

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Stamford Board of Education

Appearing on behalf of the Student:

The Parents, pro se

Appearing on behalf of the Board:

Attorney Christopher Tracey
Attorney Andreana Bellach
Shipman & Goodwin LLP
300 Atlantic Street
Stamford, CT 06901

Appearing before:

Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board's proposed program for the Student for the 2010-11 school year was appropriate;
2. Whether the Board's actions during the 2010-11 school year as outlined in the request for hearing constituted procedural violations which resulted in a denial of a free appropriate public education [FAPE] to the Student;
3. Whether the Parent's program, including all related services provided to the Student, during the 2010-11 school year is appropriate and shall be reimbursed;
4. Whether the Parent's proposed placement of the Student at the McCarton School is appropriate.

SUMMARY:

The 12-year-old Student, who is identified as eligible for special education and related services under the category of autism, is currently receiving services at home from therapists provided by the Parents. At the beginning of the 2010-11 school year, the Board offered the Student a program at the Board school which met all components recommended by three independent evaluators. The Parents rejected the program and requested this hearing seeking reimbursement for their home program and placement of the Student at the McCarton School.

PROCEDURAL HISTORY:

The Board received this request for hearing dated November 18, 2010 [Exhibit H.O.-1] on November 22, 2010 and a prehearing conference convened on December 2, 2010. The resolution session convened on December 6, 2010.

The Board submitted a Motion to Dismiss, in Part, the Parents' Due Process Request and a Motion to Strike, in Part, the Parents' Due Process Request.

The Board's Motion to Dismiss the issue of the Board's compliance with a Settlement Agreement, which was pending as Issue Number 1 in this case as set forth in the Notice of Hearing dated December 2, 2010, was granted.

This issue number 1, "whether the Board complied with the settlement agreement during the 2009-10 school year," did not concern the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to such child. 20 USC § 1415(b)(6)(A). Rather it seeks a determination of a contractual issue, to wit, whether the Board has complied with the settlement agreement. A due process hearing is not the proper vehicle to enforce or determine compliance with a settlement agreement. *H.C. v. Coulton-Pierrepoint Central School District*, 52 IDELR 278, 341 F. App'x 687 (2nd Cir. 2009). Therefore, Issue Number 1 was dismissed, and the pending issues were renumbered and are set forth as the issues to be decided in this case.

The Board's Motion to Strike the Due Process Request as it contains inaccurate or inappropriate factual allegations was denied on the record, as the allegations set forth in the "Demand for Due Process" dated November 18, 2010 were considered allegations only, akin to pleadings, and therefore those allegations were not stricken.

The Parents requested that the hearing be open to the public, and the hearing convened on twelve hearing dates in January, February and March 2011.

The Parents requested that an Albanian foreign language interpreter be present at the hearing dates convened. On one hearing date, the interpreter was not present due a scheduling error by the interpreter service company and/or its interpreter, but the Parents requested that the hearing go forward as scheduled. During that day a Board staff member was present who served as an interpreter to the satisfaction of the Parents. The interpreter's role changed from day to day and even within the same day of the hearing. At times the Parents decided that they would request translation of all spoken words and, at other times, decided that they did not need any translation whatsoever. The interpretation of the proceedings was completed in response to all of the Parents' requests.

Requests for extension of the mailing date were granted at the Board's request so that additional hearing dates could be scheduled and so that the parties could file written closing arguments. Written closing arguments were filed by both parties on March 16, 2011. Additional submissions were emailed by the Board's attorney on March 25, 2011 and by the Parents on March 28, 2011. A request for extension of the mailing date, submitted by the Board's attorney on April 1, 2011 because the transcripts were not completed by the reporting service, was granted. The mailing date of the decision was extended to May 13, 2011.

The Parents' witnesses were the Mother; Wayne Holland, Board director of special education; Karen Simon, Parents' advocate; Lucinda Ribeiro, the Student's home therapist and Marilena Baldino, the Student's home therapist. The Parents also called Carol Fiorile, the

consultant for their home program, as a witness, but failed to have her return as a witness to complete her testimony. The Parents were provided ample and frequent notice during the hearing that the failure to have the witness return to complete cross examination would result in the striking of her testimony. The witness failed to return. Therefore, Ms. Fiorile's testimony was stricken.

The Board's witnesses were Dr. Robin Nuzzolo, the Parents-selected independent evaluator; and Wayne Holland, Board director of special education.

The Parents submitted exhibits numbered P-1 through P-73, as well as an unnumbered box of cassette tapes. The Board's objections to the following exhibits were sustained, and the following exhibits were not admitted into evidence: Exhibits P-1, P-2, P-3, P-29 - Page 12, P-35, P-37, P-47, P-52, P-67, P-72, P-73- pages 2-81 and the unnumbered box of cassette tapes.¹

The Board submitted exhibits numbered B-1 through B-60, which were admitted into evidence.

All exhibits, transcripts and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

To the extent that the comments, procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

COMMENTS ON THE CONDUCT OF THE PROCEEDINGS:

Pursuant to Section 10-76h-16(b) of the Regulations, the Hearing Officer may comment about the conduct of the parties in a hearing. Such comments are necessary in this case.

It is not uncommon in special education due process hearings to have an elevated emotionality present. When parents represent themselves during the hearings, it can be challenging for the family to contain their emotions – their frustration, sadness or anger. The actions of the Parents in this case, however, far exceeded the typical difficulty that some parents have in comporting themselves to the structure of the hearing proceedings and containing emotions during a hearing about their child who has a disability.

Due to the rancor and disrespectful behavior of the Parents, usually due to the actions of the Father, several times during the hearing the Hearing Officer quoted the regulation which provides the Hearing Officer authority to take reasonable measures to ensure that the hearing proceeds in a civil manner. This regulation provision provides that “[t]he hearing officer shall take reasonable measures, including the exclusion from the hearing of parties, counsel, or any

¹ The box of cassette tapes had been submitted by the Parents unnumbered. On the record, the box of tapes was identified as proposed exhibit P-71. Subsequent to this, the Parents submitted another group of documents which was identified as exhibit P-71. To avoid confusion, the box of tapes has been identified as an unnumbered proposed exhibit in this decision.

other participant, to ensure that the parties, counsel and all other participants comport themselves civilly and that the hearing is conducted in a fair and orderly manner. Behavior which may result in exclusion includes, but is not limited to, abusive speech, inflammatory remarks or disrespectful conduct towards the hearing officer, counsel or any party or party representative, or witnesses." Regs. Conn. State Agencies §10-76h-13(a) The reference on the record to this regulatory authority was provided to warn the Parents, particularly the Father, to cease the inappropriate and disrespectful conduct. Even with these warnings, the conduct continued, and further action was necessary to ensure that the hearing was conducted in a fair and orderly manner. The Hearing Officer was patient and tolerant of the Parents' conduct, yet the disrespectful and disruptive conduct continued and escalated throughout the course of the hearing.

During the hearing, the Parents were reminded that they would be given reasonably sufficient time to present their evidence. The Parents had estimated that they would require two days to present their case. The Parents rested their case at the end of the eleventh hearing date, although they were informed by the Hearing Officer that they would be provided additional time if necessary to have additional witnesses testify. The Parents' claim that they didn't have sufficient hearing time to present their case or were required to complete their case prematurely is without merit and absolutely contrary to the record.

Despite the reminders and the latitude and leeway afforded to the Parents, rancor and disrespectful and inappropriate behavior was demonstrated by the Parents throughout the hearing dates. The Parents conducted themselves inappropriately throughout the hearing, causing undue delays in the hearing and creating a hostile environment. This inappropriate behavior was directed at the Hearing Officer, representatives of the Board and witnesses of the Board.

The Parents had blatant disregard and abject disrespect for the hearing process, including frequent disregard of even simple orders. The Parents, particularly the Father, would also talk back to the Hearing Officer when rulings were made, and respond in a loud, aggressive tone, persistently interrupting the hearing proceedings with comments, complaints and disagreements. The Parents exhibited belligerent and hostile behavior and manner towards the Hearing Officer, and the Board's representatives and witnesses. This behavior required the Hearing Officer to conclude the hearing early on two hearing dates and to remove the Father from the hearing room several times due to his inability to control his behavior despite repeated warnings that he would be removed due to his behavior if it continued. The Board's attorney also reported that the Board felt it was necessary to have a uniformed officer of the Stamford Police Department present to maintain the safety of those attending the hearing and present in the Government Center building after the hearing date on January 24, 2011. Police were present at all hearing dates following January 24, 2011. The Father also attempted to surreptitiously tape record the hearing in violation of a clear, direct order from the Hearing Officer.

Even with the presence of a police officer, the Father would delay or refuse to leave the hearing room when ordered by the Hearing Officer due to his hostile, intimidating and/or disruptive behavior, which would necessitate intervention from the Stamford Police Department to ensure exit from the hearing room.

The Father engaged in intimidation of a disinterested witness by demanding her home address after the witness expressed grave concerns for her physical safety based on alleged violent, threatening comments made by friends of the Parents on the eleventh day of the hearing (persons who had not attended any prior hearing date and who observed for just ten minutes at the start of the hearing date before leaving the hearing room and making the alleged remarks near the witness in the hallway outside the hearing room).² After this occurred, the Parents outrageously accused, without any basis in fact or logic, that the Board, the disinterested witness and the Hearing Officer fabricated the fear expressed by the disinterested witness.

Further, the Parents raised claims of discrimination against them on the basis of their national origin in their due process complaint and throughout the hearing. These claims of discrimination were asserted during the hearing against the Board and the Hearing Officer. For example, such claims were raised when the Board's attorney objected to the presentation of evidence and/or the Parents' behavior during the hearing. The Parents even raised claims of discrimination on behalf of their three friends who had to be banned from the building after they allegedly made violent threats against those in the hearing room, and the Parents charged that these threats were fabricated because they are Albanians. The Parents defended these individuals and alleged discrimination, even though the Parents were not present to hear the remarks made by their friends. There is no evidence whatsoever of discrimination against the Parents or the Student in this matter. The evidence actually demonstrates the converse. From what was evident during the course of this hearing, the Board has continuously worked in good faith and treated the Parents and the Student with respect, despite the Parents' hostile, dismissive and degrading treatment of the Board, its staff and its representatives. The Record also clearly demonstrates that the Parents were treated with respect by the Hearing Officer, who granted the Parents appropriate and extensive leeway in the presentation of their case, despite the Parents' continuous dismissive and disrespectful behavior towards the Hearing Officer.

STATEMENT OF JURIDISCTION:

This matter was heard as a contested case pursuant to *Connecticut General Statutes* ("CGS") §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACTS:

1. The Student is 12 years old and is currently receiving educational services at home from the therapists provided by the Parents. [Testimony Ms. Ribeiro, Mother]

² On this same day, in light of the alleged threatening remarks, the Hearing Officer stopped the proceedings to ensure that the three men who had made these alleged threats had exited the Government Center building, which was verified by the security cameras. Due to the legitimate concerns for the safety of those in the hearing room, the Hearing Officer requested that the police officer escort all persons to the parking garage attached to the Government Center to ensure that the parties, Board representatives, counsel, court reporter, Hearing Officer and interpreter at the hearing could safely exit the premises on that hearing date.

2. It is undisputed that the Student is eligible for special education and related services under the category of Autism.
3. The Student has been receiving his education at home for the past three to four years, initially in accordance with settlement agreements with the Board and now funded by the Parents. His current Parents-funded program is one to one service provided in the Student's bedroom. [Testimony Board director, Dr. Nuzzolo]
4. In November 2009, the Board and Parents entered into a settlement agreement which set forth a plan to have consultants evaluate the Student and recommend a program for the Student, which the Board agreed to fund. The Board entered into this agreement as a way to build its relationship with the Parents. [Testimony Dr. Holland, Exhibit P-7] As this is a confidential settlement agreement, only the particulars that relate to this pending case will be addressed in this decision.
5. In accordance with the agreement, the parties agreed to have Bridget Taylor conduct a psychological and educational evaluation of the Student. In the event that Ms. Taylor was unavailable, the Parents agreed to submit to the Board a list of five consultants with qualifications and experience, including experience transitioning students with autism to their public schools, and the Board would select one of the evaluators from the Parents' list of five qualified evaluators to complete the evaluation. [Exhibit P-7]
6. The Parents and Board also agreed that the Board would retain the Center for Special Needs to conduct a speech and language evaluation and occupational therapy [OT] evaluation of the Student. [Exhibit P-7]
7. During the pendency of the evaluations and through the development of the Student's Individualized Educational Program [IEP], the Board funded the Student's home-based program in accordance with this agreement. [Testimony Board director, Exhibit P-7]
8. Bridget Taylor sent an email that she would be unable to complete the evaluation, and subsequently the Parents submitted their list of five evaluators to the Board. Dr. Robin Nuzzolo, one of the Parents' requested evaluators who had been recommended by the Parents' consultant, confirmed that she could complete the evaluation during the appropriate timeframe. [Testimony Board director, Dr. Nuzzolo; Exhibit P-9]
9. Arrangements were made by the Board to have the Student evaluated by the speech and OT evaluators by the Center for Special Needs, in accordance with the agreement. [Exhibit P-9]
10. The Parents subsequently refused to have the Student evaluated by the speech and OT evaluators at the Center for Children with Special Needs as set forth in the settlement agreement, as they refused to drive the approximately 75 mile distance to the evaluation. They cancelled a speech evaluation which was scheduled for December, and refused the January 11, 2010 OT evaluation. [Exhibit P-9] Subsequently, the speech evaluation was

completed by Katie Curra and the occupational therapy evaluation was completed by Kristin Carbine. [Exhibits P-18, P-19]

11. The Parents scheduled the Student's OT evaluation for January 15, 2010, the tentative date for the reconvening of the PPT. The Board agreed to await completion of the evaluation to convene the PPT meeting. [Exhibit P-11]
12. The Parents notified the Board on January 24, 2010 that the last evaluation was completed, and the Board sent out a Notice on January 29, 2010 scheduling a Planning and Placement Team [PPT] meeting on February 24, 2010. [Exhibit P-13, P-14]
13. Throughout this time, the Board made many attempts to convene the PPT meeting to plan the program, but was unable to do so due to cancellations by the Parents and the scheduling conflicts of others such as the Parents-selected independent evaluator that the Parents deemed necessary to be at the meetings. The details of these cancellations are included here to outline the reasonable steps taken by the Board to convene the PPT meetings and proceed with the planning of the IEP for the Student. [Testimony Board director, Dr. Nuzzolo; Exhibits P-14, P-15, P-17, P-25, P-28, P-29, P-33, P-39, P-55]
14. On February 1, 2010 the Mother sent an email to the Board director that she was not available on February 24, 2010 and requested rescheduling the meeting. [Exhibit P-14]
15. A March 18, 2010 PPT meeting date was scheduled on February 4, 2010 in accordance with the Parents' request [Exhibit P-15], but due to the unavailability of Dr. Nuzzolo, the PPT meeting was rescheduled to March 31, 2010. [Exhibit P-17, P-15]
16. The Parents requested a second observation by the evaluator, which was completed by Dr. Nuzzolo on February 17, 2010. [Testimony Dr. Nuzzolo, Exhibit P-26]
17. On March 30, 2010 the Mother notified the Board that she had received an email from Dr. Nuzzolo, one of her son's "main evaluators," who told her that she had a personal emergency and would not be able to attend the Student's PPT meeting scheduled for the next day. The Mother requested that the PPT be postponed to a date in April. [Exhibit P-25]
18. In response to this request from the Mother, the Board director responded by email, stating that he strongly suggested that they not cancel the meeting, but rather that they hold the PPT meeting and schedule a second meeting to complete reviewing the reports as well as the IEP. The Parents then agreed via email to participate in the PPT meeting on March 31, 2010. [Exhibit P-25]
19. On March 31, 2010, minutes before the PPT meeting was to be convened, the Board learned that the regular education teacher would be unable to attend the PPT meeting scheduled for March 31. The Parents refused to go forward without the regular education teacher present and that PPT meeting was cancelled. [Testimony Board director, Exhibit P-28]

20. Again the Board attempted to reschedule the PPT meeting, proposing several days, and attempting to schedule a PPT meeting on a date requested by the Parents, May 17, 2010. When contacted about the Parents' requested date of May 17, the Parents suggested May 18, 2010. During this time, the Parents were refusing to allow the Board staff to observe the Student's home program, despite the agreement which required that the Parents allow such observation. [Exhibits P-7, P-29]
21. The Parents requested an earlier PPT meeting, but also requested that the director of special education attend the meeting. When the director suggested that he step down from chairing the meeting and ask the staff to schedule an earlier PPT meeting, the Mother stated via email that the Parents want him to be present, because they didn't want him to "give the same answer to the Hearing Officer like you did in our previous hearing." [Exhibit P-29]
22. During this time, the Parents had already determined that they were going to file a request for hearing. [Testimony Mother, Exhibit P-29]
23. The PPT meeting convened on May 18, 2010 and reconvened on May 24, 2010. A substantial amount of time was devoted at both meetings to developing the Student's IEP, but the meeting was adjourned to be continued on June 18, 2010 as the consultants who had been there a substantial amount of time were not available after 2 p.m. [Exhibit P-33]
24. Subsequent to the scheduling of the follow-up PPT meeting, Dr. Nuzzolo contacted the Board and apologized that she was unable to attend the meeting, as her school was having graduation on that day, but suggested June 25, 2010 as a follow-up date. [Testimony Dr. Nuzzolo, Exhibit P-41]
25. The Board attempted to reschedule the PPT meeting for several days, but the Parents continued to state they were unavailable for the dates. [Exhibits P-44, P-45]
26. The Board was proceeding with the PPT meeting as it was imperative that they have a program to offer to the Student for the beginning of the 2010-11 school year. [Testimony Board director]
27. The Board convened a PPT meeting on July 12, 2010. The Parents did not attend this meeting. The OT and speech consultants presented their recommendations for program for the Student, and the PPT scheduled to reconvene on August 13, 2010. [Exhibit B-39]
28. The Board had attempted to have the Parents available by phone, or even through Skype, but the Parents did not provide the Board with contact information. At this time, the Parents reported they were out of country. [Testimony Board director] The Father returned to Stamford on July 14 or 15, 2010. [Testimony Mother]

29. While the Parents were not present at the August 13, 2010 PPT meeting, the Father was in Stamford and was available to attend the PPT meeting, a notice of which had been sent to the Parents on or about July 13, 2010. [Testimony Mother, Board director]
30. Dr. Nuzzolo, the independent evaluator, was unable to attend the August PPT meeting as she had a family emergency that could not be avoided. She submitted her recommendations for the Student's program prior to the PPT meeting. [Testimony Dr. Nuzzolo, Exhibit P-54]
31. The independent evaluator, Dr. Nuzzolo, recommended "a small structured classroom in a building with opportunities to integrate into a classroom with typical peers." The IEP afforded the Student with appropriate self-contained and general education opportunities in a school attended by typical peers. The IEP provided that the Student would receive 20 hours of time spent with nondisabled peers and 10 hours of small group instruction, in addition to his pullout services for occupational therapy and services from the speech and language pathologist. [Exhibits P-10, P-55]
32. Dr. Nuzzolo also recommended the following components for a program for the Student for the 2010-11 school year:
- A transition plan for the Student to attend a center based program, with a fade in for the first 30 days.
 - A center based program was described by the evaluator as a program in a school, as opposed to a home based program.
 - The Student would require a 1:1 aide with him, which could be re-assessed after the first half of the school year.
 - A qualified behavior analyst would need to work with the classroom teacher, teaching assistants and 1:1 aide for at least four hours per week for the first 30 days of school, which time could be reassessed. The Student would require a behavior plan.
 - A parent educator was advised to serve as liaison between the school program and the family.
- [Testimony Dr. Nuzzolo, Exhibits P-10, P-54, P-55]
33. The independent occupational therapy evaluator, Kristin Downer (nee Carbine), identified the Student's visual motor and graphomotor needs. The IEP includes goals addressing both of these need areas. She recommended that the Student receive occupational therapy. The IEP includes three occupational therapy sessions weekly. [Exhibits P-19, P-55]
34. The independent speech and language evaluator, Katie Curra, recommended auditory processing and word retrieval goals and objectives, each of which are included in the IEP. She also recommended both speech and language therapy and an interdisciplinary approach that incorporated therapeutic concepts into the Student's entire program. The IEP includes consultation with a speech language therapist. The IEP also included two speech and language therapy sessions per week, one in the classroom and the other

conducted individually with a member of the Student's teaching team present. [Exhibits P-18, P-55]

35. The PPT convened on August 13, 2010 and the Student's IEP for the 2010-11 school year was finalized. The program designed for the Student met all the components of the Student's program as identified by the evaluators selected in accordance with the settlement agreement. [Exhibit P-55]
36. The Board's proposed IEP for the Student for the 2010-11 school year included appropriate goals and objectives to address the Student's concerns and needs as outlined in his present levels of academic achievement and functional performance. The goals included: (1) the Student will demonstrate an improvement in word recognition and decoding skills necessary to read for information and understanding; (2) the Student will demonstrate an improvement in the mechanics of written language such as spelling, capitalization and punctuation necessary to write for information, understanding and written expression; (3) the Student will use numbers to count, measure, compare, order, scale, locate and label, and use a variety of numerical representations to present, interpret, communicate and connect various kinds of numerical information; (4) the Student will develop the prosocial skills needed to interact appropriately with his peers; (5) the Student will demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction; (6) the Student will demonstrate an improvement in graphomotor skills for increased performance in the educational setting; (7) the Student will demonstrate improved visual-motor skills for increased performance in the educational setting; (8) the Student will demonstrate an improvement in sensory processing skills to successfully participate in educational and classroom activities; (9) the Student will demonstrate an improvement in the critical activities required for self help; (10) the Student will increase his functional math skills for increased performance in the educational setting. These goals all addressed the Student's weaknesses and had appropriate objectives linked to achieving these appropriate goals. [Exhibit P-55]
37. The IEP also included the appropriate related services, accommodations and modifications to allow the Student to progress appropriately in the least restrictive environment. The independent SLP consultant suggested placement for the Student at the Board's Roxbury School, as he would have the special education supports readily available to him, and the placement at that location would provide his program with the appropriate flexibility. All members of the team who were present at the PPT meeting agreed with this recommendation. The team discussed a transition plan to transition the Student into his program at the Board school. [Exhibit B-55]
38. On August 24, the Parents sent a correspondence to the Board in which they rejected the IEP and alleged that "stay put" was the current home program where the student is receiving a one to one program at his home in his bedroom. [Exhibit P-56]
39. While the Board had funded the home program through June, it no longer funded the Student's home program, as the home program was funded pursuant to an expired

settlement agreement. By this time, the Board had offered the Student an IEP for the 2010-11 school year which met all requirements outlined by the independent evaluators. [Testimony Board director]

40. Based on this letter, the Board attempted to schedule another PPT meeting, but the Parent then requested that the Board director meet outside the PPT process to attempt to resolve the matter. [Testimony Board director, Mother; Exhibit P-57]
41. Pursuant to the Parents' request, the Board sent the Student's records to the McCarton School; Eastchester³, a public school in New York; Eagle Hill Greenwich and Ardsley, a public school in New York. [Exhibit B-58]
42. The PPT re-convened on November 22, 2010. At that meeting, the Parents requested placement of the Student at the McCarton School in New York. The Board denied this request. [Exhibit P-65]
43. The Student continues to receive his education at his home program, which consists of one to one services in his bedroom. His lead home therapist testified that the Student is regressing in this program. [Testimony Ms. Ribeiro, Mother]

DISCUSSION/CONCLUSIONS OF LAW:

The Parents brought this action in accordance with the Individuals with Disabilities Education Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. It is undisputed that the Student is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the disability category of autism pursuant to state and federal laws. See Conn. Gen. Stat. §§ 10-76 *et. seq.*; the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, *et seq.*

³ At the resolution session, the Board offered the Parents placement of the Student at Eastchester, which the Parents rejected. [Testimony Board director] The placement at Eastchester, a public school in New York, mirrors the program the Board offered to the Student for the 2010-11 school year in its own school. [Testimony Board director] Eastchester was not requested in this hearing, and placement at this school is not considered as it was not requested by the Parent in their Demand for Due Process. Several times the Mother indicated on the record that she would accept placement at Eastchester. The parties were invited to take time to discuss their position on the placement at Eastchester outside the hearing room. The Hearing Officer did not take part in any of these discussions, nor did the Hearing Officer encourage or discourage either party to settle for this placement as such involvement in settlement discussions would be improper.

The standard for determining whether a FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry set forth in Rowley asks first whether the procedural requirements of IDEA have been reasonably met and, second, whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207

Despite the Parents’ claims that there is a laundry list of extensive procedural violations included in their 15 page single-spaced request for hearing, the Board has fully complied with the procedural requirements of the IDEA.

The Parents complain of a number of categories of procedural violations, including violations regarding the timing of the PPT meetings, the notice of the PPT meetings, the extent of review and consideration of all information/assessments during the PPT meetings and alleged “predetermination” of the Board’s proposed program, the lack of certain parties in attendance at the PPT meetings, alleged failure to allow for meaningful participation of the Parents and their providers during the PPT meetings, the scheduling of the PPT meeting during the summer 2010, the provision of copies of the IEP and other documents and assessments to the Parents, the scope of the assessments completed in accordance with the settlement agreement, alleged falsification of documents by the Board and that the Board allegedly discriminated against the Parents and caused them emotional distress.

Nothing in the record supports the conclusion that there were any procedural violations which resulted in a denial of FAPE to the Student.

Despite their claims to the contrary, the Parents were active participants in the PPT process. Though the Parents claim that they were not allowed to speak at PPT meetings, this claim is not credible. The Parents actively participated in PPT meetings. The private providers

were also allowed to provide input to the PPT. The Parents had numerous opportunities to provide input to the PPT, which input was considered and, in some cases, adopted by the PPT. Additionally, the Board offered the opportunity to participate in meetings via phone or other electronic means after the Parents left the country during the summer 2010. The Parents did not avail themselves of these opportunities.

The Parents presented no credible evidence to support their allegations of procedural violations. The Parents complained of the timing of the PPT meetings, but it was the Parents and the Parents-selected consultant who caused or requested the delays. The evidence supports the conclusion that the Board provided timely notice of all PPT meetings. The Parents also attempted to support their claim of predetermination by referencing appropriately developed *draft* IEPs (which the Parents contemporaneously acknowledged were drafts). These drafts were significantly revised before the IEP was completed. [Exhibits P-31, P-55] Further, the Parents claimed that the Board had predetermined the placement at Roxbury School, although it was Ms Curra, an independent evaluator, who was the first to recommend a placement at Roxbury School. [Exhibit P-55]

The Parents also consistently alleged, without factual support, that the Board and the PPT did not “consider” their input. As discussed above, the Record establishes that the Parents provided substantial input to the PPT. Consideration of the Parents’ requests and input, however, does not necessitate accepting or agreeing with those suggestions. See A.E. v. Westport Bd. of Educ., 463 F. Supp.2d 208, 46 IDELR 277 (D. Conn. 2006)

Procedural flaws do not automatically require a finding of a denial of a FAPE. Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419, 47 IDELR 70 (S.D.N.Y. 2007) “Only procedural inadequacies that cause substantive harm to the child or his parents -- meaning that

they individually or cumulatively result in the loss of educational opportunity or seriously infringe on a parent's participation in the creation or formulation of the IEP -- constitute a denial of a FAPE." Matrejek, 471 F. Supp. 2d at 419. It can be found that child did not receive a FAPE only if procedural inadequacies: (i) impeded the child's right to a FAPE; (ii) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; or (iii) caused a deprivation of educational benefits. 20 U.S.C. 1415(f)(3)(E)(ii). The Board offered the Student an appropriate educational opportunity, there was no deprivation of educational benefits and the Parents were provided a meaningful opportunity to participate in the development of the IEP.

The Board complied with the procedural requirements of the IDEA when developing an IEP for the Student that was reasonably calculated to enable the Student to receive meaningful -- and certainly more than trivial -- educational benefit. See Rowley, 458 U.S. at 206-07. The IEP document contains all of the required elements. Specifically, the IEP for 2010-2011 includes 1) a statement of the Student's present levels of educational performance; 2) annual goals and short-term objectives based on those present levels; 3) the specific educational services to be provided; 4) an explanation of the extent to which the Student would not participate in regular education programs; 5) any appropriate transition services; 6) objective criteria and evaluation procedures for determining whether objectives are being met; and 7) the proposed initiation date and duration of proposed services. [Exhibit P-55] See 34 C.F.R. Section 300.347; Walczak, 142 F.3d at 122; see also Regs. Conn. State Agencies § 10-76d-11.

The PPT developed the IEP in accordance with the applicable legal standards. The evidence demonstrates the Board developed a program that was "individualized on the basis of the student's assessment and performance." 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) When developing the IEP, the PPT met its obligations under the law by considering, among other things, the strengths of the Student, the concerns of the Parents, the results of evaluations, and the academic, developmental, and communication and functional needs of the Student. see 34 C.F.R. § 300.324. More specifically, the IEP is based on the results of three independent evaluations conducted by agreed-upon evaluators. The IEP is closely linked to these comprehensive evaluations of the Student's needs. The IEP is thus based on the extensive information about the Student's needs available to the PPT. Significantly, each of the independent evaluators supported the IEP developed by the PPT as well as its implementation at Roxbury School. Further, the Board provided adequate notice of all PPT meetings and invited appropriate individuals to each meeting. The Board provided the Parents their procedural safeguards. After each PPT meeting, the Board sent the Parents prior written notice pages and, where appropriate, additional documentation – including notes, tapes and transcripts of PPT meetings held in July and August 2010. [Exhibit P-55] Accordingly, the central procedural protections of the IDEA were followed by the Board, and no violation of the requirement to provide a FAPE can be found.

As for the procedural violation claims by the Parents of discrimination and emotional distress and falsification of documents, nothing in the record supports these baseless and outrageous allegations.

The second prong of Rowley is the determination of whether the Board offered the Student an appropriate IEP. The proper gauge for determining the IEP is substantively appropriate is the question of “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v.

Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). Meaningful educational benefits are “not everything that might be thought desirable by loving parents.” Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2nd Cir. 1989). Rather, school districts are required to provide a “‘basic floor of opportunity’ . . . [by providing] access to specialized services which are individually designed to provide educational benefit to the handicapped child.” Rowley, supra, 458 U.S. at 201; see also K.P. v. Juzwic, 891 F. Supp. 703, 718 (D.Conn. 1995) (the goal of the IDEA is to provide access to public education for disabled students, not to maximize a disabled child’s potential)

The IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. See 34 C.F.R. § 300.114(a)(2)(i); Oberti v. Bd. of Educ., 995 F.2d 1204, 1216 (3d Cir. 1993); see also 20 U.S.C. § 1412(5)(b); Conn. State Regs. §§ 10-76a-1(11) and 10-76d-1(a)(4). When determining whether a program is provided in the least restrictive environment (“LRE”), a school district must examine the educational benefits, both academic and non-academic, to the student in a regular classroom. Id. Among the factors to be considered when conducting this analysis are the advantages to be gained from modeling the behavior and language of non-disabled students, the effect of such inclusion on the other students in the class, and the costs of necessary supplemental services. Id.

The IDEA requires “that schools take an individualized approach to each student” and that “[w]hile including students in the regular classroom as much as is practicable is undoubtedly a central goal of the IDEA, schools must attempt to achieve that goal in light of the equally important objective of providing an education appropriately tailored to each student’s particular needs.” P. v. Newington Bd. of Educ., 546 F.3d 111, 120-122, 51 IDELR 2 (2d Cir. 2008) The Board complied with this requirement. The evidence strongly supports that this Student would

obtain substantial benefit from modeling the behavior and language of the nondisabled peers, and this IEP provides this benefit to the Student. [Testimony Dr. Nuzzolo]

The Board has met its burden of proof, demonstrating by a preponderance of evidence that the IEP for the 2010-2011 school year offers the Student a FAPE in the LRE. Each of the disinterested, mutually agreed upon evaluators has stated that the IEP is substantively appropriate. It offers much-needed specialized instruction from qualified providers, including certified special education teachers qualified to teach the Student, as well as appropriate related services to address the Student's academic, social, self-help, occupational therapy, and speech and language needs. The Student will have access to a comprehensive curriculum and modifications of that curriculum to meet his learning needs.

The objective evidence in the record establishes that the Board's IEP would confer meaningful educational benefit on the Student. The PPT was informed by three independent evaluations of the Student's needs. Both Dr. Nuzzolo and the home-based therapist revised the Present Levels of Academic Achievement and Functional Performance. The PPT thus had knowledge of the Student's current needs when developing his program. The IEP also closely mirrors the recommendations of all of the independent evaluators, which recommendations were developed after observing the Student in his home program and completing appropriate assessments.

Each of the independent evaluators reviewed and revised, as appropriate, the goals and objectives in the IEP. The design of the Student's program was also linked to other important goals for the Student, including the opportunity to generalize his skills across multiple settings and interact with peers from his home community. The proposed program for the Student provided opportunities for collaboration and consultation. The Student's program was also

provided in his least restrictive environment, maximizing the Student's access to the typical peers that each independent evaluator considered a critical component of the Student's program.

[Testimony Dr. Nuzzolo]

All of the objective evidence in the Record establishes that the Student's IEP was substantively appropriate and that the Student could greatly benefit from the Board's program. Each of the independent evaluators supported the substantive appropriateness of the IEP.⁴ The IEP would confer meaningful educational benefit on the Student. The Parents failed to present any objective evidence that contradicted the substantive appropriateness of the IEP or justify the placement of the Student in a restrictive self-contained environment. The IEP complies with the substantive requirements of the IDEA.

Because the IEP offers an appropriate program in the LRE, the Parents are not entitled to reimbursement for any other placement, including reimbursement for their home program and/or the McCarton School, as the IDEA "does not require [a local educational agency] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility *if that agency made FAPE available to the child and the parents elected to place the child in a private school facility.*" 34 C.F.R. § 300.403(a) (emphasis added); see also M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F. 3d 60, 66 (2d Cir. 2000)

2004)

Only if it is concluded that the IEP is procedurally or substantively deficient must we reach the final step and ask whether the Parents' proposed placement or their home program is

⁴ The Parents fixated on the fact that Dr. Nuzzolo did not state in her written report that Roxbury School would be an appropriate location for the delivery of the Student's educational program. Dr. Nuzzolo testified, however, that the Student should be placed in a center-based, meaning school-based, program with access to typical peers. As is good practice in her field, Dr. Nuzzolo does not identify a particular school in her recommendations. Rather, she recommends components for the program and understands that it is the PPT decision to work together to determine where the program should be implemented. All of the components of the program identified by Dr. Nuzzolo can be provided at Roxbury School. [Testimony Dr. Nuzzolo]

appropriate to meet the needs of the Student. A.C. and M.C. v. Board of Education of Chappaqua Central School District, 553 F. 3d 165, 51 IDELR 147 (2nd Cir. 2009) Because it is found that the IEP was neither procedurally flawed nor substantively deficient, it is not necessary to reach the issue of whether the Parents' home program was appropriate, whether the proposed program at the McCarton School is appropriate, or whether any equitable considerations, substantial as there are, would affect the relief. Id.⁵

The Board's proposed program for the Student for the 2010-11 school year is appropriate. The Board did not commit any procedural violations which resulted in a denial of FAPE during the 2010-11 school year. The Parents are not entitled to reimbursement for their home program, and the Board is not responsible for the funding of the Parents' proposed placement of the Student at the McCarton School.

FINAL DECISION AND ORDER

1. The Board's proposed program for the Student for the 2010-11 school year is appropriate.
2. The Board's actions during the 2010-11 school year as outlined in the request for hearing did not constitute procedural violations, and did not result in a denial of a free appropriate public education [FAPE] to the Student.
3. The Parents shall not be reimbursed for their home program.
4. As the Board's proposed program for the 2010-11 school year is appropriate, the Parents shall not be reimbursed for their home program and the Board is not responsible for funding the Parents' proposed placement of the Student at the McCarton School.

⁵ Nevertheless, the Record is clear that the Parents have failed to establish the appropriateness of the home program placement and the McCarton placement for which they request funding. It is also noted that the Parents significantly impeded the PPT process and made it extraordinarily difficult to reach a resolution that would benefit their son and/or conduct an orderly hearing to resolve the parties' dispute.