

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on behalf of the Student: *Parents, Pro se*

Appearing on behalf of the Board: Attorney Michelle Laubin
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board violated child find in not evaluating the Student in all suspected areas of disability in a timely manner;
2. Whether the program offered by the Board with the recommended placement at Woodhouse Academy or Lorraine D. Foster Day for the 2011-12 school year is appropriate and provides the Student with a free and appropriate public education in the least restrictive environment;
3. If not, whether the Student requires a residential placement at Greenwood School for the 2011-12 school year as requested by the Parent;
4. Whether the Board failed to complete the psychiatric evaluation by Dr. Gammon in a timely manner;
5. Whether the Student is entitled to compensatory education.

SUMMARY:

The 14 year old Student, identified as eligible for special education under the category of emotional disturbance, has been receiving tutoring pending a placement decision. The Board offered a placement in a therapeutic day program. The Parents disagreed with this placement offer and sought a residential placement for the Student at The Greenwood School in Vermont. Both the Board and Parents brought requests for hearing on the placement dispute. The Parents also claimed the Board violated child find in not evaluating the Student in all suspected areas of disability in a timely manner and failed to complete the psychiatric evaluation in a timely manner.

PROCEDURAL HISTORY:

The Board filed its request for hearing (Case No. 12-0154) on October 26, 2011. [Exhibit H.O.-1] and a prehearing conference convened on November 3, 2011. At the time of the prehearing conference, the Parents were represented by counsel. Subsequently, counsel for the Parents submitted notification on November 14, 2011 that she was no longer representing the Parents and that the Parents would be proceeding with the case pro se. In the email notification, the counsel noted that the Parents were planning to submit a request for hearing alleging violations of child find and other issues.

The hearing convened on December 1, 2011 at which time the Father indicated that he was unaware of the December 1, 2011 hearing date and unprepared to go forward with the case on that date. The matter was continued to the next scheduled hearing date of December 22, 2011 to allow the self-represented Parents time to prepare in light of the resignation of their counsel.

On or about December 5, 2011 the Parents submitted a request for hearing (Case No. 12-0195) [Exhibit H.O.-5], which was assigned to Hearing Officer Rosado. A request to consolidate the cases was granted, and issues from both cases were consolidated into this case. Both parties waived the resolution session for Case No. 12-0195, and the hearing convened on December 22, 2011 and January 5, 2012. A request for extension of the mailing date of the decision was granted to allow the self-represented Parents and the Board's attorney to submit closing argument. Written closing arguments were submitted by both parties on January 13, 2012.

The Board's witnesses were Christine Kirschenbaum, assistant director of Lorraine D. Foster Day School ("Assistant Director LDFD"); Robert Rosseau, school psychologist; Dr. George David Gammon, psychiatrist and Michael Regan, Board director of pupil services ("Director").

The Parents' witnesses were Dr. Marc Gershowitz, psychologist and the Father.

The Parents submitted exhibits numbered P-1 to P-32. Objections to Exhibits P-20 and P-22 through P-29 were sustained. The remaining Parents exhibits were entered as full exhibits.

The Board submitted exhibits numbered B-1 to B-95, which were entered as full exhibits.

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

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

STATEMENT OF JURIDISCTION:

This matter was heard as a contested case pursuant to *Connecticut General Statutes* ("CGS") §10-76h and related regulations, 20 United States Code §1415(f) and related

regulations, and in accordance with the Uniform Administration Procedures Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACTS:

1. The Student is 14 years old and is currently receiving tutoring as his educational program with the agreement and at the request of the Parents. [Testimony Director]
2. It is undisputed that the Student is currently eligible for special education and related services.
3. The Student was eligible for special education services in his early school years for speech articulation errors that interfered with his communication with peers and adults. At that time, the Student was attending a private school, and received speech services from the Board. [Exhibit B-4]
4. Subsequently, the Student enrolled in the Board schools and was eligible for special education with the primary disability of speech/language impaired. He continued to be eligible for special education during the 2003-04 and 2004-05 school years. [Exhibit B-13]
5. In May 2005, at the end of second grade, the Student was exited from special education with the agreement of the Parents. [Exhibits B-30]
6. In grades three, four, five and six, the Student made excellent progress in his grades and achieved goal or advanced on his Connecticut Mastery Test ("CMT"), with the exception of one score of proficient on the writing results. [Testimony Director; Exhibits B-32 to B-37]
7. The Student's CMT results improved in sixth grade, when the Student achieved goal or advanced in all areas. [Exhibit B-38] In sixth grade, the Student continued to make excellent progress as evidenced by his excellent grades and favorable comments by his teachers on his report card. [Exhibit B-39]
8. In seventh grade, the Student's grades plummeted at the end of the second marking period. [Exhibit B-40]
9. The Father submitted a message to the Board on February 9, 2010 requesting psycho-educational testing of the Student. [Exhibit B-41]
10. A notice of a Planning and Placement Team [PPT] meeting was sent to the Parents on February 17, 2010 scheduling the PPT meeting for February 26, 2010. [Exhibit B-42]
11. At this time, the Student was administered the Connecticut Mastery Test, and achieved advanced in mathematics and reading, and goal in writing. [Exhibit B-43]

12. The PPT was rescheduled to March 4, 2010 due to a school cancellation for a snow day for the previously scheduled meeting date. [Testimony School Psychologist; Exhibits B-44, B-46]
13. As of the time of the PPT, the Student's attendance was not an issue; subsequent to this PPT his attendance began to be problematic. [Testimony School Psychologist]
14. The PPT convened on March 4, 2010. The school-based members of the PPT discussed concerns of work completion, but were impressed with the Student's skills and capabilities. [Testimony School Psychologist] The members of the PPT discussed a plan to have the Student undergo comprehensive testing. The Father did not agree or disagree with the evaluation proposed, but instead said he would take the consent form home for consideration. [Testimony School Psychologist; Exhibits B-46, B-47]
15. The Board recommended intelligence/cognition and social-emotional testing by the school psychologist, academic achievement testing by the special education teacher, a behavior observation by the pupil services/special education staff and a developmental history by the social worker. [Exhibit B-47]
16. On March 9, 2010 the Father signed an altered consent form, whiting out several of the testing areas, and agreeing only to portions of the testing requested by the Board. The Father agreed to intelligence/cognition testing by the school psychologist, academic achievement testing by the special education teacher, a behavior observation by the pupil services/special education staff and a developmental history by the social worker. He would not consent to social-emotional testing by the school psychologist. In his correspondence to the Board, the Father reported that Marc Gershowitz, Ph.D. was completing rating scales, an interview and projectives which shouldn't be duplicated. [Testimony Director; Exhibit B-47]
17. The Director contacted the Parents about the altered consent form, as the school-based members of the PPT wanted to evaluate all areas of suspected disability. The Director spoke with the Father and requested that the Board be provided with a copy of the evaluation by Dr. Gershowitz. If the Board determined that the evaluation was adequate, then the Board would complete the other portions of the evaluation. The Parents agreed to get a copy of the report to the Board, so that the Board could review it and ensure that they did not overlap or repeat any testing completed by Dr. Gershowitz. [Testimony Director]
18. In March, the Director spoke with Dr. Gershowitz about the status of his evaluation of the Student. Dr. Gershowitz didn't give the Director any details of his findings, but said that the evaluation process was complete. The report was not written at this time. The Director was under the impression at this time that the Board would be provided the written evaluation report in about a week. [Testimony Director]
19. The School Psychologist did not proceed with partial testing during the spring 2010, as he was awaiting results of the Student's private evaluation by Dr. Gershowitz so that he could then proceed with the school's portions of the evaluation. [Testimony School Psychologist]

20. During this time, the Student was missing a considerable amount of school, either absent or tardy on many days. The Parents reported that the Student would not get out of bed to come to school on some of these days. [Testimony School Psychologist] The Board staff followed up with the family regarding the attendance issue. [Exhibit B-49] In mid April 2010, the Board conducted a home visit with the guidance counselor and the school social worker visiting the home on one of the days in which the Student failed to come to school. The Father was present at the time, but the Student was not home. The Father told the Board staff that the Student was a mess, it was difficult to wake him up to go to school and that the Student refuses to go to school. The Father reported that some of his repeated tardies occurred when the Father awakens at 11 a.m. to find that the Student had not gone to school. When that happened the Father drove him to school. At this home visit, the Board staff again requested a copy of Dr. Gershowitz's evaluation, as the Board needed this information to go forward with its evaluation. [Testimony Director; Exhibit B-48]
21. At this time the Board staff repeatedly stated that they were awaiting the private psychological evaluation before they completed their testing. Although the Father signed consent on May 17, 2010, Dr. Gershowitz's evaluation was not shared with the Board by the end of the school year. [Testimony Director; Exhibit B-48, B-50, P-9]
22. The Parent had requested that the Board submit their dispute to mediation in spring 2010, but the Board did not agree to mediation at that time. [Testimony Director; Exhibit P-8]
23. At the end of the 4th marking period, the Student had received grades of F in English 7, D-/F in Math a D in science and an F in social studies. During the 2009-10 school year he was absent 26 days and tardy 22 days. [Exhibit B-51] The Student was retained in seventh grade for the 2010-11 school year. [Testimony School Psychologist]
24. On August 2, 2010, the Parents submitted a request for "emergency arbitration" to the Board. [Testimony Director; Exhibit B-52]
25. The Director responded to the Parents, requesting that the Parents provide the Board with the written permission to conduct the recommended evaluation and a copy of Dr. Gershowitz's evaluation. The Director also indicated in this correspondence that the Board would agree to mediate this matter. [Testimony Director; Exhibit B-53]
26. The Parents followed up with the Board with a letter on August 30, requesting "emergency arbitration whatever you call the next level in due process." [Exhibit B-54]
27. The Board's attorney forwarded this request to the state Due Process Unit, stating that it appeared that the Parents wish to request a due process hearing, but that the Parents declined to complete the form for requesting a due process hearing. [Exhibit B-54]
28. That hearing request received by the Board on September 1, 2010 was assigned to Hearing Officer Gelfman, who convened a prehearing conference on October 7, 2010 and scheduled the matter for hearing on November 18, 2011. At the prehearing conference,

Hearing Officer Gelfman noted that the request was insufficient, and counsel for the Parents agreed to submit a revised request for hearing. [Exhibit B-56]

29. The parties mediated that case, and because there was no revised request for hearing submitted after a sufficiency challenge, the case was dismissed without prejudice on November 12, 2010. [Testimony Director; Final Decision, Case no. 11-0107]
30. At the beginning of the 2010-11 school year, the Student was repeating seventh grade and continued to have frequent absences and tardies. [Testimony Father; Exhibit B-61]
31. In November 2010 the Board agreed to go forward with its evaluation as an accommodation to the Parents with the agreement that Dr. Gershowitz's evaluation would be provided to the Board as soon as it was available. [Testimony Director, Exhibit B-64]
32. The Parents' attorneys' office sent notification that they were going to receive Dr. Gershowitz's evaluation report on January 3, 2011, and that they would forward it to the Board so a PPT meeting could be scheduled. [Exhibit B-66] Dr. Gershowitz conducted the evaluation of the Student on four days from February to May 2010, but his report of the evaluation dated December 15, 2010 was not shared with the Board until the end of January 2011. [Exhibit B-69]
33. The Board conducted an educational assessment of the Student on January 6, 2011. In the results of the Wechsler Individual Achievement Test (WIAT) the Student scored in the high average to superior range for all of the testing, with superior in word reading and in his total reading composite. The Student scored average on the reading fluency portion of the Woodcock Johnson III Achievement Battery and superior in the writing fluency. [Exhibit B-67]
34. The school psychologist conducted a psychological evaluation of the Student on January 11, 2011. The WISC-IV composite/index score results were verbal comprehension 119, perceptual reasoning 115, working memory 104 and processing speed, 115. His full scale IQ was 119. The Student was given selected portions of the Woodcock Johnson Tests of Cognitive Ability – Third Edition in order to further delve into his processing skills. While the short term memory testing during the evaluation conducted by the school psychologist did not substantiate a substantial weakness in short term memory, prior testing completed by the Board in 2004 had a single lower index score in the area of working memory. The school psychologist explained that this was thought to be an aberration given the results of all the testing analyzed. [Testimony School Psychologist; Exhibits B-19, B-20, B-21, B-22, B-23, B-68]
35. On January 26, 2011, the Parents' attorney provided the Board's attorney with a copy of Dr. Gershowitz's evaluation of the Student. [Exhibit B-69]
36. Dr. Gershowitz agreed that the Student exhibited symptoms of anxiety disorder and depression, but stated that these symptoms were situational. [Testimony Dr. Gershowitz] Dr. Gershowitz testified that he had could not diagnose a learning disability, but then inexplicably concluded that the Student's issues were related to a learning disability. He

also performed assessments on the Student using outdated assessment measures, and while he evaluated the Student in the spring 2010, he failed to draft a report until December 2010, which was not shared with the Board until the end of January 2011. Dr. Gershowitz's evaluation also failed to identify any diagnosis for the Student. [Testimony Dr. Gershowitz, Dr. Gammon, Director, School Psychologist] Dr. Gershowitz's testimony about the Student and his evaluation report were unclear and evasive. The testimony and report were of little assistance in understanding the Student and his needs.

37. Dr. Gershowitz's evaluation provided the PPT with minimal information about the Student. The Student was described as a person who magnifies others' displeasure with him, and who might over react or retreat as a result of that. [Testimony School Psychologist, Exhibit B-69] Dr. Gershowitz's evaluation, however, was inconclusive about the Student's emotional issues and whether he met the requirements for eligibility as a student with an emotional disturbance. This led the Board to recommend that the Student undergo a psychiatric evaluation. [Testimony Dr. Gershowitz, Director]
38. The PPT convened to discuss the evaluations on the mutually agreed upon date of February 25, 2011. [Exhibits B-70-72, B-92]
39. At the February 25, 2011 PPT meeting all members of the team agreed that the Student would undergo an evaluation by a mutually agreed upon psychiatrist. [Testimony Director; Exhibits B-74, B-92]
40. On March 17, 2011 the Parents' attorney reported to the Board that Dr. Gammon would be the mutually agreed upon evaluator to conduct the psychiatric evaluation of the Student. [Testimony Director; Exhibit B-75] The Student's records were forwarded to Dr. Gammon on March 25. [Testimony Director; Exhibit B-76]
41. Dr. Gammon is an experienced psychiatrist and is board certified in pediatric and adolescent psychiatry. He is an assistant clinical professor at the Yale Child Study Center, who also has a private practice. [Testimony Dr. Gammon] Dr. Gammon's testimony, as well as his report were informative, thoughtful, insightful and of much assistance in the understanding of the Student and his needs.
42. Dr. Gammon conducted his evaluation on April 30, 2011, but due to intervening medical issues of the psychiatrist, the evaluation was not completed and faxed to the Board until August 4, 2011. In the intervening months, the Board actively pursued obtaining the evaluation from Dr. Gammon. [Testimony Director, Dr. Gammon; Exhibits B-77 to B-79] The delay due to the psychiatrist's medical issues was an unfortunate occurrence but not due in any part to the action or inaction of the Board.
43. Dr. Gammon's evaluation concluded that the Student diagnoses in Axis I were mood disorder, NOS and anxiety disorder NOS. The psychiatrist noted that the Student felt apprehensive and demoralized, which resulted in his school avoidance. The psychiatrist recommended that the Student be found eligible for special education under the category of emotional disturbance based on the results of the evaluation in conjunction with the Student's school difficulties. He also suggested that a further neuropsychological

evaluation could be conducted of the Student to rule out cognitive disorder, NOS.
[Testimony Dr. Gammon, Exhibit B-77]

44. Dr. Gammon is familiar with Lorraine D. Foster Day School and concluded that this would be an excellent environment for the Student, consistent with his recommendation in his report. He also recommended in his report that a neuropsychological evaluation could be completed in conjunction with this placement of the Student. [Testimony Dr. Gammon, Exhibit B-77]
45. Prior to the PPT convening to discuss Dr. Gammon's evaluation, the Board's attorney requested that the Parents' attorney have the Parents sign the release which would allow the Board to send records to two possible out of district placements so that it could be determined whether the Student would be an appropriate candidate for placement at the school. [Testimony Director; Exhibit B-80]
46. On August 22, 2011 a Notice of PPT meeting was sent to all members of the PPT, scheduling the meeting for August 30, 2011. Due to massive power outages throughout the area due to the hurricane/tropical storm, the Board offices were without power and the PPT meeting had to be rescheduled. [Testimony Director; Exhibits B-81 to B-84]
47. The Student's evaluations were forwarded to Lorraine D. Foster Day School with the consent of the Parents in application for an out of district placement for the Student. [Testimony Director; Exhibits B-86, B-87]
48. The PPT meeting cancelled due to the power outages was rescheduled, and on September 15, 2011, the PPT convened. [Testimony School Psychologist, Director; Exhibit B-88]
49. The School Psychologist noted that the PPT members learned that the Student had two diagnoses (mood disorder, NOS and anxiety disorder, NOS) and has developed patterns of avoidance from the evaluation completed by Dr. Gammon. Dr. Gammon recommended that the Student be enrolled in a program with staff experienced in dealing with emotional difficulties. [Testimony School Psychologist]
50. The members of the PPT agreed that the Student qualified for special education, under the category of emotional disturbance. [Testimony Director, School Psychologist, Exhibit B-88] There was no dispute from any person at the PPT meeting, including the Parents and their attorney, as to this eligibility determination. [Testimony Director]
51. The PPT developed an IEP for the Student, with goals including developing coping skills, completion of academic work and developing self-advocacy, all goals appropriate to meet the needs of the Student as identified in the evaluations. [Testimony School Psychologist, Director; Exhibit B-88]
52. The Board recommended that the Student be placed at an out of district day placement at a therapeutic program at Woodhouse Academy or Lorraine D. Foster Day School, recommendations that were consistent with Dr. Gammon's recommendations for the Student. [Testimony School Psychologist; Exhibit B-88]

53. The Parents refused the placement, requesting a residential placement at Greenwood School in Putney, Vermont. [Testimony Father, Director; Exhibit B-88] Greenwood School is described as a boarding and day school for boys who have been diagnosed with dyslexia, specific learning disabilities, receptive/expressive language deficits, executive functioning deficits, ADD/ADHD, disorders of written expression, dysgraphia or speech/language needs. It is not a therapeutic program addressing needs of those who have emotional issues. [Exhibit P-14]
54. The Board agreed to the Parents' request that the Student would receive tutoring as a temporary program while the determination of his placement is made. [Testimony Director; Exhibit B-88]
55. The Student's application was reviewed by Lorraine D. Foster Day School staff, who felt that the Student looked like a very appropriate candidate for their program based on their review of his records. This school would be an excellent fit for the Student as it has been successful with similar students who have issues of attendance, anxiety and depression. The program at the school is set up so that every aspect of the program is therapeutic, able to respond immediately to issues that are difficult for the Student. The program is a state approved, follows state standards, and has certified special education teachers teaching the classes. This school has two possible classrooms that could be a fit for the Student. [Testimony Assistant Director LDFD, Director]
56. The Parents initially did not give consent to place the Student in special education. On October 19, 2011 the Board was provided a copy of the Parents' consent to initial placement in special education. In this consent, the Parents agreed to placement in special education, but did not agree to the Board's proposed out of district placement. [Testimony Director; Exhibit B-89, B-90]
57. Pending the placement decision, the Student has been receiving tutoring as his educational program, at the request of the Parents. The Student receives instruction from Excel Tutoring at their offices. [Testimony Director, School Psychologist]
58. The Student has been receiving 10 hours per week of tutoring at the tutoring service office for the 2011-12 school year in four subject areas: English, history, mathematics and science. He has made good progress in his tutoring program, and is considered a bright and motivated student. [Testimony Director; Exhibit B-93]

DISCUSSION/CONCLUSIONS OF LAW:

The Parent and Board brought this action in accordance with the Individuals with Disabilities Education Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. Students who are identified as eligible for special education are entitled to receive a free and appropriate public education ("FAPE")

pursuant to state and federal laws. See Conn. Gen. Stat. §§ 10-76 *et. seq.*; the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1401, *et seq.*

A local education agency has a “Child Find” obligation under IDEA, which is a duty to identify, locate and evaluate children who have a disability or who are suspected of having a disability. A.P. v. Woodstock Board of Education, 572 F. Supp. 2d 221, 50 IDELR 275 (D.Conn. 2008), citing 20 U.S.C. §1412(a)(4)(A) Students who are suspected of having a disability and who are in need of special education and related services are referred to a planning and placement team (PPT), which plans for an evaluation to determine whether the Student is a child with a disability under the IDEA. *Id.*

There was no child find violation in this case. For much of the Student’s academic career he was proceeding well, achieving excellent grades and performing well on the CMTs. There was no reason to suspect that the Student had a learning disability prior to the Parents’ referral in February 2010. When the Parents requested an evaluation as the Student’s academic performance began to falter, the Board took the appropriate action to evaluate the Student for special education. In this case the Parents failed to provide appropriate consent to the request to evaluate, thereby thwarting the Board’s ability to proceed with a comprehensive evaluation of the Student. The Parents’ failure to consent to the evaluation plan designed by the Board prevented the Board from conducting its evaluation and determining eligibility for special education. The Board took all reasonable efforts to obtain a copy of the Parents’ private evaluation so that it could review the evaluation and go forward with its portions of the evaluation. Subsequently, when the mutually agreed upon psychiatrist evaluated the Student, the delay in the evaluation report was not due to any actions by the Board, but an unfortunate medical situation involving the mutually agreed upon psychiatric evaluator.

All parties then agreed that the Student was eligible for special education under the category of emotional disturbance. That criteria is:

"a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) an inability to learn that cannot be explained by intellectual, sensory or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

The Student did have a general pervasive mood of unhappiness or depression over a long period of time to a marked degree that did adversely affect his educational performance. He also suffered from fears and anxiety about school. He was suffering from anxiety and depression as noted by the independent evaluator. His treating psychologist confirmed that the Student was exhibiting symptoms of anxiety and depression, although he was fixated on a determination of the causation of these symptoms. The Student was appropriately found eligible for special education under the category of emotional disturbance.

After determining the Student's eligibility for special education, the Board offered the Student an IEP, which included placement in a therapeutic day program, based on the recommendation of the mutually agreed upon psychiatrist who completed a comprehensive evaluation of the Student.

The standard for determining whether a free appropriate public education [FAPE] has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry set forth in Rowley asks first whether

the procedural requirements of IDEA have been reasonably met and, second, whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207

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

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

The Board’s proposed IEP for the Student provides the appropriate supports and services to enable the Student to obtain educational benefit in a state approved therapeutic day program. Because the IEP offers an appropriate program in the least restrictive environment, the Parents are not entitled to their requested placement as the IDEA “does not require [a local educational agency] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility *if that agency made FAPE available to the child and the parents elected to place the child in a private school facility.*” 34 C.F.R. §

300.403(a) (emphasis added); see also M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F. 3d 60, 66 (2d Cir. 2000)¹

The Board has developed and offered an appropriate IEP for the Student for the 2011-12 school year. Therefore, the Parents' request for placement at Greenwood Academy must be denied.

The hearing officer has authority to order independent evaluations as part of a hearing order. Regs. Conn. Agencies § 10-76d-9(c)(4) The psychiatrist had the benefit of reviewing all the evaluations completed of the Student but nevertheless recommended that the Student undergo a neuropsychological evaluation. In conjunction with the placement at the therapeutic day program the Board shall also provide a neuropsychological assessment of the Student to rule out a cognitive disorder as recommended by the psychiatrist's evaluation and to better understand the Student's possible weaknesses noted in previous evaluations.

The criteria for selection of the neuropsychologist to conduct the evaluation, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the board of education uses when it initiates an evaluation. The Board shall have Dr. Gammon provide a list of three neuropsychologists who meet the criteria for the conducting of the evaluation, and the Parents shall select one of the neuropsychologists to conduct the evaluation from Dr. Gammon's list. The Parents shall fully cooperate in making the Student available for the neuropsychological evaluation.

The placement of the Student at the therapeutic day school shall not be delayed pending the evaluation.

¹ Only if it is concluded that the IEP is procedurally or substantively deficient must we reach the final step and ask whether the Parents' placement is appropriate to meet the needs of the Student. A.C. and M.C. v. Board of Education of Chappaqua Central School District, 553 F. 3d 165, 51 IDELR 147 (2nd Cir. 2009)

The neuropsychological evaluation report shall identify any recommended changes or additions to the Student's goals and objectives to address any identified weaknesses, and the PPT shall convene to implement any such recommended changes/additions to the Student's IEP.

FINAL DECISION AND ORDER:

1. The Board did not violate child find because it did not fail to timely evaluate the Student in all areas of suspected disability.
2. The Board proposed program with the recommended placement of the Student at a therapeutic day school for the 2011-12 school year is appropriate and provides the Student with FAPE in the least restrictive environment.
3. The Board's recommended placement at Lorraine D. Foster Day School is appropriate, and the Student shall be placed at Lorraine D. Foster Day School if the final determination of Lorraine D. Foster Day School is that an appropriate place is available for the Student.
4. If Lorraine D. Foster Day School does not have an appropriate place for the Student, the Student shall be placed as a day student at Grove School in Madison, Connecticut.
5. If neither Lorraine D. Foster Day School or Grove School has a placement available for the Student, the Student shall be placed in another state approved therapeutic day school which has similar profile to Lorraine D. Foster Day School or the Grove School.
6. As the Board's program is found to be appropriate, it is not necessary to determine the appropriateness, or lack thereof, of the Parents' requested placement.
7. The Student does not require a residential placement to receive a free appropriate public education.
8. The Board completed the Student's psychiatric evaluation in a timely manner.
9. The Student is not entitled to compensatory education.
10. The Student shall be provided a neuropsychological evaluation as outlined in this decision.