

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. East Hartford Board of Education

Appearing on behalf of the Student/Parents: Attorney David C. Shaw, The Law Offices of David C. Shaw, LLC, 34 Jerome Ave., Suite 210, Bloomfield, CT 06002

Appearing on behalf of the Board: Attorney Linda Yoder, Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, CT 06103

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student's Individualized Education Programs [IEPs] including the transition plan and programs for the 2005-06, 2006-07 and 2007-08 school years were appropriate and consistent with 20 U.S.C. 1412(a)(5)(A).¹
2. Whether the Student shall be provided a program of compensatory education.
3. Whether the Student shall be provided with an assistive technology program by an independent mutually acceptable provider.
4. Whether the Student shall be provided an independent educational consultant.
5. Whether the Board shall retain independent private agencies to implement the Student's program.
6. Whether the Parents shall be reimbursed for the independent evaluation completed by Dr. Karan.
7. Whether the Board, by filing a request for hearing regarding the Parents' request for an independent evaluation, as of the date of the prehearing conference in this case on December 14, 2007, violated the Student's procedural rights.

¹ Per the Parents' Post Hearing Memorandum dated June 4, 2008, fn 11, page 13, it notes that the Parents are not pursuing their claim that the IEP for the 2005-06 school year was not appropriate in light of Dr. Karan's testimony that he could not testify that the IEP was inappropriate.

PROCEDURAL HISTORY:

The Board received this request for hearing on December 7, 2007, [Exhibit H.O.-1] and a prehearing conference was held on December 14.

This hearing proceeded on fourteen hearing dates from January through May 2008. Some of the hearing dates were abbreviated hearing dates or cancelled at the request of counsel due to a weather delay, urgent health issues of both counsel, and due to a Second Circuit Court of Appeals scheduling issue. In addition, requests for extension of the mailing date were granted so that counsel had sufficient time to present their case on dates that were agreed upon by both parties.

Briefs were submitted by both parties on June 4.

The witnesses who appeared on behalf of the Student and the Parents were the Mother; the Father; Mary Stark, state Department of Developmental Services training coordinator; and Orv Karan, rehabilitation psychologist and special education consultant.

The District's witnesses were Katharine Dutton, former Board high school work study coordinator and transition specialist; Rhea Klein, the Board department head of special education; Barbara Mazur, former Board speech language clinician; Louise Rivard, Board special education teacher; and Jill Raney, Capitol Region Education Council [CREC] educational audiologist.

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. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

SUMMARY:

The 21-year-old Student has been identified as eligible for special education and related services as Intellectually Disabled. He has Down's syndrome and related disabilities including a bilateral hearing impairment, speech and language disabilities and a cognitive impairment. His speech is not always understandable and he has social behavior difficulties. The Student's adaptive behavior is severely deficient.

The Parents and the Student brought this action to challenge the appropriateness of the Board's program and to seek reimbursement for the independent evaluation. They seek an order for compensatory education.

FINDINGS OF FACTS:

1. The Student is 21 years old and in his final year of special education eligibility. He lives with his Parents who are his legal guardians. [Testimony Mother]

2. The Student is identified as eligible for special education as a student with an Intellectual Disability. Student has Down's syndrome, and his disabilities include a bilateral hearing impairment, speech and language disabilities and a cognitive impairment. The Student's speech is not always understandable, and he has social behavior difficulties. The Student's intellectual capabilities are in the moderate mental retardation range, and his adaptive behavior in the area of communication and daily living skills is very limited according to psychoeducational testing in 2005. [Testimony Mother, Father, Mr. Karan; Exhibit B-44]
3. The Student has been eligible for special education throughout his education at the Board schools.
4. In 2004, a Futures/PATH planning meeting was held to provide a plan and to assist in the establishment of the Student's priorities to work on over the following few years, and to provide a foundation for the planning for the next year. The future dreams for the Student included supportive living in an apartment or house, supported competitive employment, commuting independently within the community, having friends and social and leisure activities in the community and remaining safe. The planning group identified areas of activities for daily living, behavior, social and leisure skills and work experience for the Student to focus on in the upcoming years. [Exhibit B-31]
5. While the transition planning process is supposed to involve a continuous process of updating the dreams, visions and outcomes for the student and developing goals and objectives that reflect what skills the student will need to achieve their goals, the Student's PATH was never revised or updated after June 2004. [Testimony Ms. Klein, Mother, Exhibit P-17] The Student's teacher and case manager was not involved in developing a PATH for the Student, and wasn't aware of whether his PATH was current. [Testimony Ms. Rivard]
6. An evaluation of the transition support services at the Board high school was conducted by Ernest Panscofar, Ph.D. at the Board's request during the 2003-04 school year. In his report, Dr. Panscofar set out the following as generally accepted professional principles that should guide transition planning for the Board:
 - a. The Board should prepare a single document containing the transition curriculum for East Hartford High School that identifies the resources used in transition plans, as well as teacher-made adaptations, so that parents are informed of the sequencing and scope of activities to which their child's IEP is linked;
 - b. Each child's special education program should be based on a MAPS or PATH Planning that identifies the future objectives upon which the IEP is based.

c. Functional skills are defined as those acquired competencies that assist a student to function more independently in out-of-school settings in the areas of employment, recreation, domestic living, community memberships and general socialization experienced by citizens of similar chronological age. Such functional skills should be, to the maximum extent possible, taught in, or use the materials found in, actual community settings.

d. Rather than focus on a student’s current prerequisite skills, a functional skills approach relies on the identification of supports a student needs to function successfully given current competencies.

e. For 18-21 year-old students, academic supports are best tied directly to work and community activities. The focus should be on active participation in community events and locations of high preference to each student. Develop on-the-job supports with job coaches at 1-2 jobs for up to 15 hours per week for age 18, 20 hours per week for age 19, and 25+ for age 20/21. Also, develop supports that lead to greater independent accomplishment of domestic living skills. [Exhibit P-23]

7. In September 2004, Kathleen Whitbread, Assistant Professor from the University of Connecticut Center on Developmental Disabilities conducted a program evaluation report for the Board. She identified effective transition service components that must be considered in planning the transition of students with disabilities to adult life. At that time, Dr. Whitbread concluded that it was “clear that [the Student’s] program has been developed with the active participation of his family as well as knowledgeable school personnel and consultants. [The Student’s] transition plan includes goals and objectives in the critical areas of ‘real life’ academics, independent living, community participation and vocational training.” She further recommended that “the team provide [the Student] with increasing opportunities to communicate his preferences, set goals, learn from successes and failures, monitor his own progress in meeting goals and objectives and solve problems using meaningful, real life situations.” [Exhibit B-37]

8. In February 2005, a psychoeducational evaluation was conducted of the Student’s adaptive behavior. The Vineland Adaptive Behavior Scales resulted in the following scores:

Domain	Standard Score	Percentile	Adaptive level
Communication	32	below .1	severe deficit
Daily Living Skills	23	below .1	severe deficit
Socialization	63	1	mild deficit
Adaptive Behavior Composite	34	below .1	severe deficit

9. The findings of the Vineland “suggest that [the Student] is functioning at a severe deficit as compared to his same age peers.” According to these findings, “[h]e

- needs supervision in all aspects of his life to protect him as he is naïve and lacks insight in certain situations.” [Exhibit B-44]
10. The Speech and Language “Reevaluation Progress Review” of February 2005 included the Clinical Evaluation of Language Fundamentals-4. The Student received scaled scores of 1 on all subtests of recalling sentences, formulated sentences, word classes total, word definitions and understanding spoken paragraphs. His pragmatics profile total score was 153. The Board speech language clinician explained that the scaled score of 1 is the lowest score that you can get which means that the Student isn’t fairing well. In terms of pragmatics, his profile was very adequate, according to the clinician. [Testimony Ms. Mazur, Exhibit B-45]
 11. The Planning and Placement Team [PPT] met on May 17, 2005 to plan the Student’s program for the 2005-06 school year. At that time, it was noted that the Student’s disability affected his involvement in the progress in the general curriculum as “intellectual ability, hearing and comprehension prevent [the Student] from participating fully in the general education curriculum.” The Student’s goals for the 2005-06 school year included: to independently apply mastered academic skills to functional tasks, to improve receptive and expressive language skills, to improve responsibilities for hearing aid maintenance, to demonstrate general job skills and work attitudes preferred by employers for keeping a job, to acquire skills to foster community participation, to acquire skills to foster independent living. The Student’s weekly services included 7 ½ hours of functional academics, 1 ¾ hours of post secondary employment, 1 ¾ hours of community participation, and one hour of independent living services, all provided by the special education staff. He also was provided ¾ of an hour of speech and language services from the speech/language clinician. The IEP indicated that the Student would spend 21 hours and 15 minutes with nondisabled peers. The areas of instruction that the Student would not participate in regular classes included English, math and parts of human dynamics and transition seminar. The IEP document noted that the Student required hearing aids and an FM system due to his hearing impairment. [Exhibit B-49]
 12. According to Dr. Karan, the Student’s IEP for the 2005-06 school year was appropriate. [Testimony Dr. Karan]
 13. According to the Board graduation worksheet, the Student was considered as a part of the class of 2006, as he had completed all of the graduation requirements set by the Board, and was eligible to participate in the senior activities at the conclusion of the 2006 school year. It was noted in the Senior Year Worksheet that the Student would return for “more vocational and educational experiences,” and “[a]s per IEP dated 5/15/05, the diploma to be issued in the year 2008. [Exhibit B-48, page 13]

14. The PPT reconvened on June 15, 2006 to plan for the 2006-07 school year. It was noted that speech and language services were one of the related services needed to assist the Student in reaching the transition goals and related objectives, and that the Student required hearing aids and speech and language services after considering the Student's language and communication needs. Despite these needs, the Student's direct service of speech and language was reduced to 15 minutes per week. No evaluation was conducted prior to this reduction in services. During the school year 2006-07, one of the objectives of the Student regarding changing his "units daily", which is part of the goal that the Student will maintain all amplification devices independently, was marked "NA", and no progress was reported on that objective during the 2006-07 school year. [Exhibit B-59]
15. The Board staff reported to the Parents that the Student reached a level and wasn't going to make any more progress on speech services, so they were reduced to the 15 minutes per week for checking his amplification devices. [Testimony Mother] When the speech/language services were reduced for the 2006-07 school year, the clinician conducted no evaluation that indicated that the Student no longer needed speech/language or assistive technology services or that the goals as to speech/language should be dropped. The services were dropped to an insignificant 15 minutes per week.[Testimony Ms. Mazur]
16. In developing the Student's program for the 2006-07 school year, the school decided, but the Parents did not agree, that as the Student already had the Life Horizons sex education program for two years it would only be used "as needed." The Parents requested that a male social worker continue to provide counseling to the Student. [Testimony Dr. Klein, Mother; Exhibit B-59]
17. In April and May 2007 the Board's rubric on the Student reflected that he was proficient and had mastered the skills of showing respect to females both verbally and non-verbally. [Testimony Dr. Klein] The Parents disagreed with this conclusion. The Parent indicated that the Student's ability to appropriately interact with females was not being monitored all the time, and continued to be problematic. Nevertheless, the school took away his life skills class, and his counseling was on an as needed basis only. [Testimony Mother]
18. One of the strategies of the school to address the Student's behaviors with females was to not have him work with females. [Testimony Mother] While the Student is described as very charming and co-workers may not hold him accountable due to his disability in the same ways they would hold another co-worker, that cannot take place if the Student is to be successful in a real job situation. [Testimony Dr. Karan] The Board did not appropriately address the Student's needs to learn appropriate interpersonal behavior with the opposite sex during the 2006-07 school year.

19. While the Student's services at that time included meeting with someone to discuss appropriate behavior before the Student ventured to a new job or community site, the Student was responsible for requesting assistance. [Testimony Mother] It is most beneficial to learn these skills in the moment during real world experiences rather than in school. [Testimony Dr. Karan]
20. During the 2006-07 school year, the Student spent time at job sites, including the Riverside site which was developed for him because of his interest in culinary arts. At that job site, he did set up, such as wrapping straws in napkins and making sure tops were on the food items. [Testimony Mother]
21. The Student was in the Board REALITIES program for the 2006-07 school year. The REALITIES program was described as a program developed approximately 6 years ago to help students who need life skills. The instruction in the program in English, math, human dynamics and transition curriculum were all focused on life skills. Students with significant disabilities would take the REALITIES program courses, and also have some time in general education. Students who are referred to REALITIES would attend REALITIES English/math for four years, and work on life and community skills. Then the students would enter Transition Academy to go out to community 5 days per week. [Testimony Ms. Dutton]
22. During the 2006-07 school year, the speech/language clinician worked on monitoring the Student's program only until the end of the calendar year 2006, discontinuing his services at that time. The Student received no further speech and language services during the 2006-07 school year. No evaluation was done to determine whether it was appropriate to dismiss the Student from these services prior to their discontinuation. [Testimony Ms. Mazur]
23. Jill Raney educational audiologist from CREC testified that she provided services to the Student during the 2006-07 school year until December 2006, when those services were discontinued at the request of the Board. The audiologist does not know what happened in December 2006, but was just told that her services were no longer requested. The audiologist was aware that during the 2006-07 school year, the team decided to discontinue the FM system for the Student, but she was not consulted to determine whether it was appropriate to stop using the FM system. The audiologist testified that as a member of the team, she should have been part of that decision making process. [Testimony Ms. Raney]
24. According to the audiologist the Student's hearing aid would not provide for his hearing needs in an educational environment; the Student requires a FM system in any educational setting. The audiologist indicated that the Student might or might not need the FM system in a job site placement, depending on the setting, such as when on individual is communicating some distance away. [Testimony Ms. Raney]

25. While the Student received passing grades from classes that he did not regularly attend, the Board transition specialist did know how teachers assigned passing grades to the Student in classes he did not actually attend in the 2006-07 school year. The Student's calendar was the only document that accurately showed what he was doing that year. [Testimony Ms. Dutton]
26. The Board transition specialist could not tell by looking at the Student's transcript which courses were with or without non-disabled peers or which were held out in the community. She explained that he was enrolled in classes so if there was a day in which he could not go to his job site he had some place to be. During the 2006-07 school year the Student usually was out of the building by 8:30 a.m. and gone all day. Courses were listed in his schedule in case he did not go out. [Testimony Ms. Dutton]
27. As of the 2006-07 school year, the Student's academics were eliminated, and his FM system was taken away. The Board staff opined that because the Student was not involved in academic classes, he would not need the FM system. No written evaluation was completed prior to removal of the use of the FM system. According to the Parents, the Student's one hearing aid was insufficient for classroom activities, and it was unacceptable to be on job sites without his FM system. [Testimony Mother, Father]
28. The Student's IEP for the 2006-07 school year did not adequately address his communication needs, and his needs for related services and assistive technology.
29. The IEP for the 2006-07 school year also did not provide sufficient community opportunities given the Student's substantial and very clearly documented communication limitations. The simulated types of experiences in the IEP do not translate well into real world situations for the Student. [Testimony Dr. Karan]
30. Before the PPT meeting to plan for the 2007-08 school year, the Family had a meeting with the Board transition specialist and the Board department head to discuss the Student's goals. The Mother went into the meeting, and indicated that she had visited sites and said she would go with MARC. The Board members of this planning meeting indicated that they felt the Supported Education Program culinary arts program [hereinafter "Supported Education Program"] operated by Community Enterprises, Inc. located at Manchester Community College [MCC] was more appropriate. The Board members of this planning meeting indicated that they felt the high school program couldn't be offered, and they offered Supported Education Program "out of the blue." [Testimony Mother]
31. On May 14, 2007, the PPT reconvened to plan the program for the 2007-08 school year. The PPT recommended that the Student's IEP be implemented and that the Student visit the Supported Education Program located at MCC to be considered for the next school year. The IEP had one goal: that the Student "will demonstrate how academic knowledge and skills are applied to the workplace,

- personal life and lifelong learning.” The six objectives for that goal were broad and sweeping, and included assessment of personal strengths, talents, values and interests; develop an individual career plan and portfolio; demonstrate effective oral and written communication skills necessary for employment as measured by work samples and employer reports; demonstrate integration and application of academic and occupational skills in school, work and personal life; demonstrate the ability to set, monitor and achieve clearly defined goals; identify and use coping skills to deal with situations in which he is not happy as measured by self and staff reports. The IEP included no FM system, and no speech services were provided in this IEP. The IEP did not provide for any academic instruction. The IEP offered no direct speech and language support, no support from an audiologist, and no instruction to deal with the Student’s inappropriate behaviors toward the opposite sex. [Exhibit B-63]
32. The Supported Education Program is “an occupational skills training program operated by Community Enterprises, Inc. a non-profit organization which provides services to adults with disabilities.” To enroll in the program, candidates must “have a diagnosed developmental disability due to mental retardation, learning disabilities, behavioral disorders, mental illness or physical disability.” [Exhibit P-8]
33. The Mother testified that she was told that the Supported Education Program differed from the Riverside job site, in that it would help the Student learn how to support a chef in the kitchen, and also had a component to learn the proper techniques to serve food, as well as teaching him the proper kitchen safety skills. When the Supported Education Program was presented to the Family, they understood that it was a five day program. Beth Goodwin, the program director told the Parents that the program was three days of cooking and two days of life skills run through Community Enterprises. [Testimony Mother]
34. When the Board presented the program to the Parents, the Board staff told the Parents that the program was for three days and a half year program. The Board indicated to the Parents that the other two days were to be at a job site and at community activities with the Student’s class from the Board high school. The Parents agreed to the proposal of three days at the Supported Education Program as they felt it was better than the other alternative of staying at the Board program five days, as the Board indicated to the Parents that they had nothing to offer him at the school. [Testimony Mother]
35. Initially the Board offered the second half of the program. The Parents felt that the first half focused on kitchen safety, which the Parents felt the Student needed to know. While the Parents initially protested only having the half year program, they agreed that the Student would visit the program and they would have another PPT meeting in June to finalize the Student’s program. The meeting on May 14, 2007 was adjourned with the understanding that the Student would visit the

- Supported Education Program and then the PPT would reconvene and complete the IEP for the 2007-08 school year. [Testimony Mother]
36. The Student visited the program, and liked it. He was excited as he wanted to be at the college level, and the Mother felt that was a boost to the Student's self esteem. [Testimony Mother]
 37. The PPT convened on June 18, 2007 after the Student visited the Supported Education Program. At the PPT there was discussion on whether the Student would attend one or two semesters of the Supported Education Program. The Parents requested both semesters; the Board offered one semester only. The Board proposed that the second semester would "focus on utilizing the skills attained during the first semester." The Board's Transition Academy staff was to develop a spring placement to meet the Student's "newly acquired culinary skills," and noted that a PPT will be scheduled for mid October to "present the specifics of the second semester plan." Although the culinary arts program included classroom lecture, no FM system was provided for in the IEP. A second goal was added that the Student "will meet the program requirements of the Supported Education Culinary Program at Manchester Community College," with the objectives that the Student will learn kitchen safety and sanitation as measured by the SEP curriculum rubric and the Student will learn basic cooking techniques and how to follow a recipe as measured by the SEP curriculum rubric. [Exhibit B-65]
 38. As the SEP curriculum rubric has almost nothing to do with safety, sanitation, or following a recipe or learning cooking, it fails to make Goal #2 and its objectives measurable or individualized. [Testimony Dr. Klein, Exhibit B-74A] Moreover, Goal # 2 was written by Ms. Dutton outside the PPT process and was never discussed at a PPT meeting. [Testimony of Ms. Rivard]
 39. While the Supported Education Program requires that students in the program have a diagnosed developmental disability, inexplicably the Board indicated on the IEP that the time the Student will spend with children/students who do not have disabilities was 30 hours, 15 minutes. Fifteen hours a week would be in the Supported Education Program. [Testimony Ms. Dutton] This figure (i.e. 30 hours and 15 minutes per week with non-disabled children) was not discussed at the PPT meeting. [Testimony Mother, Father, Dr. Klein] Ms. Dutton did not recall if she or Dr. Klein had computed the time with non-disabled children. [Testimony Ms. Dutton] According to Dr. Klein, the figure was computed by Ms. Dutton and Dr. Klein did not question the number. [Testimony Dr. Klein] However, Dr. Klein's decision to report that the Student was to spend more than 80% of his school day with non-disabled children during the first semester of 2007-08 to the state Department of Education and the PPT was clearly inaccurate and misleading. In addition, school staff members were aware of state guidelines and the fact that a child would not be accepted to the Supported Education Program if he/she did not have a disability. [Testimony Ms. Dutton]

40. Initially, the Board department head advocated for the position that the Student should be placed in the Supported Education Program for the second semester. Then the Board department head switched her position and recommended that the Student attend the Supported Education Program for only the first semester after the Parents argued that it made no sense to place the Student in the second semester before he had acquired the foundational skills taught in the first semester. [Testimony Father] Ms. Rivard and Ms. Dutton supported placing the Student in the Supported Education Program for a full school year. [Testimony Father, Ms. Dutton, Ms. Rivard] Although Ms. Rivard was present at the PPT meeting, she did not participate in the discussions related to placement. According to Ms. Rivard, Dr. Klein makes the placement and program decisions in East Hartford and the other members of the PPT are expected to defer to her decision as to the program and placement for a child. [Testimony of Ms. Rivard]
41. Dr. Klein decided on behalf of the PPT that the Student would be placed in the Supported Education Program for the first semester, and that the second semester program would be developed by the Transition Academy staff at the Board high school and would focus on utilizing the skills attained during the first semester by increasing time spent at vocational placements in the community. [Testimony Ms. Dutton, Ms. Rivard, Exhibit B-65] According to the IEP document, the Board administrator indicated further that if an appropriate job site that includes acquisition and application of skills learned at MCC could not be developed, then the second semester at the Supported Education Program will be funded by the Board. [Exhibit B-65]
42. The Prior Written Notice indicates that the PPT explicitly rejected the idea of determining the Student's program placement for the second semester of the 2007-08 school year. The IEP provided that the only assistive technology services that would be provided for the Student would be "personal hearing aids," despite the fact that the Student would be attending a program with classroom instruction. [Exhibit B-65]
43. At the PPT meeting on June 18, 2007, the Board staff indicated that the team would meet again in the fall to develop a program to apply his skills learned to another job site, but it wasn't decided what he would do. The Mother testified that delaying the planning for the second semester was not acceptable to her. [Testimony Mother]
44. The Mother further testified that she didn't know why there was no indication in the IEP about how his ability to hear might relate to the Student's placement at the Supported Education Program. Despite the Student's concerns and needs, no modifications or adaptations were planned for Supported Education Program. [Testimony Mother]

45. The Supported Education Program staff developed the curriculum rubric referenced in Goal #2, but the items on their rubric do not deal with the issue of teaching specific cooking skills. [Testimony Ms. Dutton, Exhibit B-65]
46. The Parents were told that the Student's goals would be the goals that the Supported Education Program set up for their own program. The Family was never given those particular goals and objectives. [Testimony Mother]
47. The Student attended the Board's Transition Academy for two days per week for the fall, as was planned by the PPT of June 2007. Ms. Rivard was the Student's teacher for the Transition Academy for the 19 to 21 years old students at the Board schools. The Transition Academy was a program for students who fulfilled their academic program and needed a community based program. The Transition Academy was set up so that by 8:30 or 9 a.m. the students were in the community to go to work or to go on their community trip. [Testimony Ms. Dutton]
48. The Student has documented hearing problems and yet he was placed by the Board at the Supported Education Program without support for his hearing impairment. [Testimony Father] The Supported Education Program staff did not know the Student wore a hearing aid or about modifying his assignments or homework. [Testimony Mother] The director of the Supported Education Program was made aware of the fact that the Student used an FM system at the October 30 PPT meeting. [Testimony Mother] The school did not conduct any hearing assessments of the Student's hearing needs in school or at the Supported Education Program. [Testimony Dr. Klein] Moreover, the Board had terminated the services of Dr. Raney during the period from December 2006 through December 2007 and made no assessment of the Student's hearing needs at MCC or of the equipment necessary to properly support his hearing needs in that setting. [Testimony of Ms. Dutton, Dr. Klein, Dr. Raney]
49. The decision to terminate Dr. Raney's participation in the Student's special education program on December 2006 was made outside the PPT process and without informing the Family. [Testimony Ms. Mazur, Dr. Raney, Exhibits B-59, B-63, B-65] This unilateral decision was not revisited until the Student was reported to be on the verge of being kicked out of the Supported Education Program. Again, the decision to provide the FM system and to reinstate Dr. Raney's involvement in December 2007 was made outside the PPT process. [Testimony Ms. Dutton, Ms. Mazur, Dr. Klein, Ms. Rivard, Dr. Raney]
50. In the 2007-08 IEP [Exhibit B-63] it was noted under vocational transition that the Student needed supervision, but there was no provision for additional supervision of the Student by a paraprofessional at his Supported Education Program. [Testimony Mother, Ms. Dutton]
51. The minutes of the June 18, 2007 PPT meeting state that the Student was able to independently access ADA transportation with minimal prompting. [Exhibit B-

- 63] Despite this notation on the minutes, the Student had difficulty accessing the ADA transportation appropriately. While he was able to get on and off the bus and know which bus to take, he could not successfully arrange for transportation, and if the bus did not show up, the Student was at a total loss on what to do. [Testimony Mother] The transportation arrangement with ADA was not reliable. [Testimony Father] The Board's transition specialist was aware that the ADA transportation often ran late. [Testimony Ms. Dutton]
52. ADA transportation goals were to be developed at the May PPT; however, the Board staff did not appropriately address the issues surrounding the ADA transportation. [Testimony Mother] The ADA transportation goal was not added until the November 15, 2007 PPT meeting after the Supported Education Program reported that the Student was often late to class. At that meeting, the PPT members decided to remove the Student from the ADA transportation and transport the Student to and from the MCC program separately. [Exhibit P-11] However, even then, the proposed IEP goal relating to ADA transportation was not discussed at the PPT meeting. [Testimony Mother, Exhibit P-11] Goal 1, objective 7 of that IEP did not address the problem the Student was having with ADA which was when they did not show up on time he had no idea of what to do or how to react. The goal was never discussed at that PPT. [Testimony Mother]
53. The Parents did not believe that the Supported Education Program was successful. There was a lack of support for the Student, as well as lack of communication and reinforcement. The Board did not go to the program to see how the Student was doing in the program. When the Parents told the Board that there was a problem with the program, the Board was unaware of the issues. The Parents also did not realize that the Supported Education Program consisted solely of disabled students. [Testimony Mother]
54. At the June 18, 2007 PPT, the PPT was scheduled to be reconvened on October 16, 2007. However, as of October 12, 2007, the PPT had not been reconvened. In light of this the Parents wrote a letter on October 12, 2007 to the school requesting the school's proposal for the second semester by October 19, 2007. [Testimony Father, Exhibit B-68] It was not until a PPT meeting held on October 30, 2007 that the school told the Parents their plan for the second semester. [Testimony Mother, Father] In the October letter, the Parents also requested that Dr. Orv Karan be allowed immediate access to perform an independent evaluation of the Student's program.
55. Although the Board employees were supposed to monitor the Student's placement at the Supported Education Program through review of the so-called rubrics in Exhibit B-74A, the Board took no action even though those documents indicated as early as September 10 and continuing through the week of November 5, 2007 that he was not performing at an acceptable level in behavior, classroom participation, homework and attitude. [Exhibit B-74A] The Parents had no way to know if the Student was following the Supported Education Program

- curriculum rubric as they were never given a copy of that rubric. [Testimony Mother, Exhibit B-65]
56. The Parents received no feedback from Community Enterprises, the organization that operates the Supported Education Program, that the Student was refusing to engage in class activity or disrupting the class which were behaviors not typical of the Student. [Testimony Mother] The school did not check on the Student's progress in the program until the Parent reported a problem. The Student had been accustomed to having someone guide him and at the Supported Education Program the ratio of classroom aides to students was about three assistants to about ten students. The Student had a lack of support and a lack of communication of what was expected of him. [Testimony Mother, Father]
57. According to the testimony of Dr. Klein, the Board was not aware of problems with the Student's placement at the Supported Education Program until mid-to-late October, when the Parents shared with Board staff that they had become aware of some problems with the Student's placement. [Testimony Dr. Klein]
58. On October 30, 2007, the PPT reconvened. That PPT meeting did not result in a firm placement and program recommendation for the second semester of the 2007-08 school year. No new IEP was presented at that meeting. At the meeting the Supported Education Program personnel made it clear that the Student was not engaging in or complying with the requirements of the program. Community Enterprises indicated it would not recommend continuation of the Student in the Supported Education Program if the Student's performance didn't improve. The PPT at that point abandoned its plan developed during the June 18, 2007 PPT meeting, that the Board would develop a program for the second semester that built on the skills the Student had learned at the Supported Education Program. Rather, the recommendation shifted to transferring the Student to an adult services provider who would be servicing him as an adult. [Exhibit B-71] Previously the school discussed that the Parents needed to start looking at adult service providers, but never requested a specific provider until this meeting. The school based members of the PPT insisted that the Parents select an adult service provider so that the transition to adult services could begin. [Testimony Father] Community Enterprises was raised by the Board as such an adult service provider even though that program was completely segregated. [Testimony Ms. Dutton, Exhibit B-71]
59. At some point, an employee of the Board rated the Student's success at the Supported Education Program on Goal 2, objective # 1 as "satisfactory" and his performance on Goal 2, objective #2 as "unsatisfactory." [Exhibit B-71] The Student's performance on this goal was not discussed at the PPT meeting.
60. The proposal for the Student at this time was that the May 15, 2007 IEP was to be implemented, and then the school was to conduct a reevaluation and evaluate the transition program. The Parents did not get any documentation on any

- reevaluation or any feedback on the Student's specific transition program.
[Testimony Mother]
61. The Parents objected to the Board's proposal, and indicated that the proposal and the programs offered for the previous two years were not appropriate and failed to place the Student in regular classes consistent with 20 U.S.C. § 1412(a)(5)(A), and requested the appointment of an independent consultant acceptable to them, an assistive technology program, a private agency acceptable to them to implement a transition program that is developed and overseen by the independent consultant in conjunction with the PPT, reimbursement for the independent evaluation of Dr. Karan, and compensatory education. [Exhibits B-71, B-72]
 62. At the October PPT meeting, the Supported Education Program staff discussed their letter which indicates that the Student was exhibiting behavioral and attentional problems at the program. [Exhibit B-70] According to the progress report, the Student was not participating appropriately in class, he was refusing to participate in class and he was having difficulty interacting with members of the opposite sex. The Student was reported on several occasions to have said "nice butt," was staring at the breasts of some of the female students and on one occasion called another student a "bitch." Further, the Student was reported to be arriving late for class. [Exhibit B-70]
 63. After this report was made on October 30th concerning the Student's inappropriate behavior toward members of the opposite sex, the Board social worker and the Supported Education Program director met with the Student. [Testimony Ms. Dutton] No evaluation was conducted, and no new goals and objectives relating to this issue were developed. [Exhibit P-11]
 64. At the hearing Ms. Dutton, attempted to explain away the Student's behavior toward members of the opposite sex by testifying that the Student's behavior was acceptable behavior in the college setting with other boys his age. [Testimony Ms. Dutton] That is not an appropriate response to these comments, particularly in light of the Student's demonstrated need for specialized instruction and related services in the area of appropriateness in relating to members of the opposite sex.
 65. At this PPT meeting, when the Parents told the director of the Supported Education Program of the Student's hearing limitations, and his prior effective use of the FM system, it was agreed that the Board would bring the FM system to the Supported Education Program. Subsequently new hearing molds were developed, the system was serviced by CREC, and the FM was put in place for the last two weeks of the program. [Testimony Mother]
 66. The Student's behavior at the Supported Education Program improved after he began using the FM system. He was more attentive, followed directions and participated more in class. [Testimony Mother, Father] The Parents were

- informed of this around the time of the November 15th PPT meeting. [Testimony Father]
67. The PPT reconvened on November 15, 2007. [Exhibit B-76] At that time, a speech and language professional was in attendance at the meeting, but an audiologist was not present. [Exhibit B-76] At that meeting, the Supported Education Program indicated that the Student's performance improved after the FM system was provided. [Testimony Ms. Dutton, Exhibit B-76] The Board transition specialist and the Board department head both agreed that there was an improvement in the Student's performance after the FM was provided. [Testimony Ms. Dutton, Dr. Klein]
 68. At the November PPT meeting, the school staff renewed their request that the Parents choose an adult service provider so that the Student's transition to adult services could begin. [Testimony Dr. Klein] At the PPT meeting, the Board expressed interest in working on transitioning the Student to an adult service provider. While Board staff indicated that this was the typical transition conducted for students, it is puzzling that this was not planned initially when the PPT planned the program at the annual review PPT meetings in May and June 2007.
 69. The plan from the PPT meeting of June 18, 2007 to develop a program to build on the skills the Student learned at the Supported Education Program was not discussed and was apparently abandoned. The school wanted the Student to start one day a week in January with an adult service provider, but there was no plan in place that told the Parents specifically what goals and objectives would be implemented by the adult service provider. [Exhibit P-11] The proposal was for the Student to spend a steadily increasing amount of time with the adult service provider and less and less time in the East Hartford program. [Testimony Father]
 70. The Board members of the PPT advised the Parents that the Student had met his goal of being prepared for supported employment. [Exhibit P-11] The Parents did not agree. There was no attempt at this PPT to identify the skills the Student had learned at the Supported Education Program and to develop goals/objectives to build on those skills. [Testimony Father, Exhibits B-71, P-11]
 71. The Parents never heard from the Supported Education Program as to whether the Student could continue in the program after he was provided the FM system. [Testimony Mother, Father] The family did receive a note from Rhea Klein saying it was not a possibility. [Testimony Mother]
 72. At the November 15, 2007 PPT meeting, the Board offered to conduct an assistive technology assessment, and offered the services of a behavioral consultant. [Testimony Ms. Klein] The Parents did not know the purpose of the behavior analysis requested at this meeting as the Supported Education Program would be ending in two to three weeks. [Testimony Mother] The Board in fact noted that

- the Student has not demonstrated any behavioral problems since the FM unit was provided at MCC. [Testimony Dr. Klein, Exhibit P-11]
73. The Parents did not refuse a behavioral assessment and an assistive technology assessment as noted in the minutes of the PPT meeting. Rather, the Parent specifically noted in signing a consent to conduct the assistive technology and behavioral assessments that she consented to having the evaluations done, but requested that the evaluations be conducted by mutually acceptable independent evaluators. [Testimony Mother, Exhibit B-78] The PPT minutes of the November 15th meeting are inaccurate in that they report that the Parents refused assistive technology and behavioral assessments. [Testimony Mother, Exhibit B-78]
 74. During the PPT meeting on November 15th, the school did not agree with the Parents' request to retain a private agency to develop and implement an IEP, they did not agree to pay for the independent evaluation of Dr. Karan, they did not agree to retain a mutually acceptable consultant to develop and implement an appropriate IEP transition plan, they did not agree to provide compensatory education, but they did agree to the Parents' request for an assistive technology assessment. [Testimony Dr. Klein, Father, Exhibit P-11]
 75. The Parents hired Dr. Karan to conduct an independent evaluation of the Student's program in early September 2007. The initial reason for seeking this evaluation was that the Parents thought the Supported Education Program should be a full year, and that it was detrimental to just have half of the program. The Parents wanted the evaluator to look at what the Board was proposing for the Student, and see if the Supported Education Program or the Board's proposal was appropriate for the Student. [Testimony Father]
 76. Dr. Karan conducted a situational assessment of the Student. He explained that the best way to assess someone like the Student would be in real world situations, in the likely places where he might work, play and live to see how it does in those situations and what level of support he needs. Dr. Karan said he understood that there was a difference of opinion between the Family and the Board on whether the Student should continue in the SEP Culinary Arts program for an additional semester, or return to the Board schools for a program. [Testimony Dr. Karan]
 77. In Dr. Karan's evaluation, he concluded that he saw no relationship in what was being taught at the Supported Education Program leading to something of long term value related to the outcomes for the Student in terms of employment, independent living and community integration. He further found that complicating matters, the Board's alternative of some unified classes at school and proposed employment at settings in which the Student had prior experience was also not acceptable. [Testimony Karan]

78. Assistive technology can assist a student to read and write. The Student reads at about a second or third grade level. [Testimony Dr. Klein] A student's skills at reading, writing, communicating and hearing must be assessed before he can transition to a job site in the adult world. [Testimony Dr. Klein] The Student had no formal assessment in the area of assistive technology as of the time the IEPs were developed for the 2005-06, 2006-07 and 2007-08 school years. [Testimony Ms. Mazur]
79. The Student will be eligible for adult services through the Department of Developmental Services. DDS does not program education for the individuals that it serves, but their program provides employment and day services for when the students leave their educational program. DDS has goals in the individual plans that they carry out, but educational services are provided by the school districts, and they provide adult services. [Testimony Ms. Stark]

CONCLUSIONS OF LAW:

The Parents and Student have brought this action in accordance with the Individuals with Disabilities Education Act which provides for special education and related services to children with disabilities, from birth through age 21, seeking compensatory education for the failure of the Board to provide a free appropriate public education to the Student during the 2006-07 and 2007-08 school years. The Parents are no longer pursuing their claims regarding the 2005-06 school year. They also seek reimbursement for evaluation of the Student.

I. Burden of Proof

In Connecticut, the regulations expressly state that the Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14 The Board has not met its burden in this case.

II. Procedural violations

The Supreme Court standard for determining whether a Board has provided a free appropriate public education 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). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Education Plan [IEP] is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.

The cases where procedural violations have been found to constitute a denial of a free appropriate public education have involved misinforming parents of their rights under IDEA, and/or significantly inhibiting them from meaningful participation in the development of an IEP. *See, e.g., Briere v. Fair Haven Grade School District*, 948 F.Supp. 1242 (D.Vt.1996); *Hall v. Vance Co. Bd. of Educ.*, 774 F.2d 629, 635 (4th Cir. 1985).

The denial of the Student's procedural rights in connection with the 2006-07 and 2007-08 school years were such as to deny the Student and the Parents of FAPE. First, with respect to the 2006-07 and 2007-08 school years, the Board failed to have evaluations of the Student's hearing done by an audiologist and failed to have a professional in the area of audiology services present at any of the PPT meetings on June 16, 2006, May 14, 2007, June 18, 2007, October 30, 2007 or November 15, 2007. Further, despite the fact that the Board determined that the Student was no longer eligible for speech/language services, there were no speech and language evaluations conducted and there was no speech and language professional invited to participate during PPT meetings when the 2007-08 IEP was formulated. This deprived the Student and the Parents of the opportunity to participate in decisions as to what accommodations were necessary to address the Student's bilateral hearing loss and his severe expressive and receptive language deficits, and in decisions as to whether IEP goals in the areas of speech and language and audiology were necessary.²

Second, the Board terminated the use of the FM system and the support of an audiologist to the Student's special education program in December 2006. These services were terminated despite the professional recommendation of Dr. Raney that the use of the FM system and professional support of an audiologist was necessary during the 2006-07 and 2007-08 school years. This deprived the Student of necessary accommodations and professional support for his hearing impairment during the 2006-07 and 2007-08 school years without holding a PPT, without advising the Parents and without obtaining appropriate input from the Parents and an audiologist. This deprived the Parents of the opportunity to participate in the decision, deprived the Student of the educational audiologist support he needed in the Supported Education Program and at the Board high school program and precipitated the Student's failure in the Supported Education Program.

Third, the 2006-07 and 2007-08 IEPs did not accurately disclose the time the Student would spend with non-disabled peers. During the 2006-07 school year, the Student was enrolled in classes in the high school and received passing grades for those courses, yet the Student often was taken out of those classes on an unplanned basis. It is therefore impossible for anyone reading the 2006-07 IEP to determine how much time the Student was spending with non-disabled peers in the community and how much time he was receiving instruction in segregated classes in the Board high school.

The placement information contained in the 2007-08 IEP with regard to the 2007-08 school year is even more misleading. The IEP specifies that all of the time the Student spent at the Supported Education Program was with non-disabled children and that he was spending 30 hours and 15 minutes per week with non-disabled children out of a total school week of 33 hours and 15 minutes. In other words the Parents were advised that 90% of the Student's instruction was with non-disabled children. In light of the state guidelines which indicated that it was not proper to disclose placement in a program that

² Exclusion of speech and language professionals and the audiologist from the PPT meetings also violated 34 C.F.R. § 300.321(a) which requires the Board to have a representative on the PPT who "[i]s qualified to provide, or supervise the provision or, specially designed instruction to meets the unique needs..."

admitted only disabled students as time with non-disabled student, [Exhibit P-20] and the Board department head's awareness of that guideline, the Board's disclosure that the Student spent 90% of his time with non-disabled students to the Parents and the state Department of Education constituted a knowing misrepresentation of the facts and deprived the family of an opportunity to challenge the IEP as violating 20 U.S.C. § 1412(a)(5)(A)'s mandate that a child with a disability cannot be placed outside a regular class (80 % of more of the time with non-disabled children) if he could be educated there with adequate supplementary aids and services.

Fourth, the Board failed to propose a program and placement for the Student for the second semester of 2007-08 until the PPT meeting on November 15, 2007. Moreover, the placement proposed at the October 30, 2007 and November 15, 2007 PPT meetings was essentially to identify an adult service provider so that the process of transitioning the Student to adult services could begin. Moreover, the IEP disclosed during the June 18, 2007 PPT meeting – to place the Student in a community work program during the second semester that built on the skills learned at the Supported Education Program at MCC - was abandoned, without explanation. By then, it became nearly impossible for the Parents to use the due process procedures to obtain meaningful relief before the Student aged out of special education on June 18, 2008. By delaying the formulation of an IEP for the second semester, by not developing goals and objectives that would be implemented by the adult service provider, and by not explaining why the plan developed during the June 18, 2007 PPT was abandoned, the Board denied the Parents of a meaningful opportunity to participate in the formulation of an IEP and to challenge that IEP.

The Supreme Court has observed that "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage ... as it did upon the measurement of the resulting IEP against a substantive standard." *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205 (1982) The Parents' effective participation was thwarted by the actions of the Board.

With respect to the first prong of *Rowley*, procedural flaws do not automatically require a finding of a denial of a free appropriate public education. Procedural inadequacies resulting in the loss of education opportunity or seriously infringing on the parent's opportunity to participate in formulating the individual education program, clearly result in a denial of FAPE. *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F. 3d 1072, 38 IDELR 91 (9th Cir. 2003), *citing W.G. Board of Trustees of Target Range School District No. 23*, 960 F. 2d 1479 (9th Cir. 1999), *accord, W.A. v. Pascarella*, 153 F. Supp. 2d 144 (D. Conn. 2001) The procedural flaws resulted in a loss of education opportunity to the Student and did seriously infringe on the Parents' opportunity to participate in formulating the Student's IEP.

III. Failure to Provide FAPE

With respect to the second prong of *Rowley*, an IEP must provide for a special education program that opens the door of education for a disabled child in a "meaningful"

way. *Rowley*, 458 U.S. at 192; *Walczak V. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (1998) This is not done if an IEP affords the opportunity for only “trivial advancement.” *D.F. v Ramapo Central Sch. Dist.*, 430 F.3d 595 (2nd Cir. 2995); *Walczak*, 142 F.3d at 130. An appropriate public education under IDEA is one that is “likely to produce progress, not regression.” *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

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 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 ...(1) meeting the child’s individual needs.” 20 U.S.C. § 1414(d)(1)(A)(ii) This statement of performance is not mere paperwork. It helps the team to formulate an appropriate program developed to meet the unique needs of the students.

The IDEA also makes clear that the PPT *must* consider certain special factors when writing an IEP including, in relevant part, a child’s assistive technology needs, 20 U.S.C. § 1414(d)(3)(B)(V), a child’s communication needs, 34 C.F.R. § 300.324(a)(2)(iv) and a child’s need for positive behavioral supports. 34 C.F.R. § 300.324(a)(2)(i).

In addition, for children over the age of 16 an IEP *must* include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 C.F.R. § 300.320(b)

The term “Transition Services” means

“(a) ...a coordinated set of activities for a child with a disability that—

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

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

- (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 C.F.R. § 300.43

In *Board of Education v. Rowley*, the Supreme Court noted that the IDEA contains a specific legal mandate which requires participating states to educate handicapped children with non-handicapped children “whenever possible.” *Board of Educ. v. Rowley*, 458 U.S. at 202³

This establishes a “strong preference for children with disabilities to be educated, ‘to the maximum extent appropriate,’ together with their non-disabled peers.” *Walczak*, 142 F.3d 119, 122 (2nd Cir. 1998, as quoted in *M.C. v. Voluntown Bd. of Educ.*, 226 F.3d 119, 122 (2nd Cir. 2000).

Under standards adopted by the state Department of Education and the Office of Special Education Programs of the United States Department of Education, a child is considered placed in a regular class when he is educated 80% or more of the time with children who are not disabled. The state Department of Education has further refined this benchmark for children placed by local school districts in transitional programs. *Memorandum to Directors of Special Education and Pupil Services, December 18, 2002*. [Exhibit P-20] According to that Memorandum, when determining if community based job placement or skills training program should count toward the 80% benchmark, the following apply:

- The job placement occurs in an inclusive setting where individuals with and without disabilities are present....;
- The job experience is one at which any student could potentially work;

³ The relevant statutory requirement provides: 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 educational environment occurs only when the nature or 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. 20 U.S.C. § 1412(a)(5)(A)

- It is not a job placement that has been designed just for students with disabilities... [Exhibit P-20]

The IEP for the 2006-07 school year was not appropriate as it did not provide for meaningful benefit, did not consider the Student's needs in the areas of assistive technology, communication and behavior towards members of the opposite sex as required by 20 U.S.C. § 1414, and did not properly address the Student's transition needs as required by 34 C.F.R. § 300.320(b) and 34 C.F.R. § 300.43.

The IEP did not specify the involvement of an audiologist or equipment necessary to support the Student's hearing deficiencies despite Dr. Raney's recommendation that ongoing support of an audiologist and the FM systems were necessary and the IEP's notation that the Student's "ability to hear may hinder hearing information and directions if the amplification devices are not working." The IEP in fact provided that the FM system would be discontinued despite the Dr. Raney's recommendation to the contrary. Further, the 2006-07 IEP provided for the termination of direct speech and language services to the Student and no IEP goals and objectives in speech or hearing were discussed or formulated, even though he had severe receptive and expressive language disabilities and had bilateral hearing loss. These actions are inconsistent with the requirement that in developing the IEP the PPT "must consider" a child's needs in the areas of communication and assistive technology. 20 U.S.C. § 1414(d)(3)(B)(V); 34 C.F.R. § 300.324(a)(2)(i).

In addition, the Parents' request for continued sex education was denied even though the IEP stated that "[b]ehaviors with those of the opposite sex interferes with his work." [Exhibit B-59] There was no goal, objective or plan described in the IEP to address this behavior. This is inconsistent with 34 C.F.R. § 300.324(a)(2)(i) which requires that the PPT must consider providing positive behavioral supports where a child's behavior interferes with his education.

Further, the IEP is inappropriate because it provides for too much teaching of functional skills in the Board high school, rather than in the community. [Testimony Dr. Karan] The goals and objectives are very general, not measurable or individualized and are focused almost entirely on vocational skills, with little to no emphasis placed on instruction in the areas of independent living and community participation.

The IEP for the 2006-07 school year was not appropriate because it did not provide "measurable" goals in the areas of employment, education and independent living, 34 C.F.R. § 300.320(b), and was not based on the Student's individual needs, and did not include appropriate instruction and related services as required by 34 C.F.R. § 300.43.

The IEP for the 2007-08 school year was also not appropriate. Neither a speech and language professional nor an audiologist was invited to the PPT meetings on May 14, 2007, June 18, 2007, or October 30, 2007 even though the Student had severe expressive and receptive language deficiencies and support of an audiologist and the FM systems

were necessary to properly support the Student at least in classroom settings. There were also no goals or objectives in the areas of speech and language or audiology as there should have been. Further, the Board had terminated the Student's educational audiologist support without informing the Parents or discussing it at a PPT meeting.

The goals and objectives were unacceptable as they focused on vocational skills with little or no emphasis on independent living or community participation skills. The independent living skill instruction was to occur in the Board high school which, according to Dr. Karan, is of little help to a child like the Student with limited ability to apply or transition skills learned in school to real life situations. Also the goals and objectives were too general and lacked the specificity required. The goals and objectives were not measurable as they did not indicate the specific behavior to be changed, the conditions under which the expected behavior was to occur or the definition of the criterion for acceptable performance. The IEP is also unacceptable because it failed to address the Student's high level of distractibility or provide for instruction on how to read social cues. Finally, the IEP does not reflect updated PATH planning as required by professional standards. Further, there is nothing in the Supported Education Program that was relevant to community integration. There was nothing in that program that addressed the Student's transition needs in the areas of independent living or community participation. Moreover, the Student was placed at the Supported Education Program without essential support services, including assistive technology, and audiologist and speech/language support.

The IEP for the second half of the 2007-08 school year is inappropriate for the same reasons. In addition, there was no IEP formulated that described the goals and objectives that would be addressed by the adult service provider chosen by the Parents.

The IEP for the 2007-08 school year and the placement at the Supported Education Program, were complete failures. The Student was put in a program with inadequate support which led to the Student's failure in that program. Then, instead of assessing what the Student had learned the Supported Education Program and building on it as had been planned during the June 18, 2007 PPT, the Parents were told that the Student would be placed with an adult service provider and be transitioned to an adult provider. Such planning is arbitrary and if not addressed will lead to emotional harm, according to Dr. Karan. This is the very antithesis of what 34 C.F.R. § 300.320(b) requires. Instead of a coordinated set of activities based on the Student's needs that facilitated his improvement in academics and functional achievement and promoted movement to post-school activities, as required by 34 C.F.R. § 300.43, the Board provided placement in a segregated program with inadequate supports that was designed to fail. And then, when the Student did fail, the Board announced that the Student was ready to transition to adult services.

It is clear that the Board failed to place the Student in a manner consistent with 20 U.S.C. § 1412(a)(5)(A) during either the 2006-07 or 2007-08 school years. The most obvious violation of this right occurred during the 2007-08 school year. Under 20 U.S.C. § 1412(a)(5)(A) the Board was required to place the Student in regular classes (80% or

more the time with non-disabled children) with adequate supplementary aids and services and modifications to the curriculum unless his disabilities were too severe. The evidence does not support a conclusion that the Student was too severely disabled to be placed in truly integrated community skill training or vocational programs. However, the Board placed the Student in a program that was for disabled children only, and did not provide any supplementary aids and services in the areas of communication, assistive technology or behavior. This violates the Student's right to be placed in a regular classes as well as his right to have adequate supplementary aids and services. In addition, the Board wrote in the IEP that all of the time he spent at the Supported Education Program was time with non-disabled children. This report was made even though Board staff was clearly aware that only disabled students are admitted into the Supported Education Program. That is, they erroneously disclosed that the Student had been placed in a regular class. The Board's failure to place the Student in a regular class with adequate supplementary aids and supports violated the Student's rights under 20 U.S.C. § 1412(a)(5)(A). The Board's misrepresentation as to the nature of the Supported Education Program deprived the Parents of the opportunity to timely challenge the program through due process.

The Board also violated 20 U.S.C. §1412(a)(5)(A) in that it failed to provide instruction in independent living and community participation skills in community settings during the second semester of the 2007-08 school year and during the 2006-07 school year. As indicated by Dr. Karan and Dr. Panscofar, independent living skills and community participation skills should be taught in the settings in which the Student will use them as an adult. Here the Board planned and taught a broad range of independent living and community participation skills such as check writing, banking, paying taxes, ordering at a restaurant, self advocacy and many others [Exhibit B-100] in classes composed of intellectually disabled students at the Board high school.

The IEP for the 2007-08 school year was not appropriate as a majority of the Student's hours were spent with disabled students, the Student was not placed with nondisabled students to the maximum extent appropriate and the IEP is not based upon an updated Futures Plan that reflects the future objectives of the Student and his family. Furthermore, the IEP is also inappropriate because it lacks emphasis on community participation and independent living based on the Student's targeted post-school outcomes, the IEP has no speech and language goals, and the IEP does not provide for any direct speech and language services and makes no provision for the services of an audiologist. The IEP is inappropriate because it does not contain any objectives based on the Student's very high level of distractibility which would be an issue in an employment situation. As Dr. Karan noted, the Board lost its way. In 2004, the Board used the PATH to identify the planning goals for the Student. After that, the relationship between the IEP and the Futures planning was lost.

There is a substantial risk that the Student could sustain emotional damage if an appropriate transition plan is not developed and implemented and adequate preparation for him behaviorally and emotionally is not made. [Testimony Dr. Karan] To remedy this situation an appropriate transition plan must be developed.

IV. The Student is entitled to compensatory education

Compensatory education can be awarded to a child who has not aged out of or otherwise been exited from eligibility under the IDEA without a finding that there had been a gross violation of the IDEA.⁴ *P. v. Newington*, 512 F.Supp. 2d 89, 112 n. 13 (D.Conn. 2007) Here, as the Student remains eligible for special education, compensatory education can be ordered without a finding of a gross violation of his rights. Compensatory education is proper remedial relief under the IDEA even if such a remedy extends beyond the date when he would ordinarily be eligible. *Burr v. Ambach*, 863 F.2d 1071, 1078 (2nd Cir. 1988).

Under the standards set out in *P. v. Newington Board of Education*, procedural violations that deprive the parents of a meaningful opportunity to participate in developing an IEP and/or failure to provide a special education program that provides FAPE or fails to comply with 20 U.S.C. § 1412(a)(5)(A) requires an award of compensatory education. Here, as the violations of the Student's procedural rights and substantive rights are clear, a remedial order must enter.

Moreover, the decisions to develop the 2006-07 and 2007-08 IEPs without any input from an audiologist clearly deprived the Parents of sufficient knowledge to know whether the FM unit and support of an audiologist were necessary and whether such necessary support was provided. Moreover, the Board's decision during the period December 2006 through December 2007 to terminate the support of the educational audiologist and the use of the FM system without consulting the PPT or the Parents deprived the Parents of sufficient information to advocate for their son and their right to be full participants in developing the Student's IEP. Further, the decision to not disclose the IEP for the Student for the second semester until November 15, 2007 violated the rights of the Student and the Parents to challenge the Board's IEP in time to achieve meaningful relief. Finally the decision to place the Student in the Supported Education Program with no support, misrepresent in the IEP that placement at the Supported Education Program was a regular class placement, and then remove him from that setting with no further program other than transitioning to an adult service provider also violated the Student's and the Parents' rights. These actions constitute gross substantive violations of the Student's rights under IDEA.

⁴ Generally, a disabled child does not have a right to demand a public education after he ages out or is otherwise exited from eligibility under the IDEA. However, the Second Circuit has recognized that a claim for compensatory education may be proper for such students where gross violations of the statute occurred that effectively deprived the child of the right to a FAPE. See *Mrs. C. v. Wheaton*, 916 F.2d 69 (2^d Cir. 1990)(gross violation of statutory regulations resulted in exclusion of the mentally retarded student from school for a substantial period of time).

The appropriate compensatory education is such relief that focuses on restoring the disabled child to the same position he would have been in but for the school district's IDEA violation. *Reid v. District of Columbia*, 401 F. 3d 516 (D.C.Cir. 2005); *Burr v. Ambach*, 863 F.2d 1071, 1078 (2d Cir. 1988), *vacated and remanded sub. nom. Sobol v. Burr*, 492 U.S. 902, *reaff'd after remand*, 888 F. 2d 258 (2d Cir. 1989); *Brennan v. Regional Sch. Dist.*, 2008 WL 220751, *14 (D. Conn. 2008) The Student has been deprived of FAPE for two school years.

Here, the remedial relief necessary to put the Student where he would have been but for the Board's violations of his rights are as follows:

(1) An order requiring the Board to retain a mutually acceptable independent consultant who has considerable experience in planning, implementing and monitoring transition plans, particularly children with intellectual disabilities. The consultant shall be retained by or before August 1, 2008.

(2) An order requiring the Board to ensure that the mutually acceptable independent consultant, Parents and school personnel who know the Student well and representatives of adult services providers to develop a positive Futures plan. The Futures planning shall be completed by or before September 15, 2008.

(3) An order requiring the mutually acceptable consultant to conduct a variety of situational assessments that include a broader range of job experiences that incorporate the Student's interests and preferences and a competency-based community based assessment of the Student's independent living and community participation skills.

(4) An order requiring the Board to provide funding for independent evaluations in the areas of speech and language, assistive technology, hearing and audiology and the Student's difficulties in interacting with members of the opposite sex. The independent consultant shall oversee these assessments to ensure that the assessments are conducted in a comprehensive and timely fashion.

(5) An order requiring the independent consultant to develop and implement an appropriate two year compensatory education program based on the Futures plan, situational assessment and competency-based assessments. The compensatory education should also establish the criteria for success that identifies the level of progress that will be necessary to restore the Student to the position he would have been in had he received appropriate programming during the 2006-07 and 2007-08 school years. Also included in the program of compensatory education should be appropriate services to address the Student's needs in assistive

technology, communication, hearing, audiology and difficulties in appropriately interacting with individuals of the opposite sex.

(6) An order requiring the Board to contract with an adult service provider to implement the compensatory education program so developed for the 2008-09 and 2009-10 school years, to transition the Student to adult services and to address the Student's needs in the areas of speech and language, assistive technology, hearing and audiology and problems in interacting with individuals of the opposite sex with the advice and oversight of the independent consultant.

(7) An order requiring the Board to retain the mutually acceptable consultant and provide compensatory education in accordance with this order for the 2008-09 and 2009-10 school years.

V. The Board is Responsible for the Student's Independent Evaluation

34 CFR § 300.502 and Conn. Reg. § 10-76d-9(c) provide that parents have a right to an independent educational evaluation if they disagree with the evaluations of the District.

34 C.F.R. § 300.502(b)(2) provides that if the parents request an independent evaluation at Board expense the Board must "without unnecessary delay" either file a due process complaint to prove that its evaluation is appropriate, or ensure that the independent evaluation is provided at public expense.

As there is no time limit under Connecticut law for requesting such a hearing "[t]he issue of what amount of time a district can wait before acting upon a parent's request for an IEE...must be viewed in a manner that preserves a parent's right to a publicly funded IEE." *In re: Letter to Anonymous*, 212 IDELR 185 (OSEP 1994). In *In re: Kent School District*, 18 IDELR 1324 (Wash. SEA 1992), the hearing officer enforced a ten day response time to the request for independent evaluation. In *In re: Letter to Imber*, 19 IDELR 352 (OPSEP 1991) reference is made to a Rhode Island Rule requiring a response in writing within fifteen days. *See also, Hampden-Wilbraham Reg. Sch. Dist.*, 37 IDELR 20 (Mass. SEA 2002) where the failure to request a hearing within twenty-four days was considered insufficient.

Here, the failure to request a hearing for over thirty days is clearly insufficient given that the Student was in his last year of eligibility for special education, the Student's pending failure at the Supported Education Program and the Board's failure to monitor the placement and respond. The Board shall reimburse the Parents for the cost of Dr. Karan's evaluation.

FINAL DECISION AND ORDER:

- 1) The Student's IEPs including the transition plan and programs for the 2006-07 and 2007-08 school years were not appropriate and not consistent with 20 U.S.C. Sec. 1412(a)(5)(A).
- 2) The Student shall be provided a program of compensatory education.
- 3) The program of compensatory education shall include provision of an independent educational consultant and retention of private agencies to implement the program of compensatory education.
- 4) The compensatory education shall include the following components:
 - a) The Board shall retain a mutually acceptable independent consultant who has considerable experience in planning, implementing and monitoring transition plans, particularly children with intellectual disabilities. The consultant shall be retained by or before August 1, 2008. If the parties fail to select an independent consultant, Dr. Karan shall select the independent consultant.
 - b) The Board shall ensure that the independent consultant, Parents and school personnel who know the Student well and representatives of adult services providers develop a positive Futures plan. The Futures planning shall be completed by or before September 15, 2008.
 - c) The independent consultant shall conduct a variety of situational assessments that include a broader range of job experiences that incorporate the Student's interests and preferences and a competency-based community based assessment of the Student's independent living and community participation skills.
 - d) The Board shall provide for funding of independent evaluations in the areas of speech and language, assistive technology, hearing and audiology and the Student's difficulties in interacting with members of the opposite sex. The independent consultant shall oversee these assessments to ensure that the assessments are conducted in a comprehensive and timely fashion.
 - e) The independent consultant shall develop and implement an appropriate compensatory education program based on the Futures plan, situational assessment and competency-based assessments. The compensatory education should also establish the criteria for success that identifies the level of progress that will be necessary to restore the Student to the position he would have been in had he received appropriate programming during the 2006-07 and 2007-08 school years. Also included in the program of compensatory education should be appropriate services to

address the Student's needs in assistive technology, communication, hearing, audiology and difficulties in appropriately interacting with individuals of the opposite sex.

- f) The Board shall contract with an adult service provider to implement the compensatory education program so developed for the 2008-09 and 2009-10 school years, to transition the Student to adult services and to address the Student's needs in the areas of speech and language, assistive technology, hearing and audiology and problems in interacting with individuals of the opposite sex with the advice and oversight of the independent consultant.
 - g) The Board shall retain the mutually acceptable consultant and provide compensatory education to the Student for the 2008-09 and 2009-10 school years.
- 5) The Board shall reimburse the Parents for the independent evaluation completed by Dr. Karan.