

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

Appearing on behalf of the Student:

Parent, Pro se

Appearing on behalf of the Board:

Attorney Christine Sullivan
BerchemMoses
75 Broad St.
Milford CT 06460

Appearing Before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the actions of the Board operate to deny Student a Free and Appropriate Public Education (“FAPE”) ?
2. Did the actions of the Board in preparing and implementing the components of the Student's Individualized Education Program (“IEP”) operate to deny Student FAPE?
3. Is the proposed remedy of placement at either the Easton Country Day School or Winston Prep an appropriate placement for the Student in the least restrictive environment and/or compensatory education or both?

PROCEDURAL BACKGROUND:

The Parent filed this Request for Due Process Hearing on June 11, 2021. The undersigned Impartial Hearing Officer was assigned the case on June 16, 2021. A Prehearing Conference was held on June 22, 2021. The case was scheduled for the first day of hearing on August 11, 2021, Subsequent hearings were held on September 9, 2021, September 23, 2021, and November 11, 2021. At the conclusion of the evidentiary hearing, the parties requested the opportunity to file simultaneous briefs, and thereafter requested several extensions for filing them. Both briefs were timely filed January 18, 2022.

WITNESSES:

The parties agreed that the Parent and the Board could examine/cross-examine the witnesses on the

same day so as to expedite the hearing and accommodate the witnesses' schedules.

Dr. Kim Hapken, Ph. D. was the Interim Trumbull Pupil Personnel Services Coordinator for a portion of the time at issue. She was succeeded by Dr. Tammy Hartman on October 16, 2020.

Amy Oman holds two Master's degrees, M. Ed. and M.S. In Special Education. She is Student's Case Manager and a Special Education teacher at Madison Middle School.

Darsi Baer, M. A., C.A.S. is the MMS School Psychologist. Meredith Barton, M.S.W. is the Trumbull Social Worker assigned to Student.

Marisa Lucuk, M.S. Is the Trumbull Speech-Language Pathologist.

Patricia Marini, M.S. is Student's Special Education Teacher.

Dr. Tammy Hartman, Ph. D., as of October 16, 2020, became the Pupil Personnel Services Coordinator for the District.

EXHIBITS:

HO-1 and HO-2 were admitted as Exhibits.

The Board Exhibits B-1 to B-56 were admitted into evidence.

Parents produced Parents' Exhibits 1-14 which were offered for identification. Board Counsel objected to P-1, P-4 (incomplete) and P-10 (relevancy) and stated she would object to any others that were incomplete, such as email chains. After discussion, the parties agreed to use the Board's copies of exhibits that were identical to Parents' exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein are not meant to exclude other supported evidence in the record. All evidence presented, including witness testimony, was duly considered and evaluated in deciding this matter. To the extent the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *Bonnie Ann F. v. Calallen Independent School Board*, 835 F. Supp. 340 (S. D. Tex., 1993)

SUMMARY:

The Parent brought this Due Process Request claiming denial of FAPE to the Student during the school years 2019-2020 and 2020-2021. The Student was unilaterally placed at a private school in 2018-19 and 2019-20. The District placed Student in its middle school, Madison Middle School, for the 2020-21 school year. As a proposed remedy to the claimed due process violation, the Parent requested placement at Easton Country Day School or Winston Preparatory School, which was rejected by the District. The District claimed its programs, evaluations, and responses it provided to address the needs of the Student nevertheless were timely, appropriate and reasonably calculated to produce educational progress. The Covid-19 crisis severely impacted the provision of services to the Student. The services recommended, and/or agreed on in IEPs for the Student, were not implemented, implemented late, or ineffectively. The Board did not provide FAPE for the 2019-20 school year.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 United States Code (“U.S.C.”) §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes (“C.G.S.”) §10-76h and related regulations, and in accordance with the Connecticut Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. The Student is a thirteen year old boy who attended the Madison Middle School ("MMS") (of the Trumbull School District “Trumbull”) in the seventh grade for the 2020-21 school year, and is enrolled in eighth grade there at the time of the Due Process hearing. (T. Mother, T. Oman, B-1)
2. There is no dispute that Student has been found eligible for Special Education services under the category of specific learning disabilities at all relevant times hereto. (T. Mother, B-1)
3. For the 2019-20 school year, the Student had been unilaterally placed by the Parent at Villa Maria, an unapproved special education school in Stamford, Connecticut (“Villa Maria”). This placement was included in a prior confidential agreement between the District and the Parents. (T. Mother, T. Dr. Hapken)
4. Mother testified that during the 2019-20 school year, Student had been making satisfactory progress at Villa Maria. (T. Mother)
5. Mother testified that she felt her son should be placed at Villa Maria or another, similar school such as Easton Country Day School or Winston Prep, but did not offer any evidence or witnesses at the hearing to support those placements. (T. Mother)
6. Mother testified that she communicated with the District during the year to ask whether the Student's placement at Villa Maria could continue into the seventh grade at District expense. (T. Mother)
7. At several times prior to June, 2020, during the parties' interactions, the Parent had requested that representatives of the District contact Villa Maria to obtain information and observe Student in class (and virtual learning) there, but such interaction was not ever scheduled or conducted. (T. Mother, T. Marini, T. Baer)
8. Close to the end of the 2019-20 school year, Parent again requested the District to extend Student's enrollment at Villa Maria another year, but the District declined her request. (T. Mother)
9. In early 2020, the Covid-19 outbreak had caused the cancellation of classes throughout Connecticut. (T. Mother, B-1)
10. The Student was due for his annual review on or about June 9, 2020. (B-1)
11. While the Student still attended Villa Maria during 2019-2020, the District prepared to complete evaluations of Student in advance of his annual review and to develop an Individualized Educational Program for Student. (T. Mother, T. Dr. Hapken)
12. None of the contemplated evaluations, tests (or arrangements for such testing) were completed by

the District while Student was attending Villa Maria. (Mother)

13. The District convened a virtual PPT on June 9, 2020 (“June PPT”) to consider Parents’ request to “review Student’s program, to offer an in-district program at MMS and to discuss evaluations.” (B-1).

14. Mother again requested placement at Villa Maria at the June PPT. (T. Mother, T. Baer)

15. Villa Maria kept records and data on Student’s progress and current academic levels during his enrollment there. Testing was done by Villa Maria staff in Spring, 2020 (T. Mother, B-1)

16. Dr. Hapken testified that the records, evaluations, reports, memoranda, grades, transcripts or other information about the Student’s attendance at Villa Maria had not been reviewed by the team in advance of the June PPT. (Hapken, Mother, B-1)

17. The information about the Student was attached to an email to Dr. Hapken from Villa Maria that was sent a few days prior to the June PPT. Dr. Hapken admitted that the attachment was not forwarded to the members of the team (including the Parent) in advance of the meeting. (Dr. Hapken)

18. MMS personnel confirmed they did not review the Villa Maria information in advance of the June PPT, and that such information was not shared in advance with Parent. (Dr. Hapken, T. Marini, T. Oman)

19. Mother invited three staff members from Villa Maria to attend the virtual June PPT. (T. Mother)

20. These staff members did attend the June PPT, and offered information regarding the Student’s educational issues with the MMS PPT team. (B-1, Mother)

21. Neither the staff nor any of the Student’s records from Villa Maria were available at the hearing. However, the “Present Levels of Academic Achievement and Functional Performance” section of the June IEP recounts the observations and data that were shared verbally by Villa Maria personnel in attendance. (B-1)

22. Student’s reading teacher at Villa Maria, Ms. Friedman, attended the June PPT and related Student’s progress during his time at that school. The PPT states that “Ms. Friedman offered insight into his current level of functioning in reading. She described him as “quiet and hardworking.” He can accurately decode unfamiliar multisyllabic words at the fifth grade level both in and out of context. He has a weekly spelling test to assess his encoding skills. He never missed more than two of fifteen words. She stated that he was also offered movement breaks when needed to help him maintain focus. She shared his Qualitative Reading Inventory assessment results. She stated that Student is better at fact based questions than inferential questions. She stated that he can become overwhelmed with homework. He did better work in the classroom with the teacher. She stated that he can decode, he can learn the rules, he can do the worksheet, but he has difficulty applying the rules.” (B-1)

23. Ms. Oliver, the Student’s counselor at Villa Maria, reported that he can “hold himself together in school.” “He needs to continue to work on demonstrating greater self-advocacy across both academic and social domains, and accessing coping strategies as needed when feeling stressed or overwhelmed at school. He needs support to interact with peers.” (B-1)

24. Ms. Sabato, Special Education Director of Villa Maria, provided more information at the June PPT.

She offered that: “In writing, Student is able to identify capitalization, punctuation, and many spelling errors when completing a Daily Oral Language worksheet. With teacher prompting, Student is able to complete a graphic organizer including 4-5 details. When given extra time and support, Student is able to complete pre-writing activities and publish interesting paragraphs. Student's attention and distractibility challenges impact his ability to be available for the entire hour of writing class. Student needs significant support to go through the steps of the writing process. He still needs prompts with brainstorming, and moderate support with outlines and drafting, editing. Student struggles with revision, including adding details and eliminating unnecessary information. After a 1:1 conference with the teacher, he may need reminders of how to take suggestions and place them into his writing. In Math, Mrs. Sabato shared his math assessment results (See Present Levels of Performance) In the spring, Student's MBSP score reflected a substantial improvement since the fall of 2019. He is currently performing at a third grade math level. His scores reflected weakness in conceptual understanding and applying correct skill steps to solve math computation problems.” (B-1)

25. Ms. Sabato also reviewed the speech progress report. Student receives one weekly thirty-minute push-in session in a small group and one pull-out session in a triad. Skills targeted are narrative language skills, vocabulary development, word retrieval, and conversational skills. (B-1)

26. Ms. Sabato questioned the speech and language testing proposed by MMS; she asked if there would be more metalinguistic testing to evaluate higher language. (B-1)

27. The reports from Villa Maria personnel support the view that Student performs “exceptionally better socially” in a very small setting. (B-1)

28. Ms. Sabato stated at the June PPT that she would like to see the transition suspended for another year because of the Covid-19 school closure. (B-1)

29. The IEP that was presented by the District at that June PPT contained the recommendation for a 40-day “diagnostic placement” at MMS. (B-1)

30. There is no evidence that any alternatives or options, other than enrollment at MMS, were considered by the District at the June PPT; the IEP only included the statement that continuing enrollment at Villa Maria was “rejected,” in the “proposed actions” section of the June IEP. (B-1)

31. Parent then asked at the June PPT if Student could “stay put” at Villa Maria while the testing is completed. She requested that, even if the District rejected placement for the entire 2020-21 year at this PPT, that he at least remain at Villa Maria during the first 40 days of the “diagnostic placement.” This was also rejected by the team. (T. Mother, T. Baer, B-1)

32. Student's social worker recalled that the Parent wanted Student to “stay put” at Villa Maria while evaluations were completed. (T. Barton)

33. The June PPT meeting was also convened for the Student's annual review. Dr. Hapken stated that the meeting was a discussion for the planning of a program and “referred to the agreement.” That agreement, according to the Parent's and Dr. Hapken's testimony, already contained a consent for testing and evaluations that was still in force through the 2019-20 school year. (T. Mother, T. Dr. Hapken)

34. Testimony was presented that the period of consent referred to in the agreement did not end until

August 31, 2020. (T. Dr. Hapken, T. Mother, B-1)

35. Dr. Hapken said that she explained that the team recommended “specific” testing and would need Mother's consent to pursue. Mother asked if she could request additional testing. The team reviewed the recommended testing. (B-1, T. Mother, T. Dr. Hapken)

36. The Trumbull Special Education Department Chair, Mrs. Patricia Marini, testified she “sent a consent for testing prior to the school closure but did not receive signed consent form back prior to the school closure.” (B-1, T. Marini)

37. The Parent testified that she questioned the need to sign a new consent since the testing was part of the agreement with the District. (T. Mother)

38. Parent believed she had already given consent for testing in the prior signed agreement, which she understood was still continuing in full force until August 31, 2020. (T. Mother)

39. “The Parent asked for a comprehensive evaluation and Dr. Hapken stated that the TPS team had planned a very comprehensive evaluation.” (B-1)

40. MMS had drafted an IEP for Student on or before the June 2020 meeting contemplating the Student would attend MMS; the text states: “The IEP has been developed for implementation within a regular school building and is based on the current available information.” (B-1)

41. Despite Ms. Sabato's and Parent's request to reconvene or reschedule the meeting once the team had a chance to review the Villa Maria material, Dr. Hapken nevertheless stated at the June PPT that the team was prepared to offer a program for Student at MMS. (T. Hapken, B-1)

42. Because of the Covid-19 pandemic, the District schools closed on or about March 20, 2020, and did not reopen until fall of 2020.

43. None of the contemplated testing of Student was done during the period from June to October 2020. (T. Mother, T. Baer, B-1, B-5, B-8, B-10)

44. The team agreed that Student's case would be reviewed “every two weeks” during the diagnostic placement. (B-1)

45. It is not clear from the evidence (in the form of reports or diagnostic data) produced at the hearing that the team shared biweekly reports of the diagnostic placement with Parent.

46. During the hearing, Dr. Hapken deferred to her staff when questioned whether the transition from private to public school was not well planned or whether it happened without adverse effect on the Student as follows:

Q. What was the transition plan for Student from Villa Maria to MMS?

A. Dr. Hapken: “The school team would be the ones to answer that question. They were the ones that would work to develop a transition from one program to the next. So from Villa Maria to the district program at Madison.”(Dr. Hapken).

47. Dr. Hapken did not participate in any interactions with Student. She testified that she was not

directly involved in transition meetings. She did not know if any such meetings occurred. She relied on Ms. Marini and other staff to facilitate the transition with the rest of the school team. She did not feel she had to “micromanage” what the school team needed to do. She does not recall any specific meetings with Ms. Marini. Dr. Hapken said there was “no reason to doubt that she (Ms. Marini) was not going to help with the transition, but she was not sure.” (T. Hapken)

48. Ms. Marini's testimony did not provide information about any transition plan created for Student. (T. Marini)

49. Ms. Barton stated she did not inquire of Villa Maria staff or parent for additional input regarding the Student's need for counseling. (T. Barton)

50. Ms. Marini stated that evaluations were not done during the summer break because of Covid-19. Ms. Marini also confirmed that the purpose of the 40 day diagnostic placement was for evaluations to take place within the 40 days from June 9, 2020. (T. Marini).

51. Evaluations were originally planned to be conducted in the Spring, 2020; however were delayed due to COVID closures. (B-8)

52. Ms. Marini stated “we closed around March 20, and I don't think we started evaluations again till we returned to school the following school year.” (T. Marini)

53. Ms. Marini stated that all assessments were done by December 2020. (T. Marini)

54. Only “curriculum based” assessments and Wilson Assessment of Decoding and Encoding (“WADE”) progress assessments were conducted during the period from June to September, 2020. (T. Marini, T. Mother)

55. Even after the expiration of the 40 day “diagnostic placement,” the testing still was unfinished and/or incomplete. The October PPT meeting recommends no alternative placement other than that Student remain enrolled at the public school. (B-8)

56. The Student was attending in-person classes at MMS on Mondays, Tuesdays, Thursday and Fridays, with virtual classes by video link on Wednesdays. (T. Oman)

57. At the PPT held on October 22, 2020 (at the expiration of the 40 day diagnostic placement), Dr. Hapken stated that “at this time, based on the results of the current curricular based assessments, it is the position of the school team that the program at MMS is appropriate to meet Student's academic and social-emotional needs.” (B-8)

58. During the fall/winter term, Mother made frequent attempts to make the team aware of Student's transition difficulties. (T. Mother)

59. When Student began attending MMS, Mrs. Barton began counseling Student in 30 minute individual sessions and 30 minute group sessions according to the recommendations of the June PPT. (T. Barton)

60. Ms. Barton did not recommend or request changes to counseling goals during the diagnostic placement. Although she stated she found them “appropriate,” she could not point to data supporting

that finding. (T. Barton)

61. As the 2020-2021 school year went on, although Ms. Barton said she did not observe crying or outbursts, Student began to present as anxious, emotional and sometimes difficult to engage peers. (T. Barton)

62. When MMS reopened for the fall 2020, Student was scheduled to attend 4 days in person per week and one day of virtual learning on Wednesdays. (T. Oman)

63. The Student began having difficulty with schoolwork and homework shortly after classes began in the fall of 2020. He began to refuse to attend school and started to have emotional meltdowns at home about school. (T. Mother)

64. Student consistently averaged about 7-8 unexcused absences per month during the school year 2020-21. (B-43, B-44)

65. On at least one occasion, the Student was found hiding in the bathroom during lunch period. (T. Marini, T. Mother)

66. Ms. Barton recalled concerns about Student having troubles in lunch period, and going into the bathroom to eat his lunch rather than the cafeteria. She changed his counseling to add a twice-weekly social group but was unsure of when that happened. (T. Barton)

67. Mother reached out for help to community-based support organizations regarding Student's absences and behavior after January, 2021. (T. Mother)

68. Mother informed Ms. Marini that the Student had been diagnosed with high blood pressure by his pediatrician. (T. Mother)

69. In addition to calling these health issues to Ms. Marini's attention, Mother called the 211 line to try to get help on at least one occasion, and was given some contact information for counseling. Mother set up counseling services for Student. (T. Mother)

70. Ms. Marini said she tried to address Student's transitions but she was not specific as to her methodology for doing so. (T. Marini)

71. Ms. Marini said the team addressed Mother's concerns about Student's getting through his school day by providing Student with a paraprofessional ("para"), and frequent check-ins. (T. Marini)

72. Dr. Hapken testified she thought providing a para was "essential" in a child with a communication disorder such as Student. However, the June IEP states the team would "determine later" if the para was needed. (T. Hapken, B-1)

73. Ms. Oman was Student's case manager and a certified special education teacher, who testified that she was a self-described "bystander" at the June PPT, as she had no previous experience with Student. (T. Oman)

74. Ms. Oman testified that her impression is that the Student is vulnerable socially and functions below expected levels. (T. Oman)

75. According to the IEP, Ms. Oman did not in fact attend the June PPT but did attend the September 24 PPT where the Student's ongoing 40-day diagnostic placement was reviewed. After the September PPT, she and her colleague began to conduct achievement tests and ultimately prepared a comprehensive academic assessment dated December 23, 2020, in the areas of reading, writing, and mathematics. (T. Oman, B-10)

76. The comprehensive academic assessment, completed on December 23, 2020 was part of Student's triennial evaluation, which was due December 23, 2020. (B-10)

77. Mother was informed that a PPT had been scheduled for December 23, 2020. She was not given a choice of dates. There was no copy of the Notice of PPT meeting for that date produced at the hearing. Mother testified she informed the team that the date they chose would be difficult for her to attend and requested a choice of other dates. That request was denied, and the meeting was held. Mother had to leave the PPT meeting before it was concluded. (T. Mother)

78. The comprehensive academic assessment produced the following results: The WIAT revealed deficits in spelling, numerical operations and math fluency. Also, Student scored below average in listening comprehension and sentence building. Likewise, many of the scores in the subtests of the C-TOPP-2 test were low, resulting in the composite phonological results being shown as below average to very poor. Other tests included the WIST, TOWRE-2, GORT-5 and TORC-4 tests of fundamental literacy skills and abilities which revealed similar deficiencies, particularly in the area of fluency. The Student's comprehension ability varied dependent on the test being used to evaluate that area, scoring "average" on the TORC-4 but much lower on the GORT-5 and TOWRE-2 as well as the BRI. Student was reported to have done much better in the curriculum-based assessments, however. (B-10)

79. Reading recommendations included: direct explicit sequential phonemic awareness instruction, continued decoding and encoding instruction through structured literacy instruction, improvement of Student's rapid naming skills, direct instruction and practice in comprehension strategies, accommodations to aid in access and understanding of curriculum material, and help with spelling, and math fluency. (B-10, T. Oman)

80. The Qualitative Reading Inventory-6 (QRI-6) is used to measure reading levels. The December 2020 reading test indicated Student was successful ("independent") at the Sixth Grade (Level 3) but when he was tested at Upper Middle School (Level 4), he scored in the "frustration" level. In additional testing on March 28, 2021 and April 20, 2021, Student similarly scored at "frustration" level in other academic areas (using social studies and science passages). (B-10, B-21)

81. Ms. Oman reported that previous testing done at Villa Maria, in the spring of 2020, shows that Student had been reading the Sixth Grade and Upper Middle School Level word lists at an "instructional" level. (B-10), corroborated by Villa Maria personnel. (B-1)

82. The daily team reports dated March 9, 2021 ("Academic Report"), consisting of two pages, was an extremely generalized view of Student's academics, showing passing grades, positive teacher comments, and a few "areas to work on" (primarily his inconsistent attendance). (B-15)

83. Mrs. Oman submitted an Annual Progress Report on Student on May 28, 2021 (B-24)

84. A comparison of the STAR testing results performed in January 2021 to those performed in May,

2021, revealed a decline in reading skills from 553 in January to 503 in May, with a commensurate half-grade decrease in grade equivalent. (B-24, B-27)

85. Amy Oman also reported Student moved from Level 3 - 442 in September 2020 to Grade 2 - 420 in May, 2021 on his I-Ready Math program. She stated he requires a “small group mathematics class where the teacher can touch base and check in as needed.” (B-24, B-27, T. Oman)

86. Mrs. Oman arranged for a paraprofessional to assist in all of Student's classes. She switched Student's class to a “self-contained language arts” class. She also reviewed progress in the Wilson reading program. (T. Oman)

87. According to the June 9, 2020 IEP, Student was to be provided with 13.75 hours of special education services per week, out of 34.5 total hours. (B-1, B-5, B-8)

88. On or about December 20, 2020, Student's total special education service hours were reduced to 10.75 per week due to his being removed from special education language arts class and placed into the general education language arts class. (B-13, B-16, B-18, B-23)

89. The Wilson Assessment of Decoding and Encoding (“WADE”) testing of the Wilson reading program showed that Student's scores were consistent from the beginning to the end of the year. Student has been instructed up to Substep 5.4. Student is performing above goal in the area of decoding and below goal in the area of encoding. (B-24)

90. Ms. Darsi Baer is the MMS School Psychologist. As part of a Psycho-educational Evaluation, she administered tests to Student on October 21, 22, November 12, December 3 and 14, 2020. (T. Baer, B-11)

91. The above testing was delayed and Ms. Baer's report was not produced until December 23, 2020 for the PPT held on that date. (B-11)

92. Testing of Student by the District had been contemplated while Student was still attending Villa Maria and was originally intended to be conducted at that locality in early 2020. All testing was to have been completed for the annual reevaluation by June 2020. However, Villa Maria school closed due to Covid-19 on or about March 20, 2020 until the end of the school year. No classroom observations of the Student were made at Villa Maria. The continued delay of the evaluation process referred to in the June IEP caused the process to expand and extend to include the Student's triennial evaluation which was due in December, 2020. (B-1, B-11)

93. Ms. Baer utilized the following tests for Student:

Weschler Intelligence Scale for Children, 5th Ed. (WISC-V)
Delis Kaplan Executive Functioning System (DKEFS) – Select Subtests
Test of Memory and Learning - 2nd Ed. (TOMAL-2)
Social Skills Inventory System (SSIS)
Behavioral Rating Inventory of Executive Functioning (BRIEF)
Behavioral Assessment System for Children (BASC)
Observation, Interview and Review of Records

(T. Baer, B-11)

94. Ms. Baer compared Student's 2020 WISC-V test results from 2018 and prior years and the present results revealed some improvement in some areas (i.e. Visual Spatial) but slight decline or minimal change in areas of Verbal Comprehension, Working Memory, Fluid Reasoning and Processing Speed. His full-scale IQ falls in the average range, and his cognitive profile appears stable. In the TOMAL-2, similarly, he scored low in the verbal memory area but reasonably well in the nonverbal memory area. He scored in the average range on the portions employed of the DKEFS, which measures executive functioning, and verbal fluency. (B-11)
95. Student's s BRIEF and BASC (parent/teacher assessments) revealed a kind, pleasant child who can be easily overwhelmed by emotions or frustrated by schoolwork. He is a rule follower. He struggles with initiating and maintaining conversations. (B-11)
96. Ms. Baer opined that Student does best with visual-based learning for new concepts and retrieval of new ideas. She offered strategies to assist Student in improving working memory and recall of information. Student can benefit from a paraprofessional. Student performs better in a small setting. Student needs support in social settings. (T. Baer, B-11)
97. Ms. Baer did not assist in transitioning Student to MMS. Student has difficulty with transitions, and the school schedule would normally require him to make 9 or 10 transitions per day. (T. Baer, B-11)
98. Ms. Baer said that she never did an observation of Student prior to September, 2020. With reference to the placement decision, she stated "our administrator had determined that we had sufficient information in front of us to review" and "take direction of the administration or the team in what their needs are." (T. Baer)
99. The 40 day diagnostic placement period ended on or about October 22, 2020. (B-1)
100. The October PPT that was convened to evaluate the 40 day diagnostic placement that recommended MMS was based only on classroom observations and curriculum-based or periodic Wilson assessments because the evaluation reports were not completed on time as contemplated. (B-8)
101. The June 2020 IEP designated that the speech/language pathologist, Ms. Lucuk, was to perform an evaluation of Student in the area of Speech and Language (Metalinguistics). She did not perform, or produce a report regarding this testing for six months, until December 17, 2020. She used the Clinical Evaluation of Language Fundamentals 5th Ed. - Metalinguistics Test (CELF-5-M). The Student scored in the "borderline" range on the metalinguistics, meta-pragmatics and meta semantics indices. Ms. Lucuk also performed other speech and language tests in December and January, 2021, culminating in her report dated January 27, 2021 showing the need for supports in the areas of inference-making and problem solving, and listening comprehension. (B-1, B-48)
102. Ms. Lucuk recommended Central Auditory Processing testing and services in the form of one ½ hour session per week on social skills, and one and one-half hours weekly session in individual/small group speech and language services. These services were not implemented until March, 2021. (B-49)
103. Ms. Lucuk stated she did not share with Parent periodic reports she was making to school personnel based on, or looking at, his receptive language, expressive language observation and social skills. The IEP of March 18, 2021, however, indicates this data was to be shared with Parent. (B-18, B-49, T. Lucuk)

104. An accredited audiologist and speech language pathologist, Dr. Elizabeth D'Souza, produced two reports dated April 27 and 28, 2021 on the Central Auditory Processing (CAPD/APD) evaluation of Student performed April 19, 2021. (B-19, B-20)
105. Dr. D'Souza's April 27 report stated the Student had been previously diagnosed with Central Auditory Processing Disorder in 2018, and that he also then presented, according to a contemporaneous neuropsychological evaluation, with diminished processing speed, a social communication disorder, specific learning disorder, developmental coordination disorder and phonological processing weakness. (B-19)
106. Dr. D'Souza's report also reviewed the results of the psycho-educational testing done in December 2020 by Ms. Oman of MMS and factored that data into Student's diagnosis and treatment planning for Student. (B-20).
107. Dr. D'Souza reported that Student's range of scores in the GORT and CTOPP-2 tests indicated a possible auditory processing disorder. (B-20)
108. No goals and objectives for auditory processing, except for one listening comprehension goal, were included in Student's December 2020 IEP. (B-13)
109. The IEP for April 28, 2021 included the CAP evaluation and sessions of 30 mins for 5 days per week. (B-23)
110. Dr. D'Souza recommended a program known as "CAPDOTS" to assist in the treatment of the Central Auditory Processing disorder, and Student began to receive 5 weeks of CAPDOTS sessions beginning on May 5, 2021. (B-26)
111. As of the June 9, 2021 IEP, a carve out of time from Social Studies during the school day would be made for CAPDOTS support. (B-28)
112. The Student's goals and objectives were substantially revised and re-written in or after January, 2021 based on the test results obtained from September, 2020 to January, 2021. (T. Marini, B-4,, B-5, B-13)
113. On June 9, 2021 a PPT was held to conduct Student's annual review and plan for the summer of 2022 ESY ("June '21 PPT). (B-28)
114. The June 9, 2021 IEP included the following:
- 30 minutes daily CAPDOT in replace (sic) of Social Studies
 - SE Math (curriculum)
 - SE Decoding
 - SE Comprehension
 - SE Language Arts (Curriculum)
 - Daily STRIDE
 - Forgo SS for CAPDOTS
 - Para supported Science
 - 1 speech pull out 2 speech push in a week
 - 1 co-treat with speech and school-based mental health provider

1 small counseling group with school-based mental health provider.

(B-28)

115. Annual Data Documents and Goals were sent to Parent prior to the June '21 PPT. The Annual Progress Report was reviewed. Parent had questions regarding the progress. Parent “does not see any gains since the last time we met or really all year.” Parent feels that Student has regressed or stayed stagnant in his academic ability all year. The Director of PPS agreed with Parent that the data needs an in-depth conversation around it. She feels that the Auditory processing piece will play an intricate role in academic gains for Student. (B-28)

116. According to the June, 2021 IEP meeting summary, the Parent stated that Student “is a complex child with lots of barriers that effect (sic) his day. She is struggling to get him to come to school due to the whole experience of school. She understands that his attendance has been issues and can effect (sic) his work. She feel he is deteriorating in all areas especially his social emotional health.” The Director of PPS expressed the possible need for Student's environment to become smaller within the school to ensure he is not overwhelmed due to the auditory processing challenges. (B-28)

117. Despite not having mastered goals in a number of areas, the final report card for Student's seventh grade indicates the Student achieved As and Bs across the board, except for Cs in reading and language arts. (B-42)

118. Between the start of the school year in September, 2020 and the final reporting period in June 2021, the Student had failed to meet four of his social-emotional and communication goals, which were reported “Unsatisfactory” or “Other” (B-25)

119. Eleven Goals and Objectives were initially proposed by the PPT team on June 9, 2020. Two additional goals were added and several others were modified during the ensuing school year as shown:

1. The Student will demonstrate organization and study skills in order to participate successfully in academic classes.

Satisfactory

2. (added: By the end of the annual review year), the Student will decode and encode single and multisyllabic words (removed: containing Latin roots and affixes)

Satisfactory

3. Student will improve his comprehension.

Satisfactory

4. Student will develop his phonetic awareness skills to an advanced level.

(Modified to: Student will use his knowledge of rules to increase his ability to encode words.)

Other/Unsatisfactory

5. Student will improve his writing skills

(Modified to: By his next annual review, Student will demonstrate phonetic awareness skills by manipulating sounds in orally presented words.)

Mastered

6. Student will improve his writing skills.

Unsatisfactory

7. Student will improve his mathematical skills.

Satisfactory

8. Student will demonstrate improvements to his receptive language.

Other/Unsatisfactory

9. Student will demonstrate improvements to his expressive language skills

Other

10..Student will demonstrate effective emotional management and social problem solving skills necessary to maintain acceptable school behavior (Revised to: Student will demonstrate improvement to his social communication skills necessary for increased social engagement within the small group setting

Mastered

11. (Added) By his next annual review of the 2021-2022 school year, Student will increase the speed and accuracy of his auditory processing by improving dichotic listening and phonemic processing to improve listening comprehension and reading skills in the classroom.

Satisfactory

12. (Added) Student will demonstrate effective emotional management and social problem-solving skills necessary to maintain acceptable behavior. (Formerly Goal 10)

Unsatisfactory

120. The IEP of June 2021 was substantially revised to include many new and/or amended set of goals:

1. By the 2021-22 annual review, Student will demonstrate executive functioning skills in order to participate successfully in academic classes.

2. By Annual Review 2021-22 Student will demonstrate an improvement in word recognition and decoding skills necessary to read for information and understanding by achieving four objectives

3. Student will demonstrate an improvement in his encoding skill by achieving three objectives

4. By the end of the annual review year, Student will increase his comprehension abilities, as measured by four objectives

5. Student will improve his skills in written expression by his next annual review as demonstrated by the achievement of four objectives

6. By his next annual review, Student will apply and extend previous understandings of mathematics skills by achievement of three objectives

7. ESY Math – Student will increase his understandings of mathematics skills by achievement of two objectives

8. By his next annual review of the 2021-22 school year, Student will increase the speed and accuracy of his auditory processing by improving dichotic listening and phonemic processing to improve listening comprehension and reading skills in the classroom as

measured by mastery of two objectives.

9. By his next annual review of the 2021-22 school year, Student will improve his comprehension of language as measured by mastery of three objectives

10. By his next annual review of the 2021-22 school year Student will improve his use of language as measured by mastery of three objectives

11. By his next annual review of the 2021-22 school year, Student will improve his social thinking and problem solving skills as measured by mastery of three objectives

12. By the next annual review 2022, Student will demonstrate effective emotional regulation and social problem solving skills necessary to actively engage in his school day, as evidenced by three objectives

13. By his next annual review of t2021-22 school year Student will improve his use of language as measured by mastery of three objectives

14. ESY Writing - Student will increase his skills in written expression by the achievement of three objectives

15. ESY Reading Comp. - By the end of the annual review Student will increase his comprehension skills

CONCLUSIONS OF LAW:

The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 et seq (“IDEA”) is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education (“FAPE”). *Board of Education v. Rowley*, 458 U. S. 176, 192, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)

There is no disagreement that the Student is entitled to special education services under the Individuals with Disabilities Education Act (“IDEA”), 20 United States Code (“U.S.C.”) §1400 et seq, which establishes a substantive right to a free and appropriate public education (“FAPE”) for children with disabilities who are covered under the statute.

A FAPE must provide "special education and related services" tailored to meet the unique needs of a particular child, 20 U.S.C. Section 1401[9], and be 'reasonably calculated to enable the child to receive educational benefits,' *Rowley*, at 207,

In *Rowley*, the United States Supreme Court set out a two-part test for determining whether a local board of education has offered FAPE in compliance with IDEA. The first part of the test is whether there has been compliance with the procedural requirements of IDEA, and the second part is whether the student's IEP is reasonably calculated to enable the student to receive educational benefit in light of the student's individual circumstances. *Id.* at 206-207. *See also, Andrew F. v. Douglas City School District*, 137 S. Ct. 988, 580 U.S. ____ (2017); *Cerra v. Pawling Cent. Sch. Dist.* 427 F. 3d 186, 191 (2d Cir. 2005); *M.S. v. Board of Education of the City School District of the City of Yonkers*, 231 F. 3d 96103 (2d Cir. 2000).

Federal Circuit courts have long differed on what exactly constitutes "progress" for children who are already advancing from grade-to-grade. 2nd Circuit opinions have consistently provided a heightened FAPE standard for student progress. Measures of this FAPE progress include that, "... the IDEA is satisfied if the school district 'provides an IEP that is likely to produce progress, not regression,' and if

the IEP affords the Student with an opportunity greater than mere 'trivial advancement.'" *A.S. v. Trumbull Bd. of Educ.*, 414 F. Supp.2d 152, 173 (D. Conn. 2006), *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998).

Additionally, social, emotional, and behavioral progress and a student's grades, are all valid components for measuring progress in some students with disabilities. *Mr. P v. West Hartford Bd. of Education.*, 885 F.3d 735 (2018).

IDEA also demands that each student's program be implemented in the least restrictive environment, so that children with disabilities are educated in integrated settings with non-disabled peers "[t]o the maximum extent appropriate." 34 C.F.R. Section 300.550(b);

Equitable factors are generally relevant to the calculation of remedies in special education cases. *C.L. v. Scarsdale Union Free School District*, 744 F.3d 826 (2d Cir. 2014)

The Board here had the burden to prove by a preponderance of the evidence that the IEPs it offered to the Student were both substantively appropriate and in compliance with IDEA's procedural requirements. Regulations of Connecticut State Agencies (R.S.C.A.) Section 10-76h-14(a)

A Board's failure to accurately assess and address a student's disability or area of need in the Present Levels of Performance portion of an IEP has been specifically recognized as a procedural violation of IDEA when the failure impedes the child's right to a FAPE, the parent's opportunity to participate in the decision-making process, or educational benefits. 20 U.S.C. Section 1414(d)(1)(A); 34 C.F.R. Section 300.320; *RR v. Wallingford Board of Education*, 101 L.R.P. 196 (D. Conn 2001); *Newtown Public Schools*, 107 L.R.P. 59412 (CT SEA 2007).

The parents of a student receiving special education must have the opportunity to be involved in decisions relating to the provision of a free appropriate public education, including participation in meetings and review of records and documents. 20 U.S.C. Sec. 1415, C. G. S. 10-76d (B)

Where parents allege a procedural violation under the IDEA, a Hearing Officer may find a denial of FAPE if the violation 1) impeded the child's right to FAPE; 2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE; or 3) caused a deprivation of educational benefits. 20 USC § 1415(f)(3)(E); 34 CFR § 300.513(a); *Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2001 (2007).

While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied FAPE. Mere technical violations will not render an IEP invalid. *Amanda J. v. Clark County School District*, 267 F.3d 877, 892 (9th Cir. 2001).

Compensatory education should be designed as a "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he would have occupied absent the school board's failures." An award of compensatory services is not based on an established logarithm, but instead on equitable considerations. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518, 524-27 (D.C. Cir. 2005)

A Board may deny the Student's right to a FAPE by violating procedural rights, substantive rights, or both. 34 CFR § 300.513(a) (2) requires a finding that the procedural inadequacies have impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefit in order to support a denial of FAPE.

A district makes FAPE available to a student with a disability if it complies with the statute's procedural requirements and offers an IEP that is reasonably calculated to allow the student to make progress that is appropriate in light of his unique circumstances. The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. See, *Rowley*, at 207. The IDEA contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. *Id.*, at 208-209. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206-207. *Andrew F. v. Douglas County School District RE-1*, 137 S. CT. 988, 999 (2017)

DISCUSSION:

2019-2020 School Year

The Student was enrolled at Villa Maria for the 2019-20 school year, and the Student remained under the District jurisdiction as a Student in need of Special Education Services. As such, the District was required to conduct an annual review. The testimony revealed that the District had intended to conduct classroom observations in the spring of 2020 while Student was attending Villa Maria. The IEP of June 9, 2020 states that "[T]he district was scheduled to complete evaluations." Due to the Covid-19 pandemic, neither the classroom observations nor any evaluations occurred prior to the annual PPT which was due and was held on June 9, 2020.

At the PPT held June 9, 2020, the Parent requested the placement at the Student's current school for the next year to be continued at District expense. District rejected this proposed placement. Instead, the team proposed a 40 day "diagnostic placement" at a District school, MMS.

Just before the June 2020 PPT, Villa Maria forwarded Student's records to Dr. Hapken for review by the PPT team. The witnesses admitted, however, that they had not received that documentary data up to the day of the June 2020 PPT, the same PPT that Villa Maria personnel attended to review Student's progress. There was no evidence produced to conclusively establish that the Villa Maria documentary information was available to the team within a reasonable time to craft an appropriate IEP for Student, due to an apparent miscommunication. Because of the delay in receiving the records, the team was not adequately prepared to offer Student an IEP that would provide FAPE at that meeting.

The District proposed a 40 day "diagnostic placement" at the District school beginning in fall, 2020. However, Mother did not file a Due Process request at that time. While Mother testified she wanted Student to remain at Villa Maria, she enrolled Student at MMS on or about September 9, 2020 for what she was told was a "diagnostic" placement.

Notably, at the June 2020 PPT, Dr. Hapken did not qualify the diagnostic placement decision as "subject to further testing," or otherwise. Despite Parent's request to do so, no alternatives to the placement at MMS were considered. Dr. Hapken's response, according to her testimony, appeared to indicate that there was no intention to consider any out-of-District placement, even though she had never even met or interacted with the Student.

With regard to the testing, the District claims it did not have Parent's consent for the proposed evaluations. The evidence showed, however, that Mother believed the consent that she had previously

signed was still in force. There was no evidence that consent was ever revoked. The District had a duty and was within its rights to rely on it. When the first consent expired on September 1, a new consent was signed by the Parent in early October, 2020. (That one-month delay is not attributable to the negligence of the District.)

I find Mother's testimony to be credible that, up until August 30, 2020, she believed the consent for testing she had signed in a prior agreement was still in force. In any event, representatives of the school testified there were no evaluations performed from June to September, 2020. I find that there was no requirement for her to sign another consent for Student's testing until after August 30, 2020, due to the consent being signed as part of a prior agreement between the parties.

The evidence showed that the school staff were unable to schedule or successfully timely complete any of the proposed evaluations throughout most of the 2020-21 school year. The District attributes this to the school closures due to the Covid-19 pandemic. Even though school had reopened in late August, 2020, none of the reports were completed by October 22, 2020, 40 days from reopening, and some testing remained incomplete until January, 2021.

There was no Prior Written Notice form (signed or unsigned) for the December 23, 2020 PPT produced in evidence. The lack of proper notice and denial of Parent's request to reschedule the December 23, 2020 PPT meeting is a procedural violation; however, this violation alone, in and of itself would not have risen to the level of a denial of FAPE in this case. However, it is part of a number of issues that together combined to the detriment of Student.

It is the decision of this Hearing Officer that the decisions made by the District staff, particularly the failure to review the Villa Maria records, and conduct evaluations (especially in the areas of central auditory processing and social-emotional/communication abilities) within an appropriate time, operated to deny FAPE to Student during the 2019-20 school year. The team and the Student should have had the benefit of the assessments much earlier.

2020-2021 School Year

Once schools reopened and the evaluations were completed, the District substantially revised the IEP for Student on several occasions. The District provided IEPs on December 23, 2020, March 9, 2021, March 16, 2021, April 28, 2021, and finally on June 9, 2021. Each of these IEPs provided more information than the prior version, and each expanded and tailored support services for Student.

The Parent filed her Due Process complaint on June 11, 2021, two days after the June 9, 2021 annual review. The IEP dated June 9, 2021 was the most recent IEP to the filing of her complaint and I find that it provides FAPE for 2021-2022.

As set forth above, with regard to the June, 2021 IEP, Student's Goals and Objectives have been reviewed and extensively modified, and new goals have been added. The PPT team is focusing on Student's reading comprehension, speech and language skills, social-emotional development and improvement in his adapting to transitions. Modifications to the times and conditions of Student's support services have been implemented. School counseling remains in place but was adjusted. Additionally, Student's relevant physical issues have been evaluated and addressed. For example, Student's auditory processing disorder, first discovered in 2018, was not being adequately addressed in his former IEPs until April, 2021 after Dr. D'Souza's evaluation and report. He is now receiving

specialized services to address that condition.

The June 9, 2021 IEP provides an appropriate plan for Student to receive FAPE. This IEP in place allows the Student to continue his education in the least restrictive environment. While the quality and quantity of Student's supports need to be monitored and potentially adjusted, it is also important for him to spend time among his non-disabled peers. As he makes the transition to high school it is critical that he continue to receive such supports necessary for him to make appropriate progress in the least restrictive milieu.

FINAL DECISION AND ORDER:

Decision on the issues in dispute:

1. The actions of the Board operated to deny Student a Free and Appropriate Public Education ("FAPE") for the school year 2019-2020.
2. The actions of the Board in preparing and implementing the components of the Student's Individualized Education Program ("IEP") did not operate to deny Student FAPE for the school year 2020-2021.
3. The proposed remedy of placement at either the Easton Country Day School or Winston Preparatory School is not an appropriate placement for the Student in the least restrictive environment and/or appropriate compensatory education.
4. Student shall receive compensatory education as follows:

Extended School Year ("ESY") sessions for 2022 to include Literacy and social pragmatics tutoring at least once-weekly until school starts in fall 2022.

Continuation of Central Auditory Processing supports as directed by Dr. D'Souza.

Tutoring for one hour per week each in reading and social pragmatics during the school year at District expense.

Counseling by an independent licensed educational psychologist (with referral to psychiatrist if necessary) of Parent's choice, at District expense with focus on transitions (and particularly the transition to high school), school acceptance and social-communication issues.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature

SUSAN DIXON

Hearing Officer Name in Print