

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing on behalf of the Parent:

*Pro Se*

Appearing on behalf of the Board:

Herbert Rosen, Esq.  
Berchem Moses PC  
75 Broad Street  
Milford, CT 06460

Appearing before:

Sylvia Ho, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board provide a Free and Appropriate Education for the 2024-2025 school year?

**PROCEDURAL HISTORY:**

The mother filed the Hearing Request on October 15, 2025. A prehearing conference was conducted on November 4, 2024 and the hearing was scheduled for December 19, 2029. The hearing was postponed to February 12, 2025 so that the parties could engage in mediation. The mailing date of the final decision was extended to February 28, 2025 at the request of the Board. The hearing convened on February 12, 2025, and additional hearing dates of March 4 and March 25 and 27, 2025, were added. The mailing date was extended at the request of the Board to accommodate additional hearing dates. On March 27, 2025, the Hearing Officer granted that request of the Board to submit additional exhibits and supplemental responses to parent's submissions and extended the decision date to April 11, 2025.

**SUMMARY:**

A 6-year-old kindergartener was transferred to the school district at the school district at the beginning of the school year with an IEP for a self-contained classroom. The school offered an out of district placement after it could not find a behaviorally based self-contained classroom for student in the district. The parent filed a complaint for due process.

**STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the 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:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

***General background of dispute between the parties***

1. Student was born on February 7, 2019, and is six years of age at the time of the hearing. Student resides in the school district with his parents and attends kindergarten at West Middle School. (B-109).
2. He is currently qualified for special education and related services under the category of Autism. Previously, he qualified under the category of Developmental Delay while he was in preschool. (B-109).
3. Student attended and received special education and related services at Windermere School in the Ellington School District from September 2023 to the end of the 2023-2024 Extended School Year. (B-29-B-32).
4. At five years of age in March of 2024, Student began experiencing difficulty with behaviors that impeded learning. A functional behavioral assessment that was conducted in February. He was observed at various times hitting, kicking, pulling, spitting, biting, scratching and/or punching others. He was observed leaving his seat; leaving the room; leaving the line in the hallway; leaving the carpet; walking away from an adult; throwing an object, climbing on places and/or shredding paper. He engaged in acts of aggression in attempts to avoid work or to seek attention from other people. These behaviors occurred daily and most frequently when the class was engage in academic work or when the class was transitioning from free time to working on academics. (B-27).
5. A Behavior Intervention Plan ("BIP") was developed by the Windermere Board Certified Behavior Analyst ("BIP") and presented at the March 14, 2024 PPT meeting. The plan included a daily target to decrease the students' daily behaviors of aggression and elopement by 20% and to assign teachers, paraeducators and BCBA to support the student. A Registered Behavioral Tech ("RBT") was also assigned to work with the team. Data would be collected on an ongoing basis to monitor effectiveness. (B-29) A safety plan was put into place. (B-30).
6. On May 3, 2024, the Windermere Planning and Placement Team ("PPT") met to review and revise Student's Individualized Education Plan ("IEP") and plan the

upcoming school year. The Windermere team members included the school psychologist, preschool general education and special education teachers as well as Kindergarten team. The mother also attended. (B-32).

7. It was during this team members discussed the student's behavioral regulation challenges. Since March 2024, Student averaged four (4) aggressive acts per school day. The parents expressed their concern about Student's behavior at school. Whereas Student spent 60% of his time with nondisabled peers in preschool, the PPT recommended a revision of the IEP to a separate self-contained setting beginning on August 29, 2024. The IEP recommended a staff support ratio of two adults in different settings. (B-29, B-32, B-38).
8. The IEP states as follows: "[Student] will participate in the general education classroom for arrival and dismissal routines. [Student] will be in a separate setting for math, reading, daily living skill, and social-emotional instruction and as well as 60 minutes per week of speech and language therapy." (B-32) Student did not return to Windermere School on August 29, 2024.
9. Instead, the parents enrolled Student in Hartford Public Schools. The mother provided supporting documentation of residency as well as a copy of Student May 3, 2024 IEP for enrollment purposes. (B-116).
10. A Notice of Planning and Placement Team Meeting was issued on August 30, 2024, for September 5, 2024. The meeting was held on September 5, 2025. The mother attended the meeting. The school team members included Student's general education teacher, a special education teacher, school psychologist, speech and language psychologist, social worker and administrators. "The mother shared that she requested that the student needed a smaller classroom/setting. The general education classroom is over stimulating." The IEP generally followed the services of the Windermere School May IEP but placed Student 72% of the time with nondisabled peers in the general education setting. In their listed recommendations, the team noted, "Team will request SPED ED director if there is any in house small group setting." (B-40).
11. On September 12, 2024, the team asked the mother and the mother signed consent for a services of a BCBA to provide consultation services at the school (B-45).
12. The Director of Pupil Services received information from members of the PPT after the September 5 PPT meeting and reviewing Student records. At the time of the September 5 PPT meeting, the school team had not yet reviewed the Windermere school records and did not yet know the extent of the student's unique needs. (Testimony, Director of Pupil Services).
13. The Director of Pupil Services set about looking for an appropriate self-contained classroom environment for student. The district has a program known as "I-GOALS" which are self-contained special education classrooms. At the time, there were two self-contained classrooms at Sarah Rawson Elementary School serving Kindergarten students with each assigned one special education classroom teacher and a ratio of one paraprofessional per two students. None of these classrooms serve students with behavioral challenges. The Director searched for therapeutic programs

comparable to services offered by Windermere School. She was able to secure parental consent to circulate records to potential therapeutic out of district placements. (Testimony, Director of Pupil Services, Testimony, Director of Special Education- I-Goals, (B-117), Testimony, Mother).

14. In the meantime, Student was struggling in school. In one incident, the Student on September 17, 2024, the student got up during circle time and hit a peer without provocation. In another incident, the student ran out of the school building and out onto the street. By October 10, 2024, the student had six incidents of restraints and seclusion, prompting the scheduling of a PPT meeting, as required by state regulations, to review and revise Student's IEP to address behaviors causing the restraints and seclusion. (B-49, B-54, B-56, B-57).
15. During this meeting, the school based members PPT recommended that the student's daily schedule be modified to a total of 3.75 hours per day on a temporary basis until an appropriate outplacement is confirmed. The mother disagreed and filed for Due Process. The mother also requested "stay put", an automatic injunction under IDEA regulations so that the student remain in current placement during the hearing process.
16. The district received the Due Process Complaint with the request for "Stay Put" on October 16, 2024. Student continued to be on a half day schedule until October 28, 2024 because there was inadequate staffing to support the student for those half days. In total, Student missed eight (8) half days of school. (B-58, Exh. H.O.-1, Board April 4, 2025 Response to Parent's April 2, 2025 Submission).
17. In the Due Process Complaint, the mother states that the proposed outplacement schools "explained that their focus is on behavior and that is not what I want for my child and I have no intention of placing him in a school like that.." (H.O.-1).
18. Some of the mother's comments during her questioning a witness about giving sugar to the student suggest her belief that Student's behavior is externally caused. In other words, her belief that his behavior may be cause by outside factors rather than his disability. (See Transcript of questioning of paraeducator). The Student had a history of the same behavior at Windermere School.
19. On October 18, 2024, the parents sent notice retracting their consent to out of district placement. (B-63).

***Student's Profile: Disability and Unique Needs***

20. Student has been described as a kind and affectionate boy who loves spiderman and the gingerbread boy. He is athletic and enjoys playing outdoors. (B-27).
21. His testing indicates that he is good at math. (B-24) He can perform in an above average level if testing were administered in a one-to-one setting and if he were interested in the subject matter. (Testimony, Special Education Teacher, B-105).
22. He has academic strengths and potential; however, his potential is hampered by his disabilities. In addition to overstimulation, the student's disability presents behaviorally and emotionally and in communication. He requires the help of

experienced professionals. (Testimony, BCBA; Testimony, Director of Pupil Services, Testimony, Social Worker, Testimony, Paraeducator).

23. The incidences of aggressions interfere with Student's safety and take time and attention away from learning. Both district and the mother agree that the current situation is not beneficial for Student as a learning environment. From the date of the filing of the Due Process Complaint to the last hearing date, the incidents have continued. These incidents most commonly involve refusal to do work assignments and kicking the paraeducator or RBT. (Testimony, Mother, B-145).
24. When Student decides to do schoolwork even while he is working in a general education environment while other days, he refuses to do any work and gets less than a fraction of schoolwork done. (Testimony, Paraeducator).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique needs" and "prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1).
3. The Act defines FAPE as special education and related services which "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. §1401 (8).
4. 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. Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
5. The 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). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207.
6. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in *Rowley*, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans,

reflects a “conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP.” 458 US at 206. " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child’s unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5<sup>th</sup> Cir. 1989). Compliance with the IDEA’s procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273, 285 (2001). However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child’s educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the “loss of educational opportunities or seriously infringed upon the parent’s opportunity to participate in formulating the [IEP]...” Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877 (9<sup>th</sup> Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child’s needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoening v. Doe* 484 US 305, 311 (1988).

7. The record reveals that the mother was provided procedural safeguards. The mother was a full participant in all PPT meetings when she attended and her input was considered including her desire for a smaller classroom setting to the extent the resources were available in the school district. There were no procedural violations in this respect.
8. However, the record also reveals that when the mother filed her Due Process Complaint on October 15, 2024, the Student did not remain in his then current placement in violation of 34 C.F.R §300.518(a) and R.C.S.A. § 10-76h-17 (a), which provide that the child shall remain in his or her then current educational placement during the pendency this hearing. As a result, the student lost eight half days of school.
9. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children " *Walczak v Florida Union Free School District*, 27 IDELR

1135 (2d Cir 1998), *citing Rowley, supra.*; *KP v Juzwic*, 891 F Supp 703, 71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful" way." *Walczak*, 142 F.3d at 130. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132.

10. Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002) (*citing M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)). An IEP need not specify reading program or methodology or training in order to provide FAPE. *See e.g. WR and KR et al v. Union Beach Board of Education*, 56 IDELR 62 (3d Cir. 2011) *affirming* 54 IDELR 197 (USDC, NJ 2010).
11. In addition to providing an education likely to produce progress, tailored to the unique needs of the child, the program must be offered in the least restrictive environment. 20 U.S.C. § 1412(a)(5)(A); *see M.W. v. New York City Dep't of Educ.*, 725 F.3d 131, 145 (2d Cir. 2013)) (one of the IDEA's goals is "to provide disabled children with a public education 'while protecting them from being inappropriately sequestered in a special-education classroom'").
12. "The purpose of the Individuals with Disabilities Education Act ("IDEA") is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique needs" and "prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1).
13. Although the issue is framed above is whether the Board provided a free and appropriate education, the mother's main complaint stem from the Board's inability to create the smaller classroom special education classroom that she wished for? In other words, is the Board required to create a small classroom in order for the student to receive a free and appropriate education? The answer is no. The Board has already provided a free and appropriate education for Student and in offering to pay for a therapeutic behaviorally based placement at public expense, the Board has offered Student a free and appropriate public education. *See Finding of Facts.*
14. The IDEA was passed "to ensure that all children with disabilities have available to them a free appropriate public education ... designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). A FAPE is defined as an education that is provided at public expense, meets the standards of the state educational agency, and is in conformity with the student's IEP. *Id.* § 1401(9). ... "To the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled ...." 20 U.S.C. § 1412(a)(5)(A). "[S]pecial 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 cannot be achieved satisfactorily." *Id.* *See also Letter to Trigg*, (US Office Special Education Programs (OSEP)) 108 LRP

16391 (“If a child’s IEP requires services that are not available at the school closest to the child’s home, the child may be placed at another school that can offer the services included in the IEP and necessary for the child to receive a free and appropriate public education”).

**FINAL DECISION AND ORDER:**

1. There is a procedural violation of FAPE resulting in loss of education to student as described in paragraph 8 of the Conclusions of Law. The equitable remedy for Compensatory Education for losses described in paragraph 8 above shall be three (3) hours of one-to-one tutoring on a subject decided by the student’s special education teacher to be remediated during ESY 2026.
2. Within 5 days of receiving this Final Decision and Order, the Board or Board Counsel shall contact the Due Process Unit to obtain a list of names of consultants and retain a consultant to perform the services of the Independent Educational Consultant in paragraph 3b.
3. Because Parents have retracted consent for out-of-district placement and the Board and Parents agree that the current placement in the general education setting is not the optimal environment for Student, the Hearing Officer hereby modifies the current IEP as follows (The 90 day period is to begin as soon as the consultant in paragraph 2 is retained by the Board):
  - a. “For the next 90 days, except for arrival and dismissal and Adaptive PE, the Student will be in a separate room near or walkable distance to the resource room, under the supervision of the Special Education Teacher, with a paraeducator and a RBT for math and reading. He shall receive his social skills instruction from the social worker as well as speech and language in the same setting. Data collection will continue as per BIP and FBA as applicable” The provision the services in paragraph (a) are conditional upon the attendance of the mother for parent training as described in paragraph (b).
  - b. “For the next 90 days, the mother shall receive twelve (12) parent training sessions, through an Independent Educational Consultant with knowledge in educational methodologies and behaviors and behavioral interventions of challenges of school aged children on the autism spectrum, including scientifically based and evidence-based research interventions. The first training shall be in person or virtual and scheduled at the mutual convenience of the mother and the consultant and shall be up to the amount of time necessary as determined by the consultant. Thereafter, the sessions shall be conducted virtually or in person as determined by the consultant. Parent shall be notified by the Board and Consultant that the Educational Consultant is independent of the Board. Parent shall also receive training on up-to-date programs regarding social communication and success rates including examples of successful interventions. Parent shall receive training on collaboration in a role as a parent member of an IEP team. Each session may



be in a length as determined by the consultant. The Education Consultant shall keep an attendance log.

4. The Board shall convene a PPT meeting as soon as possible after the 90-day period is completed. The Independent Educational Consultant shall attend the meeting and participate, and the PPT shall analyze the data and make determination about adjustments to the IEP and placement decisions for Student.

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

Sylvia Ho  
Hearing Officer      Name in Print