

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Groton Board of Education

Appearing on behalf of the Parents/Student:

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Appearing on behalf of the Board of Education:

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Appearing before:

Attorney Elisabeth Borrino
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board's Individualized Education Programs ("IEP") for the 2009-2010 school year, ESY 2010 and the 2010-11 school year provided the Student with FAPE;
2. If not, whether the placement at the CREC Soundbridge program requested by the Parents is appropriate;
3. Whether the Student is entitled to an award of compensatory educational services.

PROCEDURAL HISTORY:

This matter is before the Hearing Officer pursuant to the Parents' request for a Due Process Hearing on November 2, 2010. A prehearing conference was held on November 19, 2010. Both parties were represented by counsel and hearing dates were selected. The parties appeared on the following hearing dates: January 25, 2011, January 31, 2011, February 7, 2011, February 9, 2011, March 1, 2011, and March 25, 2011. Witnesses called by the Parents included the Parent; Dr. Marietta Patterson and Dr. Elizabeth Cole. Witnesses called by the Board included Denise Doolittle, Paula Bell, Lisa Knobloch, Jose Brasfield, Nina Hallissey, and Dr. Lisa Kuntz.

The issues addressed during the Due Process Hearing were raised at Planning and Placement Team ("PPT") meetings on June 3, 2009, June 18, 2009, October 19, 2009, December 8, 2009, April 26, 2010, and July 28, 2010.

The Board has not challenged the sufficiency of the Parents' Due Process Hearing request and there is no claim by either party that the prehearing resolution meeting requirements were not pursued.

The hearing concluded on March 25, 2011. The Hearing Officer directed the parties to submit their respective post hearing Briefs by simultaneous filing on April 8, 2011.

The original date for mailing of the final decision was January 19, 2011. However, upon joint motion of the parties, in order to be able to present necessary multiple witnesses and evidence, and after careful consideration of the following factors:

- (1) the extent of danger to the child's educational interest or well being which might be occasioned by the delay;
- (2) the need of either party for additional time to prepare and present their position at the hearing in accordance with the requirements of the process;
- (3) any financial or other detrimental consequence likely to be suffered by a party in the event of the delay;
- (4) whether there has already been a delay in the proceeding through the actions of the parties;

the mailing date was extended to April 21, 2011.

STATEMENT OF JURISDICTION:

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

SUMMARY:

The Student's DOB is January 24, 2006. He is identified as eligible for special education services under the category of Hearing Impairment (B-15). The Student is a child diagnosed with moderate to severe hearing impairments, speech and language delays, and other social and academic challenges. The Student has been enrolled in the integrated preschool program in the Groton Public Schools during the 2009-2010 school year and ESY 2010. He is currently enrolled in that preschool program for the 2010-2011 school year.

PPT meetings were held on October 19, 2009, December 8, 2009, April 26, 2010, and July 28, 2010. The Parents presented their concern that the Student was being denied FAPE and requested that he be placed at CREC Soundbridge ("CREC"), in Wethersfield, Connecticut. The Board denied the Parents' placement request and maintained that the Student has been and will continue to be provided FAPE.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute, Inc., v. S & H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985); and *Bonnie Ann F. v. Callallen Independent School District*, 835 F. Supp. 340 (S.D. Tex. 1993).

Any motions not previously ruled upon are hereby denied.

FINDINGS OF FACT:

1. The Student was five years old at the time the Due Process hearing commenced and was attending the Board's preschool program at Charles Barnum School.
2. The Student was diagnosed with a moderate to severe bilateral hearing loss when he was two months old. He now wears bilateral hearing aids and is unable to hear high-frequency sounds in common speech such as "sh", "s", "f", and "th." However, this appears to be improving and the Student is making progress. (Testimony Bell, Testimony Hallissey, Testimony Knobloch).
3. The Student received Birth to Three services from the New England Center for Hearing Rehabilitation (NECHEAR) until age three when he was transitioned to the Board's special education program following a January 21, 2009 PPT meeting. (Testimony Parent; B-8, B-9, B-13, B-15, B-20).
4. The Parents requested that NECHEAR provide the Student with his audiological and aural habilitation services as part of his special education program. (Testimony Parent; B-80).
5. The Parents provided copies of NECHEAR evaluations to the Board prior to the January 21, 2009 PPT. These contained educational recommendations, including acoustical modifications to the Student's classroom environment. (Testimony Parent; B-12, B-18).
6. The Student was placed in the Board's half-day preschool program for the remainder of the 2008-09 school year following the January 21, 2009 PPT meeting with a Teacher of the Hearing Impaired ("THI"), special education teacher, and a speech and language pathologist. (B-20).
7. The THI utilized a daily home/school communications notebook that provided the Parents with information on the work that was completed during the school day and specific lesson plans for the Parents to work on at home with the Student for the 2008-09 school year and ESY 2009. (Testimony Parent).
8. The Student made progress during the period of January 2009 through July 2009. (Testimony Parent).

9. On December 22, 2008, January 5, 2009, and January 7, 2009, the Groton Public Schools Early Childhood Assessment evaluated the Student. Pursuant thereto, scores on the Battelle Developmental Inventory 2 indicated an adaptive total of 98, personal social total of 86, communication total of 83, motor total of 111, cognitive total of 77, and a total score of 88. The Student's scores on the Preschool Language Scale-4 indicated auditory comprehension of 92, expressive communication of 74, and total language score of 81. The standard scores on these evaluations have an average range between 85 and 115. (Testimony Hallissey, Testimony Knobloch; B-17).
10. On January 21, 2009, a PPT was convened. The Student was enrolled at the Charles Barnum School. The PPT considered the above Early Childhood Assessment and recommended that the Student be eligible for the Integrated Preschool Program. Pursuant thereto, the Student would have three half-day sessions per week, sixty minutes per week of speech and language and one hour per week of services from the THI; IEP goals were developed. The Student would use the FM system in School. An audiological evaluation would be conducted biannually. An auditory perceptual evaluation would be done annually. The PPT intended to reconvene in June 2009 to review the Student's program and discuss further evaluations. No other options were considered or rejected. (B-20).
11. On June 3, 2009, a PPT was convened. The PPT recommended ESY 2009 services for one hour per week for four weeks in the form of group speech and language to prevent regression. (B-24).
12. On June 18, 2009, a PPT reconvened and recommended that the Student be provided ESY 2009 programming at Northeast Academy for four days per week for four weeks in July. Services from the THI would be provided one hour per day and speech and language services one hour per week. All services would be provided in the classroom. Further, the Student would attend the Integrated Preschool program for four half-days per week during the 2009-2010 school year. No other options were considered or rejected. (B-26).
13. On July 15, 2009, a PPT convened to review and/or revise the IEP. Pursuant thereto, the recommendations were to increase services from the THI to two hours per day during the ESY 2009 program. No other options were considered or refused. (B-30).
14. Pursuant to the NECHEAR evaluation report of October 2009, wherein the speech and language pathologist evaluated the Student's performance during 2008-2009, the Student's standard score improved on the Peabody Picture Vocabulary Test (PPVT-4) from an 85 in 2008 to a 96 in 2009 which placed him "at a level within average ranges in comparison to peers with typical hearing." The evaluation report indicated that the Student "made over a year's growth in his comprehension of vocabulary." On the Expressive Vocabulary Test (EVT-2), the Student mastered skills giving him an age equivalent score of 3 years/2 months in 2009 as compared to 2 years/11 months in 2008. Both scores in 2008 and 2009 were "in the average ranges when compared to peers with typical hearing." On the SPELT-2, the Student was unable to complete the test in 2008 but was able to complete the test in 2009 and received a standard score of 71. On the Preschool Language Scale-3, the Student's auditory age equivalent scores improved from

1 year/8 months in January 2009 to 3 years/1 month in October 2009. Expressive communication improved from 2 years/2 months to 2 years/9 months. Total Language score improved from 1 year/11 months in January 2009 to 3 years/0 months in October 2009. (Testimony Hallissey, B-18, B-37, B-38).

15. In October 2009, the Developmental Reassessment determined that the Student's scores had improved in several important respects. BDI-2 cognitive domain had improved from a standard score of 77 to 87, which was within the average range; personal social improved from 86 to 96 (low to solidly average); and communication improved from 83 to 92 with no gap between receptive and expressive language subtests (low to solidly average). (Testimony Knobloch; B-36).
16. Pursuant to the October 2009 Developmental Reassessment, the Student maintained his position relative to his peers by maintaining the same standard scores as demands increased commensurate with age expectations, but also "closed the gap" by increasing his standard score. (Testimony Knobloch; B-36).
17. On October 19, 2009, a PPT was convened to Review or Revise the IEP and Review Evaluations. The Parent reported that the Student's communication skills were regressing and read a statement outlining the reasons that he was requesting placement at CREC. The Board rejected the Parents' request for a change in placement based upon the education performance and the evaluation results. (Testimony Parent; B-39).
18. The October 19, 2009 PPT reviewed the results of the above re-evaluations. It recommended increasing the Student's preschool program to five half-days per week and increase the services from the THI to one half- hour per day or 2.5 hours per week. (B-39).
19. On December 8, 2009, a PPT was convened to plan evaluations/re-evaluations. The Parents requested an outside evaluation by a qualified educator of deaf and hearing impaired children. The Board offered Dr. Lisa Kuntz to complete the Board's psychological evaluation. The Parent renewed the previous request for the CREC placement. (B-44, B-46).
20. The December 8, 2009 PPT recommended that the Board complete developmental, social, communication and audiological evaluations. The Board recommended that a release of information be provided to Dr. Kuntz to consult with NECHEAR. (B-44).
21. The Board retained the Connecticut Children's Medical Center (CCMC) to complete the Board's audiological evaluation and speech and language evaluation. (B-47, B-49).
22. The CCMC Audiologist reported that the Student's hearing loss was communicatively and educationally significant which impacted conversational speech, that the Student mishears information without realizing it, that he strains to hear what people are saying and may experience fatigue as a result of his increased efforts to hear. (B-47).

23. The CCMC Speech and Language Pathologist reported the results from standardized assessments and concluded that the Student's articulation skills were moderately delayed, he had difficulty monitoring the level of his voice, his receptive language skills were mildly delayed and his expressive language skills were moderately delayed; one hour per week of medically based speech and language services was recommended. (B-47, B-49).
24. On January 13, 2010, January 27, 2010 and February 22, 2010, Dr. Lisa Kuntz performed a multiple day comprehensive evaluation of the Student. This evaluation included, but was not limited to, classroom observation, Woodcock-Johnson III, Tests of Achievement, Brief Battery, Bender Visual-Motor Gestalt Test, Vineland Adaptive Behavior Scales Second Edition (Vineland II), Survey interview with the Parents, Teacher Rating Form, Mental Status Checklist for Children, Meadow-Kendall Social-Emotional Assessment Inventory for Deaf and Hearing Impaired Students - Preschool form, Human Figure Drawing, House-Tree-Person Drawing, Drawing of Choice, Behavior Assessment System for Children-Second Edition (BASC-2), Structured Developmental History with the Parents; and Interviews with the Parents, Ms. Knoblock the Special Education Preschool teacher, Ms. Bell the THI, the Audiologist, and NECHEAR. (Testimony Kuntz; P-22).
25. Pursuant to Dr. Kuntz "[A]s would be expected when meeting a stranger, [the Student] was initially minimally responsive. . . as he became more comfortable [the Student] relaxed and he was quite talkative. His range of affect was appropriate and he presented as happy and cheerful . . was cooperative." (P-22).
26. Dr. Kuntz opined that the Student's skills were within the age level expectations or average range. Dr. Kuntz also opined that the Student's classroom was not specifically designed for the needs of a child with a hearing impairment and recommended acoustical modifications to the classroom. Further, that the Student required certain direct teaching strategies for academic and social skills because he did not learn such skills incidentally. (Testimony Kuntz; B-50).
27. The Student was continuing to make steady progress in the Board's program through February 2010. On the Woodcock-Johnson Tests of Achievement, the Student scored at age and grade appropriate levels for a child of his age at the preschool level, indicating that he was gaining appropriate pre-academic skills in the Board's preschool program. (Testimony Kuntz; B-50).
28. On the Vineland II, a developmental interview completed by the Parents and teachers with Dr. Kuntz, the Student scored in the average range on all measured skills, including receptive and expressive communication. (Testimony Kuntz; B-50).
29. Dr. Kuntz observed the Student in school and endorsed his program for the 2009-2010 school year as appropriate to meet his needs. This included appropriate technologies of an FM system, visual supports, services of both a THI and speech and language pathologist, and a consultation with an audiologist for further analysis of the acoustic environment of the school setting. (Testimony Kuntz; B-50).

30. There were no more than twelve children in the preschool classroom, and the typical peers provided excellent speech role models. (Testimony Dr. Kuntz; B-50).
31. The audiological consultation was obtained following the receipt of Dr. Kuntz' report, and the recommendations contained therein were implemented in terms of reducing ambient noise, obtaining a new sound field receiver unit and adding acoustic improvements to the "focus room" where the Student received one to one instruction. (Testimony Knobloch, Testimony Doolittle; B-53).
32. The Parents provided the Board with an undated NECHEAR Auditory perceptual evaluation report which appears to have been performed on or about April 2, 2010. That report indicated that the Student hears approximately eighty-two percent (82%) of individual sounds with his hearing aids and approximately eighty-nine per cent (89%) of such sounds with an FM system. NECHEAR provided educational recommendations including the use of an FM system and acoustical modifications to the Student's classroom in order to reduce ambient noise and increase the auditory signal. (B-50, B-52).
33. On April 26, 2010, the Board convened a PPT meeting to review or revise the IEP, conduct the annual review, and review evaluations. (B-57).
34. During the April 26, 2010 PPT, the Parents disagreed with Dr. Kuntz's report and requested an independent education evaluation (IEE) by an educator of children with hearing impairments. The Parents disagreed with the reports of progress and they requested placement at the CREC program for ESY 2010 and the 2010-11 school year. The Board denied those requests. (Testimony Parent; B-57).
35. The April 26, 2010 PPT recommended that (1) CCMC complete a full Speech and Language Evaluation, not selected subtests, and that CCMC also be asked to complete a classroom observation in the Classroom; (2) a new IEP be implemented for the 2010-2011 school year in the Integrated Preschool Program for five mornings per week; (3) one hour of speech and language instruction per week and thirty minutes daily of services from the THI be provided; (4) the Student attend ESY 2010 within the district with the summer program including one hour of daily services from the THI and typical peer role models; (5) an Audiological Evaluation be provided at Board expense by Pequot Audiological Center; and (6) an environmental evaluation be conducted by Pequot Audiological to assess the classroom environment. The PPT denied the request for an IEE for a functional listening assessment by a THI. (B-57).
36. Dr. Patterson evaluated the Student on May 24, 2010, and prepared an IEE report that was sent to the Board's attorney on June 30, 2010. Dr. Patterson had not met the Student prior to that day and "did not know him at all." She had not observed the Student in any other settings - such as home or school. (Testimony Patterson; P-35).
37. Dr. Patterson had no information regarding the program offered by the Board. She had never observed the Student within the program. Observing the child in the school setting is usually part of Dr. Patterson's standard evaluation. Dr. Patterson did not request an opportunity to do so. Dr. Patterson did not speak with school staff, including the THI.

She relied upon conversations with the Parent but not direct contact with the School. Dr. Patterson did not request or review any school records. (Testimony Patterson).

38. Dr. Patterson did not perform any standard testing but relied upon the tests of others. Dr. Patterson believed that there was sufficient information in the summary results presented in summaries by other evaluators such that administering another standardized test was not going "to be adding substantially more information" to her observations. (Testimony Patterson).
39. The Parent was present during Dr. Patterson's entire evaluation. The presence of a parent can change a child's behavior. (Testimony Patterson).
40. The Student presented as "shy" on the day of Dr. Patterson's evaluation. Testing may be impacted if a child is nervous. During the evaluation, Dr. Patterson involved the Parent in the evaluation as the Student was getting tired and she was concerned she "was not getting the best from him" and thought "someone familiar with him such as the father" should assist. (Testimony Patterson).
41. Dr. Patterson assessed the Student's spoken language, auditory perception, auditory discrimination, and speech. Dr. Patterson concluded that the Student had a delay in spoken language development compared to his peers in receptive and expressive vocabulary. Further, she concluded that he had a significant gap in his receptive and expressive language skills based upon her review of four subtests out of six subtests administered in the original CELF-2 test by the CCMC speech and language pathologist's report (B-49). (Testimony Patterson; P-35).
42. During the hearing, Dr. Patterson corrected her evaluation and explained that she erred by misinterpreting certain testing results when she represented that the Student had a significant gap in his receptive and expressive language skills. (Testimony Patterson).
43. Dr. Patterson concluded that the Student did not make one year of progress in one year, that his test scores in expressive language had declined, the Student has a moderate delay in articulation skills, the use of hearing aids and an FM system alone were insufficient, and that he required the daily services of an audiologist to manage his access to sound. Dr. Patterson provided several educational recommendations including a full day program with hearing peers to provide excellent language models. She further recommended regular parent guidance sessions to assist them with stimulating the Student's auditory and spoken language development, small group instruction with a THI, developing oral communication goals to encourage the Student to speak frequently in class, having the THI monitor the Student's expressive language abilities and oral communication during play and learning activities, having the THI frequently check the Student's understanding and establishing individual objectives for spoken language through listening. (Testimony Patterson; B-62).
44. On June 6, 2010, NECHEAR completed an Aural Habilitation Assessment, a copy of which was provided to the Board. Pursuant thereto, NECHEAR reported that "it is worthwhile to note that [the Student] tends to act shyly and revert back to jargonizing when

he is in new environments and is unfamiliar with people . . . and will often not take chances if he feels that he will be unsuccessful.” (B-65).

45. The June 6, 2010 NECHEAR evaluation determined that the Student made approximately one year’s growth in one year’s time by direct comparison to the prior year’s evaluation. However, in order to close the gap between his chronological age and his language age, the Student needed to make more than one year’s growth in one year’s time. The evaluation further noted that while the Student’s hearing aids provide him with excellent access to sound in an ideal listening environment, he still made speech perception errors, required an acoustically treated room, an FM system, and individual therapies to occur in a quiet environment to provide him with the best access to the acoustical signal. Auditory memory was an area of concern. The evaluator provided several educational recommendations. (B-65).
46. Pequot Health Center prepared a classroom observation report that is dated April 5, 2010 and date stamped as received by the Board on May 27, 2010. That report made recommendations for acoustical modifications to the Student’s classroom for reducing ambient noise and developing a focus room for direct instruction. (B-65).
47. The CREC Preschool program is a full day program from 9:00 a.m. to 3:00 p.m. It consists of fourteen children with hearing impairments and fifty-eight typical children. Each classroom is comprised of forty percent children with hearing impairments and sixty per cent typical children. The classes are taught by a certified THI who works with each student individually up to thirty minutes daily and directs other classroom staff. There is also an Early Childhood Instructor, Assistant Early Childhood Instructor and paraprofessional. Full time audiologists and audiology technicians are on site. The classrooms are acoustically modified to reduce ambient noise and the classrooms have sound fields and FM systems that are compatible with a child’s hearing aids. (Testimony Cole).
48. CREC accepts children with other disabilities in the preschool program. It is required that all of these children have hearing impairment as a primary disability. They may have other disabilities, too. There are “quite a number of kids with sensory problems, gross motor, fine motor, and autistic-like behaviors. Some are eventually diagnosed. The ratio of children with disabilities to children who are typical is approximately 60 percent without disabilities and 40 percent with disabilities. This may vary depending on morning or afternoon or day of the week. Some days it is greater.” (Testimony Cole).
49. Dr. Cole did not assess the Student but reviewed educational records and reports from CCMC and NECHEAR, the IEP, the Board’s language samples from January 2011 and Dr. Kuntz’s report. (Testimony Cole).
50. Based upon her review of the educational records and video (P-44), Dr. Cole opined that the Student and his needs were similar to students at CREC. (Testimony Cole).
51. Dr. Cole has never met the Student nor has she attended any PPT meetings. (Testimony Cole).

52. On July 28, 2010, the Board convened a PPT to review evaluation reports including Dr. Patterson's report, the Pequot Audiology report date stamped May 27, 2010, the NECHBAR Aural Habilitation report and an amended CCMC speech evaluation report. (B-65, B-66, B-68, B-70, P-30, P-35).
53. The July 28, 2010 PPT added a self-advocacy goal and a pragmatic language goal to the Student's IEP. (B-70).
54. The July 28, 2010 PPT recommended (1) revision of the Student's IEP goals and objectives for communication and an added goal for conversational speech and pragmatics; (2) add environmental modifications to the classroom and focus room to reduce noise level and provide a focus room for individual or small group instruction; (3) provide full day preschool programming by having the Student attend both the morning and afternoon half-day sessions commencing with the 2010-2011 school year; (4) one hour per day of services from the THI; (5) three one-half hour sessions per week from the speech and language pathologist; (6) on site consultation by the Pequot Audiologist in the fall to assess the environmental conditions and instructional spaces; (7) the THI conduct at least one training session with the classroom paraprofessionals and the speech and language pathologist in the fall on best practices for instructing the Student; and (8) the Board pay for Dr. Patterson's evaluation. (B-70).
55. The July 28, 2010 PPT refused the Parents' request for a change of placement for ESY 2010 and the 2010-2011 school year based upon the Student's educational performance, the evaluation results and that the program was appropriate and the least restrictive environment for the Student. (B-70).
56. The Student made meaningful progress during ESY 2010. (Testimony Brasfield; B-71, B-72).
57. The 2010-2011 program consists of a full day, five days per week program with the Student attending and participating in both the morning and afternoon preschool half-day programs with an opportunity for speech and language therapy. He has "Lunch Bunch" with nondisabled kindergarten peers between the two sessions. The concepts addressed in the morning and afternoon sessions are the same, but the teacher varies the activities between the two sessions so that the Student is not bored. He has multiple opportunities to practice the same concepts in different activities. (Testimony Knobloch, Testimony Bell, Testimony Kuntz).
58. During the "Lunch Bunch" lunchtime group, which is run by the speech and language pathologist and a paraprofessional, the Student has an opportunity to practice receptive, expressive, and pragmatic communication skills in real-life conversations with peers over lunch. (Testimony Hallissey, Testimony Bell).
59. The Student's preschool class consists of the Student and typical peer roles models in a 50-50 ratio and he is the only child with a hearing impairment. (Testimony Bell, Testimony Knobloch).

60. The preschool teacher sends home regular weekly communication sheets to the parents detailing the units to be addressed in the coming week, including vocabulary to be reinforced, songs to be sung, and reinforcement activities. (Testimony Knobloch; B-84, P-49).
61. The Student's hearing aid function is checked on a daily basis by the THI or the Speech and Language Pathologist. The Board has a contract with Pequot Audiology if issues arise. (Testimony Bell, Testimony Hallissey, Testimony Knobloch).
62. The Student has made meaningful progress. (Testimony Bell, Testimony Knobloch, Testimony Hallissey; B-77, B-78, B-85).
63. Currently, the Student receives one hour per day from the THI which includes forty-five minutes in the focus room receiving aural habilitation therapy and fifteen minutes in the general classroom in addition to the services provided by the Speech and Language Pathologist. (Testimony Bell, Testimony Hallissey).
64. The Board's program is an integrated preschool program where the Student's classroom teacher is a certified special education teacher. The Student's entire teaching team, which includes the special education teacher, THI, and Speech and Language Pathologist, consult with one another and coordinate teaching practices daily for the benefit of the Student. There are no more than twelve children in the classroom and the Student has typical peer role models all year round, including in the ESY program. (Testimony Knobloch, Testimony Doolittle, Testimony Brasfield).
65. Lisa Knobloch is a State Certified Special Education Teacher and has worked in the integrated preschool program at the Groton Public Schools since 2001. She was the Student's special education teacher for the 2008-2009, 2009-2010, and 2010-2011 school years. (Testimony Knobloch).
66. The integrated preschool model is such that there are seven students with special needs in the morning class with six typical peers. Since some of the students attend only three days per week and some of the students attend four days per week, there are typically six typical peers and six special needs students. In the afternoon, there are six special needs children and six peer models. There is a speech and language pathologist, an occupational therapist, a THI, and paraprofessionals. Regular team meetings are held on Wednesday afternoons when students are not present, as well as at other intervals. (Testimony Knobloch).
67. The Student's progress has been very similar to that of typical three year olds in the classroom. The Student has had a positive experience. He started out very quiet and shy. He made progress academically, was talking more, increased in his sentences and was playing more naturally and more comfortably. (Testimony Knobloch).
68. The evaluation by Dr. Kuntz is consistent with daily observations by Ms. Knobloch of the Student in the classroom. (Testimony Knobloch).

69. There have been changes and modifications to the classroom to meet the Student's needs. These include an FM system and the sound field system, use of the Smart Board and a maximum of 12 children in the classroom. Ms. Knobloch works in the classroom and takes small groups to an outside area, either in the focus room or in the hallway to minimize the noise both in the classroom and in the small groups. They also replaced the air conditioning system so that it would be quiet, installed new lighting to avoid ambient noise, and added the focus room, which is a small room with carpeting and soundproofing such as bulletin boards on the walls causing the focus room to be very quiet. (Testimony Knobloch).
70. During the 2008-2009 school year, the Student made meaningful progress. (Testimony Knobloch, Testimony Parent; B-20, B-28, B-38).
71. The Student made meaningful progress during ESY 2009. (B-29, B-32).
72. When the Student returned to the classroom in fall 2009, he had maintained his skill levels from the previous school year. (Testimony Knobloch).
73. During the 2009-2010 school year, the Board's program provided FAPE to the Student and the Student made meaningful progress. (Testimony Knobloch, Testimony Hallisey; B-36, B-38, B-39, B-44, B-70, B-77, B-81, B-83).
74. The 2010 ESY program provided FAPE to the Student and he made meaningful progress. (Testimony Knobloch, Testimony Hallisey; Testimony Brasfield; B-71, B-72, B-77).
75. During the 2010-2011 school year, the Board's program provided FAPE to the Student and he has made meaningful progress. (Testimony Hallisey, Testimony Knobloch, Testimony Doolittle; B-77, B-78, B-81, B-83).
76. The Student resides in Groton, Connecticut. CREC is located in Wethersfield, Connecticut. Travel time is likely to be approximately one hour in each direction. The Student would be transported by some type of vehicle, such as a minibus, and it is not permitted to travel over fifty-five miles per hour pursuant to Board policy. Weather conditions and/or traffic may increase the travel time. (Testimony Ms. Doolittle).
77. The Student has made many friends and is quite "popular" amongst his peers. Based upon the Student's current progress, he is expected to be transitioned to Kindergarten for the 2011-2012 school year. Many of his current friends and peers are also anticipated to be transitioned with the Student to kindergarten in the Groton Public Schools in the fall. (Testimony Knobloch, Testimony Doolittle).

CONCLUSIONS OF LAW:

1. The Student qualifies for, and is entitled to receive, a free and appropriate public education with special education and related services under the provisions of state and federal laws. CGS §10-76, *et seq.* and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1401, *et seq.*

2. IDEA opens the door of public education to children with disabilities. *Board of Educ. Of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982). Under IDEA, a local education association ("LEA"), such as the Board, must provide to each qualifying student a free appropriate public education ("FAPE") in the least restrictive environment ("LRE"), including special education and related services. 20 U.S.C. §1401(18).
3. The purpose of 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).
4. An "appropriate" education is one that is reasonably calculated to confer some educational benefit. *See Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206-7 (1982); *Walczak v. Florida Union Free Sch. Dist.* 142 F.3d 119,130 (2d Cir. 1998).
5. "Special Education" means: "specially designed instruction at no cost to parents to meet the unique needs of a child with a disability." 20 U.S.C. §1401(25).
6. "Related Services" means: transportation, and such developmental, corrective, and other supportive services (including speech/language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children. 20 U.S.C. §1401(22).
7. The standard for determining whether FAPE has been provided is set forth in *Rowley, supra*. The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Rowley, supra*, at 206-207.
8. The second prong of *Rowley* requires a finding that the IEP is "reasonably calculated to enable the child to receive educational benefit." The Supreme Court has made clear that "appropriate" under the IDEA does not require that the school districts "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 142 F.3d 199, 130 (2d Cir.1998)), citing *Rowley, supra*. Rather, school districts are required to provide, as the "basic floor of opportunity . . . access to specialized services which are individually designed to provide educational benefit to the handicapped child." *Rowley, supra*, 458 U.S. at 201; *see also K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995) (Goal of IDEA is to provide access to public education for disabled students, not to maximize a special education child's potential). In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is "whether the educational program provided for a child is reasonably calculated to allow the child to

receive "meaningful" educational benefits." *Ms. B. v. Milford Board of Education*, 103 F.3d 1114, 1120 (2d Cir.1997). The Court of Appeals has also cautioned that meaningful educational benefits are "not everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free School Dist.*, 873 F.2d 563, 567 (2nd Cir.1989). "Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985). "Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability." *Ms. B. v. Milford*, *supra* at 1121. When determining the appropriateness of a given placement courts will also consider evidence of a student's progress in that placement. As set forth hereinabove, at all relevant times, the great weight of the evidence establishes that the Student has made meaningful progress. Although he still has delays and requires special education services in order to progress and reach his goals, the totality of the record does not support that these services are better provided by CREC rather than the Groton Public Schools.

9. In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an Individualized Education Program. The IEP is intended to be "the result of collaborations between parents, educators, and the representatives of the school district." *Lillbask v. Connecticut Dep't of Educ.* 397 F.3d 77, 2005 U.S. App. LEXIS 1655 (2d Cir.Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential it must provide "meaningful" opportunities and the possibility for more than "trivial advancement." *Walczak* 142 F.3d at 130.
10. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including academic and functional goals, designed to (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability." 20 U.S.C. §1414(d)(1)(A)(ii); 34 CFR §300.320(a)(2)(I); *Roland M. V. Concord School Committee*, 910 F.2d 983, 987 (1st Cir. 1990), *cert. denied* 499 U.S. 912 (1991).
11. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parents, the results of the initial or most recent evaluations, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a)(1). Courts must also consider whether the program is "individualized on the basis of the student's assessment and performance" 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. Ms. C. v. Voluntown Bd. of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D.Conn. 2000)).

Here, there have been multiple PPTs wherein the team reviewed testing, performance, and revised the IEP on multiple occasions based upon the Student's assessments and performance.

12. The IEP must set forth goals and objectives which provide a mechanism to determine whether the placement and services are enabling the child to make educational progress. 20 U.S.C. §1401(a)(20). Connecticut courts have determined that in order for an IEP to be found appropriate, it must provide more than mere trivial advancement, it must be one that is "... likely to produce progress, not regress." *Mrs. B. v. Milford B.O.E.*, 103 F.2d 1114, 1121 (2d Cir 1997). The student's capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit to the child. See. *Hall v. Vance County Bd. of Ed.* 774 F.2d 629, 635 (1985). Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispositive. See. *Mrs. B. v. Milford Bd. of Ed.* 103 F.3d 1120, (2d Cir. 1997).
13. Procedural safeguards are set forth in 20 U.S.C. §1415 and 34 CFR §§300.500, *et seq.* Failure by the Board to develop an IEP in accordance with procedures mandated by IDEA, in and of itself, can be deemed a denial of FAPE. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 9th Cir (2001).
14. A Board may not predetermine a placement for a student with a disability and must come to the table with an open mind and consider the unique needs of the child. *Deal v. Hamilton County Bd. of Ed.*, 42 IDELR 109 (6th Cir. 2004) Participation of Parents must be more than a mere form; it must be meaningful. *W.G.*, 960 F.2d at 1485; *see also Knox County Sch.*, 315 F.3d at 694-95. The Board in this instance reviewed all of the information provided by the Parents and sent a team from the School who were familiar with the Student to observe the CREC program first hand. Although the team did not agree with the Parents' proposed placement, it did nonetheless note the CREC program and implemented many aspects of that program, including modifications to the classroom.
15. The Board has the burden of proof by a preponderance of the evidence that the program for the 2009-2010, ESY 2010, and 2010-2011 school years was appropriate. *RCSA §10-76h-14(a)*. See also, *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998). The Board met its burden of proof. Indeed, the Board presented the testimony of the Student's special education teacher who has observed the Student for the 2009-2010 and 2010-2011 school years, the ESY 2010 teacher, and the speech and language pathologist who has worked with the Student. The Board also presented the testimony of Dr. Kuntz who performed multiple day comprehensive independent objective testing, observed the Student on multiple occasions, consulted with the school staff, obtained information from school staff and the Parents, reviewed records, and other testing as well as participated in the PPT. The Board also submitted multiple exhibits by evaluators and consultants. Conversely, the Parent relied upon the Parent's testimony and an evaluation performed by Dr. Patterson in May 2010. The evaluation by Dr. Patterson was not reliable in that Dr. Patterson did not review school records and could offer no

explanation for not doing so. Dr. Patterson admitted that observing the Student in the school setting was normal practice but did not do so. She performed minimal testing of her own of the Student's performance and relied upon her interpretation of the testing of others. To that extent, Dr. Patterson had to correct her report during the hearing because she had incorrectly concluded that there was a "significant gap" in the Student's receptive and expressive language and realized during the hearing that this was an error. Moreover, multiple evaluators noted that the Student is initially shy and not very responsive. Dr. Patterson admittedly could not obtain adequate cooperation from the Student so she utilized the father to assist her with the evaluation while at the same time admitting that the presence of the father could affect the reliability of the testing results. Multiple witnesses who were familiar with the Student also viewed the video of Dr. Patterson's evaluation and noted the Student to be tired, not fully cooperating, and not an accurate representation of the Student's abilities.

The Student's IEP included ESY due to his being unavailable for learning during the school year. Generally, ESY is provided for a Student in order to prevent the amount of gains achieved by a Student from being jeopardized *Student v. Preston B.O.E., CT DOE* Case No. 06-109, p. 10 (12/27/06); *M.M. by D.M. & E.M. v. Sch. Dist. of Greenville County*, 37 IDELR 183 (4th Cir. 2002); *J.H. by J.D. & S.S. v. Henrico County Sch. Bd.*, 38 IDELR 261 (4th Cir. 2003). An ESY program cannot be arbitrarily limited by the Board. *Id.*; 34 CFR §300.309 (a)(3)(ii). The Student made meaningful progress during his 2010 ESY program. When the Student returned to the fall school year program he had not only maintained his level of ability but had progressed. Hence, the 2010 ESY program provided FAPE.

16. Pursuant to 34 CFR §300.342 (a), at the beginning of each school year the public agency shall have an IEP in effect for each child with a disability within its jurisdiction. The Board complied with this and each of the referenced IEPs above identified a program that provided FAPE.
17. The least restrictive environment does not trump the requirement that a child receive FAPE. If a child's placement does not provide "significant learning" or "meaningful benefit" to the child, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in that more restrictive program. *See Dighton-Rehoboth Regional Sch. Dist.* 4 ECLPR 721 (SEA MS 2006). Here, the program proposed by the Parents is a more restrictive program, does not afford the Student the opportunity to have the optimum nondisabled peers as role models and involves transporting the student approximately two hours per day alone in a vehicle, exclusive of traffic and weather conditions which could increase this time and could be time spent learning in the classroom. Further, the Student has progressed with certain other students whereby he has formed strong social relationships. The Student is expected to be transitioned with his peers and friends into Kindergarten in the fall 2011. Since the current placement provides significant learning and a meaningful benefit to the Student, there is no basis upon which to place him in a more restrictive environment. The Board has extensively investigated modifications for the Student's benefit, including alterations and modifications to the classroom. The Board did this both by way of consultants and

visiting the CREC program. The Board implemented all recommendations. Setting aside that the Board's program provided FAPE to the Student, the CREC program does not provide a greater opportunity to the Student so as to warrant his placement in a more restrictive environment.

18. The federal law requires that handicapped children be educated with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. §1412(a)(5); 34 CFR §300.114. However, a district must make any placement and service decisions for a child based on their individual needs. 20 U.S.C. 1401(29); 34 CFR §300.39, *see also Oberti v. Board of Education of Borough of Clementon School District*, 995 F.2d 1204, 1214 (3d Cir. 1993). A comparison must be made between the educational benefits the child will receive in the regular classroom and the benefits the child will receive in a segregated program. *Id.* at 1220. A segregated setting may be the most appropriate and least restrictive environment for a student. *Connecticut Final Decision and Order 00-180*, Conclusion of Law No.6 (November 30, 2000) (citing *DeVries v. Fairfax County School Board*, 882 F.2d 876 (Cir. 1989)). Where a student demonstrates stagnant or negative progress in the mainstream, a private placement that provides appropriate supports and services for the student to make progress becomes the least restrictive environment. *W.M. and K.M. v. Southern Regional Bd. of Educ.*, 46 IDELR 101 (D.N.J. 2006), *see also, J.D. v. N.Y.C. Dept. of Educ.*, 550 F.Supp.2d 420 (D.N.Y. 2008). It is well settled that the least restrictive environment for a child depends on his unique needs.
19. "[I]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 CFR §300.104; 20 U.S.C. §1412 (a)(1); §1412 (a)(10)(B).
20. Parents seeking an alternative placement are not subject to the same mainstreaming requirements as a school board. *MS. Ex rel S.S. v. Board of Education of the City of Yonkers*, 33 IDELR 183 (2nd Cir. 2000) citing *Warren G. V. Cumberland County School District*, 190 F.3d 80, 84 (3d Cir.1999). In selecting a unilateral placement, parents are not held to the same standards as are school systems. *Florence County Sch. Dist. V. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). It is well settled that the unilateral placement does not have to meet the standards of a least restrictive environment (LRE), nor does the unilateral placement have to include certified instructors in special education 34 CFR §300.403(c), *M.S. ex rel S. v Board of Education of the City of Yonkers* 33 IDELR 183 (2nd Cir. 2000) citing *Warren g. v. Cumberland County School District*, 190 F.3d 80, 84 (3d Cir.1999). The test is whether the parents' private placement is appropriate, and not that it is perfect. Here, because of the nature of CREC, the Parents are unable to unilaterally place the child and must rely upon the School or success in this Due Process Hearing to accomplish this. The great weight of the evidence establishes that the Student has been provided FAPE at all relevant times, that he has made meaningful progress, and that placement at CREC is not appropriate.
21. Compensatory education is the "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he

would have occurred absent the school board's failures. *Reid ex rel. Reid v. Board of Columbia*, 401 F.3d 516, 518, 524-27 (D.C. Cir. 2005). Hearing Officers have the authority to provide compensatory education as an equitable remedy for denial of FAPE. *Student v. Greenwich B.O.E.*, CT DOE Case No. 06-005 at 19; *Inquiry of Kohn*, 17 EHLR 522 (OSEP) (2/13/91) (citing with approval *Lester H. v. Gillhool*, 916 F.2d 865 (3d Cir. 1990); *Burr v. Ambach*, 863 F.2d 1071 (2d Cir. 1988), vacated, 492 U.S. 902, reaff'd, 888 F.2d 258 (2d Cir. 1989). Compensatory education has been recognized as an available remedy under IDEA for failure of the Board to provide FAPE. See, *K.P. v. Juzwic*, 891 F.Supp. 703 (D.Conn. 1995); *Burr v. Ambach*, 863 F.2d 1071 (2d Cir. 1988); *Mrs. C. v. Wheaton*, 916 F.2d 69 (2d Cir. 1990). Here, the Board has provided FAPE during 2009-2010, ESY 2010, and the 2010-2011 school years. Further, the Student has made meaningful progress. Accordingly, there is no basis upon which to award compensatory services.

FINAL DECISION AND ORDER:

1. The Board's IEP for the 2009-2010 school year provided the Student with FAPE.
2. The Board's IEP for the ESY 2010 program provided the Student with FAPE.
3. The Board's IEP for the 2010-11 school year provided the Student with FAPE.
4. Placement at the CREC Soundbridge program requested by the Parents is not appropriate.
5. The Student is not entitled to an award of compensatory services.

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).

Elisabeth Damino
Hearing Officer Signature

Elisabeth Damino
Hearing Officer Name in Print