. On March 29, she wrote a check for \$240.00. Id. at 17. On April 3 and 4, the Mother wrote checks for \$150.00. Id. at 18 and 19. These 8 checks total \$1,290.00. Dr. Markle's invoice for February 2007 in the amount of \$600.00 was paid by DCF. Exhibits P-46 at 12; P-80 at 1 and P-84 at 17. Dr. Markle's February 2007 invoice in the amount of \$1,200.00 was paid by DCF. Exhibits P-46 at 13; P-80 at 1 and P-84 at 7. Dr. Markle's invoice for March 2007 in the amount of \$1,350.00 was paid by DCF. Exhibits P-46 at 14; P-80 at 1 and P-84 at 6. Dr. Markle's invoice for April 2007 in the amount of \$750.00 was paid by DCF. Exhibits P-46 at 15; P-80 at 1 and P-84 at 5. E.'s Mother admitted that all of Dr. Markle's invoices had been paid by DCF. Testimony of Mother.

18. On May 10, 2006, the District convened the annual review for the Student. Exhibit B-8. The PPT received information that E. was making progress academically and that she was beginning to appear more relaxed, interact more with peers and was comfortable in both ECA and the Cedarhurst environments. Testimony of Dr. Wheeler. Due to a concern about weaknesses in spelling and grammar, additional resource time was added to the Student's schedule. Id.; and Exhibit B-8 at 3. The PPT continued support for psychotherapy with Dr. Markle as part of the Student's IEP. Exhibit B-8 at 3 and 17. The IEP documentation indicates that DCF, as a linking agency, supports psychotherapy funding. Id. at 16. The PPT affirmatively considered the restrictiveness of the Student's placement and completed the LRE form provided by the SDE to assist the PPT in documenting its consideration of this issue. Id. at 20. The PPT considered the Student's need for proximity to her therapist as one of the reasons to place the Student at Cedarhurst. The PPT made a determination that the LRE factors had been met. Id. at 21.

19. For school year 2005-2006, the Student received final grades of 82 to 89 in all of her courses at Cedarhurst. Exhibits B-1 and B-14. Her classroom teachers commented that she acted as a "positive group participant" (Biology), she "meets classroom expectations" (World History), her "skills have improved" (Geometry) and she "sets a good example" (English). Exhibit B-14.

20. During the spring and summer of 2006, Dr. Wheeler and E.'s mother communicated about the payment for the Student's psychotherapy with Dr. Markle. The Mother indicated to Dr. Wheeler that DCF was covering the payment for these services and told Dr.

Wheeler that she preferred to have DCF continue to pay for the services. Testimony of Dr. Wheeler.

21. When the Mother changed her mind about wanting DCF to pay for the services, Dr. Wheeler immediately confirmed the District's responsibility for this charge and asked E.'s Mother to provide the relevant invoices. Exhibit B-18. During the summer of 2006, one invoice for psychotherapy services for the Student was submitted to, and paid by, the District. Exhibits B-24 and B-25; and Testimony of Dr. Wheeler.

22. During the fall of 2006, the Student continued to make progress at Cedarhurst School, as evidenced by her progress reports of October, November and December, 2006. At that time, the Student received positive comments that she processed issues well with staff, acted as a positive group participant and met classroom expectations. In academic subjects, her grades ranged from A- to C-, with the majority in the B range. Exhibits B-32, B-34 and B-36.

23. On January 16, 2007, E.'s Mother telephoned Dr. Wheeler and discussed a possible return to Wamogo. The Mother reported that the Student had stopped seeing Dr. Markle and was in a different therapy. Exhibit B-37; and Testimony of Dr. Wheeler. Dr. Wheeler had strong concerns regarding this possibility, as did members of Cedarhurst staff who worked with the Student. Testimony of Dr. Wheeler. On January 17, E.'s mother sent an e-mail to Dr. Wheeler stating that the Student's psychiatrist, Dr. Siegel, did not support a return to Wamogo. She also said that the Student would return to Dr. Markle for therapy. *Id.*; and Exhibit B-38.

24. The District held a PPT for the Student on February 5, 2007, with both Dr. Markle and Dr. Siegel in attendance. Exhibit B-47. E. and her Parents also attended. *Id.* The purpose of the PPT meeting was to review or revise the IEP and discuss transition planning for post-secondary/college. A triennial evaluation was planned for May 2007. *Id.* No member of the PPT suggested a change in placement, whether to Wamogo or any other school or program. Testimony of Dr. Wheeler.

25. The only action refused by the PPT was dropping chemistry, which could affect her ability to get into college. Instead, the team added additional academic support in this area. *Id.*; and Exhibit B-47 at 3. The District agreed to contract with an agency for job exploration activities, as part of transition services for the Student. Exhibit B-47 at 2. The Parents and Dr. Wheeler agreed to employ LARC for this purpose. Exhibits B-58, B-65 and B-67. On April 23, 2007, the District sent a letter to ECA committing the funding for E. for the 2007-2008 school year. Exhibit B-66.

26. On May 2, 2007, the PPT held an annual review for the Student. Exhibit B-71. The PPT continued the current IEP through the end of the school year and planned a program for the Student for the 2007-2008 school year. Testimony of Dr. Wheeler. The PPT in particular focused on goals and objectives for the Student based on her transition planning needs, and related to her anxiety and interpersonal skills. *Id.* The PPT planned a triennial review for the Student to be conducted by a school psychologist over the summer of 2007. The PPT recommended that Dr. Markle discuss the transfer of rights at age 18 with the Student. Exhibit B-71 at 2. The PPT

developed a plan to have some community-based work experiences and the District engaged a series of consultants who would work with the family to facilitate application to college, selection of college, as well as consultants to help E. in obtaining a job in the community and successfully fulfilling the requirements of that job. Id.; and Testimony of Dr. Wheeler.

27. At the PPT on May 2, 2007, neither of E.'s Parents or her doctors requested a return to Wamogo. Id. The PPT affirmatively considered the restrictiveness of the Student's placement and completed the LRE form provided by the State Department of Education to assist the PPT in documenting its consideration of this issue. Exhibit B-70. After determining that the LRE factors had been met, the PPT made a decision to continue the Student's placement at Cedarhurst and ECA. Id.; and Testimony of Dr. Wheeler.

28. The District worked very cooperatively with the family in arranging for consultants for E.'s program. Exhibits B-75, B-77 through B-85; and Testimony of Dr. Wheeler.

29. During the summer of 2007, Dr. Wheeler announced that she would be leaving her position with the District and taking a job as Assistant Superintendent of Schools for the Brookfield Public Schools. Testimony of Dr. Wheeler. In July 2007, the Student's Mother began e-mailing Dr. Wheeler to discuss mediation and/or due process. Exhibits B-86 through B-90. E.'s Mother filed for due process in early August 2007. Exhibit HO-1.

30. Approximately seven days prior to the Parents' filing for due process, the Mother sent an email to Dr. Wheeler in which she referred to the Student's placement at Cedarhurst/ECA as "wonderful" and Dr. Wheeler as "great." Exhibit B-88 at 1; and Testimony of Mother.

31. Dr. Wheeler's last day as Director of Special Education with the District was August 10, 2007. Testimony of Dr. Wheeler. On the same day, the Mother e-mailed Dr. Wheeler and requested that the District schedule a PPT "as soon as possible" to address the Mother's concerns about the Student's "lack of readiness for college" and possible graduation in June 2008. Exhibit P-21. The PPT was ultimately held on September 10, 2007, after the school year began. Exhibit B-102.

32. Dr. Sharon Bremner was appointed Director of Special Services for the Regional School District No. 6 Public Schools by the Board on August 14, 2007. Testimony of Dr. Bremner.

33. Dr. Bremner graduated from St. Joseph College in 1978 with a degree in Special Education and Child Study. She is certified to teach elementary school, nursery school through sixth grade and possesses the 065 comprehensive Special Education endorsement. She has a Masters degree in Reading and Language Arts from Central Connecticut State University and a doctorate in Educational Leadership from the University of Hartford and the 092 endorsement intermediate administrator certificate. Id.

34. Dr. Bremner arranged to attend the resolution session for the due process request with the Student's Parents and Dr. Wheeler on August 20, 2007. Id. The parties were not able to resolve this matter at the resolution session. Id.

35. The District worked with the Student's Mother to arrange a mutually satisfactory date for the PPT she had requested on August 10, 2007. Id. On August 22, the Mother wrote to the District's attorney that Dr. Siegel had advised against postponing graduation. She also indicated that September 7 was a good date for the PPT meeting. Exhibit P-22.

36. The date for the PPT meeting was changed from September 7 to September 10 because Kathy, the consultant from Educational Solutions, could not be there on September 7. Exhibit B-110. Prior to chairing the Student's PPT meeting on September 10, 2007, Dr. Bremner familiarized herself with the Student's records, discussed the Student's program at length with Dr. Wheeler, and communicated with the Student's Mother by telephone and e-mail concerning the upcoming PPT. Testimony of Dr. Bremner. From e-mails sent by the Student's Mother, Dr. Bremner had the impression that the Student and her Mother would be participating in the PPT. Id.; and Exhibit B-106.

37. In advance of the September 10 PPT meeting, Dr. Bremner attempted to obtain an appropriate release from the Student and/or her parents to permit the District to speak with Dr. Siegel regarding the Student's program. Exhibit B-107. However, neither Dr. Siegel nor Dr. Markle contacted the District to give information to the PPT relative to the Student's program and placement. Testimony of Dr. Bremner and Dr. Markle.

38. E.'s Mother purposefully withheld information from E. regarding the PPT scheduled for September 10, 2007. The Mother did not inform E. that a PPT had been scheduled for September 10, 2007, and she intercepted her daughter's mail and withheld the PPT invitation from her. Testimony of Mother. The District sent all PPT invitations directly to E. Id.; and Exhibit B-123.

39. After Dr. Bremner's appointment on August 14, 2007, neither the Student nor her Parents contacted Dr. Bremner to specifically request that the September 10, 2007 PPT consider a return to Wamogo for the Student. Testimony of Dr. Bremner. Neither the Student nor her Parents participated in the PPT on September 10, 2007, despite procedurally appropriate notice and the opportunity to do so. Id.; and Exhibit B-102.

40. On September 10, 2007, the PPT discussed the Student's placement at Cedarhurst/ECA, and agreed that the placement remained appropriate for the Student. Id.

41. Given the Parent's stated concern about readiness for college, the PPT discussed continuation of services after June 2008 and recommended that the Student graduate in June 2009 to better prepare her for a post-secondary experience. Cedarhurst staff recommended that the Student complete her schooling there in June 2008. The District agreed to investigate the implications of a Cedarhurst diploma. Id.; and Exhibit B-102 at 2.

42. The September 10 PPT affirmed the District's continuing commitment to providing psychotherapy for the Student two times per week. Id.; and Exhibit B-102 at 2-3. The PPT discussed postponing the triennial review for the Student due in November. The school psychologist was not able to do the testing in the summer because the Parents had declined it. Id.

The PPT did not refuse any action proposed by a member of the PPT. Id.; and Exhibit B-102 at 3. The PPT recommended reconvening in November 2007. Exhibit B-102 at 2.

43. The District sent the documentation from the September 10 PPT to the Student. Exhibit B-116; and Testimony of Dr. Bremner. Dr. Bremner offered to reconvene the PPT to discuss the IEP and/or to speak with the Student by telephone if she had questions. Id.

44. The Student received the documentation from the September 10 PPT because E.'s Mother had determined that she would no longer withhold mail from the Student, as she had turned 18 years of age. Testimony of Mother.

45. In a follow up telephone conversation with the Student's Mother on September 28, Dr. Bremner affirmed the plan to reconvene E.'s PPT, and offered to discuss the Mother's concerns about LARC (consultant) at that time. Exhibit B-117; and Testimony of Dr. Bremner.

46. At the time of the close of evidence in this matter, E.'s PPT was scheduled for December 5, 2007, and the District intended to invite Drs. Markle and Siegel, the Student and her Parents. Testimony of Dr. Bremner.

47. During the course of the hearing, both on the record and off the record in written and verbal communications with the Dr. Bremner, Atty. Littlefield and the Hearing Officer, the Mother engaged in repeated derogatory, abusive and profane language. Exhibits B-111, B-115 and B-120. She was admonished in a written ruling on October 10, 2007. Exhibit HO-7 at 2. On November 29, she was ejected from the hearing after she failed to heed numerous warnings by the Hearing Officer.

48. There were no claims of bullying, teasing or sexual harassment at Cedarhurst or ECA. Testimony of Mother. The Parents never claimed at a PPT meeting during planning for the 2005-2006, 2006-2007 and 2007-2008 school years that Cedarhurst or ECA was not an appropriate placement for the Student. Id.

49. No evidence was produced in support of the claim that DCF would seek to recover the costs of psychotherapy provided to the Student from either the Parents or the Student. Although given the opportunity to call witnesses from DCF, the Mother did not do so. The inference drawn is that testimony from DCF would not have been favorable to the Parents' claim.

CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that E. is a Student with specific learning disabilities. 34 C.F.R. Section 300.8(c)(10).

2. Many of the claims raised by the Mother involve events that occurred prior to August 6, 2005. The allegations regarding bullying, teasing and sexual harassment of the Student at Wamogo occurred prior to June 2004, during the Student’s eighth grade year at Wamogo. The Student has attended Cedarhurst since the 2004-2005 school year and ECA since the 2005-2006 school year. There were no claims of bullying, teasing or sexual harassment at Cedarhurst or ECA. The Mother also sought reimbursement for psychotherapy going back as far as 2002. On September 7, 2007, the Board’s motion to dismiss claims more than two years prior to the filing of the due process request on August 6, 2007 was granted. The 2004 amendments to IDEA specifically provide for a two-year statute of limitations. 20 U.S.C. Section 1415(b)(6). The Mother argued because she filed a complaint with the District in December 2005 regarding its alleged failure to investigate and remedy the bullying and harassment of the Student in 2004 that the two-year time limit should begin in December 2005 not 2004 when the alleged acts occurred. This argument was rejected in the October 10 ruling on the Board’s October 2 motion to dismiss. In both the September and October rulings, the Mother was advised that the hearing was limited to the current school year and the two prior school years. 34 C.F.R. Section 300.511(e) provides:

A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

Connecticut also provides for a two-year statute of limitations. Conn. Gen. Stats. Section 10-76h(a)(4). The Mother continued to raise issues that were dismissed at the hearings on September 17, October 18, November 20 and 29 and ignored directions to confine her evidence to the school years at issue.

3. On November 29 the Mother was excluded from the hearing at the close of Dr. Wheeler’s direct examination because of her inflammatory remarks and disrespectful behavior toward the witness, the Board’s attorney and the Hearing Officer. Pursuant to Regs. of Conn. State Agencies Section 10-76h-13(a):

The hearing officer will take reasonable measures, including the exclusion from the hearing of parties, counsel, or any other participant, to ensure that the parties, counsel and all other participants comport themselves civilly and that the hearing is

conducted in a fair and orderly manner. Behavior which may result in exclusion includes, but is not limited to, abusive speech, inflammatory remarks or disrespectful conduct towards the hearing officer, counsel or any party or party representative, or witnesses.

The Mother ignored repeated warnings to control her behavior at the hearing and in written communications to counsel and the Director of Special Services for the District. The Hearing Officer advised the Mother that she needed to send a written apology for her behavior, but she did not. Instead, she left a voice mail message stating that she was apologizing because the Hearing Officer said she had to, but she didn't see why. The Mother's offensive behavior is amply demonstrated in the record (exhibits and transcripts of the hearings).

4. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207. The only procedural violation claimed is that the District failed to provide notice to the Student of the September 10, 2007 PPT meeting. The uncontroverted evidence shows that the Mother withheld the Student's mail containing the notice and that the Mother did not tell the Student about the meeting. The District complied with the IDEA's procedural safeguards by sending the Student and Parents the notice. The Parents chose not to attend the PPT and the Student was not aware of the meeting because of the Mother's actions. There are no procedural violations. As to the second prong of the Rowley inquiry: "IDEA requires only that school districts provide an 'appropriate' IEP, gauged by whether the IEP is 'sufficient to confer some educational benefit.'" Id. In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is "whether the educational program provided for a child is reasonably calculated to allow the child to receive 'meaningful' educational benefits." Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). The Student's IEPs for 2005-2006, 2006-2007 and 2007-2008 contained all of the requisite components under the IDEA and state law. The IEPs included: 1) a statement of E.'s present levels of [academic and functional] performance; 2) annual goals and short-term objectives; 3) the specific educational services to be provided; 4) an explanation of the extent to which E. would not participate in the regular education programs; 5) objective criteria and evaluation procedures for determining whether objectives are being met; and 6) the projected initiation date and duration of proposed services. 20 U.S.C. Section 1414; See Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (1998). In this case, the Parents and Student are not challenging the appropriateness of the IEP goals and objectives in the three school years at issue, but only the placement.

5. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. Board of Education of the Hendrick Hudson Central School District v. Rowley, supra., 181; 34 C.F.R. Section 300.114(a). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.114 through 300.120; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir.

1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. Id. “Least restrictive environment” is defined as follows under IDEA:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that such education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. Sec. 1412(a)(5); 34 C.F.R. Sec. 300.114(a). FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002).

6. Section 300.116(b) provides: “The child’s placement—(1) is determined at least annually; (2) is based on the child’s IEP; and (3) is as close as possible to the child’s home.” In this case, the PPT developed an IEP for the Student for her 10th, 11th and 12th grade years of high school at Cedarhurst school, a state-approved facility in Hamden which provides special education and related services in a therapeutic environment. In the afternoons, the Student is transported to ECA in New Haven, a public magnet school with regular education classes with non-disabled peers. Although the Mother claimed at the hearing that the Student should have been educated at Wamogo, notably no one voiced this issue at any PPT meeting in the relevant time period. To the contrary, the Parents, the Student’s doctors and the staff at Cedarhurst all advocated the Student’s continued placement there. The evidence is abundant that the Student could not be educated at Wamogo and that because of her long history of self-injurious behavior she required a therapeutic environment in order to access education.

7. Although Cedarhurst school in Hamden is an hour’s driving distance from the Student’s home, the Student’s Parents and therapist, Dr. Markle, requested placement there in favor of therapeutic facilities that were closer to home. The placement mutually chosen by the parties at the therapeutic school at Cedarhurst and the ECA magnet school enabled E. to progress academically, socially and emotionally. The placement at Cedarhurst and ECA provides a meaningful education in the least restrictive environment as required by the IDEA. 20 U.S.C. Section 1412(a)(5); 34 C.F.R. Section 300.114 (2006 Rev.). Therefore, the Board’s IEPs and placement for E. for 2005-2006, 2006-2007 and 2007-2008 provided her with FAPE.

8. The Student receives 20.3 hours of special education at Cedarhurst and 10 hours of regular education with non-disabled peers weekly. The District’s IEPs offered the right balance between special education and regular education. R.L. by Mr. and Mrs. L. v. Plainville Bd. of Ed., 363 F.Supp.2d 222 (D.Conn. 2005), citing Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (2d Cir. 1998). See also Lillbask v. Connecticut Dep’t. of Educ., 397 F.3d 77

(2d Cir. 2005). While the IEP does not have to maximize the child's educational potential, it must provide "meaningful" opportunities and the possibility for more than "trivial advancement." Walczak, supra at 130. There is substantial evidence in the record that the Student does require an out-of-district placement in order to be educated. The evidence does not support the Parents' claim that the Student could have been transitioned successfully to Wamogo.

9. In February 2006, the PPT agreed to add two hours per week of individual therapy with Dr. Markle as a related service. The Mother's claim that this was not in the IEP is belied by the evidence. At that time, DCF was already providing funding for therapy with Dr. Markle. The Parents asked to continue this funding. IDEA allows each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of FAPE for the Student. 34 C.F.R. Section 300.103. Given DCF's financial support of the Student's psychotherapy services, and the Board's payment of such costs when DCF did not pay, FAPE was provided at no cost to the Parents. 34 C.F.R. Section 300.17. The Mother's claim that the District should reimburse DCF or the Parents, if they reimburse DCF, is not supported by IDEA. The claim for reimbursement of psychotherapy expenses is moot.

10. The Mother also claims that the Student requires an educational consultant in order to receive FAPE. The evidence shows that the District has provided a consultant to assist the Student with post-secondary issues since the May 2, 2007 PPT added this service to the IEP. The Mother did not provide evidence to sustain her claim that these services were required in the 2005-2006 and 2006-2007 IEPs. As to the 2007-2008 IEP, the claim is moot.

11. The Parents and Student are requesting two years of compensatory education following the Student's graduation from high school in June 2008. The Parents and Student seek psychotherapy and educational consultant services for two years after graduation until age 21. The District argues that the Student's graduation date has not been determined. At the September 10, 2007 PPT meeting, the team recommended that graduation occur in June 2009. A further discussion was scheduled to occur at a PPT meeting in December. Any determination of the Student's graduation date in this ruling would be premature.

12. The District also argues that the legal standard for an award of compensatory education has not been met in this case. Compensatory education has been recognized as an available remedy under the IDEA for the failure to provide a free appropriate public education. See, K.P. v. Juzwic, 23 IDELR 5, 891 F.Supp. 703 (D.Conn. 1995); Burr by Burr v. Ambach, 863 F.2d 1071 (2d Cir. 1988), *vacated*, 492 U.S. 902 (1989), *reaffirmed*, 888 F.2d 258 (2d Cir. 1989); Mrs. C. v. Wheaton, 916 F.2d 69 (2d Cir. 1990). Moreover, most courts have characterized an award of compensatory education as an "equitable remedy" (*see*, Burlington v. Dept. of Educ., 736 F.2d 773, 801 (1st Cir. 1984), *affirmed*, 471 U.S. 359 (1985)), and have awarded compensatory education such as tuition reimbursement only where a school district "flagrantly" fails to comply with the requirements of IDEA, or commits what may be characterized as an "egregious" violation. Carlisle Area Sch. Dist. v. Scott P., 23 IDELR 293, 62 F.3d 520 (3d Cir. 1995); Lester H. v. Gilhool, 916 F.2d 865, 872 (3d Cir. 1990), *cert. denied*, 499, U.S. 923 (1991) (compensatory education awarded where district took more than 30 months to provide an appropriate placement while admitting that the in-district program was not appropriate). The Second Circuit has explicitly required a "gross" violation of IDEA as a prerequisite to an award of compensatory education, at least as it pertains to claimants over the age of 21 at the time of the institution of the claim. Garro v. State of Connecticut, 23 F.3d 734

(2d Cir. 1994) (student was denied all access to educational services until the age of 21); Mrs. C. v. Wheaton, 916 F.2d 69, 75 (2d Cir. 1990)(gross violation examples include undue delay in holding hearings, taking advantage of mental infirmity to deny a placement). Since there has been no denial of a FAPE, there is no basis for an award of compensatory education.

FINAL DECISION AND ORDER

1. The program proposed by the District on May 25, 2005 for the 2005-2006 school year at Cedarhurst and ECA offered the Student a free appropriate public education in the least restrictive environment.
2. The program proposed by the District on May 10, 2006 for the 2006-2007 school year at Cedarhurst and ECA offered the Student a free appropriate public education in the least restrictive environment.
3. The program proposed by the District on May 2, 2007 for the 2007-2008 school year at Cedarhurst and ECA offered the Student a free appropriate public education in the least restrictive environment.
4. The District appropriately sent notice of the September 10, 2007 PPT meeting to the Student, who turned 18 years of age one week prior to the PPT meeting.
5. The District appropriately sent written prior notice of the actions taken at the September 10, 2007 PPT meeting to the Student.
6. The Parents are not entitled to reimbursement of psychotherapy expenses, which were paid by DCF.
7. The District provided appropriate transition services to the Student through education consultants paid by the District and agreed upon by the Parents.
8. The Parents and Student are not entitled to any compensatory education.