

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Voluntown Board of Education

Appearing on behalf of the Student:

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Appearing on behalf of the Board:

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Appearing before:

Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board of Education appropriately assess the Student's community integration and independent living skills?
2. If not, what is or are the appropriate remedy or remedies?
3. Did the Board of Education provide appropriate transition services for the Student from January 17, 2012 to the present?
4. If not, what is or are the appropriate remedy or remedies?
5. Does the Student require additional transition services for which the Board of Education is responsible?
6. If [so], what is or are the appropriate remedy or remedies?

PROCEDURAL HISTORY:

The Student requested a special education due process hearing in this matter on January 17, 2014. This Impartial Hearing Officer was assigned to the case on January 17, 2014. A telephonic pre-hearing conference was held on January 28, 2014. Attorney Sally Zanger appeared on behalf of the Student and Attorney Frederick L. Dorsey appeared on behalf of the Board of Education (Board). Hearings were scheduled for March 19, 2014 and March 21, 2014.

On February 4, 2014, the Student submitted a request for an order of "Stay Put", pursuant to 34 Code of Federal Regulations (C.F.R.) Section 300.518 (a) and Section 10-76h-17 (a) of the Regulations of Connecticut State Agencies (R.C.S.A.) The Hearing Officer responded on February 13, 2014, ordering the Board to continue Student's then-

current placement at the EASTCONN Northeast Regional Program (EASTCONN) pending the completion of the hearing.

During the hearing on March 19, 2014 the hearing scheduled for March 21, 2014 was cancelled. Further, the parties agreed that additional hearings would be necessary in order to afford due process to both the Student and the Board. Additional hearings were scheduled for April 10, 2014, April 23, 2014, April 25, 2014 and April 28, 2014.

During the hearing on April 10, 2014 and in a brief dated April 18, 2014, the Student moved to add the issue of an extended year program for the summer of 2014 to the case. The Board opposed that motion and the Impartial Hearing Officer denied it on April 22, 2014.

On March 20, 2014, the timelines to conduct the hearing and to file the final decision was extended to May 2, 2014. At the hearing on April 25, 2014, an additional request for an extension of the timelines to conduct the hearing and to file the final decision was granted to May 30, 2014. Finally, at the last hearing, on April 28, 2014, a further extension of the timelines to conduct the hearing and to file the final decision was granted to June 27, 2014.

The Student's witnesses were the Mother; the Father; the Student; Andre Bessette, the Student's former therapist; Elaine Lee, the Board's Special Education Director; Cynthia Mason-Jones, a Treatment Coordinator with the Connecticut Department of Mental Health and Addiction Services (DMHAS); and the following staff members from EASTCONN: Heather Cymbala, Karen McElroy, Kurt Mias, Amy Margeloni, Graham Chamberlain, and Mitchel Sibley-Jett.

The Student submitted proposed exhibits numbered Exhibits P-1 to P-55. Objections to Exhibit P-44, page 6 of Exhibit P-47, Exhibit P-49, Exhibit P-50, pages 1, 2 and 6 of Exhibit P-53 and Exhibit P-54 were sustained. Proposed Exhibit P-48 was withdrawn. The remaining Student exhibits were entered as full exhibits.

The Board's witness was Elaine Lee, Special Education Director for the Voluntown Board of Education.

The Board submitted proposed exhibits numbered Exhibits B-1 through B-47, which were entered as full exhibits except that the Student's social security number was redacted from Exhibit B-41.

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:

A Student with a disability category of Emotional Distress claimed entitlement to continued transition services after his high school graduation with a standard diploma. The Student's IEP, including his transition plan, met the standards of *Rowley* for a free appropriate public education in that it was reasonably designed to afford the Student educational benefit.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, 20 United States Code (U.S.C.) Section 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178, inclusive, Section 4-181a and Section 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. The Student was born on October 13, 1995, and is now eighteen years of age. He attended the Board's public elementary school in the mainstream from the fourth through the eighth grades. Exhibit P-22 p. 2.
2. The Student began to exhibit significant psychiatric illness in about the sixth grade. Exhibit P-2 p. 2. Although he completed his academic work satisfactorily, there were concerns about his attendance and social, emotional and behavioral functioning. Exhibit B-13 p. 2. He was identified as a student eligible to receive special education and related services under the category of Emotional Disturbance in the ninth grade. Exhibit B-13 p. 1.
3. The Student was initially placed in the self contained ACES Program at the Norwich Free Academy for ninth grade. Norwich Free Academy is one of the designated high schools for students from Voluntown. Exhibit B-13 p. 1. Testimony of Dr. Elaine Lee (Lee).
4. Despite his relatively restrictive placement in the ACES Program, the Student suffered several emotional crises in the ninth grade and was hospitalized several times during the 2009-2010 School Year. Exhibit P-22 p. 1.
5. The Connecticut Department of Children and Families (DCF) placed the Student at Hillcrest Education Center, a residential therapeutic facility in Massachusetts, in June 2010. Exhibits P-22 p. 1 and B-13 p. 1. He stayed there until the end of December 2010, when the Voluntown Board of Education placed him at EASTCONN, a public therapeutic day treatment school operated by the area's educational service center.

6. Except for a few hospitalizations, the Student matriculated at EASTCONN continuously from December 2010 through January 17, 2014, when this case was filed.

7. EASTCONN is a very small program. Its high school section includes only about twelve students in two classrooms. (Cymbala).

8. The Student met a good deal of academic and behavioral success at EASTCONN. (Cymbala).

9. The Board takes the position that the Student graduated from high school on or before January 17, 2014 and that, if not for the Stay Put order, special education and related services would have been discontinued at that time.

10. The Student has been diagnosed with a multitude of conditions over the years. (Mother). More recently, he was described as follows:

[H]e has average overall intellectual ability; his verbal comprehension skills are slightly above average, while his processing speed is slightly below average [He] continues to display significant social, emotional and behavioral concerns. He displays many of the DMS-IV TR criteria for Depression, . . . [and] struggles with feelings of low self-esteem, social stress and poor self-confidence. He has difficulties getting along with peers and often displays a tendency to withdraw and isolate himself from social relationships. While he struggles to socialize with others his age, [he] gets along well with both children and adults.

Exhibit B-13 p. 3.

11. As required by the IDEA, the Student's Planning and Placement Team (PPT) began transition planning for him by his sixteenth birthday. These activities are described below for the two years before this case was filed.

Junior Year (2011-2012 School Year)

12. At the March 22, 2012 meeting, during his Junior Year, the Student's PPT identified his Vocational/Transition strengths as "[c]ommitted to building an excellent work history, willing to learn new tasks, complete his work assignments, and he enjoys mentoring and working with elementary age children." His concerns/needs were that he "can be negatively influenced by peers, which can result in his making poor behavior choices which inhibit his internship participation. He needs to improve upon his work presentation and hygiene." The impact of his disability was to create "[d]ifficulty maintaining appearance and lack of organizational skills [that] may affect his current and future employment aspirations." Exhibit B-7 p. 5.

13. The PPT described the Student's Activities of Daily Living strengths as: "[m]oney skills and computer skills." His concerns/needs were described as "[o]rganization and application of self-care skills." The impact of his disability was

identified as “[d]ifficulty maintaining appearance and organizational skills [that] may affect his current and future employment aspirations.” Exhibit B-7 p. 5.

14. The Student’s Transition Goals and Objectives at the time of the March 22, 2012 meeting were as follows:

Post Secondary Education/Training Goal:

Discover and/or acquire instruction and skills to transition to a two or four year community college or trade school

Objectives:

1. Identify and print applications for two post-secondary options (4 year college or trade school).
2. Complete applications for two post-secondary institutions and BRS if accepted.
3. Research and organize financial aid materials for the two post-secondary institutions of his choice.

Employment Goal:

Complete a series of activities in order to prepare him to transition to competitive or supported employment

Objectives:

Define interests and abilities to potential career and job opportunities in the Early Childhood Education field in written form, with staff assistance.

Identify primary and secondary career goals comparing qualifications necessary for success in such occupations with his own abilities in written form, with staff assistance.

Identify attitudes and behaviors necessary for job success in written form, with staff assistance.

Independent Living Goal:

Acquire the necessary daily living skills to allow for independent functioning in a variety of environments (home, vocational and community)

Objectives:

Given a staff prompt, . . . will maintain and comb hair prior to leaving for his work placement.

Given a staff prompt, . . . will change into appropriate work clothes prior to leaving for his job placement.

Independently operate the washer and dryer.

Exhibit B-7.

15. The Student’s Post-School Outcome Goals on March 22, 2012 were as follows:

Postsecondary Education or Training: to “attend college or trade school if financial funding is available”;

Employment: to “acquire part time competitive employment”;

Independent Living Skills: to “continue living with his parents or maintain an apartment.”

Exhibit B-7 p. 6.

16. During his Junior Year, the Student received 17.25 hours per week of academic instruction and .75 hour per week of counseling. Included was a course entitled "Transition to Success II". In addition, he had 10 hours per week of vocational/transition instruction, also called "work study" or "internship" in a community based setting. Exhibit B-7 p. 19 and Exhibit B-23 p. 2.

17. At that time, the Student was projected to graduate at the end of the 2012-2013 School Year. Exhibit B-7 p. 20. His criteria for exiting, or discontinuing, special education was "[a]bility to succeed in Regular Education without Special Education Support." Exhibit B-7 p. 18.

18. The Student did well in his transition endeavors during his Junior Year. It was reported to the PPT that he "has an excellent work record. Is now working in a day care center and is doing extremely well. The employer would like him to work as many hours as possible. . . . Exhibit B-7 p. 2. His level of effort was consistently at least "Satisfactory." He earned a final grade of A- for his work study at a day care center, and passed his Transition to Success course. Exhibit P-28 p. 1.

Senior Year (2012-2013 School Year)

19. At the December 17, 2012 meeting during his Senior Year, the Student's PPT identified his Vocational/Transition strengths nearly identically as it had six months earlier: "[c]ommitted to planning future, willing to learn new tasks, complete his work assignments, and enjoys mentoring and working with elementary age children." His concerns/needs were "[m]aintaining a clean work area." The impact of his disability was worded slightly differently, as "[d]ifficulty maintaining organizational skills and interpersonal relationships that may affect his current and future employment aspirations." Exhibit B-15 p. 6.

20. The PPT described the Student's Activities of Daily Living strengths as: "[m]oney skills and computer skills." His concerns/needs were described as "[o]rganization and application of functional skills." The impact of his disability was identified as "[d]ifficulty maintaining organizational skills may affect his current and future employment aspirations." Exhibit B-15 p. 6.

21. The Student's Transition Goals and Objectives were:

Post Secondary Education/Training Goal:

Research two or four year community college or trade schools as demonstrated by mastery of the objectives below:

Objectives:

a) [R]esearch Lincoln College and an additional community college, b) print and organize information on each school in a binder, c) complete a compare and contrast chart (Lincoln College vs. other school) and d) complete a pro's and con's list for each establishment.

[R]equest and obtain two letters of reference from past employers.
Given assistance from the vocational coordinator, . . . complete the Senior Checklist in an effort to obtain documents necessary for employment.

Employment Goal:

Complete a series of activities to prepare . . . to transition to competitive or supported employment as demonstrated by mastery of the objectives below:

Objectives:

Given assistance from the Vocational Coordinator . . . a) create an updated resume, and b) complete a personal information form, and c) save both documents on a thumb drive.
[C]omplete a series of 5 interview classes and successfully demonstrate mastery of skills by an average rating of 80% or better given 2 mock interviews.
Given staff support, . . . inquire about the possibility of summer employment at his current worksite.

Independent Living Goal:

Acquire the necessary daily living skills to allow for independent functioning in a variety of environments (home, vocational and community).

Objectives:

Given a gestural prompt and visual reminder, . . . 1) update agenda, 2) clean up after lunch, and 3) completed [sic] end of the day clean-up checklist.
Given a calculator, . . . maintain a checkbook register as demonstrated by averaging 90% given 15 trials
[C]omprehend information about the Connecticut Driver's Manual as demonstrated by an averaging [sic] 80% given 10 trials.

Exhibit B-15.

22. The Student's Post-School Outcome goals were:

Postsecondary Education or Training: to "attend Lincoln College of New England to study Mortuary Science";

Employment: to "obtain competitive employment";

Independent Living Skills: to "obtain . . . drivers license."

Exhibit B-15 p. 7.

23. During his Senior Year (2012-2013), the Student received 17.25 hours per week of academic instruction and .75 hour per week of counseling. Included were a course entitled Transition to Success II and a course entitled Consumer Math. He now had 12 hours per week of vocational/transition instruction (work study/internship), in a community based setting. Exhibit B-15 p. 19, and Exhibit B-23 p. 2.

24. At the December 17, 2012 meeting the Student's PPT team discussed that representatives of EASTCONN recommended he graduate in June 2013, as he would

have a sufficient number of high school credits to graduate at that time. The Student indicated that he “would like another year @ NE Regional.” At that time, the Student’s Exit Criteria continued to be “[a]bility to succeed in Regular Education without Special Education Support.” Exhibit B-15 p. 14.

25. The Student was still working at the day care center under the work study program. He had decided to include mentoring younger students at EASTCONN as part of his senior project, and he was exploring Mortuary Sciences as a possible career. Exhibit B-15, p. 3. His level of effort was consistently rated as at least “Good” and he was earning a grade of B+ for his work study at the day care center. He was passing his Transition to Success course. Exhibit B-11 p. 1.

26. At the April 8, 2013 meeting near the end of his Senior Year the Student’s PPT identified more Vocational/Transition strengths than it had in December: “[c]ommitted to planning future, willing to learn new tasks, complete his work assignments, and enjoys mentoring and working with elementary age children, self-starter, able to work independently when presented with familiar tasks.” His concerns/needs were “[i]nterview skills, knowledge of BSA requirements, organizations [sic] of documents needed to obtain employment.” The impact of his disability was updated, now expressed as “[d]ifficulty maintaining organizational skills and interpersonal relationships that may affect his current and future employment aspirations. Anxiety with unfamiliar staff, situations, place may negatively impact work performance. Processing speed requires explicit directions. Extra processing time.” Exhibit B-35 p. 5.

27. The PPT again described the Student’s Activities of Daily Living strengths as: “[m]oney skills and computer skills.” His concerns/needs were now described as “[r]ecording homework assignments, ability to maintain checkbook register.” The impact of his disability was identified as “[d]ifficulty maintaining organizational skills may affect his current and future employment aspirations. . . . processing speed requires receiving clear, concise, explicit directions, difficulty focusing on multi-tasking, and needs extra time to process.” Exhibit B-35 p. 17.

28. The Student’s Transition Goals and Objectives were now described as follows:

Post Secondary Education/Training Goal:

[R]esearch two or four year community college or trade schools as demonstrated by mastery of the objectives below.

Objectives:

[C]omplete four Basic Skill Assessment (BSA) practice tests, averaging 80% accuracy given no more than one opportunity to correct.

[R]equest and obtain two letters of reference from past employers. He will scan and save references on a thumbdrive with staff assistance.

Given assistance from staff, the Student will complete the identified items on the Senior Checklist in an effort to obtain documents necessary for employment.

Employment Goal:

Complete a series of activities to prepare him to transition to competitive or supported employment as demonstrated by mastery of the objectives below:

Objectives:

Given assistance from staff, the Student will a) create an updated resume, and b) complete a personal information form, c) save both documents on a thumb drive, and d) e-mail documents to self.

Complete a series of 5 interview classes and successfully demonstrate mastery of skills by an average rating of 80% or better given 2 mock interviews.

Participate in a potential employer and vocational coordinator meeting to determine specifics of employment offer, and record information on template provided by coordinator.

Independent Living Goal:

Acquire the necessary daily living skills to allow for independent functioning in a variety of environments (home, vocational and community) as demonstrated by mastery of the objectives below:

Objectives:

a) Record homework assignments from QVCC in a given assignment notebook, b) bring the notebook back to NRP to discuss with staff, c) ask for help when needed on the assignments, and/or d) download application to phone that can record homework and substitute for assignment notebook.

Given a calculator application on his phone or calculator in isolation, . . . will maintain a mock checkbook register as demonstrated by averaging 90% of given 15 trials.

Demonstrate comprehension of information about the Connecticut Driver's Manual as demonstrated by averaging 80% given 10 assignments.

Exhibit P-35.

29. At the time of the April 8, 2013 PPT meeting, the Student was still working at the day care center under the work study program, and the day care center was interested in doubling his work hours for the summer. Exhibit P-35, p. 2. His Vocational Coordinator reported that the Student is a "strong, reassuring and friendly presence for the children" at the day care and that he "is respected by staff and enjoys great popularity with the children." The Student, however, was struggling to maintain focus at work and had not yet mastered good hygiene: "he often wears the same outfit most days (to work and school) even when that outfit is dirty and stained." Exhibit P-39.

30. The Student was also "doing very well" in the classroom and was "working driver's ed manual, doing SAT prep, Math life skills, has completed Community Project. Has completed all CAPT Testing." Exhibit P-35, p. 2. His level of effort was consistently rated as at least "Good." He was earning a grade of B- in his Consumer Math course and he was earning a grade of B+ for his work study at a day care center. He was passing his Transition to Success course. Exhibit P-20 p. 1.

31. At the meeting on April 8, 2013, the PPT team “determined that [the Student] would remain at EASTCONN until the end of the semester in January 2014” in as much as he had “enough high school credits [to graduate] but could benefit from additional vocational and post secondary goal completion.” Exhibit B-35 p. 2.

32. The PPT documentation for the April 8, 2013 meeting changed the Student’s Exit Criteria to: “Graduation” and his projected graduation date was changed to the 2013-2014 School Year. Exhibit P-35 p. 13 and 15.

33. The PPT documentation for the April 8, 2013 meeting does not include any reference to changing the Student’s Exit Criteria or his Graduation Date under its Prior Written Notice section. Exhibit P-35 p. 3.

34. The Student’s program at EASTCONN continued in the Fall of 2013, including his work study position at the day care center. Since he had completed his high school credit requirements, the Student was enrolled in two credit courses at the local community college. One course was taken on line (English), and the other (Mathematics) in person at the college campus. Transportation to and from the college was provided for this purpose. (Chamberlain; Cymbala).

35. The Student’s special education teacher contributed a significant level of support for the Student in his English class, but he worked relatively independently in the Math course. He passed both courses. Exhibit P-38 p. 2. (Chamberlain).

36. The Student’s PPT met on December 12, 2013, a few weeks in advance of the Student’s then proposed graduation date of January 21, 2014. It was discussed that the PPT had decided on April 8, 2013 that the Student would remain at EASTCONN until January 2014 even though he had sufficient high school credits to graduate in June 2013, and that he would “exit special education” in January 2014. Representatives of DMHAS attended the meeting and objected to the plan on behalf of the Student. DMHAS took the position that the Student should not be exited from special education until he reaches age 21. Exhibit P-38 p. 3.

37. The PPT documentation for the meeting on December 12, 2013 identifies the Student’s graduation of January 21, 2014 as an Action Proposed in the Prior Written Notice section. Exhibit P-38 p. 3. The Prior Written Notice states that “[e]ducational performance supports the proposed actions” and identifies the “[o]ther options considered and rejected” as DMHAS’ view that the “[S]tudent should have IEP in place until he is 21.” The rationale for rejecting DMHAS’ position was that “Voluntown BOE feels student has completed necessary vocational training.” Exhibit P-38 p. 3.

38. The PPT met again on January 14, 2014, this time with each party’s lawyer present. Again, the discussion included the issue of graduation: “[t]he purpose of this semester was to complete transition goals and objectives, to provide an opportunity for [Student] to take 2 college courses and also to reach his 18th birthday at which time he would be eligible for other support programs. [Student], having completed his

transitional goals and objectives will graduate from high school and receive his diploma effective January 17, 2014. [Student's] last day at EASTCONN will be Friday, January 17, 2014 and he will be exited from special education on that date." Exhibit P-41 p. 3.

39. Like the PPT documentation for the December 12, 2013 meeting, the PPT documentation for the January 14, 2014 meeting identifies the Student's graduation on January 17, 2014 as an Action Proposed in the Prior Written Notice section. Exhibit P-41 p. 3. The Prior Written Notice states that "[e]ducational performance supports the proposed actions", "[e]valuation results support proposed actions", "[p]revious IEP goals and objectives have been satisfactorily achieved" and "Student has met Exit Criteria." The documentation does not identify any "[o]ther options considered and rejected" or express a rationale for rejecting other positions. Exhibit P-41 p. 3.

40. The Student and his parents were offered a copy of Procedural Safeguards in Special Education at the December 12, 2013 and the January 14, 2014 meetings. Exhibits P-38 p. 2 and P-41 p. 2.

41. The Student had completed all requirements for graduation from high school as set forth under Connecticut law and the policies of the Voluntown Board of Education by January 14, 2014. Stipulation of the Parties.

42. The Student had completed work on all of his Transition Goals and Objectives by January 14, 2014. (Chamberlain).

43. During his time at EASTCONN, the Student undertook or participated in several formal "assessments" related to post high school training, employment, education and independent living. Some of these are listed in the "Transition Assessment Resource Manual" published by The Connecticut Transition Task Force in collaboration with the Connecticut State Department of Education Bureau of Special Education and the State Education Resource Center (Manual). Exhibit B-43. The assessments used with the Student include at least the following:

Name/ Exhibit No.	Description	Date	Listed in Manual
Vocational Interview B-1 B-25	Staff Interview of student re: 1) Job interests and training/support needs; 2) higher education interests and needs; 3) living interests and needs; 4) leisure/recreation interests and needs	11/14/11 - 01/11/12; 8/28/13	No
Harrington- O'Shea Career Decision making System Revised, Level 1; B-2	Interest inventory that provides an assessment of career interests, job choices, school subjects, future plans, values and abilities.	1/18/12	Yes
Barriers to Employment Success Inventory B-5	Self assessment to identify barriers to employment success in areas of personal, physical and psychological, career planning, job seeking skills, education and training and begin to develop a plan to overcome them	3/15/12	Yes
I CANS (Integrated Curriculum for Achieving Necessary Skills) B-10	Self Assessment of Listening Ability, Getting Along with Difficult People, Determining Organizational Values	8/30/12	No
AGS Life Skills Final Mastery Test B-23		By 6/14/13	
Career Exploration Inventory; B-26	Assessment connects interests with related jobs, education, training options and leisure activities	11/1/13	Yes
Harrington O'Shea Career Decision Making System Level 2		1/6/11	Yes

ICANS B-32	Personal Management	11/1/11	
Canadian Career Exploration B-47	Self report of work abilities, learning styles and work values	3/24/11	No

See also Exhibit P-35 p. 6 (Sibley-Jett).

44. The formal assessments implemented with the Student covered many transition topics and went well beyond mere interest inventories.

45. In addition to these formal assessments, the Student took several high school courses at EASTCONN that focused on life after high school, including Transition to Success, Consumer Mathematics and Jobs Academy. Presumably, he was assessed on his acquisition of skills and knowledge in these courses. (Chamberlain).

46. Additionally, the Student spent a substantial amount of time during his high school years in work-study positions at a hardware store and then a day care center in the community. Although the Student's experiences in these placements was not formally assessed, his PPT Team did receive periodic reports concerning the Student's experiences, strengths and weaknesses in these settings. (Sibley-Jett).

47. The Student also attended at least some sessions of a guitar class at the local community college during his Junior or Senior year. He then formally matriculated at the community college for two courses - one on line – in the Spring of 2013. The Student's reports of these experiences, as well as his teachers' direct involvement with these experiences brought valuable information to the PPT concerning the Student's successes and challenges in community integration and post secondary education. (Sibley-Jett; Chamberlain).

48. These informal and formal assessments covered a wide range of knowledge and skills relating to training, education, employment and independent living. They were used, in part, to generate individualized transition goals and objectives for the Student and to fashion services in support of those goals.

49. For example, reports about the Student's work study experience (and other sources) during his Junior year revealed a need for improved hygiene. This was then identified as an area of concerns/needs in his vocational/transition and activities of daily living areas. Exhibit B-7 p. 5. Objectives were developed and implemented for the Student to "maintain and comb hair prior to leaving for work", "change into appropriate work clothes", "independently operate the washer and dryer" and "identify attitudes and behaviors necessary for job success." Exhibit B-7 p. 11 and p.12.

50. Similarly, assessments revealed that the Student might have an interest in and aptitude for a career in early childhood education. Accordingly, his objectives included defining career opportunities and abilities in the area of early childhood education. Exhibit B-7 p. 11.

51. Later in his career at EASTCONN, the PPT learned that the Student had an interest in embalming. Accordingly, objectives were included for the Student to research a nearby college offering "Mortuary Science." A shadowing opportunity was arranged for the Student at a mortuary, and he was taken to visit the college campus. (Sibley-Jett; Mother).

52. During his Senior year, a need was identified for the Student to become familiar with the Basic Skills Assessment used by community colleges for placement. He was given an objective to practice these examinations. When a concern was identified that the Student was anxious with unfamiliar people, he was given objectives to practice job interviews and meet with a potential employer and the vocational coordinator. Concerns with organization and recording homework were addressed with a goal to maintain a homework notebook or a phone application.

53. As far as the record reveals, no one ever suggested at a meeting or otherwise that the PPT did not have sufficient information about the Student's transition strengths, weaknesses or needs to develop appropriate goals and objectives or services for him.

54. All in all, the transition services provided to the Student included special instruction by his teachers, related services (transportation to and from work study and community college), community experiences (work study, community college matriculation, mortuary college visit, mortuary visit) and the development of post school adult living objectives and acquisition of daily living skills (hygiene, consumer math, drivers education manual). These were appropriate for the student at the time.

55. In the later months of 2013 and into early 2014, the Student experienced increasing difficulties with memory. He lost his position at the day care center because he could not remember to perform his assigned tasks. His anxiety has become so significant that he is unable to drive or even enter a retail store. He has not been able to follow up on job applications and is not currently employed. (Mason Jones).

CONCLUSIONS OF LAW AND DISCUSSION:

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court set out a two-part test for determining whether a board of education has offered a student a free appropriate public education (FAPE) in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* (IDEA). The first part is whether there has been compliance with the procedural requirements of IDEA; and the second part is whether the student's individualized education program (IEP) is reasonably calculated to enable the student to receive educational benefits. *Rowley*, at 206-207.

A FAPE under the IDEA does not mean a "potential-maximizing education." (*Id.* at p. 197, fn. 21.) Instead, the IEP offered must be one that "confers some educational benefit upon the handicapped child." (*Id.* at p. 200.)

Whether an IEP offers the student FAPE is assessed in light of information available at the time it is developed; it is not judged in hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). "An IEP is a snapshot, not a retrospective." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Id.*)

While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School District*, 267 F.3d 877, 892 (9th Cir. 2001)). In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir. 1992)

A parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the PPT team has participated in the IEP process in a meaningful way. *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1036 (3rd Cir. 1993).

Under Connecticut and federal law, a board of education's duty to educate disabled students ends with the earlier of a) the student's high school graduation; b) the student's twenty-first birthday; or c) the student's achievement of such other criteria as are established by his PPT Team. 34 C.F.R. Section 300.102(a)(3)(i); C.G.S. Section 10-76(d). [Note: *Regulations of Connecticut State Agencies Section 10-76d-1(a)(4)* provides that for those students who have not graduated, special education and related services shall be continued until the end of the school year in the event that the child turns twenty-one during that school year.]

High school graduation requirements are determined by state law and school district policy. If a student with a disability meets all state and school district requirements for award of a regular high school diploma, he cannot be denied a diploma simply because

he has a disability. (*Letter to Anonymous*, 22 IDELR 456 (OSEP 1994); (*Sammons v. Polk County Sch. Bd.*, 45 IDELR 29 (11th Cir. 2006).

In this case, there is no dispute, and the parties stipulated, that the Student accomplished all of the criteria necessary for him to graduate from high school by the end of June 2013. In particular, he earned all of the high school credits required for graduation under state law as well as the under the policy of the Voluntown Public Schools.

Even where a student has met all requirements for high school graduation, however, a school district may not graduate the student if the district has not provided the student with a FAPE as required by the IDEA. *Doe v. Marlborough Public Schools*, 54 IDELR 283, 110 LRP 39223 (D Mass. 2010).

The decision to graduate a student is a “major change of placement” and triggers the requirement that the school district convene a PPT meeting and give written prior notice a reasonable time before actually graduating the student and discontinuing special education and related services. 34 C.F.R. Section 300.503 (a)(1); *Letter to Hagen-Gilden*, 24 IDELR 294 (OSEP 1996); *Letter to Steinke*, 21 IDELR 379 (OSEP 1994). Such written prior notice must include a description of the action the school district proposes, a description of the evaluation procedure, assessment, record or report used as a basis for the action, a statement of procedural safeguards and sources for parents to seek assistance, a description of other options considered and any other factors relevant to the decision. 34 C.F.R. Section 300.503.

Failure to provide prior written notice or to conduct a PPT meeting may result in a procedural violation of the IDEA if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process, or causes a deprivation of educational benefits. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir. 1992)

Here, although he did not claim procedural violations relating to graduation as an issue in either the initial request for special education due process hearing or at the prehearing conference, the Student now argues that the decision to graduate the Student was improperly processed. This claim, even if had been properly raised in the case, is not supported by the evidence or the law.

The Board did convene at least three PPT meetings – on April 8, 2013, December 12, 2013 and on January 14, 2014 – where a discussion of the Student’s graduation took place. Written Prior Notice was provided as part of the PPT documentation for the meetings of December 12, 2013 and January 14, 2014. Furthermore, any deficiencies in the process or documentation clearly had no impact on either the Student’s FAPE or his Parent’s opportunity to participate in the decision-making process. After all, the issue was discussed as early as the April 8, 2013 meeting, and the Student brought representatives of DMHAS with him to the December 12, 2013 and January 14, 2014 meetings specifically to advocate that the Student not be graduated or exited from special education, but maintained in his then special education status until age 21. The Student also brought his lawyer to the January 14, 2014 meeting for the same purpose.

The Student's graduation decision was, therefore, not a surprise. Nor were the Student's parents shut out of the process. Their voices were heard.

The IDEA requires school districts to provide transition goals and services, on an annual basis beginning when the student turns sixteen:

[B]eginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter-

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

20 U.S.C. Section 1414(d)(1)(A)(i)(VIII)(aa) and (bb); *see also* 34 C.F.R. Section 300.320(b).

Students must be invited to PPT meetings when the team will be discussing transition goals and services. If a student does not attend the meeting, the school district must take other steps to ensure that the student's preferences and interests are considered, 34 C.F.R. Section 300.321(b); *Gibson v. Forest Hills School District*, 62 IDELR 261, 114 LRP 7352 (S.D. Ohio 2014)

The term "Transition Services" is defined as follows:

- (a) *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 education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 C.F.R. Section 300.43.

The Student claims here that the Board did not implement the correct “age appropriate assessments” of the Student in the areas of community integration and daily living skills and, therefore, did not provide appropriate transition services.

It is clear that a failure to perform any age appropriate transition assessments or a failure to develop any transition goals violates the IDEA. *Carrie I. v. Department of Education, State of Hawaii*, 869 F.Supp.2d 1225, 1244-45 (D. Haw. 2012); *Dracut v. Bureau of Special Education Appeals of Mass. Dept. of Elementary and Special Ed.*, 737 F. Supp.2d 35, 50-51 (D. Mass. 2010); *East Penn School District, Plaintiff v. Scott B., et al., Defendants*, 29 IDELR 1058, 29 LRP 5231 (E.D. Pa 1999).

Here, of course, the Board did conduct a number of formal and informal transition assessments and did develop and implement transition goals and services. The Board used several relatively formal transition protocols, many of which can be found in a “Transition Assessment Resource Manual ” published by The Connecticut Transition Task Force in collaboration with the Connecticut State Department of Education Bureau of Special Education and the State Education Resource Center (Manual). In the face of evidence that any of the assessments used were not age appropriate, I conclude that at least some “age appropriate” assessments were implemented. The assessments that were implemented also cover issues such as the skills, training and aptitude associated with particular jobs and how a student might go about selecting a particular career.

In addition to these more formal assessments, the Student’s PPT also had a panoply of informal assessments of the Student’s acquisition of knowledge and skills imparted in the several courses he took at EASTCONN focusing on vocational, employment and independent living skills. The Student’s passing grades in these courses gives rise to an inference that he was assessed on, and learned the material taught.

Additionally, the PPT had informal assessments of the Student’s work study experiences at the hardware store and day care center as well as his college exposure experiences in taking a high school guitar class on the community college campus and matriculating in the two credit courses at the community college. Throughout his high school career, the Student’s teachers and other PPT team members received reports on these experiences, including the successes as well as the challenges. These experiences both allowed the Student to practice community integration skills and allowed his PPT to assess his needs in this area.

PPT meeting documentation included a brief description of the Student’s strengths and concerns/needs in the areas of Vocational/Transitional and Independent Living. These

descriptions were surely based on all of the sources available to the PPT. Yet, as far as the record reflects, no PPT member ever articulated a need for more assessments or more or different information about the Student's strengths or weaknesses in the areas of vocational, transitional, independent living, community integration or daily living skills. And, while the Student's failure to articulate a request or concern before filing a request for special education due process hearing is certainly not fatal to his claim, it does support the credibility of other PPT members who believed the team had no need for further assessment in these areas.

In conclusion, the evidence demonstrated that the Student's PPT conducted adequate assessments of the Student's knowledge, skills, strengths, weaknesses and experiences in the areas of community integration and daily living skills.

The evidence also reflected that the Student's transition goals and services met the relatively low standard for propriety set forth in *Rowley*. Although the Student's transition goals were not lofty, even for a student with emotional disabilities as severe as his, they did focus on the areas required under the law - training/education, employment and independent living.

The Student's goals were also at least loosely based on information gathered through formal and informal assessments of this particular Student, and focused on improving his performance of academic and functional skills in order to facilitate his movement from high school to post school activities. For instance, a part of the Student's plan focused on becoming familiar and practicing the Basic Skills Assessment needed for placement at the community college. Other objectives focused on preparing, gathering and organizing various documents needed for a job search (resume, references).

As a whole, the Student's transition program was reasonably calculated to afford more than minimal educational benefit at the time that it was designed. It was not perfect and it may not have maximized the Student's potential, but that is not what is required under the law.

The Student's main claim is not that the education provided to him was not appropriate, but instead that there should have been more of it. He argues that his anxiety and other emotional needs currently render him unable to participate in many essential activities of daily living, such as following up on a job application, entering a retail store, or even taking a cooking class with more than one other student. As he puts it, he needs a bridge to support his journey from high school to post secondary school or work and independent living.

Unfortunately, the Student's claim is not founded in current law. Indeed, it runs counter to the Supreme Court's expression of the IDEA's parameters in the seminal *Rowley* case. The Board's duty was to design and implement a program with the instruction, services and accommodations necessary for the Student to acquire a public education. Here, the program afforded the Student the opportunity to acquire the knowledge and

skills that the Board of Education and the State of Connecticut expect of all high school graduates. The Student was not shut out of that education because of his disabilities.

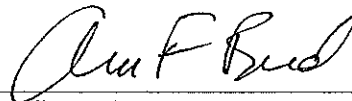
The Student's PPT could have provided more or different services to the Student and could have spent more time imparting knowledge and skills that he will need for life after high school. It could have hired a mentor or coach to alleviate the Student's anxiety by repeatedly exposing him to anxiety causing situations. Undoubtedly, these are things that would benefit the Student immensely. The Board was not, however, obligated to do more than it did.

FINAL DECISION AND ORDER:

1. The Board of Education appropriately assessed the Student's community integration and independent living skills.
2. The Board of Education provided appropriate transition services for the Student from January 17, 2012 to the present.
3. The Student does not require additional transition services for which the Board of Education is responsible.

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

ANN F BIRD

Hearing Officer

Name in Print