

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. West Hartford Board of Education

Appearing on Behalf of the Student:	Attorney Courtney Spencer The Law Office of Courtney Spencer 100 Riverview Center, Suite 290 Middletown, CT 06457
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Appearing on Behalf of the Board:	Attorney Susan Freedman Attorney Peter Maher Shipman & Goodwin One Constitution Plaza Hartford, CT 06103
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Appearing before:	Attorney Brette H. Fitton Hearing Officer
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FINAL DECISION AND ORDER

ISSUES:

1. Did the District fail to provide Student with a Free Appropriate Public Education ("FAPE") from March 24, 2012 through the remainder of the 2011-2012 academic year?
2. Did the District fail to provide Student with a FAPE for Extended School Year ("ESY") services for the summer of 2012?
3. Did the District fail to provide Student with a FAPE for the 2012-2013 academic year?
4. Did the District fail to provide Student with a FAPE for ("ESY") services for the summer of 2013?
5. Did the District fail to provide Student with a FAPE for the 2013-2014 academic year?
6. Is the District's proposed program for 2014 ESY appropriate?
7. If the District's proposed program for 2014 ESY is not appropriate, what is the appropriate program?
8. Is the District's proposed program for the 2014-2015 school year appropriate?
9. If the District's proposed program for the 2014-2015 school year is not appropriate, what is the appropriate program?
10. Did the District commit procedural violations of the Individuals with Disabilities Education Act ("IDEA") including, but not limited to:
 - a. failing to identify Student in a timely manner;
 - b. failing to provide consistent programming when Student is unable to attend school;
 - c. failing to provide appropriate evaluations;
 - d. failing to implement recommendations of a Parent's neuropsychologist; and/or
 - e. failing to provide appropriate transition planning?
11. If the District did commit a procedural violation of the IDEA, did such procedural violation result in a denial of a FAPE to the Student?

PROCEDURAL HISTORY:

The hearing was requested on March 24, 2014, and the original deadline for mailing the final decision and order was June 7, 2014. During the prehearing conference held on April 3, 2014, the Attorney for the Student requested an extension of time to allow the parties to participate in mediation and to accommodate hearing dates. There was no objection to this request from the Attorney for the Board. The extension request was granted and the new deadline for the mailing of the final decision and order was established as July 7, 2014. Requests for extension were granted in 30 day increments to allow for the scheduling of additional hearing dates. The final deadline for the mailing of the Final Decision and Order was set at October 5, 2014. The hearing convened on June 9, 2014, June 17, 2014, July 7, 2014, July 16, 2014, August 20, 2014, August 21, 2014 and August 26, 2014.

The Parents' witnesses were Mother, Scott Wells ("Options Director") and John Thomas ("Private LCSW"). The Board's witnesses were Neil Cummings ("Transition Coordinator"), Michael Davis ("STRIVE Program Coordinator"), Jamie Urso ("STRIVE Teacher") Ted Dillon ("Special Education Supervisor") and Beth Pettinelli ("ACHIEVE Teacher").

The Parents' Request for a Special Education Due Process Hearing was entered into evidence as Hearing Officer-Exhibit 1. Parents submitted exhibits P-1 through P-46. Board submitted exhibits B-1 through B-63. All exhibits were entered as full exhibits. All motions and objections not previously ruled upon, if any, are hereby overruled. 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. For reference, see *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

An 18 year old Student with diagnoses of Attention Deficit Hyperactivity Disorder, High Functioning Autistic Spectrum Disorder, a Processing Disorder and Psychotic Disorder refused to participate in the regular education program in one of District's high schools in which he was enrolled. In response, District provided homebound tutoring and then an alternative high school program to Student. Parents filed a Request for Special Education Due Process hearing claiming the programs provided by the Board denied Student a Free Appropriate Public Education ("FAPE"). Parents also alleged various procedural violations of the Individuals with Disabilities Education Act ("IDEA") and claimed that the District's proposed programs for 2014 Extended School Year ("ESY") and the 2014-2015 academic year were inappropriate.

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:

1. Student is an 18 year old male enrolled in the West Hartford Public Schools. He is eligible for Special Education under the IDEA under the eligibility category of Emotional Disturbance. (Testimony of Mother; B-52)
2. A neuropsychological evaluation of Student completed on July 13, 2012 revealed diagnoses of High Functioning Autistic Spectrum Disorder/Asperger's Syndrome, a Processing Disorder-Predominately Nonverbal LD and Executive Subtype and Psychotic Disorder-Not Otherwise Specified. (B-10) This evaluation was arranged and paid for by Parents. (Testimony of Mother)
3. Student's intellectual ability was tested during the July 2012 neuropsychological evaluation through administration of the Weschler Adult Intelligence Scale-IV Edition. (B-10) While Student's Full Scale IQ was 108, placing him in the upper limits of the average range, the disparity or "scatter" between individual scores was deemed to reduce the utility of the Full Scale IQ score when understanding the needs of Student. (Id.) Student's composite scores in Verbal Comprehension placed him in the 98th percentile. (Id.) Perceptual Reasoning subtest scores placed Student in the average range, but with percentile ranks ranging from the 25th to the 63rd percentiles. (Id.) Student scored in the superior range on the arithmetic subtest, and in the average range for the digit span subtest for working memory. Processing speed subtest scores ranged from the low average or 16th percentile for coding through the average range for symbol search (37th percentile). (Id.)
4. The 2012 neuropsychological evaluation included administration of the Wide Range Achievement Test III. (B-10) The achievement testing results placed Student in the superior range for Reading and Spelling and in the average range for Numerical Operations. (Id.) The Student received an overall Spontaneous Writing Quotient standard score of 108 on the Test of Written Language-IV administered at this time indicating Student has average writing skills. (Id.) Student's knowledge and application of writing conventions was in the high average range. (B-10)
5. Student's performance on the NEPSY-II tests of affect recognition, theory of mind and face memory revealed weaknesses in the areas of social cognition, communication, and motivation. (B-10) Other weaknesses included learning information embedded within a social context, executive processing and visual motor integration skills. (B-10)
6. The clinical interview conducted by the neuropsychologist showed Student's thinking to be characterized by irrational beliefs, paranoid patterns of thinking and difficulty distinguishing reality from fantasy. (B-10) Aggressive and morbid themes were prevalent in Student's thinking. (Id.)
7. During the 2011-2012 academic year Student was enrolled in 10th grade in Hall High School in West Hartford. (Testimony of Mother)

8. Historically, Student's interactions with peers had been awkward. (Testimony of Mother) After entering high school, Student's social interactions with peers were of a greater concern for Mother. (Id.) In September of his 10th grade year, Student became involved with peers who encouraged him to participate in a "fight club" during school in an effort to integrate socially. (Id.) Student's participation resulted in a call to Mother by Hall High School administration, but no formal disciplinary action was taken against Student for this fight. (Id.)
9. Following the "fight club" incident, Student's family engaged in family therapy for about 6 weeks, but Student would not participate and so this therapeutic intervention was ended in October, 2011. (Testimony of Mother)
10. In December 2011, Parents discovered that Student, who had previously achieved high marks in school, now had Ds in all of his classes. (Testimony of Mother) When confronted by Mother about the grades, Student made statements of suicidal ideation. (Id.) In response to these statements, the Student's pediatrician was called and on his recommendation, Student was taken to Connecticut Children's Medical Center ("CCMC"). Student had a pocketknife on him when he arrived at CCMC, which was confiscated from him. Upon learning that it would not be returned to him, Student's reaction resulted in a referral to the Institute of Living ("IOL"). (Id.) Student remained at IOL overnight for observation and was discharged the next day. (Testimony of Mother, P-30)
11. Mother notified the school that Student had expressed suicidal ideation, been hospitalized and had been bringing a pocketknife to school with him. (Testimony of Mother) On December 8, 2011, the School convened a meeting of the Child Study Action Team to discuss these recent events. (Testimony of Mother; P-31) As of the date of this meeting, Student was failing five out of seven classes. (P-31). Interventions discussed included reducing Student's workload and assistance with organizational skills. (Id.) Mother provided the school team with a discharge summary clearing Student for return to school and indicated that Student would be following up with a psychologist. (Testimony of Mother)
12. Student began to see a private Licensed Clinical Social Worker ("Private LCSW") in 2011, initially on a weekly basis and currently on a bi-weekly basis. (Testimony of Private LCSW) In the course of his therapy with this Private LCSW, Student has discussed a desire to kill his former psychiatrist on several occasions. (Id.) In addition to these homicidal thoughts, Student has also mentioned attacking people at school and blowing up a hospital. (Id.) The Private LCSW, on occasion, has noted a decline in Student's behavior, which he has attributed to missing medication or a drop in medication levels. (Id.) When this happens he refers the Student back to his current psychiatrist to do an acute psychiatric assessment to determine if there is an imminent risk. (Id.)
13. Student's Private LCSW focuses his treatment on reality testing, building relationships, learning to channel and moderate his feelings in rage, talking about feelings in order to identify them, improving his mood affect and eliminating suicidal ideation. (Testimony of Private LCSW) The Private LCSW also focuses on monitoring Student's aggression and dangerous and psychotic thought processes. (Id.) The Private LCSW testified credibly that

without constant clinical intervention, supervision and monitoring Student has a "...high risk to hurt somebody, kill somebody, damage somebody". (Id.)

14. On January 31, 2012, a meeting was held by the District to review evaluation data and determine whether Student was eligible for 504 accommodations (B-2). At this meeting Student was determined eligible for accommodations based on his recent diagnosis of Attention Deficit Hyperactivity Disorder by a doctor on January 13, 2012 and the decline in Student's grades. (Id.) Accommodations for Student resulting from this meeting included modifications of his grading system and elimination of penalties for late assignments, consideration for Student absences, and the assignment of a counseling intern to assist Student with organization for the balance of the school year. (Id.)
15. Student's attendance became sporadic in January 2012. (Testimony of Mother) Student would refuse to go to school as a result of panic attacks and episodes of paranoid thinking. (Id.) Attendance continued to be an issue in February; Student eventually stopped attending at all in that month. (Id.) Homebound tutoring was arranged for Student after the School consulted with Student's psychiatrist. (Testimony of Mother; B-16)
16. Parents referred Student for Special Education in March 2012. (Testimony of Mother)
17. On March 12, 2012, during the second half of Student's 10th grade year, a PPT meeting was held to review Parent's referral and to determine Student's eligibility for Special Education. (B-3) The PPT noted Student had achieved "acceptable" grades in the first semester, but in the second semester was failing all subjects and as a result was now receiving homebound instruction. (Id.) The PPT did not determine that the student was eligible at this time, stating in the IEP summary that the difficulties being experienced by Student have not been over a long time. (Id.) The PPT was set to reconvene in two weeks to check on Student's progress. (Id.)
18. Student sat for the Connecticut Academic Performance Test ("CAPT") in March 2012, but Student did not complete the test, thus his scores were reported as blank. (B-39)
19. On April 23, 2012, the PPT reconvened in order to review the referral and plan an evaluation. (B-4) The Student was not present at the PPT meeting because he had been hospitalized at St. Francis due to emotional concerns. (Id.) Parents reported that Student had been having aggressive thoughts which had caused his psychologist to call the West Hartford police. (Id.) Parents reported that doctors had indicated Student has PDD. (Id.)
20. As part of the evaluation recommended by the PPT, the parents and teachers were to complete behavioral checklists, a psychiatric consult was to be conducted by District psychiatrist Dr. Black, and Student was to meet with Hall school psychologist if Student is emotionally comfortable. (B-4) The PPT also recommended an increase in Student's current homebound tutoring to 8 hours per week. (Id.) The PPT was set to reconvene when the evaluations were complete. (Id.)

21. The PPT noted that Student's psychiatrist would not release the evaluation he had completed to the school. (B-4) As of the April 23, 2012 meeting, Parents indicated that they would not sign release forms until they had a better understanding of what was going on with the Student. (Id.) The PPT did not recommend cognitive testing after determining that academics were not a concern for the Student. (Id.)
22. A psychological evaluation was conducted on May 9, 2012 by the Hall High School-School Psychologist that involved the administration of the Behavior Assessment System for Children 2nd Edition ("BASC-II"). (B-5) Teacher Rating Scale Reports resulted in a rating of At-Risk in areas of Attention Problems, Study Skills and Functional communication and a rating of average in all other areas. (Id.) Student's Self-Report Scale placed him in the At-Risk range for hyperactivity, attitudes toward school and teachers. His self-report about personal adjustment was in the clinically significant range relating to a feeling that he has a poor relationship with his parents. (Id.) Parents' reports placed Student in the clinically significant range for hyperactivity, aggression, anxiety, depression, and activities of daily living. (Id.) Both Parents rated Student at risk for conduct problems and functional communication. The recommendations of the School Psychologist were for the PPT to explore the possibility of special education eligibility under the category of Emotional Disturbance and to reconvene to discuss an appropriate program for Student. (Id.)
23. The psychiatric consultation was conducted on May 9, 2012 by Dr. Black, the District psychiatrist. (B-6) Dr. Black's report indicated that Student might have Asperger's and Reactive Attachment Disorder. (Id.)
24. The PPT reconvened on May 17, 2012 to review the referral with the stated purpose of reviewing recommendations from the psychiatric consult and determining the correct placement for the remainder of the 2012 school year. (B-7) The PPT recommended that Student's current homebound tutoring hours be increased to 8 hours a week and that the PPT reconvene on June 11, 2012 to determine eligibility. (Id.)
25. The PPT reconvened on June 11, 2012 and at this time identified Student as eligible for Special Education under the disability category of Emotional Disturbance. (B-8)
26. The District normally provides 10 hours a week of for students who are out of school. (Testimony of Special Education Supervisor) Student did not receive 10 hours but rather received an inconsistent amount of hours per week due in part to Student's emotional issues and also to the schedule of the District tutor. (B-16)
27. At the end of the 2011-2012 school year, Student did not have enough hours to earn credits in his course work. Per Parents' request, the District extended tutoring into the summer of 2012 to permit Student to complete all his work, which he did. (Testimony of Mother, Testimony of Special Education Supervisor).
28. Student received total hours of tutoring mandated under his IEP or enough to get credits he was missing. (Testimony of Special Education Supervisor)

29. The PPT reconvened on June 19, 2012 in order to review and develop Student's IEP. (B-9) The PPT recommended that the Student take the standard administration of the CAPT test and that the Student be placed at the Success Through Responsibility Initiative Vision Education program ("STRIVE") for the 2012-2013 school year. (Id.)
30. STRIVE is an alternative high school program offered by the West Hartford Public Schools ("WHPS") that includes academic courses necessary for students to meet WHPS graduation requirements. (B-31) There are no non-disabled peers at STRIVE. (Testimony of Special Education Supervisor). STRIVE's curriculum is aligned with that of the regular education West Hartford high schools in terms of content. (Testimony of STRIVE Teacher) Modifications are made to how learning in a content area may be expressed. (Id.)
31. STRIVE employs a behavior management system which is data driven and employs a level system, whereby students earn privileges by earning points for appropriate behavior. (Testimony of STRIVE Program Coordinator; B-31, B-35) By all accounts Student's behavior while in the STRIVE program was very good. (Testimony of Mother, Testimony of STRIVE Program Coordinator) With few exceptions Student's behavior was above 80% compliance while in the STRIVE program. (B-35) Student's behavior was so good that there was discussion in the STRIVE program about taking Student off the behavior plan. (Testimony of STRIVE Teacher)
32. The STRIVE program's policies are described in the STRIVE Student Handbook, which Student signed on August 29, 2012. (B-32)
33. The STRIVE social worker and Student's Private LCSW communicated about Student every few months. (Testimony of Private LCSW) Other than these conversations the District did not have any other communications with the Private LCSW. (Id.)
34. Mother requested that STRIVE Social Worker not delve into certain subjects that Mother felt would trigger student. (Testimony of STRIVE Social Worker)
35. The IEP resulting from the June 19, 2012 PPT meeting was inaccurate, in that it indicated that Student would be spending 14.25 hours per week with non-disabled peers, when in fact due to the nature of the STRIVE program, all participating students have some form of disability. (Testimony of Special Education Supervisor; B-9) The IEP also fails to note the evaluation procedure, assessments, records or reports used as a basis for the actions proposed. (B-9)
36. The IEP from the June 19, 2012 PPT meeting indicates that the PPT determined that Extended School Year Services were not required for the summer of 2012. (B-9)
37. There was a behavior incident report for the use of inappropriate language at STRIVE on March 11, 2013, which was addressed through processing with staff. (B-36)
38. Student again sat for the CAPT in March of 2013. (B-39) Student this time completed the test and scored at the proficient level in Mathematics and Reading Across the Disciplines,

and at Goal in Science and Writing Across the Disciplines. (B-39) Student was given the accommodations of extra time and a separate setting as set forth in his IEP. (Testimony of Special Education Supervisor)

39. On December 13, 2013, Student received an out of school suspension for an incident on that day during which Student reacted to another Student “mushing” a female Student in the face by physically assaulting him. (B-37, P-35) In accord with STRIVE policy Student was arrested. (Id.) Student was permitted to return to school on December 19, 2013. (Id.)
40. Student’s grades at the end of the 2012-2013 school year (Student’s 11th grade year) at STRIVE were As and Bs. (B-19)
41. Student was taught in the STRIVE program by a teacher certified in both regular education and special education, with experience in teaching students on the Autism spectrum. (Testimony of STRIVE Teacher) The STRIVE Teacher noted significant growth in Student’s social skills during his time in the STRIVE program. (Id.) Student’s private LCSW believed that STRIVE was an appropriate program for Student. (Testimony of Private LCSW)
42. Student participated in the year long Career Academic Vocation Education Class at the STRIVE program during the 2012-2013 school year. (Testimony of Transition Coordinator; B-15)
43. On September 20, 2012, a PPT meeting was held. (B-12) During this meeting, the PPT reviewed Student’s progress at the STRIVE program and reviewed the neuropsychological evaluation parents had obtained over the summer. The PPT agreed with the neuropsychological evaluation (Testimony of Special Education Supervisor; B-10). The IEP was revised to include participation in the CAPT with accommodations. (B-12)
44. On April 29, 2013, Mother contacted Student’s assigned guidance counselor at Hall High School to inquire about college prep counseling. (B-44) In response, Student’s guidance counselor indicated Student should be taking the SAT twice, in June and again in September, and that the sign-up for the June SAT was on May 7, 2013. (Id.)
45. Student met with the Hall guidance counselor on May 8, 2013 and during this meeting he indicated an interest in attending college. (B-44)
46. On May 22, 2013, a PPT meeting was held for Student’s annual review. (B-13) At the time of the annual review in 2013, Student had a 3.0 grade point average and his attendance had significantly improved. (Id.) Based on Student’s success in the STRIVE program during the 2012-2013 school year, the PPT recommended that Student begin reintegration into Hall High School. (Id.) This was to be accomplished by splitting the day between Hall High School and the STRIVE program, with Student taking academic classes at Hall High School in the morning and then finishing the day at STRIVE. (Id.)

47. At the May 22, 2013 PPT meeting, the PPT determined that Student did not require an Extended School Year program for the summer of 2013. (B-13).
48. On August 22, 2013, Mother expressed her concern to the Hall Guidance Counselor regarding Student having a Study Hall during his mornings at Hall High School during the 2013-2014 school year. (B-44) In response, the Hall Guidance Counselor suggested alternative courses. (Id.) Mom indicated that Student was not interested in the alternatives offered. She also expressed that Student was very excited to go back to school that day. (B-44)
49. On September 19, 2013, the STRIVE Social Worker and the Hall High School Guidance Counselor exchanged emails regarding Mother's agreement to Student not taking the SATs in September. (B-44)
50. Student had extreme difficulty readjusting to the Hall High School environment and began to skip classes. (B-14) On October 22, 2013, a Hall High School Guidance Counselor met with Student to discuss his missed classes and Student became extremely upset and threatened to leave school. (B-14) STRIVE staff were successful in getting Student to walk to the STRIVE building and de-escalate Student's behavior. (Id.)
51. On October 28, 2013, a PPT meeting was held to review and revise the IEP and discuss transition planning. (B-14) As a result of this meeting, Student was reenrolled in the STRIVE program full time until either the end of the 2013-2014 school year or when Student and the PPT decided Student should graduate. (B-14, B-33) At this time, the PPT was set to reconvene on January 10, 2014. (B-14)
52. On February 4, 2014, a PPT meeting was held with the stated purpose of reviewing and revising the IEP and transition planning. (B-15) Teacher reports indicated Student was achieving average to above average grades. The STRIVE Social Worker reported progress in the area of identifying emotions and feelings and accessing school counseling, and that Student was an excellent participant in group problem solving. (Id.) For the balance of the 2013-2014 school year, the District proposed a split program with Student's day beginning at STRIVE with group therapy and academic classes in the morning and with vocational training in the afternoon supervised by a one to one job coach. (Id.) Vocational assessments and counseling were also proposed. (Id.) Parents requested an out of district placement. (Id.)
53. Student participated in the Hall High School Wrestling Team while enrolled in the STRIVE program. (B-18) Student participation in wrestling was facilitated by his parents who drove him to matches. (Testimony of Mother) Student's private LSCW encouraged wrestling as an outlet to channel Student's severe aggression, but found his therapeutic intervention was necessary to keep him involved in the sport. (Testimony of Private LCSW)
54. Parents were granted a conservatorship over Student by State of Connecticut Court of Probate, West Hartford Probate District on April 23, 2014. (Testimony of Mother, P-18)
55. Student was hospitalized again on May 19, 2014 and discharged on May 28, 2014. (B-45)

56. There was no testimony or documentation to indicate that any incidents resulting in Student's hospitalizations occurred during the school day.
57. Student graduated from the STRIVE program in June of 2014 and the class went to an amusement park to celebrate. (Testimony of Mother, Testimony of STRIVE Program Director)
58. On June 2, 2014, a PPT meeting was held to conduct Student's annual review and undertake transition planning. (B-52) At this meeting the PPT recommended that Student be placed full-time in the ACHIEVE post-secondary program run by West Hartford Public Schools. (Id.) The PPT also recommended Student's program include counseling once a week and a 1 to 1 job coach (Id.) An ESY program was also proposed for the summer of 2014 that involved work experiences with a one to one job coach from 8:30 a.m. to 12:30 p.m. 4-5 days a week. (Id.) Transportation was to be provided although the specific nature of the transportation was not identified, nor is it clear whether transportation is to be provided only to and from the program or also within the program day. (Id.)
59. At the June 2, 2014 meeting, Parents rejected the IEP proposed by the Board for Student's ESY 2014 and for Student's post-secondary 2014-2015 school year, requesting instead that Student be placed at an out of district program. (B-52) The out of district program request was refused by the PPT, on the basis that it believed the District could provide an appropriate program in district. (B-52)
60. The ACHIEVE program includes three to four days of vocational experiences, one day of independent living skills training and one day of community-based experiences per week. (Testimony of ACHIEVE Teacher; B-44) The ACHIEVE program also offers the opportunity to take courses at community college. (Id.) Students are instructed on how to utilize public transportation and take the public bus as part of their life skills training. (Id.) Social skills needs are addressed through group and individual counseling. (Id.) Vocational training begins with full staff support which is faded as appropriate. (Id.)
61. The school-based portion of the ACHIEVE program is located in the same building as the STRIVE Building that Student attended for the 2012-2013 and 2013-2014 school years. (Testimony of Mother, Testimony of ACHIEVE Teacher).
62. The ACHIEVE program has an established process for incoming Students that includes a program orientation for new incoming students in May. (Testimony of ACHIEVE Teacher i; B-46, B-47, B-48) This process was not followed for Student. Student did not attend this orientation. (Testimony of Mother)
63. Progress at ACHIEVE is tracked through individualized Community Based Situational Assessments and Skills Assessment (B-50, B-51).
64. Mother visited the ACHIEVE program on the date of the June 2, 2014 PPT and met briefly with ACHIEVE Teacher. (Testimony of Mother)

65. Mother was aware in advance that ACHIEVE was one of the options that the PPT would be considering on June 2, 2014 and had had conversations about ACHIEVE with Lori Fitzsimmons and Neil Cummings in the Fall of 2013. (Testimony of Mother) Mother received four pages describing the program. (Testimony of Mother, B-46)
66. Student was hospitalized again in June 2014 after an incident in his home when he took a knife out of his kitchen and ran out of his house. (Testimony of Mother)
67. On the date of Student's graduation from the STRIVE program, Mother and Student looked into the ACHIEVE classroom and spoke briefly with a paraprofessional associated with the ACHIEVE Program. (Testimony of Mother) No further meetings with ACHIEVE staff took place. (Testimony of Mother)
68. Writing is a weakness for Student. (Testimony of Special Education Supervisor, Testimony of STRIVE Teacher; B-10) Student's visual motor integration skills are low which impacts Student's ability to handwrite. (Testimony of Special Education Supervisor) Elaboration was the main challenge for Student. (Testimony of STRIVE Teacher)
69. Student needs staff that are able to develop and engage with him in an empathic relationship and who have an understanding of psychology, emotional and psychiatric processes, and who have the ability to be calm and soothing and listen carefully. (Testimony of Private LCSW)
70. Student is at risk of being triggered for rage and violent fantasies if interventions are inappropriately handled. (Testimony of Private LCSW)
71. While the Private LCSW reported Student had an extremely low tolerance for group counseling, the STRIVE staff responsible for group counseling did not observe this to be the case. (Testimony of Private LCSW, Testimony of STRIVE Social Worker) Student showed growth in his ability to accept peer feedback and changing his behavior in response to peer criticism. (Testimony of STRIVE Social Worker).
72. Parents have requested placement at the Options Program in Hartford. (Testimony of Mother) The Options agency is a private Special Education program approved by the State of Connecticut. (Testimony of Options Director) In Options, social skills are addressed by developing a plan that allows staff to take students into the community and socialize them in different settings with other competitively employed people or people attending college. (Id.) Options can provide staff members to work one-on-one with a student to help them integrate into employment or college settings. (Id.) Academic needs are addressed through one-on-one settings in Options and classrooms with multiple students are not utilized. (Id.)
73. Students are paid for their vocational work in Options and ACHIEVE. (Testimony of Options Director, Testimony of ACHIEVE Teacher)

74. When determining job placements for Students, Options will place students in established job sites to assess a student's aptitude for basic employment ("soft") skills such as showing up on time, and then as the staff get to know the Student job development is individualized. (Testimony of Options Director).
75. Similarly, the ACHIEVE teacher testified that she will have students participate in an initial job placement while she gets to know and learns more about the Student. (Testimony of Achieve Teacher)
76. Twenty percent of students at Options attend post-secondary education. (Testimony of Options Director) When introducing a student to the college environment, Options has provided one-on-one support and then faded support when appropriate. (Id.) Options has also supported students with college coursework through tutoring. (Id.)
77. Transportation in the Options program is in the program's own vehicles. (Testimony of Director of Options)
78. ACHIEVE provides Students with bus training as a life skill. (Testimony of ACHIEVE teacher.)
79. Options vocational counselors are hired more for their personal character traits than for a specific educational background. (Testimony of Options Director) Some vocational counselors have only a high school diploma. (Id.)
80. Options does not employ group counseling, rather the therapeutic component of the Options program is provided by two LCSWs and a fulltime certified school counselor/guidance counselor. (Testimony of Options Director)
81. Students in Options have taken classes at Capital Community College, but Options has not worked with Tunxis Community College. (Testimony of Options Director) The ACHIEVE program also provides access to college courses at local community colleges. (Testimony of ACHIEVE teacher)
82. Student had employment with a pet store that was facilitated by District Staff. (Testimony of Transition Coordinator) Student was fired from this job based on the owner's observation of an interaction Student had with his own dog when Mother brought the dog into the store and it interacted with the owner's dog. (Id.) Student's direct supervisor at this job had a positive assessment of Student's work. (Id.) Student was also employed by a local man in the community doing his lawn work. (Id.) Student received positive feedback on his performance in this job, although initiating tasks was an area that needed improvement according to the employer. (Id.)

CONCLUSIONS OF LAW AND DISCUSSION:

1. DENIAL OF A FAPE CLAIMS

The IDEA requires states receiving federal special education funding to provide disabled children with a FAPE. *M.W. ex rel. S.W. v. N.Y.C. Dep't of Educ.*, 725 F.3d 131, 135 (2d Cir. 2013); *R.E. v. N.Y.C. Dep't of Educ.*, 694 F.3d 167, 174-75 (2d Cir. 2012). "To ensure that qualifying children receive a FAPE, a school district must create an individualized education program ('IEP') for each such child." *R.E.*, 694 F.3d at 175; see also 20 U.S.C. § 1414(d). That IEP must be developed in accordance with the procedures laid out in the IDEA, and must be "reasonably calculated to enable the child to receive educational benefits." *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). The state must also ensure that "[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled." 20 U.S.C. § 1412(a)(5)(A).

A. FAPE FOR THE 2011-2012 YEAR

While Student's difficulties began to manifest themselves earlier in the year, the Statute of Limitations limits the scope of the claim to the two year period preceding the filing of the complaint. R.C.S.A. 10-76h-(4-a) In the present case, Student filed for Due Process on March 23, 2014, thus, analysis of the claim that Student was denied a FAPE for the 2011-2012 school year will focus on that portion of the school year running from March 24, 2011 to the end of the year. The District provided Student with a FAPE from March 24, 2012 through the remainder of the 2011-2012 academic year. Student began a pattern of school refusal in January 2012, eventually ceasing to attend school at all in February 2012. In order to maintain Student's academic progress, the District arranged for home-bound tutoring for Student. This homebound tutoring was in place while the District processed Parents' referral to Special Education and determined Student's eligibility. While the tutoring schedule was inconsistent and that inconsistency required compensatory tutoring hours beyond the regular school year, Student was eventually able to complete his coursework. In the face of Student's complete disengagement from the regular education environment, the District's provision of homebound tutoring was reasonably calculated to provide the Student with an educational benefit and which did enable Student to obtain the credits necessary to complete 10th grade.

B. ESY 2012, 2013

The District did not fail to provide Student with a FAPE when it determined that Student did not require ESY programming during the summer of 2012 and the summer of 2013. The District has an obligation to provide ESY programming to students receiving Special Education under the IDEA when such programming is necessary to provide a FAPE. 34 CFR 300.106 (a) (1). When determining whether or not a student shall receive ESY, the Connecticut Department of Education has indicated that the analysis includes both a "regression/recoupment criteria" and "nonregression criteria". The factors to consider in this analysis include: (a) The nature or severity of the student's disability; (b) [Whether] the student is likely to lose critical skills or fail to recover these skills within a reasonable time as compared to typical students; (c) The student's progress in the areas of learning crucial to attaining self-sufficiency and independence from caretakers); (d) [Whether] the student's stereotypic, ritualistic, aggressive or self-injurious interfering behaviors prevent the student from receiving some educational benefit from the program during the school year; or (e) Other special circumstances identified by the IEP team such as: the ability of the student to interact with other non-disabled students; the areas of the student's curriculum that need continuous attention; the student's vocational needs; or the availability of alternative resources. (Topic Brief, Connecticut State Department of Education, March 15, 2007)

In the summer of 2012, Student's eligibility under the category of Emotional Disturbance had just been determined and Student was receiving homebound tutoring to ensure he received the credits necessary to complete his 10th grade coursework. At the time of the 2012 PPT meeting when ESY was deemed unnecessary, there was no indication that the tutoring being provided was not assisting Student to finish his coursework for the year. Historically, academic achievement had not been a problem for the Student, as he had achieved good grades in the years leading up to his sophomore year. While Student's mental health issues had impacted Student's educational progress, with tutoring in place and on track to bring Student current in his studies, and Student receiving care from his Psychiatrist and Private LCSW, it was reasonable for the PPT to conclude that regression and recoupment were not concerns and that none of the "nonregression" criteria applied.

Going into the summer of 2013, the PPT reviewed Student's progress in the STRIVE program and determined it was appropriate to try to reintegrate Student into the Hall High School in the 2013-2014 school year. In light of Student's past academic success and Student's demonstrated ability to achieve academically and make progress in social skills within STRIVE's smaller program, it was reasonable for the PPT to conclude that Student was not at risk for regression and did not meet any of the "non-regression criteria" which would require remediation through ESY for the summer of 2013.

C. 2012-2013 and 2013-2014 STRIVE PROGRAM

The District did not fail to provide Student with a FAPE for the 2012-2013 and 2013-2014 school years. The STRIVE program, in which Student was enrolled for his junior year and for the majority of the senior year, provided Student with an environment that, through reduced class size and therapeutic and behavioral supports, resulted in Student being able to transition from total school refusal to a reengagement in a school environment with peers. While the attempt to reintegrate Student into the regular high school environment was unsuccessful, the failed attempt in and of itself does not amount to a deprivation of a FAPE.

D. PROPOSED PROGRAM FOR ESY 2014 and 2014-2015

The post-secondary education programs proposed by the Parties are strikingly similar. One critical difference is in the area of transportation, where Parents' proposed program has support staff driving students in private transportation vehicles owned by the program, while the District's program relies on school and city bussing. While ACHIEVE is an appropriate program for the Student, District's transportation services are ill-defined and, to the extent they contemplate bus-training student in the beginning of his program at ACHIEVE, are not appropriate. Student's specific needs and challenges require ready access to transportation back to the ACHIEVE program or other clinical settings should Student show signs of decompensating in his community placements. To date, Student's hospitalizations have occurred when he is with family and outside of the school setting, but the ACHIEVE program represents a significant change from the regular education and STRIVE education environments; until the Student can be stabilized in his post-secondary program, there must be appropriate transportation for this Student that takes into account his potential for intense psychological and emotional distress. While the substantive nature of the Program proposed by the District for 2014 ESY was reasonably calculated to confer an educational benefit in the nature of transitional services, the program suffers from the same deficiency in the appropriateness of transportation as a related service. The ESY program proposed involved work experiences with a one to one job coach from 8:30 a.m. to 12:30 p.m. 4-5 days a week. This program would have allowed Student to gain work experience and job skills over the summer and

would have also given ACHIEVE staff additional information when programming for the Student for the 2014-2015 school year; however, the transportation services to be provided are not sufficiently described.

2. PROCEDURAL VIOLATIONS

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 a FAPE.

A. Consistent Programming

The Board's records regarding tutoring received by Student during the Spring semester of 2012 are of limited assistance. The type and amount of information contained in the records tendered by the Board is not consistent between entries. The records demonstrate, and the District does not dispute, that tutoring sessions were inconsistent in terms of duration of sessions and number of sessions per week. Some of the interruptions were initiated by Parent due to Student's emotional status and others were the result of the tutor's schedule. Regardless of the source of the inconsistency, Parent has failed to show that Parents were denied an opportunity to participate in the decision making process, or that the Student was deprived of an educational benefit.

B. Failure to Provide Appropriate Evaluations

The Board took the appropriate steps in determining whether or not Student was eligible for Special Education and related services under the disability category of Emotional Disturbance ("ED") and did so in a timely manner. In order to be eligible for Special Education under ED, the District had to find that Student was experiencing one of the following conditions:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression, and/or
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

The PPT has the further obligation to find that that Student is exhibiting this condition *over a long period of time* and to such a degree that Student's educational performance was negatively impacted. 34 CFR § 300.8 (c)(4)(i)

In this case, when Student's difficulties were initially brought to the attention of the District, a 504 meeting was convened and accommodations put in place. After Student's hospitalization, Student's difficulties were presented to the PPT when Mother referred Student in March 2012. At the time of the initial referral, Student's anxiety and school refusal were at a level that was clearly adversely impacting his educational performance by virtue of the fact that Student was removing himself from the academic learning environment altogether. While Student's decline was clearly precipitous and alarming, the Board had an obligation to ensure that the conditions presented were not temporary in nature. 34 CFR § 300.8 (c)(4)(i)

After the initial PPT meeting to discuss Parents' referral on March 12, 2012, the PPT met again on April 23, 2012 to monitor progress and plan evaluations. The PPT recommended a psychiatric consult and a psychological evaluation at the April meeting and had these completed by the May 17, 2012 meeting at which the evaluations were discussed. At the May 17, 2012 meeting it was noted that Parents were meeting with staff from a PHP program to better understand Student's plan. Student's eligibility was not determined at the May 17, 2012 PPT meeting, instead, that determination was made at the next PPT meeting on June 11, 2014. Student's eligibility for Special Education was determined three months after the initial referral for the PPT and only after the PPT had conducted evaluations and monitored Student over a period of time, as required under both the Federal and State regulations. The facts do not support a finding that the procedure which the Board followed in monitoring Student and subsequently identifying Student resulted in a denial of a Free Appropriate Public Education for the Student.

The evaluations conducted by the District of Student were appropriate. The District had an obligation to conduct a full and individual initial evaluation of Student before the initial provision of special education and related services to a child with a disability. 34 CFR § 300.301 (a) The procedural requirements for an initial evaluation are set forth in 34 CFR § 300.301 (c). An initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) if the State establishes a timeframe within which the evaluation just be conducted, within that timeframe; and (2) must consist of procedures – (i) to determine if the child is a child with a disability under § 300.8 ; and (ii) to determine the educational needs of the child.

C. Failure to implement Recommendations of Parent's Neuropsychologist

There is no automatic mandate to implement all recommendations included in an outside evaluation. *T.S. v. Bd. of Educ. Of Ridgefield*. 87 F.3d 87, 89-90 (2d. Circuit) The neuropsychological evaluation obtained by Parents was presented at a PPT meeting and considered by the PPT. Changes were made to the IEP after consideration of the evaluation and other information presented. The Board did not commit a procedural violation by not implementing the recommendations of the neuropsychologist.

D. Failure to provide appropriate transition planning

Transition services means 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 educations, vocational education, integrated employment (including supported employment) continuing and adult education, adult services, independent living or community participation; 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.

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 CFR § 300.43

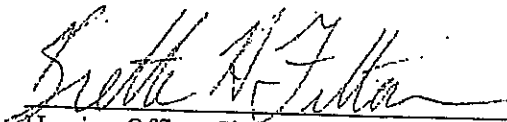
Student participated in yearlong vocational classes while in STRIVE which provided opportunities for Student to assess areas of career interest and the development of employment skills such as resume drafting. These tasks are by their nature individualized to the Student because they are designed to identify Student's potential career interests, the training necessary for those career areas of interest, and to prepare Student for marketing his particular experience and skill sets to potential employers. Student was provided with the opportunity to participate in employment and while not successful in one placement, was successful in the other.

FINAL DECISION AND ORDER:

1. The District did not fail to provide Student with a Free Appropriate Public Education ("FAPE") from March 24, 2012 through the remainder of the 2011-2012 academic year.
2. The District did not fail to provide Student with a FAPE for Extended School Year ("ESY") services for the summer of 2012.
3. The District did not fail to provide Student with a FAPE for the 2012-2013 academic year.
4. The District did not fail to provide Student with a FAPE for ("ESY") services for the summer of 2013.
5. The District did not fail to provide Student with a FAPE for the 2013-2014 academic year.
6. The District's proposed program for 2014 ESY was not appropriate in that transportation as a related service was not specified sufficiently to take into account Student's safety in the community.
7. The District's proposed program for the 2014-2015 school year was not appropriate and modifications to the proposed program should be made only with regards to the ACHIEVE program's emphasis on public transportation training. The District shall provide transportation for the Student to and from the Achieve program and to and from job sites, community outings, college visits and classes, until such time as the PPT meets and determines that the Student is fully acclimated to the ACHIEVE program, is ready emotionally to begin bus-training and no longer needs private transportation. The District shall ensure that transportation is available on an emergency basis to transport Student should Student need to be removed from the community.
8. The District did not commit the procedural violations of the Individuals with Disabilities Education Act ("IDEA") by failing to identify Student in a timely manner, by failing to provide appropriate evaluations, or by failing to implement appropriate transition planning.
9. The District did commit the procedural violations of drafting inaccurate, incomplete IEP documents and failing to provide consistent programming for the Student, however neither of these violations operated to deny Student an educational benefit or deny Parents a meaningful opportunity to participate.

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

Brette H. Fitton
Hearing Officer Name in Print