STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Region 14 Board of Education

Appearing on behalf of the Parent:	Elizabeth Moyse, Esq. Law Office of Jennifer Laviano, LLC 76 Route 37 South Sherman, CT 06784
Appearing on behalf of the Board:	Rebecca Santiago, Esq Anthony Shannon, Esq. Shipman and Goodwin, LLP One Constitution Plaza Hartford, CT 06103
Appearing before:	Sylvia Ho, Esq. Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide appropriate programs for the 2011-2012, 2012-2013 and 2013-2014 and extended school years?
2. Did the Board's physical therapy consultant conduct an educational evaluation as contemplated by the IDEA?
3. Is the Board required to financially support an Independent Educational Evaluation for physical therapy?
4. Is a placement in the ACES program appropriate?
5. Should the Board be required to financially support placement at the ACES program?

PROCEDURAL HISTORY:

The Parent filed the Due Process Complaint/Hearing Request on November 18, 2013, which was received by the Board the same day. The Hearing Officer was appointed on November 19, 2014 and conducted a Prehearing Conference on November 27, 2013 wherein the hearing issues above were identified and an initial hearing date was scheduled for January 2, 2014.

The hearing convened on January 2, January 28, February 7, February 12, February 27, March 18, March 19, March 26, April 21 and May 14, 2014. Prior to the presentation of evidence, the parties settled their dispute regarding issues number 2 and 3 above, and Parents withdrew these issues from the hearing. The Parents presented five witnesses. They were the Mother; Ephraim Bartfield, M.D., Student's Pediatrician; Lori Overland, Private Speech and Language Pathologist; Marcia Zeigler, STAR Preschool Paraprofessional; and Ashley Mealey, Bethlehem Elementary Kindergarten Paraprofessional. The Board presented six witnesses. They were Jean "Gigi" Leslie, STAR Preschool and Bethlehem Elementary School Physical Therapist; Jillian Cook, Bethlehem Elementary School Speech and Language Pathologist; Kathy Bischoff, STAR Preschool teacher;

Bonnie Woodward, Kindergarten and First Grade Special Education Teacher; Capital Region Education Council Physical Therapy Consultant; and Kim Culkin, Director of Special Services.

The Board's exhibits B-1 to B-63 and B-65 to B-74 were admitted as full exhibits. Exhibit B-64 was marked for identification purposes only. The Parent exhibits P-3 to P-5; P-7 to P-50; P-52 to P-71; P-73 to P-77 and P-79 to P-80 were admitted as full exhibits. Exhibit P-51, 52 and P-78 were marked for identification purposes only. Exhibit P-1 was marked for identification purposes and was replaced by P-49, a complete copy of the document. Exhibit P-2 was marked for identification purposes and was replaced by P-50, a complete copy of the document. The Parent withdrew P-6, which was a marked copy duplication of B-18. The Board objected to the admission of Exhibit P-72 on the grounds that the Board had never received Exhibit P-72 because there was no copy of it in the Student's medical or educational file. Later, the Board withdrew its objection after the Director of Special Services testified about having reviewed it previously. The Due Process Complaint/Hearing Request was admitted as H.O.-1 and the parties' Joint Stipulation of Facts were read into the record and admitted as H.O.-2.

This Hearing Officer granted the parties' requests for extension of the mailing dates of the Final Decision and Order as follows: On January 2, 2014, the mailing date of the Final Decision and Order was extended from January 31, 2014 to February 21, 2014 to add hearing dates. On February 27, 2014, the mailing date of the Final Decision and Order was extended to March 28, 2014 to add hearing dates. On March 19, 2014, the mailing date of the Final Decision and Order was extended to April 23, 2014 to add hearing dates. On April 23, 2014, the mailing date of the Final Decision and Order was extended to June 20, 2014 to add a hearing date. On May 16, 2014, the mailing date of the Final Decision and Order was extended to July 18, 2014 in order to allow the parties to submit briefs and proposed findings of fact by June 16, 2014. Both parties submitted Proposed Findings of Fact and Conclusions of Law.

During the course of the hearing, the Board filed a Motion to Dismiss the Parent's claims for the Extended School Year (ESY) 2013, with accompanying memorandum, on the grounds that the parties had entered into a settlement agreement. The Parents opposed the motion and filed an opposition brief on March 31, 2014. The Order on the Board's Motion to Dismiss claims regarding ESY 2013 is contained herein. All other motions that were not previously ruled upon are hereby denied.

This Final Decision and Order, which sets forth herein the Hearing Officer's summary, findings of facts and conclusions of law, and which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board,* 835 F. Supp. 340 (S.D. Tex. 1993).

SUMMARY:

The Parents of a seven year old student with multiple disabilities who fell twice in school filed a Due Process Complaint alleging that they were denied rights of full participation in the Student's program and that the Student was denied a free and appropriate public education because the Board 1) failed to adequately train his paraprofessional to guard him against falls; 2) failed to provide an

appropriate physical therapy program; 3) failed to provide a proper toilet training program; and 4) failed to create and implement a feeding and swallowing plan as provided by Connecticut Department of Education Guidelines on Feeding and Swallowing Services.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

The contested issues that were raised in the Due Process Complaint and during the course of hearing concerned the following: [H.O.-1]

1. *Deprivation of Parent rights of participation.* The Parents, who are medical professionals, allege that the Board did not consider their serious concerns about the Student's safety. The Parents allege that had the Board taken their concerns seriously regarding the proper training of paraprofessionals, the accidents could have been preventable. The Parents also allege that the Board delayed the Parent's ability to observe the Student's school program. The Parents alleged that the Board unilaterally decided to engage in a trial of independent ambulation of Student with Student's Paraprofessional without notifying Parent, thereby denying their full participation in planning the Student's program.
2. *Lack of oral feeding and swallowing plan.* Parents believe that the Board's Speech and Language Therapist was inexperienced and that the Board had failed to devise an adequate IEP that should have included a feeding component. Parents allege that the Student cannot communicate that he is hungry and could not feed himself sufficiently to derive proper nutrition. The Parents allege that a school member of the PPT had stated that the Board did not have a responsibility for feeding skills. In addition, the Parents believe that when the Board therapist did eventually agree to consult with Student's private therapist to incorporate the private therapist's plan into the program, the exercises in the private therapist's protocols were not properly implemented.
3. *Student's toileting program.* Parents believe the Board's program is inappropriate, that there had been no real progress in Student's toileting abilities and he is still wearing diapers.
4. *Student's physical therapy program.* Parents allege that the Board's program is inappropriate because the Board assigned paraprofessionals and teachers to perform independent ambulation and other physical therapy exercises with Student. Parents believe that the use of inexperienced staff in performing independent mobility exercises with Student poses a danger to the Student who is a hemophiliac and is unbalanced, unsteady and re-learning to walk.
5. *Improper training of paraprofessionals leading to lack of Student safety in his paraprofessional's care.* Parents allege that the Board paraprofessionals were improperly trained in guarding Student and this led to two accidents. A serious fall could prove fatal to the Student who is a hemophiliac.

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

1. The Student was born on November 11, 2006 and is currently identified as being eligible for and is receiving special education services under the category of Multiple Disabilities. At the time of the hearing, the Student was seven (7) years of age and attending the first grade at the Bethlehem Elementary School (BES) (2013-2014 school year), where he also attended kindergarten (2012-2013 school year and extended school year (ESY)). Prior to being a student at BES, Student attended the Board's STAR Preschool (2011-2012 school year and ESY). [Joint Stipulation of Facts]
2. The Student has a complex set of physical disabilities. His medical diagnoses include "chromosome 13/15 translocation as well as chromosome 13 deletion q33", gastrointestinal and urologic malformations, mild asthma, seizure disorder, vision issues, oral motor dysfunction, hip dysplasia and hemophilia. All of the Student's diagnoses have required medical and/or surgical interventions. [Testimony, Mother; Testimony, E. Bartfield, M.D.].
3. The Student was born with major malformations of the gastrointestinal and urologic systems, which had to be surgically corrected and these systems have required medical monitoring and interventions as the Student has developed. [Testimony, Pediatrician]
4. The Student has asthma and a seizure disorder, which has required medication to control. [Testimony, E. Bartfield, M.D.]
5. The Student has visual disabilities, which have required ongoing medical treatment and services for the visually impaired. He was diagnosed with Strabismus and amblyopia on his right eye due to poor muscle control. He wears corrective glasses and will require surgery. [Testimony, E. Bartfield, M.D.]
6. The Student has oral motor dysfunction. This contributes to significant difficulties in communication and feeding. Student did not have mobility of the tongue, which interfered with speech. Student was unable to fully close his mouth. He cannot chew and has difficulty swallowing different textured foods. In April 2013, Student underwent a frenectomy, a surgical procedure to release tissue in a posterior tongue-tie. Student receives ongoing consultation and treatment from two private Speech and Language Pathologists for a feeding and language program using sensory motor techniques. [Testimony, E. Bartfield, M.D.; Testimony, L. Overland]
7. The Student was born with hip dysplasia, a positioning and ambulation gait disability that required major surgical correction in March of 2012 when Student was five years and five months old. [Testimony, E. Bartfield, M.D.]
8. The Student has hemophilia, a bleeding tendency. The hemophilia was discovered while Student was undergoing the operation to surgically correct his hip dysplasia in spring 2012. The tendency to bleed is both external and internal. Internal bleeding is of greater concern to Student's physicians. Internal bleeding that may occur in an injury to the head can be life threatening to Student. [Testimony, E. Bartfield, M.D.; Testimony, Mother]
9. Student requires continuing care by specialist physicians. In addition to his Pediatrician, he receives continuing treatment and monitoring by an Orthopedic Surgeon, an Urologist, a Nephrologist, an Ophthalmologist, an ENT (Ear Nose and Throat), a Hematologist, a Neurologist and a Geneticist. [Testimony, E. Bartfield, M.D.; P-37]
10. Since the first year of life, Student's various physicians have prescribed medications that impact his functioning such as fine motor, speech, adaptive skills, gross motor and ability to toilet. Over the time that Student has attended STAR preschool and BES, Student's medical prescriptions have changed such that the Student's functioning has also been impacted. [Testimony, E. Bartfield, M.D.]
11. The Student has an Individualized Health Care Plan, which has been overseen by school nurses.

The Student's Individualized Health Care Plan calls for the Student's one-to-one paraprofessional to wear a walkie-talkie. In the event of an emergency, the paraprofessional is to call the school nurse or dial for 911. Because of Student's hemophilia, the School Nurse has in her possession a medication to administer to slow bleeding in the event of an injury. [Testimony, K. Culkin; Testimony, Mother; Testimony, A. Mealey]

12. The Mother is a licensed Physician's Assistant who is employed by Southbury Training School in Southbury, Connecticut to provide primary medical care to students with special needs. The Father is a Nurse. [Testimony, Mother] Student's Pediatrician describes the Parents as extremely dedicated and very knowledgeable about the Student's very complicated medical condition. [Testimony, E. Bartfield, M.D.]
13. The Student began receiving early intervention services through Family Junction Birth to Three in April 2007 when he was four months old. Student began attending STAR Preschool when he was two years and eleven months old. Birth to Three services staff consulted with STAR Preschool staff members and continued support until the Student was three years old. [Testimony, Mother; Joint Stipulation of Facts]
14. He attended STAR Preschool from 2009 to 2012 where he was found eligible for special education services under the eligibility category of Developmental Delay. While at STAR Preschool, Student received occupational therapy, physical therapy, speech and language services and consultation from a teacher of the visually impaired through the State of Connecticut. He also received Extended School Year (ESY) services in 2010, 2011 and 2012. Since the 2011-2012 school year, Student has been using an iPad2 with software known as TouchChat AAC for communication in the school environment. [B-17]
15. Student attended kindergarten at BES and received special education services for the 2012-2013 school year and ESY under the category of Multiple Disabilities. At the time of the hearing, he was attending first grade and receiving special education services for the 2013-2014 school year. [Testimony, Mother; Testimony, K. Culkin; Testimony, B. Woodward; Testimony, J. Cook]
16. On February 21, 2010, when Student was four years old, the PPT met to review the Student's overall progress in the 2010 to 2011 school year and to discuss the family's request to begin toilet training. The STAR Preschool team felt that it was important to employ a program of trip training and all agreed that at an appropriate time for trip training, the goals and objectives would be developed for that process. The PPT recommended the following: daily documentation of bowel movement consistency per parent request for monitoring of medication; obtain appropriate seat for toilet while exposing Student to the bathroom and toileting; the team agreed to "come up with an appropriate modification of sign for potty for Student to use functionally during the school day and daycare and home environments; be certain that diaper changing times are different from toilet exposure times with peers." The toileting procedure was described as follows: 1. Begin to check Student every half hour to check if dry or wet in order to determine a pattern (shorten if need be) 2. Look for dry times to leave classroom (with consideration for appropriateness of interfering with program/services) 3. Pair sign with picture and verbal cue for bathroom/toilet 4. Sit Student for one minute, get him up and state, "bathroom all done" 5. Keep a running record of any elimination. The Parents had made a request that toilet training begin and not to trip train but to offer the Student the opportunity to visit the bathroom with peers 2 times a day to see if he would eliminate.

2011-2012 School Year

17. On May 24, 2011, the PPT met to conduct an annual review of progress and plan the Student's IEP for the 2011-2012 (third preschool) year. The following information and actions were taken with regard to toileting, feeding and gross motor skills:
Toileting: Student was toileting with success on a daily basis. He was not yet expressing a need to use the toilet independently but would void when staff would take him to the bathroom. The Student's IEP did not include any goals and objectives for toileting. [P-50]
Feeding: During feeding, he was able to hold a container with one hand and use the other to scoop food and place it in his mouth independently. "To encourage lip closure staff suggested sipping a thicker liquid through a curly straw. Liquids like Danimals yogurt, milkshakes would be good things to try." The Student's IEP did not include any goals and objectives that address any of the Student's feeding or swallowing except with respect to Self Help; these were: Measurable Annual Goal #13: Demonstrate increased participation in self help activities required within the school setting. Objective #2: Demonstrate the ability to scoop food with spoon and bring to mouth without spilling. Measurable Annual Goal #14: [Student] will demonstrate increased participation in self help activities required within the school setting. Objective #12: [Student] will drink from a cup independently. Objective #13: [Student] will drink water from a sport top water bottle independently. [P-50]
Gross Motor: The Student had increased protective responses and had made satisfactory progress when kneeling and would learn to kneel walk next year. He had been working on standing at a table and squat in order to pick something up. He could get in and out of the Rifton chair as he pushes up, and could push back independently. He will work on coming to a stand by a vertical surface such as a wall and pushing up off the floor with his hands in the middle of the room. He goes up and down the steps to the sink. The Student's IEP contained 3 goals to "[i]mprove functional gross motor abilities in the classroom environment" and [i]mprove postural control for functional motor activities." and many objectives which included specialized instruction in a variety of gross motor skills. This instruction included but was not limited to kneeling, standing, picking up objects from the floor, transferring from Rifton chair to walker, standing in a balanced stance, walking sideways, walking with a walker in the classroom from one activity to another for 15-20 feet; using a walker to maneuver around obstacles with minimal adult assistance; walking with his walker up the ramp to the door; learning to negotiate uneven surfaces on the playground or grass using his walker; stepping up and down the railing to wash hands at sink with minimal adult assistance; stepping on stairs using an alternate step pattern. [P-50]
18. Student's Preschool Performance Report was issued in January 2012. In the area of Physical Development, Student received an "E" in "[a]ttempts to dress, eat and toilet independently with some success. Student was not marked in two other areas: "Manages most aspects of dressing, eating and toileting independently" and "Dress, eats and toilets independently." The teacher noted "[Student] wants to walk in the room without his walker with increasing frequency."
19. In January of 2012, the Student's private Speech and Language Pathologist, Kathy Hendricks, referred the Parents for a consultation with Lori Overland, a Speech and Language Pathologist, whose specialty is a sensory motor approach to feeding. Ms. Overland holds a Masters of Science in Speech and Language Pathology and a Neuro-Developmental Treatment Certificate from City Kids, Inc. Chicago. She has been a speech and language pathologist for over 33 years and lectures internationally and has published a book as well as articles in professional journals on the sensory approach to feeding. She is licensed by New York and Connecticut and is

certified by the American Speech Language Hearing Association. In addition, she is a certified teacher in Connecticut and also holds a Teacher of Speech and Hearing Handicapped Permanent Certificate in New York State. [Testimony, Mother, Testimony, L. Overland].

20. Ms. Overland conducted an oral motor/feeding and oral placement/speech evaluation of Student that revealed the Student's physical disabilities with feeding and swallowing food. The evaluator noted structural weaknesses that compromised jaw strength and stability. The Student did not have a functional chew to support mastication of solid foods. He used his teeth to clear a spoon. He could not use his cheeks to support sucking, chewing, swallowing or to stabilize solid bolus. [B-5, Testimony, L. Overland]
21. Ms. Overland developed a program plan dated January 31, 2012, which contained exercises for both feeding and speech. The plan was to be implemented three times a day. The various components of the plan included sensory/prefeeding, feeding and oral speech exercises, which included massage and use of sensory inducing tools. [B-5]. The sensory approach to feeding is an established practice and Ms. Overland's goal in developing the plan was to help Student be able to move from a purely puree diet with some meltable solids (such as Cheetos) to being able to eat table foods. Motor skills for eating and speech do not necessarily have a one-to-one correspondence. The skills necessary for lip closure for sound production are not the same as lip closure for eating. There is controversy surrounding the use of these techniques (oral placement) for purposes of sound production related to speech but not for feeding. [Testimony, Overland]
22. The STAR Preschool PPT met on February 28, 2012 to discuss the Overland evaluation, a behavior plan and to discuss homebound instruction after the Student's upcoming surgery in March of 2012. The team indicated that there was ample time to review the Overland evaluation and how the Overland program components would be added to the Student's daily routine. The staff had already attempted some of the Overland program plan. Some techniques, such as the use of "chewy tubes" to help Student bite, were successful. Others, such as the use of "z-vibe" appear to have caused discomfort. The staff noted that the Student could drink 50% of a container of yogurt with a straw and was able to drink with his lips closed from a juice box with a straw. No goals and objectives were revised or added into the IEP for feeding. The Team did not recommend an evaluation for Student's disabilities with feeding. [B-7]
23. The staff also created a behavioral plan for Student's inappropriate behaviors. Student would sometimes engage in loud outbursts in the classroom; inappropriately reach out and grab other students to get attention and drop from his walker to the floor when he would not want to comply with a teacher or paraprofessional request. The staff observed this behavior as the Student "acting silly." [B-8; Testimony, M. Zeigler; Testimony, K. Bischoff]
24. In March 2012, Student underwent a major surgery to correct hip dysplasia in both hips. The Student's Pediatrician described this operation as a "massive surgery, as it had to be done on both hips and especially as it had to be done on an older child." Various metallic pieces of hardware were left in place to stabilize, to form the joint and to keep the femur where it should be in relation to the acetabulum. Casts were placed on both legs after the surgery. During this operation, Student's surgeons discovered that Student has Factor 7 Deficiency, a form of hemophilia. While Student was receiving multiple blood transfusions, Student continued to bleed. His blood was not clotting properly while the transfusions were infused. The Mother notified Student's various teachers of the discovery of hemophilia while Student was at the hospital as Student's various preschool teachers were concerned about Student's well being in this very complicated surgery and were texting Mother to find out how Student was faring. [Testimony, E. Bartfield, M.D.; Testimony, Mother]

25. After discharge from the hospital, Student received homebound tutoring from March 16, 2012 for approximately four weeks for an hour a day from a rotation of STAR Preschool staff. Physical therapy services were offered but declined by the Parents because the Student was receiving physical therapy from his private physical therapist. When Student's casts were removed, Student developed an abscess, which required medical attention and readmission to the hospital due to kidney stones. Student returned to school on April 24, 2014. Shortly thereafter, he was readmitted to the hospital due to a possible stress fracture at the surgical site on May 2, 2012. He returned to STAR preschool in a cast and in a wheelchair on May 7, 2012. [Testimony, Pediatrician; Testimony, Mother; B-17]
26. Student's mood and functioning changed significantly post operatively. [B-17; Testimony, E. Bartfield] Prior to the surgery, Student was playful, engaged and a sometimes mischievous little boy. [Testimony, M. Zeigler] He showed a genuine interest in peers in the classroom. Though he was limited in his ability to vocalize, he would sit next to his peers and reach out and grab peers by their arm or hair to gain their attention to play. He had to learn to signal for attention in socially appropriate ways. He had episodes of "acting silly"; would drop to the floor while standing in his walker and when refusing to comply with his paraprofessional or teacher's requests. [Testimony, M. Zeigler] A Functional Behavior Plan was developed to address these behaviors on February 22, 2012. However, this behavior plan was not implemented for any great length of time because the Student underwent his hip surgery shortly after the behavior plan was developed. [Testimony, K. Bischoff] The record is clear that the surgery had a profound effect on Student. After his return from surgery, Student was unsure of what to do in the classroom. He was less focused in classroom activities. He was observed by his special education teacher to be banging the arms of his chair, wiping his eyes and pulling his hair; he could not focus on items when he was asked to make choices on the I-Pad he was using to vocalize his choices. Post-operatively, the STAR team created a second behavior plan to decrease unwanted behaviors such as inappropriate touching of peers in circle or group activity time; playing with his tongue and repeatedly hitting his chin with his fist. The behavior plan did not include any student behavior in dropping to the floor. [B-14]
27. The surgery rendered Student unable to walk. On return to school, the Student's orthopedic surgeon prescribed transport to and from school in a wheelchair and school physical therapy for range of motion and strengthening. [B-11 p.5] As of June 2012, Student was working on trying to increase his ability to tolerate lower extremity weight bearing and increasing functional gross motor abilities. At the end of the 2011-2012 school year, Student was just beginning to transfer in and out of a wheelchair. He could only stand up at a table or his walker with adult assistance for short periods. He could walk several steps with adult assistance. He was beginning with a walker again for a distance of 20-30 feet with adult assistance before tiring. [B-17]
28. On May 10, 2012, with Parent consent, a PPT was convened without the Parents. The Mother consented to a Triennial evaluation. The PPT planned to share the Triennial results and reports with the Bethlehem Elementary School staff at a PPT meeting scheduled for June 5, 2012. The evaluations did not include an evaluation for Student's feeding disability. [B-13]
29. The PPT met on June 5, 2012 to conduct the annual review, review the results of the Triennial re-evaluations and plan for the 2012-2013 (kindergarten) school year. In attendance were the Mother and the staff from BES and STAR, including the BES kindergarten teacher; the school physical therapist; the STAR speech and language pathologist and the BES speech and language pathologist and the BES special education team leader. [B-16] The Student's primary disability was changed from Developmental Delay to Multiple Disabilities. The Student's medical information, including his Factor 7 deficiency and hemophilia was discussed. The Mother was

asked to provide a list of current doctors, their specialties and lists and doses of medications for the school nurse to be included in the Student's medical plan. The PPT made recommendations for Student to attend ESY in 2012 and for transportation to and from STAR. The Student was to receive 30-minute sessions each of occupational therapy, physical therapy and speech and language therapy twice a week.

ESY 2012 and 2012 -2013 School Year

30. The June 5, 2012 PPT developed and revised the 2012-2013 IEP. Included were the following services relevant to this hearing: "A paraprofessional will be assigned to [Student] for safety and assistance with self help skills and academic instruction/support." Student would receive the following related services: Speech and Language Therapy: 3x/30 minutes direct and 1x 30 minutes consult to staff; Physical Therapy 2x/30 minutes per month paraprofessional consult and 2x/30 minutes per month with Physical Education consult; 2x/45 minute sessions for direct physical therapy. The IEP provided that the Student would receive OT, PT and speech and language therapy on a one to one basis. IEP objectives were added for toileting under Self Help goals as follows: Measurable Goal #16, Objective #4: [Student] will participate in his toileting needs with appropriate modifications and objective #5 "[Student] will request to use the bathroom by sign or use the iPad at a minimum of one time per day. [B-16] Despite Student's limited progress in "drinking from a sport top bottle [B-13] and reporting that [Student] "drinks well from a looped straw, holds a juice box in a supportive holder, holds containers in his left hand while scooping with a spoon on the right. He is working on chewing and needs encouragement to bite off small pieces of a Cheeto on his molar," the IEP included no new goals and objectives on feeding other than those included in the 2011-2012 IEP. No feeding evaluation was conducted and no feeding plan was developed and no motor exercises related to feeding were described. The Board did not solicit input from physicians about the Student's medical, mobility or functional status. [B-16]
31. With respect to Gross Motor, IEP goals and objectives of the previous year were repeated because the hip surgery had left Student unable to walk. The Student's IEP included goals and objectives for ESY 2012 and the 2012 to 2013 school year. These objectives called for Student to re-learn skills he had previously mastered but had lost because of hip surgery. Most 2012 - 2013 school year gross motor goals and objectives were the same as the previous school year with the addition of a new objective: being able to maintain a standing position and participate in an independent reciprocal ball catch by throwing the ball a distance of five feet. [B-16]
32. The School Physical Therapist was not able to work in ESY 2012 and Student received physical therapy from a substitute physical therapist. Student mastered the following objectives at the end of ESY 2012: to go from sitting to standing with adult assistance; to stand and pivot to transfer from wheel chair to school chair with supervision and sit on the floor; walking with a walker and minimal adult assistance a distance of 50 feet with a few rests. He was making satisfactory progress on the following objectives: sitting on the floor; crawl on hands and knees for a distance of 20-25 feet; standing without support for 10-15 seconds; and will walk with one hand held 15-20 steps with adequate balance and control. [B-16]
33. Student began the 2012-2013 kindergarten school years a few days after the school term began. The following activities were undertaken in preparation for the Student's transition to kindergarten. From January to February 2012, the school physical therapist and occupational therapist spent approximately six hours each to assess for and order equipment for Student. In April, the school staff obtained a consultation from an orientation and mobility instructor from

the Connecticut Bureau of Education and Services for the Blind. On April 27, STAR staff visited BES with the Mother to meet BES staff and later, STAR team members held a PPT with the Mother. The Mother testified that during this PPT meeting, the Mother asked for paraprofessionals to be trained and be prepared to work with the Student because of his recent surgery. On May 18 and June 4, 2012, BES certified staff visited STAR Preschool to observe Student in his classroom. On June 11, Student toured BES and met teachers and staff. On August 30, 2012, the BES staff met with the preschool paraprofessional who had been working with the Student. Two of the BES staff members, the occupational therapist and physical therapist, had already worked with the Student in preschool. The BES Speech and Language Pathologist and general education Kindergarten teacher had not worked with Student. The discussion involved Student's forms of communication; interests; his oral motor skills ("doesn't chew (sucks)"); his behavior and the bathroom procedure. There was no discussion of the Student's mobility, balance or medical fragility. [B-58; B-59; Testimony, Mother; Testimony, M. Zeigler; Testimony, G. Leslie] Prior to the beginning of the 2012-2013 school year, BES staff decided that Student would have a rotation of three paraprofessionals. Each of these paraprofessionals was assigned to Student for one day before being rotated to another student. The Student was one of a number of incoming special education students who were introduced by BES staff and discussed at a general classroom paraprofessional meeting. Topics of discussions were general and involved the Student's disabilities and interests. There was no discussion about the Student's hemophilia, mobility, balance problems and Student's recent hip surgery. [Testimony, A. Mealey] The classroom paraprofessionals received their training with Student by observing the physical therapist, the occupational therapist and other staff. With respect to Student's gross motor skills, the paraprofessionals each observed the physical therapist during physical therapy with the Student, which at that time could have been about once a week for 45 minutes. The paraprofessionals were not given any information with regard to the Student's medical status of being a hemophiliac. The paraprofessionals did not receive any specific instruction around Student's safety in ambulation except what they observed with the physical therapist. [Testimony, A. Mealey]

34. On September 6, 2012, a few days after the Student began kindergarten; the Mother received a telephone call from the BES Speech and Language Pathologist. The Mother testified credibly that the Speech and Language Pathologist told her during this phone call that the Student fell. At the time of the incident, the Student was standing at his walker and suddenly let go. The paraprofessional who was standing next to him did not catch the Student to prevent his body from hitting the ground. The Speech and Language Pathologist testified that the purpose of the phone call was out of a concern that the Student might have had a seizure because she had observed a blank stare on his face. [Testimony, Mother; Testimony, J. Cook]
35. Although the Speech and Language Pathologist and other Board staff would describe this fall in testimony as an incident where the Student "sat back" or "floor dropped", it is clear that the Student's body hit the ground. [Testimony, J. Cook] There was no chair for which the Student could have "sat back". There was no urgency or concern paid to this fall by the BES staff. The term "sat back" is euphemistic terminology used to minimize the fall that the Student experienced. This terminology would be repeated again during the course of the hearing by Board staff that were not witnesses to the fall; and also later repeated to an independent physical therapy consultant from the Capital Region Education Council (CREC) who was left with the impression that there had been no fall at all. [Testimony, Brilla]
36. Even though the Speech and Language Pathologist had already attended a June PPT meeting that discussed Student's recent hip surgery and tendency to bleed, it did not occur to her that this

fall could have been significant in impeding the Student's ongoing post-operation recovery. [Testimony, J. Cook]. However, the educational record clearly demonstrates this. The Student was in physical therapy working on being able to stand independently for 10-15 seconds just a few weeks prior to the fall. [B-16] It is likely the Student could not stand at his walker for any great length of time before becoming tired and letting go. The Student probably was standing at the walker for a longer length of time than he could tolerate. His paraprofessional would not have known because she was not trained and did not know about the limitations of Student's physical stamina. Further, the paraprofessional would not have known how to guard the Student from the fall. The record is bare of any information regarding training of the Student's paraprofessionals to guard him against a fall or to recognize signs that the Student was fatigued. The record reveals that paraprofessionals learned by watching certified staff interact with the Student. This "on the job" training was conducted through observation and imitation of activities of certified staff and not through a conscious and methodical training program based upon the Student's physical and medical profile and his unique set of needs.

37. The Mother was very upset after this fall and immediately contacted the school. The Mother reached out to staff and administrators. She asked to come to the school to observe the educational environment. The Mother testified that when she came to the school to observe the Student ambulating with his walker, the paraprofessional was not properly guarding the Student by standing in back of his walker. During her observation, the Mother observed the paraprofessional greeting other people in the hallway as the Student was ambulating. At one point, the Student let go from his walker and started to walk away only to be redirected back to the walker by the Mother. There appeared to be no urgency on behalf of the paraprofessional. The Mother testified the observation left her very upset because the Student was postoperatively still in a very fragile state. [Testimony, Mother] Indeed, the Student's bones were still being held together post operatively by metal pieces and not yet totally healed. A fall could have jeopardized recovery. [P-4; Testimony, E. Bartfield M.D.] In addition, Student had hemophilia and a fall could cause internal bleeding that could pose a risk of safety to the Student. [Testimony, E. Bartfield M.D.]
38. The Mother contacted the School Physical Therapist immediately after this incident. The School Physical Therapist testified that she had been thinking about a physical therapy protocol, which had not been reduced to writing. This protocol contained information on the Student's habits and procedures in movement and transitions. At the time the protocol was developed, the Student was using a front facing walker. The Student had fallen backwards when he let go off the walker. The first paragraph of the protocol states as follows: "When walking or moving from one position to another, stand behind [Student] in case he falls backwards."
39. On September 12, 2012, the Mother emailed the Director of Special Services that she had spoken to the School Physical Therapist who stated that she would be going over the protocol with the BES staff. The Mother stated, "I wanted to express my on-going concern to you that the staff at present are not trained and I remain worried that his safety is still at issue. I think it's lucky that he wasn't injured more seriously and feel there is clearly potential for a more serious incident. Please call or email me. I am curious to know your plans. Thank you very much. I just can't emphasize enough that [Student] is very fragile right now and I am extremely worried about him." The Mother testified that she did not receive a response to this email for six days. [P-5; Testimony, Mother]
40. On September 15, 2012, the Student's Orthopedic Surgeon, Brian G. Smith, M.D., Chief of Pediatric Orthopedics and an Associate Professor at Yale New Haven Hospital and Yale University School of Medicine sent a facsimile letter to the BES. In pertinent part, Dr. Smith's

letter states that the Student "deserves adequate care at school with a paraprofessional. Given his diagnosis and recent surgeries it is critical he have an experienced individual work with him that knows his mobility, motion and actions. Please allow him an individual suited to his needs in order to prevent falling or other setbacks that will prove harmful for [Student]." The letter ends with the following paragraph: "Please feel free to contact my office with any questions or concerns and thank you in advance for allowing us to participate in his care." It is unclear whether anyone on the school staff working with the Student reviewed this letter or took it into account. The School Physical Therapist testified that she never saw this letter. The Director of Special Services did not remember reviewing this letter. It is likely that this letter was never reviewed by school-based members of the PPT. The Director of Special Services testified that if a physician's note were to be faxed to the BES school office, it would not come to her attention. Sometimes, the school office fax is unattended and sometimes it would be routed to the school nurse. If the school nurse received the physician's note then the school nurse would put the information into the Student's file; it would not come to special services staff and she would not receive it. In any event, it is clear that Dr. Smith was not contacted as a result of the letter. [P-4; Testimony, G. Leslie; Testimony, K. Culkin]

41. On September 20, 2012, the Yale Hemostasis Center, who were treating physicians for Student's hemophilia, addressed a letter to "Dear School Administrators" and stated, in pertinent part, the following: "[Student] has Factor VII (7) deficiency, a rare bleeding disorder that places him at risk for prolonged bleeding with injury and following surgery. Small lacerations are rarely a problem, but [Student] may have prolonged nosebleeds and mouth bleeding with oral injury. Head, neck and abdominal injuries from falls or other trauma are particularly concerning due to the potential for internal bleeding. It is very important for staff working with [Student] understand the potential for bleeding and be trained to minimize the risk of falls as he works to develop gross motor skills." The letter ends as follows: "Please do not hesitate to contact our office if you have any questions or concerns about [Student's] care." The next sentence of the letter provides telephone numbers for the staff of Yale Hemostasis Center. [P-10] The Mother testified that she specifically recalled handing a copy of this letter to the Director of Special Services at a meeting on September 27, 2012. [Testimony, Mother]
42. The Mother also worked aggressively to change the paraprofessional situation. In addition to contacting the school administrators, the Mother reached out to several State of Connecticut Agencies, one of which assigned an Educational Liaison to intercede in the situation. The Mother wanted the Educational Liaison to observe the Student at school. The Director of Special Services resisted and in an email to the Mother, stated, in pertinent part, that "[t]he district is not obligated to, and does not authorize individuals not affiliated with our school or retained by the District to assess our staff or programs. As we have discussed with you, we feel that the District has (sic) safe environment for your son. Our staff is trained and knowledgeable about your son's needs. Additionally, the staff is confident that we are providing a safe program for him." [P-9]
43. The Mother insisted that the Student's former Preschool Paraprofessional return to be the Student's kindergarten paraprofessional. The Mother testified that she insisted on the return of the Preschool Paraprofessional, not because the paraprofessional had any specialized knowledge or training, but because the Preschool Paraprofessional was the only option of having someone who had experience with the Student. Later, the Mother would ask the school, including the Region 14 Superintendent of Schools, for another paraprofessional who had experience with children with physical disabilities but the request would be denied. [P-18; Testimony, Mother]
44. The Connecticut Educational Liaison was eventually given access to observe the Student in the

school environment. The school assigned the preschool paraprofessional to assist and answer questions of the BES paraprofessionals. The preschool paraprofessional returned to STAR after spending a short time at BES. [Testimony, Mother; Testimony, M. Zeigler]

45. Notwithstanding the letters from Dr. Smith and Yale Hemostasis Center emphasizing the risk of dangers of falls, BES staff minimized the danger of the September fall in their testimony. Instead the Board staff focused their attention on the possibility that Student might have been suffering from a seizure during this incident. During the hearing, the Director of Special Services testified that the Parents were not agreeable to allowing the school to contact the Student's doctor and that consent was not granted until April of 2013 after the Mother called the Region 14 Medical Advisor. [Testimony, K. Culkin; B-24] Presumably, this testimony was to suggest to this Hearing Officer that the Parents were unreasonable in not allowing the school access to medical providers and that their actions were contributory to any problems with programming for Student. After reviewing all of the evidence in the record, this Hearing Officer does not find this suggestion to be credible for a number of reasons. First, the School District had always been provided with medical information and consent. In fact, the Mother, who is a licensed Physician's Assistant, provided medical status on the Student at every opportunity. Second, the Parents provided consent for contact with Student when requested, including consents and doctor's notes for school services as reflected in PPT minutes. Third, the seizure issue had nothing to do with the Student's fall. The information that was being sought from doctors had to do with whether the Student was having signs of seizures in October 2012, about a month after the first fall in September. The School Nurse was developing a medical plan for seizures and sought information. Parents, who are medical professionals, tried to address the school's concerns on their own by offering to take requests to the physicians. The Parents were worried that the Staff would cause changes to the Student's seizure medication regimen by misreporting information. [Testimony, Mother; Testimony, K. Culkin] In any event, the record is barren of any seizure episodes while Student was attending BES. In fact, the Student's Pediatrician testified that the Student's seizure disorder had been under control with medication. [Testimony, E. Bartfield M.D.] Finally, there is no correspondence between the school district and the Mother or to anyone immediately after the September fall to suggest that seizure was an issue at the time of the fall. The documentary evidence of the notes and the correspondence in the aftermath of the Student's September fall does not support the Board's version of the story. Significantly with respect to the fall, the Board made no effort to contact the correct physicians, the Orthopedic Surgeon and Hematologists who wrote to the Board with relevant information about Student's medical fragility and welcomed open dialogue by providing their telephone numbers and contact information. [Testimony, Mother; Testimony, Culkin; P-4; P-10]

46. A few months later in February of 2013, the Mother received a telephone call from the School Nurse that the Student had fallen. The Student had hit his face on a bookshelf while independently ambulating across the Resource Room without his walker. The Student sustained an injury to the face and his nose was bleeding. Fortunately, the bleeding stopped. The Father went to retrieve the Student from school. The Kindergarten Paraprofessional who was caring for Student testified that she overheard the Father remarking that something to the effect that "children who were learning to walk fall." The Board repeated this remark in its post-hearing brief to excuse or minimize this event. The Father was not a witness at the hearing and was not available to deny or explain this remark. Leaving aside the credibility of this testimony, the evidence in the hearing clearly establishes that falls of this nature are an anomaly even in rehabilitation clinics and hospitals. If a fall does happen in a rehabilitation clinic and hospital,

the staff investigates the incident to find out how it occurred to prevent them from happening in the future. Falls are statistically tracked in clinical settings to determine compliance with safety mandates. [Testimony, E. Bartfield M.D.] This type of injury to the head was exactly the type the Mother was urgently working to prevent. Nevertheless, it did occur. Quite fortunately, the fall did not result in a serious injury, concussion or internal bleeding that could potentially have been life threatening to the Student. [Testimony, E. Bartfield M.D.]

47. After this second fall, the Mother agitated for changes from the School. The Mother contacted the Region 14 Superintendent of Schools and the Director of Special Services. [P-22; Testimony, Mother] The school conducted an investigation and reenactment, which did not satisfy the Mother. There were only two witnesses to this incident, the Kindergarten Paraprofessional who was caring for the Student and another paraprofessional, who was involved in the previous fall and who was attending to another student. The Kindergarten Special Education Teacher was not in the room and was attending a meeting at the time that the accident occurred. Student's Kindergarten Paraprofessional received her education as a regular education teacher. She worked as a paraprofessional part time before being hired as a full time employee of the school district. Her experience included working with students with learning disabilities. She had attended some meetings for training to work students with autism. She had no experience with children with the Student's multiple physical disabilities and unsteady gait. She testified that the training she received with the Student was on the job through watching the various licensed or certified professionals practice on the Student and observing. The professional licensed staff, such as the School Physical Therapist and the Speech and Language Pathologist, would instruct her and then watch her perform the task. She did not remember how many times she was directly supervised before performing oral motor or physical therapy exercises. She estimated the number to be a few times, leaving the impression that she had only received a cursory amount of training before providing these normally complex services for the Student. When performing these related physical therapy or oral motor services, she was supervised by the Special Education teacher. [Testimony, A. Mealey]
48. That the training of the Kindergarten Paraprofessional was inadequate is confirmed by the testimony regarding the events that led to the February fall. Student's School Physical Therapist regards her style as "aggressive". She liked to worked the Student and felt the Student responded and worked hard in physical therapy. She testified that she has never contacted the Student's physicians regarding her physical therapy program. She was able to call if she wanted but never felt the need to. The Physical Therapist testified that, at the time of the fall, she was conducting a "trial" of independent ambulation in the Resource Room to allow the student to walk without the walker. This use of paraprofessionals to perform this procedure, referred to as "hands off guided walking", was not described in the Student's IEP nor previously discussed with the Parent at any PPT meeting. The IEP states that physical therapy services would be provided by the Physical Therapist. The Physical therapist also spent time consulting with staff. [B-16] The Physical Therapist's plan was to conduct this trial and let the Parents know of the changes after the fact. [Testimony, G. Leslie] The Student had been walking without a walker in the Resource Room with the Physical Therapist, with the Special Education Teacher and the Kindergarten Paraprofessional observing. The Student was allowed to walk a few steps at first without any physical support. This "hands off guided walking" was introduced to the Paraprofessional and the Special Education Teacher. The Paraprofessional testified that she was first asked to practice walking with the Student for a few feet. She testified that on one Friday afternoon she was told by the Special Education Teacher that the school based team had decided that the Student would be walking a lot farther, from just a few feet to about 20 feet to his

walker, which was parked by the door of the Resource Room. The following Monday afternoon, the Kindergarten Paraprofessional attempted to walk the Student for 20 feet. Midway through the walk, the Student lost his balance and fell into a bookshelf head first causing the bleeding nose. Both the Special Education Teacher and the Paraprofessional believed the Student was able to walk the distance of 20 feet. [Testimony, Mealey; Testimony, Woodward] The School Physical Therapist was confronted with this testimony during the hearing and looked surprised. She testified that at the time of the fall, the Student could not physically ambulate this distance of 20 feet and that, in fact, he would lose his balance in the middle. The Kindergarten Paraprofessional and the Special Education Teacher also testified that they had understood the protocol for guarding was to stand behind the Student as contained in the September protocol. The Physical Therapist testified that this was not what she had taught the staff and not appropriate for this type of independent ambulation. Whatever training was given to the paraprofessional was totally ineffective. In addition, the poor communication compounded the situation. The root of this unfortunate event was the Physical Therapist's misplaced reliance on personnel who had no previous professional training in, or understanding of body mechanics and mobility. Later, the Student's Orthopedic Surgeon would prescribe the use of a gait belt. A gait belt is a safety measure allowing the Student to be held by a person assisting in ambulation. It was also a recommendation of the CREC Independent Physical Therapy Consultant who would later be retained by the school to evaluate the physical therapy program. The School Physical Therapist testified that she had considered a gait belt but decided against it in her physical therapy program with the Student. [P-22; Testimony, A. Mealey; Testimony, G. Leslie; Testimony, B. Woodward; Testimony, Brilla; P-72]

49. After the fall, the Mother called the School District Medical Advisor to register her concern about the Student's safety. The Medical Advisor called the Director of Special Services and the conversation turned to the possibility of Student seizures. There is no evidence in any record relating any seizure activity to either of the Student's falls. Subsequent to the call with the Medical Advisor, the Director of Special Services emailed the Mother. The last line of this email is significant. It states, in pertinent part, as follows: "In addition, it is my understanding that [Student] will be having surgery during the week of April 8. Please have [Student's] physician also provide information regarding whether he/she believes that [Student] will require any additional or different accommodations or modifications to his school program in light of his physical condition after surgery, and if so, for what duration of time." It is important to note that this was the first time in the educational record in which the school considered the Student's physician's point of view in the Student's IEP. The Director of Special Services testified that generally a physician's input is forwarded to the School Nurse for the Student's health care plan and is not part of the IEP development process. After this event, the Director of Special Services contacted the Student's Pediatrician with the Parent's consent. The Pediatrician was asked for advice with Student's toileting issues. [B-24; Testimony, Mother; Testimony, K. Culkin; Testimony, E. Bartfield, M.D.]
50. On March 19, 2013, the Student's Pediatrician faxed a letter to the School, which stated in pertinent part as follows: "His balance, proprioception and gait, though, are not fully developed and he requires specialized physical and occupational therapy. During periods of independent ambulation, it is medically indicated for [Student] to receive specialized support from therapists to minimize his fall risk and continue his ambulation." [P-48] It is not clear from the record whether Dr. Bartfield's letter reached anyone. The Physical Therapist did not remember seeing a copy of the letter. In any event, the Student did not engage in independent (hands off guided walking) ambulation with a paraprofessional from the time of the February 25, 2013 fall until

April of 2013. [B-23] Dr. Bartfield testified at the hearing and stated that as of today, the Student's medical needs for independent ambulation remains the same. In his medical opinion, the Student needs professional support during periods of independent ambulation. [Testimony, Bartfield] This medical opinion is supported and shared by the Student's other physicians. For instance, a letter dated June 14, 2013 from Linda Huh, M.D., Student's neurologist, explains the nature of Student's medical disability. She states that "[h]e has a complicated neurological disorder which predisposes him to unexpected seizures in addition to tone and motor strength deficits which result in poor balance/coordination, unsteady gait and mobility which tends to fluctuate and is difficult to predict. In view of his hemophilia, a risk of a fall may be more detrimental to [Student] than another child of his neurologic status." These physicians have recommended out of district placements for the Student because they believe that the inadequate care of the School District was the cause of the two falls. [P-36; P-37]

51. Subsequent to this accident, the School reassigned the paraprofessional. The Parents retained counsel. The Director of Special Services summarized expectations for increased staff training by the School Physical Therapist. The School's plan was to continue to allow paraprofessionals and teachers to continue with motor skill exercise but with better training by the School Physical Therapist. [B-22] The Preschool Paraprofessional returned to the school to be Student's one-to-one paraprofessional. [Testimony, Mother; Testimony, M. Zeigler] A new paraprofessional was assigned to train with the Preschool Paraprofessional. A summary of skills and competencies were developed for any paraprofessional to be qualified to work with Student. A training log was developed to record the new paraprofessional's hours and types of training. The Paraprofessional was allowed to ask follow-up questions after training. One competency was "ambulation with guided, hand held support." [B-23]
52. In April of 2013, Student underwent a second surgery for removal of rods from his previous hip surgery. In addition to this surgery, the Student also underwent a frenectomy, a surgery to release a tongue-tie that was recommended by the Student's Private Speech and Language Pathologist. Postoperatively, the Student was walking in small spurts at home. He would return to school in a wheelchair and receive physical therapy twice a week first with transfers and then resuming ambulation with the Physical Therapist at school. Prior to the Student's return, a PPT meeting was convened to plan for Student's return. The staff shared the training process of the new paraprofessional with the Mother. The Mother did not agree that the paraprofessional training was sufficient and requested a physical therapist during the school day. The school-based members of the PPT rejected this idea. [B-27]
53. On May 23, 2013, the school convened a Team Meeting after the Mother observed the Student's program. The team reported on the Student's progress in school since his recent surgery. The oral motor exercises that were being implemented to carry out feeding were discussed. The Mother expressed concerns about a lack of a feeding program for Student. The Speech and Language Pathologist complained about the safety of the foods that were being sent to school for the Student to eat. The Mother called attention to Department of Education guidelines for Feeding and Swallowing. The team minutes stated that the "team questioned the school system's role in feeding and agreed to reference the state guidelines." This is the first time in the educational record that the school considers formally incorporating feeding as a part of the Student's IEP. [P-24]

2013 ESY and 2013-3014 School Year

54. On June 13, 2013, the PPT met to conduct an annual review and to plan the Student's 2013-2014 IEP. The services to be received by Student were as follows: ESY recommended; PT to consult with PE teacher 2x monthly; PT, OT, Speech and language consult 1x weekly for 30 minutes with special education teacher; full time paraprofessional support in all areas of the school day; paraprofessional will attend a minimum of 2x weekly PT sessions with [Student] and in addition to attending PT sessions, para will consult with PT at least 1x weekly for 15 minutes; Para will attend a minimum of 3x weekly speech and language sessions with [Student] and in addition will consult with the speech and language pathologist 1x weekly for 15 minutes; para will attend a minimum of 2x weekly OT session (1x in classroom and 1x in resource room) with [Student] and in addition will consult with OT 1x/weekly for 15 minutes; Para will consult with special education teacher 2x weekly for 20 minutes; regular and daily use of tablet device to support communication and learning.
55. Student's 2013-2014 IEP contained goals and objectives for toileting, physical therapy but not feeding. The team shared the Student's progress. Toileting objectives were discussed. The Mother requested that a consultant be hired to support the staff in toilet training. The team would not agree to an outside consultant but agreed to have a special education teacher from the preschool provide guidance on the toileting plan. The team also agreed to consult with the Student's doctor to see how his surgeries impacted his ability to toilet. The Student's Pediatrician testified at the hearing that the Student's readiness and ability to make progress on toileting was limited prior to his surgeries. The school has had access to the pediatrician and continued to modify the Student's toileting plan. The Student's toileting plan was modified on September 19, 2013. In addition, a performance goal (#18) was added to include feeding skills for the first time. [B-44]
56. The September 2013 PPT met to review a consultation report conducted by a CREC Physical Therapy Consultant. This had come about after the Parents filed a Due Process Complaint seeking a one-to-one physical therapist as Student's paraprofessional. The Parents and the Director of Special Services signed the Settlement Agreement on July 3 and 8th. [B-31] The Agreement states in pertinent part as follows:

> Paragraph 1 states that "The Board agrees to contract the services of a mutually agreed upon physical therapy consultant. The consultant shall consult for 20 hours during the summer of 2013. The Board agrees to advise the consultant that the Parents request that the 20 hours be delivered as 5 hours per week over 4 weeks of the Board's extended school year program. However, the Parents understand that the Board cannot guarantee that the consultant will be able to provide the hours in the Parent's requested increments. However, if the consultant is available to do so, this is how the consult shall occur. In consideration of the above payments, the Parents agree that they will not seek reimbursement for any additional costs related to the Student's educational program for the summer of 2013. Parents acknowledged that they were being represented by counsel experience in the area of the law and that the agreement had been fully explained to them by counsel.
>
> Paragraph 5 states that "[i]n consideration for the consultant services agreed upon herein, the Parents agree to waive any and all claims, known and unknown, which the Parents or Student may have had against the Board, including but not limited to all claims pursuant to Conn. Gen. Stat. §10-76 et seq., The Individuals With Disabilities Act, as amended, Section 504 of the Rehabilitation Act, The American with Disabilities Education Act, as amended, Section 504 of the Rehabilitation Act, The Americans with Disabilities

Act, 42 U.S.C. Section 1983 and The Family Education Rights and Privacy Act concerning the educational program during the summer of 2013.

Paragraph 10 of the Settlement Agreement states that the Agreement is legally binding and enforceable in any State Court or in a district court of the United States.

57. The CREC consultant observed the Student's physical therapy program in ESY and wrote a consultation report about her opinion as to what she observed during ESY 2013 and for one day in the 2013-2014 school year to see the school environment. [Testimony, Brilla] The Board has filed a Motion to Dismiss the Parent's Due Process claims for the ESY 2013. The Parents oppose. For the reasons stated in the Conclusions of Law and Order below granting the Board's Motion to Dismiss, the Parent's claims for ESY 2013 will not be considered.

58. This Hearing Officer therefore will not consider the CREC Physical Therapy Consultant's testimony with regard to what she observed in ESY 2013. The CREC Physical Therapist's testimony is of limited probative value. The Consultant recommended the use of a gait belt, a safety device, for use in independent ambulation. This recommendation was contrary to the Physical Therapist's conscious decision not to use a gait belt. [Testimony, G. Leslie; Testimony, Brilla] The CREC Physical Therapy Consultant appeared nervous throughout her testimony. This Hearing Officer observed her continually looking to the Board's lawyers for reassurance during testimony. At one point in her testimony, she repeated the Board's position about the September fall, that there was no fall because the Student simply sat back, even though she was not a witness to the event. When questioned by this Hearing Officer, the witness denied being told this by the Board's attorney but then later referred to her conversations with the School Physical Therapist.

59. Leaving credibility aside, the witness did provide some helpful testimony. In September of 2013, the Student's Orthopedic Surgeon sent a new prescription for physical therapy to the school. This prescription stated that the Student should receive gait training with "PT or PT aide" two times a day. [P-72] The Physical Therapist testified that she was not available everyday because she only worked part time at BES. She delegated the gait training to the Student's paraprofessional. The Director of Special Services also testified that she reviewed the prescription with the Physical Therapist and was told by the Physical Therapist that there was no need to contact the prescribing doctor. [Testimony, G. Leslie; Testimony, K. Culkin] The CREC Physical Therapy Consultant testified that she would have had to call the doctor to clarify what he meant by the prescription before conducting any physical therapy. [Testimony, Brilla].

60. As of the time of the hearing, the Student's classroom paraprofessional continues to participate in the independent ambulation of the Student with a gait belt. It is unclear whether the paraprofessional engages in the practice of "hands off guided walking" with the Student. The previously described falls risked the Student's safety and seriously interfered with the Student's ability to access his educational program. Falls not only posed a danger to Student's health but in the aftermath of a fall, time has been taken away from the educational program to tend to the Student's well being and revisit changes in procedures. Student has had to be excused from school and seen by doctors to be assured that he was not seriously injured. The manner through which related services are delivered cannot be the subject of continual experimentations, especially when it draws vigorous objection from prescribing doctors and other treating physicians who know the Student best.

CONCLUSIONS OF LAW AND DISCUSSION:

Board Motion to Dismiss Claims in ESY 2013

The Board's Motion to Dismiss the Parent claims for ESY 2013 is GRANTED because the parties entered into a Settlement Agreement. The Hearing Officer does not have jurisdiction to determine whether the agreement is enforceable or valid. §10-76h of the Connecticut General Statutes confines the jurisdiction of Hearing Officers to confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of FAPE to a child, to determining the appropriateness of a unilateral placement of a child or to prescribing alternative special education programs for a child. The proper forum for the enforceability or determination of the validity of the Settlement Agreement is a state or federal court. [B-31]

2011-2012; ESY 2012; 2012-2013 and 2013-2014 Programs

1. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique needs" and "prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1).
3. The Act defines FAPE as special education and related services which "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. §1401 (8).
4. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
5. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v Rowley,* 458 U S 176(1982). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley,* 458 U S at 206-207
6. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in Rowley, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans, reflects a "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP." 458 US at 206. " *Walczak v Florida Union Free School District,* 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child's unique needs and abilities. 20 U.S.C. § 1412 and 1415. These

procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education,* 874 F.2d 1036, 1041 (5th Cir. 1989). Compliance with the IDEA's procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.,* 64 Conn. App. 273. 285 (2001). However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child's educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton,* 895 F.2d 973, 982 (4th Cir. 1999); *Evans v. District No. 17,* 841 F.2d 824, 830 (8th Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the "loss of educational opportunities or seriously infringed upon the parent's opportunity to participate in formulating the [IEP]..." Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877 (9th Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child's needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoenig v. Doe* 484 US 305, 311 (1988).

7. Here, the first prong of *Rowley*, whether the Board complied with procedural requirements, was not met. First, the IDEA requires schools to assess children "in all areas of suspected disability" and the assessments shall provide relevant information to determine the child's educational needs. 20 U.S.C. §1414(b)(3). The Board was presented with an oral motor evaluation by the Parent calling attention to Student's motor deficits and physical disabilities in feeding at a February 2012 PPT, but failed to conduct a comprehensive feeding and swallowing evaluation. In fact, Board staff refused to recognize its obligations to evaluate and program for Student's feeding disabilities as late as May 2013. The failure to evaluate and program for this oral motor disability in feeding resulted in the loss of educational opportunities for Student. Second, the Board conducted a "trial experiment" employing classroom paraprofessionals to conduct "hands off guided walking" without first discussing this with Parents at any previous PPT or allowing Parent to have input. Although the Student's IEP contained objectives for independent ambulation, the Parent was not informed that classroom paraprofessionals would be participating in hands off ambulation and, if informed, would have been able to object. The IEP described the Paraprofessional's role as "safety and assistance with self help skills and academic support." Central to the procedural safeguards is the process of developing the IEP. The Parents were denied the opportunity to fully participate in the development of the goals and objectives for independent ambulation. 20 U.S.C. §1401(a). [B-16; Findings of Fact No. 20-22; 48]
8. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children " *Walczak v Florida Union Free School District,* 27 IDELR 1135 (2d Cir 1998), *citing Rowley, supra.; KP v Juzwic,* 891 F Supp 703, 71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful' way." *Walczak,* 142 F.3d at 130. However, it does not guarantee

"everything that might be thought desirable by loving parents." *Id.* at 132.

9. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford,* 35 IDELR 179 (D. Conn. 2001), *aff'd,* 47 Fed. Appx. 615 (2d Cir. 2002) *(citing M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.,* 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000). The Student's program was not individualized on the basis of the student's functional status and did not meet the unique needs of Student in the following ways:
10. The Student was not provided with appropriate programs for the 2012-2013 and 2013-2014 school years because the Board did not include the Student's physician's input and Student's functional status that impacted his educational program. [Finding of Fact No. 49]
11. The Student was not provided appropriate programs for the 2011-2012; ESY 2012; 2012-2013 and 2013-2014 school years because Student's IEPs did not include feeding as a related service. In addition, there was no plan developed to provide feeding services for Student so that Student could safely receive proper nutrition. State of Connecticut *Guidelines for Feeding and Swallowing Services* create a template to follow to address the complex needs of Students with feeding and swallowing disorders. The guidelines recommend the use of a feeding plan. Properly implemented, the Student should have been able to easily access the nutrition necessary to access his educational program and progress in feeding and swallowing. The Feeding Plan should have included a multidisciplinary group of professionals, including the nurse, the Student's physician, the School District medical advisor, private speech and language pathologists, teachers and nutritionists among others to determine the Student's unique needs for feeding, and, made nutritional food options available to Student so that the Student could access his educational program. As a result of this failure to address this necessary related service, the staff was confused and unable to determine what to safely feed the Student at different times and refused to feed the Student food that was previously approved by the Student's private speech and language pathologist. Additionally, the school put the responsibility on the Parent to provide food and nutrition for the Student while he was attending school when this would normally not be the case for nondisabled peers. The school had no menu developed for the Student to obtain proper nutrition to access his school program. These are clear denials of FAPE. [Findings of Fact No. 6, 21, 22, 30, 53, and 55]
12. The Physical Therapy program in 2012-2013 and 2013-2014 did not meet the unique needs of the Student and interfered with the Student's ability to access his education. Further, the Physical Therapist lacked basic judgment in developing her program by not consulting with the Student's doctors. She did not follow *Connecticut Department of Education Physical Therapy Guidelines (Guidelines).* First, the Guidelines state "teams need to consult with the prescribing doctor to develop appropriate goals." *Guidelines*, p. 26. The Student's physical therapy program was not developed with any input from the prescribing doctors. Second, state Guidelines require physical therapists to consult and collaborate with the school medical advisor and the student's physician in the planning, providing, and evaluating of health-related services for students with actual and potential health problems. The Guidelines state that consultation with these medical doctors "must be done, as much as possible, in collaboration with the school nurse and other school health professionals serving the student." The Student's physical therapy program was not developed in collaboration with the Student's prescribing physician. Student's physical therapist not only failed to consult or collaborate with the Student's physicians in planning the physical therapy program, but ignored a doctor's order for gait training with a physical therapist or physical therapy aide by delegating the therapy to a classroom

paraprofessional. [Findings of Fact No. 59] Third, the Guidelines define physical therapy interventions in school to be conducted by physical therapists to include "motor skill practice". *Guidelines* p. 47. Physical Therapists and Physical Therapy Assistants (PTAs) are licensed by the Department of Public Health under the Connecticut Physical Therapy Practice Act, Conn. Gen. Stat. Section 20-66 and are the only persons licensed to perform physical therapy interventions, including rehabilitative exercises. The delegation of motor skill practice, such as "hands off guided walking" and gait training to a classroom paraprofessional is antithetical to the *Connecticut Department of Education Physical Therapy Guidelines*. Fourth, the delegation of physical therapy exercises to a classroom paraprofessional is inappropriate because the Connecticut Department of Education *Guidelines for Training and Support of Paraprofessionals* (2012) specifically describe "Physical Therapy Assistants" to be the type of paraprofessional to assist physical therapists in delivering physical therapy services. Finally, the School Physical Therapist testified that the motor skills practice was performed in the Resource Room and that the paraprofessional was supervised by other certified staff when the School Physical Therapist was not in the building. [Finding of Fact No. 59] The delegation of supervision of the classroom paraprofessional to a Special Education Teacher while the classroom paraprofessional is providing related services to the Student violates R.C.S.A. 10-76d-2(a). The regulation requires direct supervision of each aide who is assisting in the provision of related services by a person certified or licensed in the area of specialization to which the aide is assigned. Direct supervision requires that the aide work in close proximity to the related service personnel. The aide was not in close proximity to the Physical Therapist who was not in the building. In addition, as set forth in the Finding of Facts above, the Student's paraprofessionals did not receive adequate training. All these failures to properly implement physical therapy services seriously interfered with the Student's access to his educational program. This is a clear denial of FAPE. [Findings of Fact No 33, 35, 40, 47, 48, 59, 60]

13. Student's toileting program was appropriate. The evidence supports a conclusion that the Student was not physically or developmentally able to begin toileting until his recovery from surgery. Since beginning the toilet training program, he has made steady progress. [Findings of Fact No. 49, 50]
14. In addition to the free appropriate public education requirement, the IDEA preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra.* IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms *Oberti v Board of Education,* 995 F 2d 1204 (3d Cir 1993). The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti,* 995 F 2d at 1217. There is no evidence to suggest that the Student cannot be educated at BES with supplemental aids and related services that are administered properly. Further, there was not sufficient evidence that ACES could provide an appropriate program to meet the unique needs of the Student. Therefore, the proper placement for Student is at BES with appropriately provided related services.

FINAL DECISION AND ORDER:

1. The Board did not provide appropriate programs for the 2011-2012, ESY 2012, 2012-2013 and 2013- 2014 school years.
2. ACES is not an appropriate placement for Student.
3. The Board is not required to financially support Student's placement at ACES.
4. The Board shall issue a notice to convene a PPT within 15 days of receipt of this Final Decision and Order. The PPT will invite the Student's pediatrician, orthopedic surgeon or their representative, private speech and language pathologists and private physical therapists to participate in the PPT. Participation by the medical doctors may be by telephone. The PPT may be continued as necessary to include information and perspectives from all outside private providers. The Board shall pay the fees for the consultation of these providers. The purpose of the PPT will be to revise the Student's IEP, taking into account Student's medical history and functioning and any modifications or accommodations as will be necessary for Student to access his educational program.
5. The Board shall hire a qualified and experienced consultant, who is acceptable to the Parents, to develop a feeding plan for the Student following the State Feeding and Swallowing Guidelines. This plan should incorporate multidisciplinary team information, including a school nutritionist, the school district medical advisor and the Student's physicians and the Student's private speech and language pathologist. The Board will pay the fees for the Student's physicians and private speech and language pathologist in the consultations. The Board may choose, but is not obligated to choose, the Parent's private speech and language pathologist. The selection of this consultant will be completed within 60 days of receipt of this Final Decision and Order.
6. The Board shall hire a qualified and experienced consultant, upon the recommendation of the Student's Orthopedic Surgeon's office and who is acceptable to the Parents. This Physical Therapy consultant may be, but is not required to be, a person that the Parent has already identified to conduct an independent educational evaluation of the School's program. This consultant will work with the Student's Orthopedic Surgeon's office to develop a physical therapy plan for Student to be recommended to the PPT. The Board shall pay any charges by the Orthopedic Surgeon's office for this consultation. The selection of this consultant shall be completed within 90 days of the receipt of this Final Decision and Order.
7. The Board shall maintain a licensed physical therapist on premises at all times Student attends school.
8. When ambulating or performing physical therapy exercises, the Student must be under the supervision of a licensed physical therapist, or a physical therapy assistant working under the supervision of a licensed physical therapist who is in close proximity to the physical therapy assistant. This Order will remain in effect until the earlier of either (1) the date by which the prescribing physician (Orthopedic Surgeon) determines that the Student may safely ambulate independently or (2) the date on which the PPT convenes to plan for the 2015-2016 school year.
9. The Board shall provide the Student with two paraprofessionals so that one will serve as a backup for the other. Any classroom paraprofessional working with the Student must receive an appropriate safety course equivalent to that provided to a nurse's aide or a physical therapy aide at a rehabilitation facility or at ACES Village to be determined by the Student's Pediatrician.

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

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

Hearing Officer Signature

Sylvia Ho

Hearing Officer Name in Print