

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

K.G. v. Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES: (as discussed on January 20, 2012 and subsequently revised on February 20, 2012)

1. Were the Individualized Education Program (IEP) and placement developed at the May, 2011, Planning and Placement Team (PPT) meeting, including extended school day services, appropriate to the Student's special education needs in the least restrictive environment for the Student?
2. Did the Board commit procedural errors in scheduling and convening the December 14, 2011, PPT meeting?
3. After notice from Easton Country Day School (ECDS) dated November 29, 2011, were the December 14, 2011, IEP and proposed change of location of Student's placement appropriate to the Student's special education needs in the least restrictive environment?
4. Was the Student's then-current placement at ECDS no longer appropriate to her special education needs, in that some aspects of Student's IEP would no longer be provided by ECDS?
5. If ECDS is no longer an appropriate special education placement for the Student, is placement at either Devereaux School or Arch Bridge School appropriate to her special education needs?

6. Was the Board's refusal to include Adaptive Music, Adaptive Physical Education, Adaptive Art, two Cooking Classes and one week at Camp Jewell Ranch Camp in Student's 2011 extended school year (ESY) special education services appropriate?
7. Does the Board have the right to select the provider of IEP Occupational Therapy (OT) services to the Student?

PROCEDURAL HISTORY:

This hearing was requested by Parent on January 9, 2012. The Hearing Officer was appointed on January 10, 2012. The date for mailing the decision was March 22, 2012.

Included in the Parent's January 9, 2012, request for a hearing was a request for an order of "Stay Put", pursuant to Section 34 C.F.R. §300.518 (a) and Section 10-76h-17 (a), Regulations of Connecticut State Agencies (R.C.S.A.) The Hearing Officer responded on January 20, 2012, ordering the Board to continue Student's then-current placement at ECDS pending the completion of the hearing.

At the pre-hearing conference on January 20, 2012, it was reported that a resolution session had been scheduled, but the Parent had notified the Board that she would not attend. The hearing was scheduled for February 15 and 22, 2012.

By letter dated January 17, 2012, the Board asked the Hearing Officer to strike portions of the request for hearing that it considered moot, inaccurate, or outside the jurisdiction of a special education hearing officer appointed pursuant to 34 C.F.R. §§300.507 and 300.508. The Hearing Officer responded on January 25, 2012, dismissing some of the Parent's issues and slightly revising the issues discussed in the January 20, 2012, pre-hearing conference.

On January 26, 2012, the Parties agreed to request a state mediator for this case and related cases involving the Student's two siblings, and requested that the Hearing Officer postpone the hearing dates so that the mediation could be held on February 15 and a PPT meeting could be held on February 22. The Hearing Officer agreed and re-scheduled the hearing for March 5 and 7, 2012.

By letter dated February 29, 2012, the Board objected to Parent's plan to take testimony by telephone. The Hearing Officer responded with a list of requirements for telephone testimony, including the consent of the other party to the hearing. The witness agreed to appear in person.

The hearing convened on March 5 and 7, 2012, and additional hearing dates of March 21 and April 5 and 24, 2012, were added. The Parties requested that the decision date of March 22 be extended to accommodate the additional hearing dates. The Hearing Officer granted that request and extended the decision date from March 22 to April 20, 2012.

The hearing session scheduled for April 5 was postponed because the Board's Attorney was detained out of state by tornados. The Parties agreed to add April 25 as a hearing date, and requested an extension of the decision date. The Hearing Officer extended the decision date to May 21, 2012.

At the hearing session on March 5, 2012, the proffered documentary exhibits were reviewed by the Parties and the Hearing Officer. Generally speaking, the Board objected to all documents dated prior to the two-year statute of limitations for special education appeals. The issues identified by the Parties included the school years 2009-2010 and 2010-2011. There was also discussion over whether the Hearing Officer could rule on a contract dispute.

Prior to convening a hearing session for Student's sibling on April 12, 2012, the Hearing Officer discussed scheduling with the Parties. It was agreed that the Attorneys would submit briefs in lieu of closing arguments: briefs would be due on May 9, 2012.

All motions and objections not previously ruled upon, if any, are hereby overruled.

SUMMARY:

The Student has been attending ECDS for several years, placed and funded by the School District. Student's May 2011 IEP continued that placement for the 2011-2012 school year. In December, 2011, the Board proposed changing Student's placement after a contractual disagreement with ECDS concerning after school services in the IEP and payment with ECDS. Parent, who was not present at the December 2011 PPT meeting, pointed to the success of the ECDS placement and had objected to the change.

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g and related regulations at 34 C.F.R. § 99, the following decision uses "Student", "School", "Parent" and titles of school staff members and other witnesses in place of names and other personally identifiable information. The school district in this case will be referred to as the school district or the Board. Individual professionals are referred to by title; a list of the individuals by name is provided for the Parties only.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

FINDINGS OF FACT:

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

1. Student was born on July 19, 2000, and is now eleven years of age. She has a history of Autism, allergies, Obsessive Compulsive Disorder (OCD) and anxiety. In 2007, she was diagnosed with aplastic anemia and received a bone marrow transplant. She spent three months in the hospital and a significant period of time at home to recuperate. She was advised by her physicians to try to avoid exposure to germs, especially at school, because her immune system had been compromised. She observed her brothers' difficulties with school, and became severely school avoidant. (Testimony, Mother Tr. 3/7/2012 pp. 230-231, 234; Testimony, Neuropsychologist Tr. 3/5/2012 pp. 56-65; Ex. HO-2, B-29 pp. 18-34)
2. After the transplant, the Board provided homebound instruction from tutors. When she was well enough to resume attending school for partial days, the PPT agreed to send her to ECDS, where her brothers had been placed by the School District. At first, she "visited", coming to school for partial days and receiving one-to-one tutoring in a room that had been designated for her brothers when they needed to be somewhere quiet. She became a full-time student at ECDS in approximately 2009. When she began to attend classes, the placement was formalized by the Board's PPT. (Testimony, ECDS Director Tr. 3/5/2012 pp. 256-262; Testimony, Former Board Director of Special Education, Tr. 3/7/2012 pp. 162, 168-172; Testimony, Mother Tr. 3/7/2012 pp. 230-238; Testimony, Current Therapist, Tr. 3/5/2012 pp. 65-66)
3. ECDS is not approved for publically funded special education placements by the Connecticut State Department of Education. The Director of ECDS is a state certified special education teacher. She described ECDS as:

We have everybody, we have every color under the sun, every religion under the sun. We have I'd say about 20% of our population are gifted children. We have about 40% of our population are fairly typical – bright typical kids. And another 30%, if not a little bit more – many gifted children have some issues –have some kind of learning issues of one kind or another. We have children with Asperger's, we have children with auditory processing issues, dyslexia, a number of issues.

(Testimony, ECDS Director Tr. 3/5/2012 p.256)
4. Student's learning is also impeded by her sensory problems, difficulties with social interactions and OCD behavior. An early Applied Behavior Analysis (ABA) approach to educating her had been unsuccessful. (Testimony, Neuropsychologist, Tr. 3/5/2012 pp. 66-68, 73)
5. The Board also arranged for an evaluation by a Rhode Island psychologist who was reported to be a specialist in children regarded as twice exceptional, that is, having a disability and also being very bright. Educational Consultant B, who was also active

in the area of twice exceptional children, participated in the development of Student's original IEP and placement and returned as Parent's witness in this hearing. She was not directly involved in Student's program during the interim, but did respond to telephone consultations with Parents and ECDS staff working with Student from time to time. (Testimony, Former Director of Special Education Tr. 3/7/2012 pp. 164-168; Testimony, Consultant B. Tr. 3/5/2012 pp. 187-196)

6. The Board's PPT met on May 17, 2011, to plan a triennial evaluation and for the annual review of the Student's special education program. Present at this meeting were: the Board's Director of Special Education, Student's Parents, Regular and Special Education Teachers from ECDS, Board's Occupational Therapist (OT), two OTs from the contracted OT provider for Student, the Director of ECDS and Attorneys for Parents and the Board. (Ex. B-5 p. 2)

7. The May 17, 2011 PPT reported Student's Present Levels of Academic Achievement and Functional Performance:

Academic/Cognitive/Language Arts: [Student] has improved to a 5th grade reading level. Phonics and reading comprehension are areas of improvement. Decoding when in context rather than in isolation has improved. Retelling and inferencing are continued areas of difficulty.

Strengths: Relative strength in oral comprehension, verbal skills, expressive vocabulary.

Concerns/Needs: [Student] demonstrates limited comprehension of narrative text that exceeds the length of a paragraph; making inferences in reading and through writing; identifying main ideas in passage longer than a paragraph; mechanics and organization of written thought.

Impact of disability: Due to [Student's] compulsive behaviors, engagement in fantasy thought, ocular, sensory and fine and gross motor difficulties and misread of cues from adults and peers [Student] requires specialized, specific instruction in the areas of reading and writing to develop phonetic skills, reading comprehension and organization of written thought.

Academic/Cognitive: Math: [Student] had demonstrated improvement in the area of basic addition and subtraction, but continues to have difficulty in the areas of multiplication and division and employing order of operation and overall computation.

Strengths: Improvements gained in the areas of basic addition and subtraction.

Concerns/Needs: Concerns exist regarding multiplication, order of operation and identification of key words for solving applied problems.

Impact of disability: Due to [Student's] compulsive behaviors, engagement in fantasy thought, ocular, sensory and fine and gross motor difficulties and misread of cues from adults and peers [Student] requires specialized, specific instruction in the area of basic multiplication, completion of applied word problems and employing order of operations to conduct math computation.

Other Academic/Nonacademic Areas: [Student] has made progress in her level of engagement in social studies and science curriculum and in overall functioning in the

educational environment; however, [Student] continues to require support and instruction in these areas.

Strengths: [Student] is a cooperative and engaged student.

Concerns/Needs: [Student's] level of participation in social studies and science classes and in overall organization skills such as independently using an assignment pad, using folders to organize papers and to structure time for studying are areas of concern.

Impact of disability: Due to [Student's] compulsive behaviors, engagement in fantasy thought, ocular, sensory and fine and gross motor difficulties and misread of cues from adults and peers [Student] requires specialized, specific instruction and support in the areas of maintaining participation in the curriculum and classroom setting for social studies and science and in developing organization skills to be able to function more effectively and independently in the educational environment.

Behavioral/Social/Emotional: Improvements demonstrated in overall functioning, daily functioning impacted by: compulsions and obsessive thoughts, engagement in fantasy thought and misread of social cues, anger and anxiety.

Strengths: [Student] continues to improve in her self image, has made gains in her ability to effectively function in the school setting.

Concerns/Needs: Tendency to misperceive transient physical symptoms, modulation of emotionality, management of obsessive and compulsive thoughts and behaviors, social awareness and social interactions and engagement in fantasy thoughts.

Impact of Disability: Due to [Student's] compulsive behaviors, engagement in fantasy thought, sensory processing difficulties and misread of social cues, [Student] requires specialized instruction and support to develop her social and emotional coping skills to engage in academic and social learning.

Communication and Vocational/Transitional: Age appropriate.

Health and Development – including Vision and Hearing: [Student] participates in full day school programming and after school related services. Physical stamina and endurance have improved.

Strengths: [Student] engages in full and extended day programming and is making gains in her self concept.

Concerns/Needs: [Student's] limited endurance and stamina and at times, perception of transient physical symptoms to be indicative of recurring ill health and fragility.

Impact of Disability: Due to [Student's] compulsive behaviors, engagement in fantasy thought, sensory processing difficulties and misread of social cues, [Student] requires specialized instruction and support to develop strategies for coping with physical condition.

Fine and Gross Motor: [Student] continues to demonstrate difficulty processing sensory information; maneuvering through the educational environments; and coordinating and processing visual-motor information.

Strengths: [Student] has made gains in the areas of sensory processing and fine and gross motor and is cooperative and engaged in related services sessions.

Concerns/Needs: Ability to effectively utilize sensory breaks, maneuver through the educational environment, fine motor and visual skills.

Impact of Disability: Due to sensory processing difficulties, fine and gross motor difficulties, [Student] requires occupational therapy and support to develop fine and gross motor and effective sensory processing to more successfully and independently navigate the educational environment.

Activities of Daily Living: [Student] currently has educational staff assistance in managing educational expectations.

Strengths: Works well and is responsive to adult guidance.

Concerns/Needs: [Student] requires guidance and instruction to participate in general curriculum and to organize academic expectations.

Impact of Disability: Due to compulsive behaviors, engagement in fantasy thought, sensory processing difficulties and misread of social cues, [Student] requires specialized instruction and support to develop her ability to organize and structure her study time. (Ex. B-5 pp. 9-10)

8. The May 17, 2011 PPT meeting record listed as PPT recommendations:

Implement IEP.

Continued placement at ECDS.

Provide ESY services.

Conduct neuropsychological evaluation of cognitive and executive and social/emotional functioning; conduct OT evaluation of fine and gross motor and sensory processing; conduct academic evaluation of reading, math and writing skills.

Extended day programming up to 12.5 hours weekly, including tutorials in content areas.

1:1 staff support throughout [school day] during school year and during ESY at ECDS.

10 hours direct service to be delivered by [Consultant A] during summer to address academic and social/emotional goals. (Ex. B-5 p. 3)

9. The May 17, 2011 PPT developed the following goals for the 2011-2012 school year:

1. [Student] will make gains and demonstrate academic progress in the area of Mathematics.

2. [Student] will improve her reading comprehension.

3. [Student] will build executive functioning skills to increase independence.

4. [Student] will make gains and demonstrate academic progress in the area of Language Arts.

5. [Student] will improve skills in mechanics of writing.

6. [Student] will develop and improve expository writing skills.

7. [Student] will develop and improve narrative writing skills.
 8. [Student] will make gains and demonstrate academic progress in the area of History.
 9. [Student] will improve academic knowledge in the area of Science.
 10. [Student] will continue to improve her self-image and with an increasing emphasis upon strength, resilience, and physical wellness. She will diminish her reflexive tendency to perceive transient physical symptoms as signs of recurring ill health and fragility.
 11. [Student] will improve her symptom management of her obsessive compulsive condition, employing methods such as thought stopping, cognitive reappraisal, exposure and response prevention, relaxation training, and distractive techniques.
 12. [Student] will continue to improve her capacity at modulating strong emotional responses, with an emphasis on the emotional states of anger and anxiety.
 13. [Student] will learn to better modulate her voice volume.
 14. [Student] will continue to improve her awareness of physical boundaries between individuals and what rules govern body contact, physical distance, and other related features of this social skill.
 15. [Student] will continue to strengthen her ability to assertively express her emotions when in interaction with others.
 16. [Student] will increase her capacity to disengage from her inner fantasy world so that she can be reliably available for her academic work, [activities of daily living], or social interaction in 8 out of 10 instances.
 17. [Student] will improve her conversational skills and increase her capacity to identify the needs and interests of others in her communications.
 18. [Student] will demonstrate improved gross motor skills for successful maneuvering through the educational environment.
 19. [Student] will demonstrate improved visual motor and fine motor skills for successful participation in various activities.
 20. [Student] will demonstrate improve visual skills for successful completion of activities during educational activities.
 21. [Student] will participate in sensory breaks when needed, across educational settings.
 22. [Student] will learn computer skills needed for academic success. (Ex. B-12 through B-43)
10. Program accommodations and modifications listed for the Student in the May 17, 2011 IEP:
- Materials/Books/Equipment:** Access to computer, access to computer both at home and school, access to Smart Board, Handwriting Without Tears materials.
- Tests/Quizzes/Assessments:** Alternative Test Setting, Extra time on tests and quizzes, Extra time on Written Work, One to one support for reading and dictation.
- Grading:** Modified grades based on IEP.
- Organization:** Sensory breaks.

Environment: Flexibility in leaving classroom, Small setting.

Behavioral Interventions and Support: Cue expected behavior.

Instructional Strategies: Pre-teach content.

Other: Access to alternative classroom setting.

Frequency and Duration of Supports Required for School Personnel to

Implement This IEP Include: Neuropsychologist to provide weekly consultation up to 2.5 hours. OT to provide training to school staff at the beginning of the school year and to provide consultation to school staff via email/telephone communication monthly. Training/consultation will be provided to any new staff to [Student's] programming, by parent, school staff and related service providers. 1:1 support provided across educational settings. (Ex. B-5 p. 44)

11. Student would continue to be supported by a 1:1 teacher in the classroom. It was planned that this substantial level of support would eventually fade as Student becomes more independent and confident in classroom settings. (Ex. B-5 pp. 48-49)
12. The service grid for the May 17, 2011 IEP shows the following:

Language Arts Instruction	2.00 hr/wk	Individual Instruction Reg. ed Teacher
Language Arts Instruction	1.33 hr/daily	Inclusion/general education
Language Arts Instruction	1.33 hr/wk	Community based
Math Instruction	0.67 hr/daily	Inclusion/general education
Math Instruction	2.00 hr/wk	Individual Instruction Reg. ed Teacher
Study Skills Instruction	0.75 hr.daily	Inclusion/general education
Social Studies Instruction	0.17 hr.daily	Individual Instruction
Social Studies Instruction	0.50 hr.daily	Inclusion/general education
Science Instruction	0.67 hr.daily	Inclusion/general education
Science Instruction	1.33 hr.wk	Individual Instruction
Technology Instruction	0.67 hr.daily	Inclusion/general education
Technology Instruction	1.00 hr.wk	Individual Instruction
Occupational Therapy	1.00 hr.wk	Individual Instruction
Counseling group/individual	10.00 hr. monthly	Individual Instruction

 (Ex. B-5 pp. 47-49)
13. The May 17, 2011 PPT meeting also discussed an ESY program for the Student, for the summer of 2011. The IEP listed ESY services to be provided: Counseling, group and/or individual, by the Current Therapist; OT, individual instruction; Technology individual instruction; and behavioral support by Special Education Teacher, Classroom Teacher and Educational Consultant A. These services included a full school day program the week after school ended for the year and a full school day program the week before school resumed. Some socialization would be included. (Ex. B-5, pp. 47-50)
14. Parent requested, and the PPT denied, additional ESY services of cooking, art, sleep-away camp, adaptive music and sports/athletic coaching. Parent stressed that these activities were primarily intended to "enhance and prevent regression of peer

interactive social skills". (Ex. B-5 p.8; Testimony, Parent Tr.3/21/2012 pp. 25-32; Testimony, Director of Special Education Tr. 4/24/2012 pp. 65-69)

15. Student's Mother, the Director of ECDS, Student's Current Therapist and Educational Consultant A who supervised the Student's after school program, who attended the May 17, 2011, PPT meeting, submitted a statement questioning some of the elements of the PPT record. All of their proposed goals had been incorporated in the IEP. They also requested that various current service providers be named in the IEP as providing services in the IEP, which the PPT refused. (Ex. B-5 pp. 52-69)

16. No identifiable IEP progress reports were offered at the hearing for the school years 2009-2010 or 2010-2011.

17. Student's progress reports for 2010-2011 from ECDS show:

Subject	11/13/2010	2/19/2011	6/1/2011
American Studies	On grade level	On grade level	On grade level
Art	On grade level	On grade level	On grade level
Drama	Above grade level	Above grade level	Above grade level
IEP goals	Below grade level		
Literature	On grade level	On grade level	On grade level
Math	Needs more support and practice to meet objectives	Needs more support and practice to meet objectives	Is progressing toward objectives as expected.
Physical Education	On grade level	On grade level	On grade level
Science	On grade level	On grade level	On grade level
Writing	On grade level	On grade level	On grade level
Executive Function	On grade level		
Debate		On grade level	On grade level

(Ex. B-4, B-7)

18. The Current Therapist, who sees Student approximately two hours a week, reported on Student's social difficulties. The current school year, 2011-2012, is the first time that Student has had a group of friends with whom she sometimes eats lunch and plays on the playground. However, the interplay of Autism Spectrum Disorder, OCD and anxiety make this progress both slow and fragile. (Testimony, Current Therapist Tr. 3/5/2012 p. 67)
19. A copy of Student's undated weekly schedule at ECDS was entered on the record of the hearing. Although no actual times are provided (eight daily class periods with breaks for snack and lunch) it is obvious that Student had a busy and complicated school day. Time for transportation and the extended school day at home are omitted from this schedule. (Ex. B-18)
20. On August 19, 2011, the Board's Director of Special Education notified Parent that OT services would be provided by an OT employed by the Board, rather than the

previously contracted OT service provider. This arrangement would make it possible to provide OT at ECDS, and for the OT to collaborate with Student's teachers in providing appropriate supports in the classroom. Parent opposed this change, stating that she would not allow it. (Testimony, Director of Special Education Tr. 4/24/2012 pp.70-76; Ex. B-8)

21. Student's first trimester report card 2011-2012 showed the following:

Art	Effort Excellent, At Grade Level
Debate	Effort Excellent, At Grade Level
Drama	Effort Excellent, Above Grade Level
English	Grade A-, Effort Excellent, At Grade Level
	Progressing toward objectives
Math	Grade A, Effort Excellent, At Grade Level
Physical Education	Progressing toward objectives, Effort Good
	At Grade Level
Social Studies	Consistently Achieving Objectives, Effort
	Excellent, At Grade Level

Attendance reported as one late to school and one absence. A tutorial, Play and Executive Function were listed "No report cards defined for this course". (Ex. B-19)

22. Although no contract was in place at the start of the 2011-2012 school year, ECDS started the year using the IEP developed on May 17, 2011. An underlying difficulty was that the ECDS school day could not accommodate all of Student's supported regular classroom placements and IEP services. Some direct instruction (tutorials) could be shifted to the home after-school program, but Parent preferred that the same ECDS staff members who presented such instruction to Student during the school day also provide tutorial time in the after school program. Because of individual teachers' schedules, varied contractual pay rates and delivery of the after school program in Student's home, the ECDS Director and ECDS Business Manager wrote to the Board's Director of Special Education on November 29, 2011, that ECDS would no longer be able to provide the afternoon program. (Testimony, ECDS Director Tr. 3/5/2012 pp. 263, 276- 286; Tr. 3/7/2012 pp. 3-11; Testimony, Director of Special Education Tr. 4/24/2012 pp. 55-62, 80-104; Ex. B-11, B-12, B-15)
23. The Board's Director of Special Education interpreted the November 29, 2011 letter from ECDS as a statement that ECDS was unable to provide Student's complete IEP. (Testimony, Director of Special Education Tr. 4/24/2012 pp. 55-65)
24. A PPT meeting was scheduled for December 14, 2011, two weeks after the letter was received. That date had been set for a hearing which was cancelled when the request for hearing was withdrawn. Then this date was proposed for mediation, possibly to address issues involving Student and her two siblings. Then the Board's Director of Special Education proposed that a meeting be held on that date to formalize a list of issues on which the Parties disagreed, in preparation for mediation. The Director regarded December 14 as a date on which all parties – Board staff, ECDS staff and

Parent - were available. (Testimony, Director of Special Education Tr. 4/24/2012 pp. 95, Tr. 4/25/2012 pp. 3-23; Ex. B-14, B-30)

25. Alternative placements were informally investigated. The notice for the December 14, 2012 PPT meeting did not include the issue of a possible change in placement. When Parent stated that she would not attend this PPT meeting, the meeting went forward without her. The ECDS staff members (ECDS Director, Student's Regular and Special Education Teachers) and Student's Current Therapist and Educational Consultant A gathered in a room at ECDS. The Board's Director of Special Education, School Psychologist, and Attorney participated by telephone. The discussion included possible provision of the after school program at ECDS, rather than in Student's home. (Ex. B-12, B-13, B-14, B-16)

26. The service grid on Student's December 14, 2011, IEP showed the following special education services:

Language Arts Instruction	3.00 hr.wk	Small group/individual instruction
Math Instruction	2.00 hr.wk	Small group/individual instruction
Study skills instruction	0.75 hr.daily	Small group/individual instruction
Social studies instruction	1.33 hr.wk	Individual instruction
Science instruction	1.33 hr.wk	Small group/work with peers
Technology instruction	0.67 hr.wk	Small group/work with peers
Counseling Group/individual	10.00 hr monthly	Individual instruction
Occupational Therapy	1.00 hr.wk	Individual instruction

(Ex. B-16 pp. 46-47)

27. Current Therapist, who had been counseling Student for several years, described the advantages of placement at ECDS for Student:

... One of the reasons why [Student] has been thriving is that she's in a school that's essentially populated by kids that are functioning better than she is. ... The immersion in social modeling that gives her as an opportunity for growth ... is significantly positive.

(Testimony, Current Therapist Tr. 3/5/2012 pp. 90)

28. When the issue of a change of placement arose, it was opposed by ECDS Director and Student's ECDS Regular Education Teacher, the Current Therapist and Educational Consultant A. The two alternative placements offered by the Board were vigorously attacked by ECDS Staff and various consultants. Several of their reasons are worthy of consideration. However, it must be noted that without parental consent, the Board had been unable to provide documentation of Student's specific special education needs and thereby establish whether such placements were viable. (Testimony, Testimony Current Therapist, Director ECDS, Educational Consultant B, Mother; Ex. B-16 pp. 6, B-20, B-21)

CONCLUSIONS OF LAW:

1. Section 10-76h, Connecticut General Statutes (C.G.S.), and related regulations at Section 10-76h, Regulations of Connecticut State Agencies, authorize an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Sections 4-181a of the C.G.S. Section 20 U.S.C. § 1415(f) and related regulations at 34 C.F.R. § 300.511 through § 300.520 also authorize special education hearings. Section 10-76h(d), C.G.S. authorizes an impartial hearing officer to order an evaluation.
2. The standard for review of special education programs for individual students with disabilities was established by the U.S. Supreme Court in the case of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). That case established two tests: 1) were the procedural requirements of the Act complied with; and 2) was the educational program developed for the child reasonably expected to provide educational benefit.
3. A significant procedural issues raised by Parent is the absence of notice from the December 6, 2011, notice for the December 14, 2011, PPT meeting that a change of placement might be discussed by the PPT. Another procedural issue was the convening of the December 14, 2011 PPT meeting after Parent had stated that she would not attend. The Federal regulations focus on the importance of parental participation in these meetings. Given the School District's experience with this Parent and the uncertain status of the ECDS placement, it is clear that the Parent should have been present or the meeting should have been postponed. The letter dated November 29, 2011, from ECDS to the Board, giving notice that ECDS would cease to provide some elements of the current IEP, provided notice to the Board that an emergency situation existed.
4. At 34 C.F.R. § 104.35 (a), an evaluation is required prior to an initial special education placement, and **any subsequent significant change in placement** (emphasis added.) While the record shows that Parent has been reluctant to consent for evaluations, citing the emotional fragility of Student, a formal review by the PPT of Student's records and a request for consent for limited evaluation of specific areas is a responsible approach to consideration of a change of placement. It is unlikely that a placement could be found that would duplicate all of the characteristics of the ECDS placement, so the position that the current IEP could be duplicated is questionable. Any change of placement for this child, at this time, could be considered as significant.
5. At 34 C.F.R. §300.322 (a) (2), school districts are required to schedule PPT meetings at a "mutually agreed on time and place". While the District's concerns (the need for complete implementation of the IEP and prior difficulties with scheduling of meetings with this parent) are real, this meeting should have been postponed to accommodate the Parent and her Attorney. While the regulations do not address what is required when parents announces that they will not be attending a scheduled

meeting, common sense suggests that a postponement should be considered, in order to secure the parent's presence. In this case, where a change in placement was possible, both the lack of specific notice and the absence of the Parent were detrimental to addressing the Student's special education needs.

6. Incomplete notice of the PPT agenda and proceeding with the PPT meeting without Parent in attendance together made it impossible for Parent to respond to proposed alternative placements for Student, as well as significant re-structuring of the special education services to be provided. However, both the May and December IEPs were likely to enable Student to make reasonable educational progress.
7. The Supreme Court has held that a unilateral placement by parents of a student in need of special education in a private school that is not state-approved for special education placements could be funded by a local school district if a hearing officer determines that the program offered by the school district is not appropriate and the private school placement is appropriate for that child (*Florence County School District Four v. Carter*, 510 U.S. 359 (1985)). While the facts of this case are different, there is no question that the placement at ECDS has been appropriate for Student. Whether it continues to be appropriate will be determined by the PPT after the evaluation ordered herein.
8. The December 14, 2011, PPT meeting was held at two sites, connected by telephone. 34 C.F.R. §300.322 (c) and 300.328 suggest use of a conference telephone call or video conference as ways to provide for parent participation in meetings. Thus, the use of telecommunication is not barred by regulation.
9. The IDEA includes strong provisions concerning the rights of special education students to attend school with non-disabled peers:
 - 34 C.F.R. § 300.114 (a) (2): (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
 - 34 C.F.R. § 300.116 Placements, (d) In selecting the least restrictive environment, consideration is given to any harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in regular classrooms solely because of needed modifications in the general educational curriculum.
 - 34 C.F.R. 300.550(b), special education placement should be to the maximum extent appropriate [to the student] with students who are not disabled. Removal from the regular education classroom: "... only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

In this case, placement with non-disabled peers was actually a therapeutic component of the IEP, providing appropriate behaviors for Student to model.

10. From a legal standpoint, if a contracted special education service provider reports to the public school district that it cannot provide the full IEP (for whatever reason, including funding) the school district MUST act to remedy the situation. An obvious response is to seek an alternative placement that will be able to implement the IEP. In order to learn whether an alternative placement can implement the IEP, the school district must have parental consent to disclose the IEP to possible alternative placements.
11. The role of individualized evaluations in determining the need for special education and at least every three years, in reviewing the special education program and the student's performance and progress, is a fundamental component of IDEA.
34 C.F.R. §300.303 Reevaluations
(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section -
(1) May occur not more than once a year, unless the parent and the [school] agree otherwise; and
(2) Must occur at least every 3 years, unless the parent and the [school] agree that a reevaluation is unnecessary.
12. At Section 10-220 (a), C.G.S., the Board of Education is given the authority to hire and assign teachers and other school staff members. While parents may comment of selection and performance of school staff members, they may not dictate the assignment of staff members. The Board has the legal authority to provide IEP services by school staff members or, when appropriate, contract for such services. The decision to provide OT services by a properly licensed OT who can provide the services on site and collaborate with Student's teachers is both legally allowed and practical.
13. At *Sioux Falls School District v. Koupal*, 22 IDELR 26, South Dakota Supreme Court 1994, the court held that prior IEP services did not require continuation of such services in later IEPs. While similar IEPs and placement may continue over several years, an annual review is required by 34 C.F.R. § 300.324 (b) (i): [the IEP Team] "Reviews the child's IEP periodically, but no less than annually..."

DISCUSSION

The Board's PPT devised a creative program and placement for Student, who was struggling with life-threatening medical issues and some degree of school phobia in addition to an Autism Spectrum Disorder, OCD and anxiety. Placement at ECDS with her brothers, with counseling by a dedicated professional, was successful in that she is now attending classes with many non-disabled peers and appears to enjoy school. It is understandable that Student's Parent and the professionals who have contributed to her school attendance and performance are reluctant to risk a full evaluation and possible

changes in her IEP and/or placement. However, without some current data, it is difficult to determine whether she needs more of the same, or either a more specialized program or return to a public school program. No one has suggested that she is no longer eligible for special education.

The Board has little current evaluative data for this Student. While it has been argued that testing might exacerbate her anxiety and lead to setbacks in her progress, it is important to determine some basic facts about her academic progress. Approximate measures of her grade levels in major subjects (reading, writing and math) are overdue for consideration of her IEP and special education placement. It is likely that some of the needed information may be obtained from her records. Some standardized testing, in a comfortable place with support from people she trusts, is not unreasonable.

Since it is theoretically possible for Parent's lack of consent to evaluate to freeze the placement at ECDS, it is essential that such an evaluation be ordered. It is possible that in addition to reducing the amount of testing normally performed in a triennial evaluation and providing accommodations and the presence of a familiar person such as a teacher or her Current Therapist, a few of Student's classmates taking the tests at the same time might make her more comfortable.

Student's Current Therapist and a Board psychologist can gather as much data as is currently available and through the PPT process design a minimal evaluation that will show where Student is in terms of grade level and what, if any, psychiatric diagnosis or diagnoses, are appropriate. Such an evaluation will undoubtedly include some standardized testing. Student would need to be prepared for that testing and supported appropriately during the testing, and such accommodations should be recorded so that the test results can be considered with knowledge of testing conditions.

Student's Current Therapist shall assist the PPT, including Student's Parents, in selecting appropriate evaluators and in designing arrangements for test administration that will minimize stress for the Student. The evaluators must be appropriately certified and/or licensed in the State of Connecticut and without prior contact with the Student. Evaluations may be given at a site that is comfortable for the Student, and the Current Therapist may assist in preparing her and/or accompany her at the testing location.

Pending completion of these steps, the Student shall remain at ECDS. The contract between the Board and ECDS shall include the services agreed to in the May 2011 IEP, appropriately funded.

After the reports of evaluations and prior relevant records have been gathered, the PPT shall convene to consider the Student's IEP and placement. Among the questions to be considered are:

- Is the Student ready to return to a public school setting, with appropriate supports?
- Is the Student in need of a more specialized placement, as proposed at the December 14, 2011, PPT?
- Should the Student continue where she is, at ECDS?

From a legal standpoint, if a contracted special education service provider reports to the public school district that it cannot provide all IEP services (for whatever reasons, including funding) the school district MUST act to remedy the situation and assure that the IEP is being fully implemented. One reasonable response from the school district is consideration of a change of placement. In order to discuss possible enrollment, the school district must obtain parental consent to release the student's IEP to prospective alternative placements. When a parent blocks legally appropriate PPT actions by withholding consent, a special education hearing officer has the authority to override lack of consent.

Pursuant to the ruling in Connecticut Special Education Hearing No. 11-0561, the Board has the right to select evaluators as well as related service providers such as OTs. Whether to select regular board staff members or to contract with outside providers is also the right of the Board and its administrative designees. Parents may make suggestions, but ultimately Connecticut state law reserves the right to hire and assign staff to the Board.

Problems concerning the contracts between the Board and ECDS and payment arrangements are not directly within the scope of authority of a special education hearing officer, and the Board's objections to documents and testimony on these topics were reasonable. However, implementation of an IEP is at the heart of many special education hearings, including this one. Problems concerning contracts (or lack of timely contracts) or funding for contractual services may imperil implementation of an IEP, and that is within the authority of a hearing officer. Some, if not all, of the difficulties discussed in this hearing could have been avoided if the contract between the Board and ECDS for Student's placement in 2011-2012 had been executed in a timely manner.

FINAL DECISION AND ORDER:

1. The May 17, 2011, IEP was appropriate to Student's special education needs in the least restrictive environment through the end of the current school year, 2011-2012.
2. The December 14, 2011, IEP, though quite different in service format, was also appropriate to Student's special education needs.
3. With the assistance of Student's Current Therapist and a Board school psychologist, the PPT shall plan a triennial evaluation following the general outline discussed above. Timely information from Student's education record may be used, as well as standardized testing in selected areas, with appropriate supports for Student.
4. When the evaluation has been completed, the PPT shall convene to discuss Student's current status, to review and revise Student's IEP and to determine whether a change of placement is appropriate at this time.
5. The failure to provide notice that a change of placement was under consideration and the Board's unwillingness to re-schedule the PPT meeting that was held on December 14, 2011, were procedural errors that prevented Parent from full participation in the PPT.
6. The overriding fact that Student can model behavior from non-disabled peers at ECDS makes that placement preferable to a placement in which all students are disabled to some degree and many have behavioral issues.
7. Based on the limited information available and lack of an opportunity for either of the two proposed, state-approved private school placements to see Student's IEP, it is doubtful that either was appropriate for Student at the time.
8. The ESY provided by the Board in the summer of 2011 was appropriate to Student's special education needs.
9. The Board holds the legal authority to select and assign appropriately certified/licensed personnel to implement Student's IEP. Thus, the Board may select the provider of OT services to Student.