

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Suffield Board of Education

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Appearing Before: Attorney Justino Rosado, Hearing Officer

**ISSUES:**

1. Was the program offered by the Board for the 2011-2012 school year appropriate and does it provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE)? If not;
2. Does the program at Ben Bronz Academy provide the Student with FAPE in the LRE?
3. Should the Board be responsible for the cost of the Student's placement at Ben Bronz Academy as of September 1, 2011?

**FINAL DECISION AND ORDER**

**SUMMARY:**

The Student has been identified as Other Health Impaired (OHI) and is entitled to receive FAPE as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statutes (CGS) §10-76a. At a Planning and Placement Team (PPT) meeting, the Parents rejected the program offered by the Board and requested placement of the Student at Ben Bronz Academy. The Board refused the Parents' request.

**PROCEDURAL HISTORY:**

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

The parties were under a settlement agreement through August 2011; the claims raised by the Parents pertain to the procedural and substantive violations as they would have impacted the Student from August 31, 2011 forward.

On or about August 8, 2011, the Board received notice of the Parents' request for due process. An impartial hearing officer was appointed on August 9, 2011, and a pre-hearing conference was scheduled for August 25, 2011. The parties agreed to forego a resolution meeting and go to mediation. The parties met in mediation on October 27, 2011, but did not reach agreement.

On November 18, 2011, the Board requested that the hearing officer order the Parents to allow the Board to conduct speech and language, occupational therapy, physical therapy auditory and psychological evaluations of the Student. The Parents' attorney filed a timely objection. At the December 14, 2011 hearing the hearing officer granted the speech and language, occupational therapy, physical therapy and auditory evaluations but denied the Board's request for a psychological evaluation.

The hearing convened on December 14, 2011, February 7, 2012, and March 6, 9, 12, and 14, 2012. The December 22, 2011 and January 5, 9, and 11, 2012 hearing dates were cancelled. The Board submitted Exhibits 1<sup>1</sup> through 104. Board Exhibit B-73 was presented as a forty-three page exhibit. It was divided into two exhibits, B-73 pages 1 to 30 and B-73a pages 1 to 13. The Parents submitted Parent Exhibit 1 through Exhibit 26. Parent Exhibit 24 was not accepted as an exhibit of the hearing.

The date for the mailing of the Final Decision and Order was extended to accommodate the parties' mediation, hearing dates and Post Trial Briefs. The date for mailing the Final Decision and Order is May 31, 2012.

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

### **FINDINGS OF FACT:**

1. The Student is diagnosed as OHI. He has auditory processing issues that impact language, Pervasive Development Disorder (PDD) Not Otherwise Specified (NOS) and Attention Deficit Hyperactive Disorder (ADHD). The Student has been found

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<sup>1</sup> Hereafter Parent Exhibits will be noted as "P" followed by the exhibit number, Board Exhibits will be noted with a "B" followed by the exhibit number and Hearing Officer Exhibits will be noted with "H" followed by the exhibit number.

eligible to receive special education and related services under IDEA. (Testimony Of Mother, B-20)

2. On or about November 9, 2005, the Student was administered a neuro-psychological evaluation. The evaluator found that it was essential for the Student to continue receiving speech and language, occupational therapy and physical therapy. He recommended small group/individual academic instruction to help focus his attention. The evaluator anticipated that these services would eventually be discontinued. The Parents provided the private speech and language, occupational therapy and physical therapy. (B-34)
3. While attending the 2<sup>nd</sup> grade at the Board's school, the Parents obtained a private auditory processing evaluation of the Student and provided it to the Board. The evaluation demonstrated that he exhibited central auditory processing difficulties. The evaluator made several recommendations, including small groups, visuals, repeating and rephrasing as well as a trial of an FM system. This evaluation was not reviewed at a PPT. (Testimony of Mother, B-41).
4. In February 2008, the Student was given an Audiological and Auditory Processing Assessment. The Student demonstrated auditory processing weaknesses in all the areas of auditory processing that were evaluated. The significant listening weaknesses impact school performance. The evaluator recommended that the Student continue to use the FM system at school, be in close proximity to his teacher, have short intense periods of instruction, have pre-teaching of new vocabulary items and be encouraged to ask for clarification when message or directions are unclear. (P-1)
5. In March 2008, the Student was administered the Connecticut Mastery Test (CMT). The results of the test showed that the Student was below basic level in the grade 3 Mathematics test, mastering only one of the twenty five content strands, Time. He was below basic level in the Reading test with a Degree of Reading Power (DRP) unit score of 27. The Student did not master any of the four content strands of the Reading test: Forming a General Understanding, Developing Interpretation, Making Reading/Text Connections and Examining the Content and Structure. On the Writing test, he also scored below basic level with 6 in writing prompts, and did not master any of the two content strands of Composing/Revising and Editing. (P-2)
6. In March 2009, the Student was given an Audiological and Auditory Processing Assessment. The Audiological testing showed that the Student would have difficulty listening and processing auditory input. He demonstrated difficulty in the areas of comprehension (auditory/linguistic processing), auditory decoding and auditory closure and selective listening. These weaknesses will affect his ability to comprehend spoken language and follow directions. (Testimony of Dr. Jill Raney, B-70)

7. The audiologist recommended that the Student continue the use of an FM system at school. He should be placed in a quiet environment and in close proximity to the teacher. (B-70, B-71)
8. On or about December 17, 2009, the Parents provided the Board with a copy of the neuro-psychological evaluation of the Student by Dr. Cristina Ciocca. The evaluation had been conducted from May to August 2009 while the Student still attended the Board's school. The evaluator found that the Student thrived in a small classroom and required that information be broken down. The Student struggled in co-taught classrooms and did not participate in class. His processing issues and pragmatic language deficits interfered with his peer interaction. The Student's social experience was impeded by his developmental delays and immaturity. He became easily frustrated and irritable and resorted to avoidance of uncomfortable tasks. The Student showed improvement in reading decoding but both oral and silent comprehension was an area of concern. The Student had weaknesses in mental and written calculations, difficulty in relating his topics to the required assignment, and poor story structure. His writing was below grade level. The Student was diagnosed with ADHD, Neurological Impairment, and PDD NOS. (Testimony of Dr. Ciocca, B-73)
9. The doctor made 22 recommendations. Among them were the following:
  - a. Preferential seating;
  - b. Intensive structured language-based program within a small classroom environment;
  - c. A systematic plan to help him remain on track, focused and motivated;
  - d. Academic fluency skills in his program to address his processing speed difficulties;
  - e. Building frequent academic success to enhance his self-esteem;
  - f. Extended time and direct support;
  - g. Breaking assignments into smaller parts; and
  - h. Continue extensive services in occupational therapy, physical therapy and speech and language pathology.(Testimony of Dr. Ciocca, B-73)
10. The Student entered Ben Bronz Academy (Academy) in the summer of 2009. He was admitted as a fulltime student on or about September 2009. The Student demonstrated issues in reading and frustration when asked to speak more clearly. (Testimony of Director of the Academy)
11. At the September 8, 2009 PPT, the Parents requested placement at the Academy. This request was rejected. The Parents wanted the Student to be at grade level. The Parents and the Board mediated an agreement so that the Student could attend the Academy. The agreement was for the 2009-2010 and 2010-2011 school year. The Board would pay a lump sum payment for each school year and the Parents would be responsible for any additional costs. The agreement provides for the Board to convene a PPT in May 2010 to plan the Student's 2010-2011 individualized education program (IEP). The Parents could accept or reject the IEP developed by the

PPT for the 2010-2011 school year. The Parents rejected the IEP and the Student continued at the Academy for the 2010-2011 school year. (B-76, Testimony of Director of Pupil Services (DPS), Testimony of Mother)

12. Counseling, physical therapy, occupational therapy and speech and language are not provided as related services at the Academy but are incorporated in the Student's program. Counseling was not provided to the Student as the Academy was of the opinion that it was not necessary. If he needed any speech and language services, he can either do pull out services, the speech pathologist can give him service in the class, or use a consultative model where the pathologist tells the Academy what is needed and the Academy's teachers provide the service. (Testimony of Director of the Academy)
13. On November 3, 2009, the Parents received a psychotherapy report of the Student. The Student attends a psychotherapy session once a week for 75 minutes. The session focuses on reading social cues, understanding social perspectives, managing anxiety, processing situations and developing skills to establish and maintain friendships. The Student becomes overwhelmed when issues are addressed in large groups. He becomes more interactive and has greater social success in small group activities. The Student needs to learn in a small, direct-instruction environment that is both concrete and nurturing. This report was provided to the Board by the Parents. (B-75, Testimony of Mother)
14. The Student's grade 4 CMT showed that the Student was below basic level in the grade 4 Mathematics test, mastering only one of the twenty five content strands, Pictorial Representation of Numbers. He was below basic level in the Reading test with a DRP unit score of 48. The Student did not master any of the four content strands of the Reading test: Forming a General Understanding, Developing Interpretation, Making Reading/Text Connections and Examining the Content and Structure. In the Writing test, he also scored below the basic level with 7 in writing prompts and did not master any of the two content strands of Composing/Revising and Editing. (B-80, B-98)
15. The Student's 2009-2010 progress report of goals and objectives showed that he had made satisfactory progress in all his goals and he was making unsatisfactory progress in 4 objectives of the service plan. A comment in the April 2010 progress report stated that the Student had problems with articulation and comprehending directions. The Student was not receiving speech and language services. (Testimony of Mother)
16. The Academy does not offer any electives because there is not enough time for additional classes. The testing demonstrated that when the Student entered the Academy, he was reading at level 3. The Student was now reading at a level 10. Reading is addressed in every class. The Student's writing classes have not dealt with handwriting because he uses typing. The Student has many needs but concentrating on language processing is necessary for executive functioning to improve. (Testimony of Director of the Academy)

17. The Student is not at grade level in mathematics. When he first entered the Academy he was dropped to a lower level mathematics class. Any additional assistance in mathematics needs to be done after school because of his current schedule. The Student was observed to see if noise was a factor in his learning. The Academy staff decided that background noise was not an issue and an FM system was not necessary. (Testimony of Director of the Academy)
18. The Student has not required counseling while at the Academy. He has "melted down" a few times, and has had tantrums but they were few. If he has social skills needs they would be given as outside service. The Student has not demonstrated a need for social services. (Testimony of Director of the Academy)
19. The Student's March 2011 Academy progress report showed that he had made satisfactory progress in all his goals and objectives. His 6<sup>th</sup> grade report card showed that the Student was doing A and B work. (B-84)
20. On or about February 2011, the Parents had Dr. Cristina Ciocca perform a neuropsychological evaluation of the Student. Dr. Ciocca noted that he still struggled with mathematics. His executive functioning deficits and poor number sense contributed to his slow progress in mathematics. The Student's learning was slow and highly dependent on repetition, cuing, and instruction specifically structured to facilitate the learning concept. He was reading at a lower level than the prior evaluation in 2009, but his reading tests showed improvement. The Student needed immediate, direct support; otherwise he was not able to progress. Dr. Ciocca ruled out any intellectual disability. His reading accuracy, rate, and fluency showed a 1 ½ to 2 grade improvement. (b-86, Testimony of Dr. Ciocca)
21. Dr. Ciocca made various recommendations. Among the recommendations made are the following:
  - a. Allow the Student seat breaks to help him to maintain focus throughout the day;
  - b. Continue his reading program, using comprehension of text to circumvent memory retrieval difficulties;
  - c. Continue the Cyberslate program to increase his fluency especially in mathematics. The typing in Cyberslate program is an effective tool for fluency;
  - d. Continue the use of positive enforcers to build confidence;
  - e. The Student requires support, direction, and structure to insure continued growth and progress;
  - f. Extended School Year (ESY) services to avoid regression during the summer;
  - g. Supplemental social skills training;
  - h. Additional support and tutoring in mathematics;
  - i. Extracurricular activities and social programs outside of school to enhance socialization and social skills practice;(B-86)

22. The Student's progress report for the 2010-2011 school year at the Academy showed that he had mastered Goal 2, mastered Goal 3 but in four objective his progress was not to criterion. He had mastered Goal 4 but one objective was rated as not to criterion, Goal 5 was mastered but in 2 of its five objectives his progress was not to criterion and Goal 6 was mastered. In Goals 1 and 7, the Student's progress was not to criterion. (B-97)
23. The annual testing summary showed that in the Woodcock Johnson III Test of Achievement, the Student, in his Pictorial Vocabulary in 8/2009, was at a 3.6 grade equivalent and in 4/2011 was at a 4.9 grade equivalent; in Oral Comprehension in 8/2009 he was at a 2.8 grade equivalent and in 4/2011 a 2.5 grade equivalent. In Broad Math, the Student in 4/2010 was at a 3.8 grade equivalent in the calculations subset and a 3.6 grade equivalent in 4/2011; in the math fluency subset in 4/2010, he was at a 3.6 grade equivalent and in 4/2011 he was at a 5.3 grade equivalent. In the Applied Problems subset, in 4/2010 the Student attained a 2.5 grade equivalent and in 4/2011 he was at a 2.6 grade equivalent. (B-87)
24. On or about May 31, 2011, the Parents informed the Board that the Student was not receiving any occupational therapy services. (B-88)
25. On or about June 3, 2011 the Board held a PPT to plan the Student's 2011-2012 school year. The current assessments utilized were the same as used to plan the 2010-2011 IEP. The staff from the Academy was not invited to the PPT nor did anyone from the Board observe the Student in order to plan for the PPT. The Board needed updated assessments on related services to plan the IEP. (B-89, Testimony of Mother, Testimony of DPS)
26. In order to address his reading fluency, the Student's 2011-2012 IEP called for the Student to utilize Cyberslate with the Wilson Reading Program. The Cyberslate program is an Academy program and is offered at the Board School. The Student had benefited from Cyberslate and although his fluency skills were above grade level this should not be interpreted to mean that the Student was reading at a 9<sup>th</sup> grade level. The Director of the Academy consulted with the Board regarding its implementation of the Cyberslate program which was the same program that the Student was being provided at the Academy. (Testimony of DPS, Testimony of Director of the Academy).
27. As a new student, the Student would be assigned a peer who would shadow him to acquaint him with the school. Both regular and special education students could take small classes known as lab classes. These classes were scheduled for an entire period and therefore students were not pulled out from other classes to attend them. Students are grouped in lab classes by their ability. The Student would be attending small classes for the majority of the day with students functioning at his academic level. The lab classes proposed for him were scheduled to have between 2 to 4 students. He was to be provided with Cyberslate, reading, writing, math and organizational skills

instruction in these small lab classes. He would receive speech and language, occupational therapy and physical therapy as pull out services in these lab classes; so he would not miss any core course. (B-89, Testimony of DPS)

28. The Student also was scheduled to take either science or social studies in the mainstream with assistance from a paraprofessional. He also was scheduled for a co-taught language arts class with adult assistance from a paraprofessional. He had an advisory period one time per week to address social skills, adjustment to school and related issues. (B-89, Testimony of DPS)
29. The Student also had two Quest classes per week where he could select an area of interest each quarter. The Quest classes are regular education classes that are designed to foster social skills development and teach problem solving skills. These classes would be with non-disabled peers and are not for credit, so there would be no pressure for grades. (B-89, Testimony of DPS)
30. The Student would sit with a behavior specialist and the school psychologist to evaluate his needs. Incentives would be concrete so that he could understand them. Data that is collected would be reviewed every two weeks to allow for any modifications to his program. (B-89, Testimony of DPS)
31. The Academy staff was not invited to attend the June 3, 2011 PPT. The DPS consulted with the Academy prior to the PPT about the Student. The Academy staff informed the DPS that the Student was making slow progress and his test scores were inconsistent with his progress. If the Student needed more assistance with mathematics, the PPT would find time to address his need. The Student is motivated by academic success. (B-89, Testimony of DPS)
32. On or about November 2011 the Parents referred the Student to Bayside Children's Hospital for a speech and language evaluation. The Student was administered the Clinical Evaluation of Language Fundamentals-4<sup>th</sup> Edition. He presented with moderate-severe receptive and expressive language delays characterized by poor memory, language skills, and language processing skills. His skills were equivalent to a 5-6 year old. He did not score average in any subset. His memory and recall were below average for his age range and treatment was recommended. (P-26)
33. Bayside Children's Hospital also administered an occupational therapy evaluation. The student demonstrated severe delays in fine motor functions. It was recommended that the student receive services for fine motor development. (B-16)
34. Bayside Children's Hospital also performed a physical therapy evaluation. The Student demonstrated low muscle tone strength. The father informed the evaluator that the Student was in a karate class. The evaluator was of the opinion that the karate class would be sufficient and the Student would not require physical therapy services at this time. (P-16)



35. In January 2012, the Board performed speech and language, occupational therapy, physical therapy and audiological evaluations of the Student. The Student had not received these related services since he left the Board's school in 2009. These evaluations were administered as a result of a motion granted by the hearing officer. (H-3, B-89)
36. On or about January 2012, the Student was administered a speech and language evaluation. The evaluator found that the Student's auditory and oral communication skills were in the moderately low range of ability. His receptive and expressive language vocabulary was in the moderately low range. Articulation, hearing and oral motor functioning were within normal range. The evaluation indicated a speech and language disability. The speech and language pathologist recommended pull out services for 45 minutes 2 times per week and 75 minutes per week of speech and language assistance in the Science class. The Student did not seem apprehensive about returning to the Board's school; he was concerned about doing well. Based on the assessments, the Student showed regression in his speech and language and requires services. (Testimony of Speech and Language Pathologist, B-100)
37. The Audiologist made an observation of the Student at the Academy. The Student had better listening behaviors in a 1 to 1 quiet environment. The Student was observed in the largest classroom with the most people and he appeared to do well in this setting. In the questionnaire filled out by his teacher a score of 50 would indicate that the student "usually" exhibits the listening behavior in a situation. The Student received a score of 42. The audiologist recommended a trial period of 4 weeks with an FM system and pre- and post-questionnaires as a way of determining its potential benefit. (Testimony of Dr. Jill Raney, B-101)
38. In January 2012, the Board performed an occupational therapy evaluation of the Student. He had made progress with his fine motor skills using correct finger placement when typing. He also maintained an average score with his manual dexterity skills. When performing fine motor precision tasks, he demonstrated decreased hand strength and endurance. The Student scored below average on the fine motor integration. It was recommended that he participate in direct occupational therapy services once a month and consultative services 3 times a month. It was recommended that he participate in a home program to increase his strength and endurance. (B-102)
39. In January 2012, the Board performed a physical therapy evaluation of the Student. The Student showed improvement in running skills from his prior evaluation. He showed average performance in balancing and agility. The student showed below average in coordination activities and strength. Physical therapy was recommended for 30 minutes each week. (B-103)

**DISCUSSION AND CONCLUSIONS OF LAW:**

1. The Student qualifies for, and is entitled to receive FAPE with special education and related services under the provisions of state and federal laws. CGS §10-76, et seq. and IDEA 20 U.S.C. §1401, et seq.
2. The Board has the burden of proving the appropriateness of the child's program or placement, which burden must be met by a preponderance of the evidence. Conn. Reg. §10-76h-14(a); *P. ex rel. Mr. P. v. Newington Bd. of Educ.*, 512 F.Supp.2d 89, 99 (D.Conn. 2007).
3. A parent or a public agency may file a due process complaint on any of the matters described in 34 C.F.R. §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section. 34 C.F.R. §300.507.
4. 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 agency (LEA), such as the Board, must provide to each qualifying student a FAPE in the LRE, including special education and related services. 20 U.S.C. §1401(18).
5. Under the Supreme Court test established by *Rowley*, FAPE consists of educational instruction specifically designed to meet the unique needs of the handicapped child, and related services as are necessary to permit the child to benefit from the instruction. FAPE is not required to maximize the potential of each child; however, it must be sufficient to confer educational benefit. *Id.* at 200. The *Rowley* standard is satisfied by providing meaningful access to educational opportunities for the disabled child. *Id.* at 192. The *Rowley* court determined that the IDEA requires school districts to provide a "basic floor of opportunity" consisting of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Id.* at 201. The Supreme Court found Congress' intent in passing the IDEA was "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *Id.* at 192.
6. However, the *Rowley* requirement of consideration of the unique needs of the handicapped child does require consideration of the child's capacity to learn. *Nein v. Greater Clark County School Corporation*, 95 F.Supp.2d 961, 973 (S.D. Ind. 2000). The requirement of "some educational benefit" requires more than a "trivial" benefit

but not a maximization of the potential of a handicapped child. *N.J. v. Northwest R-1 School District*, 2005 U.S. Dist. LEXIS 24673, 22 (E.D. Mo. 2005).

7. Under *Rowley*, there are two components to the FAPE analysis, one procedural and the other substantive. An educational program can be set aside for failure to provide FAPE on procedural grounds under three circumstances: (1) where the procedural inadequacies have "compromised the pupil's right to an appropriate education"; (2) when the district's conduct has "seriously hampered the parents' opportunity to participate in the formulation process"; or (3) when the procedural failure has resulted in "a deprivation of educational benefits." *Independent School District No. 283 v. S.D.*, 88 F.3d at 556. Where this type of harm is found, the substantive question of whether the IEP provided FAPE is not addressed by the hearing panel. *W.B. v. Target Range School District*, 960 F.2d 1479, 1485 (9th Cir. 1991). Assuming no denial of FAPE on procedural grounds, the analysis turns to the substance of whether the IEP provides FAPE as defined by the *Rowley* standard and "whether a proposed IEP is adequate and appropriate for a particular child at a given point in time." *Rowley*, 458 U.S. at 200; *Town of Burlington v. Dept. of Education*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd* 471 U.S. 359 (1985).
8. In this matter, the Parents attended all PPTs and in the IEP in question, for the 2011-2012 school year, the Parents were represented by counsel. All notice requirements were clearly adhered to. The Parents did not allege or present evidence that they were not properly and timely provided with any requests for the Student's educational records. There were no procedural violations in this matter.
9. The 2<sup>nd</sup> prong of *Rowley* addresses the substantive question of whether the IEP provided FAPE. In order to decide the appropriateness of the IEP one must view it as, "a snapshot, not a retrospective. In striving for "appropriateness," an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated." *D.F. and D.F., on behalf of N.F., v. Ramapo Central School District*, 403 F.3d. 595 (2nd. Circuit 2005)
10. There is no one standard for determining what constitutes a, meaningful, educational benefit. 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, e.g. *Hall*, 774 F.2d at 635. 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, e.g., *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1120 (2nd Cir. 1997).
11. The program offered the Student, at the June 3, 2011 PPT, for the 2011-2012 school year was not appropriate. "Meaningful educational benefit" requires that the Board be able to provide for the Student's unique educational needs. The PPT recognized its lack of timely and adequate information from the Academy and requested re-

evaluations in order to provide the Student FAPE. (Findings of Fact # 25) This request was not granted. (H-3) The Parents' lack of cooperation in obtaining the evaluations did not motivate the Board to file for due process in order to provide the Student with FAPE. IDEA has a provision that would allow the Board to file for due process. "If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section." (34 C.F.R. §300.300(c)(ii)) Instead they utilized the same data available in 2009 to complete his Present Level of Academic Achievement and Functional Performance which is, the "blueprint" for developing the Student's IEP and creating his goals and objectives. The Student had not attended the Board's school for two years and during that time the Board had not visited the Student's placement to see how he was performing in the classroom. (Findings of Fact No. 25) The Student had not received related services (speech and language, occupational therapy and physical therapy) since he left the Board's school in 2009. (Findings of Fact No. 35) Yet, goals and objectives were written to address these needs without adequate knowledge to determine if they were required or the level of service the Student needs. Neither the academic or related services of the June 3, 2011 IEP were written with adequate information to provide for the Student's unique educational needs. Extended school year (ESY) should have been offered to assist the Student in his transition from the Academy, avoid any possible regression and observe the Student to ensure his needs would be met during the 2011-2012 school year. It is clear that the Student would not make "meaningful" progress with this IEP.

12. The parties entered into an agreement to place the Student in a program outside of the Board's schools. (Findings of Fact No. 11) Since the placement of the Student at the Academy for the 2009-2010 and 2010-2011 school years was by a mediated agreement, there is no inquiry by this hearing officer into the issue whether the Student received FAPE during the 2009-2010 and 2010-2011 school years.
13. The Parents unilaterally continued the placement of the Student at the Academy for the 2011-2012 school year. That the parties had agreed to the placement, does not make the agreed upon placement and program appropriate. The private program must be specially designed to meet the unique needs of a disabled child and it must include the services necessary for the child to benefit from instruction. *Frank G. v. Bd. Of Educ. Of Hyde Park*, 459 F.3d 356, 364-65 (2d Cir. 2006). The placement need not furnish every special service necessary to maximize the child's potential. *Id.* In this matter the Student was not receiving any of the related services he required. (Findings of Fact # 35) The Parents' psychologist recommended that the Student receive speech and language, occupational therapy and physical therapy. (Findings of Fact No. 7) The Parents' psychologist, recognizing the Student's deficiency in mathematics recommended support and tutoring in mathematics. (Findings of Fact No. 22) In order to meet the Student's social skills needs, he had recommended supplemental social skills training. Neither of these recommendations could be addressed in the Academy, but were to be provided by outside services. (Findings of Fact Nos. 17 and 18). The Academy's focus on

language processing (Findings of Fact No.16) is commendable but “meaningful educational benefit” includes mathematics as well as related services. Focusing on one area of academics does not provide the Student with FAPE. The Student expresses his desire to be successful and in order to succeed; he needs a well rounded educational program that focuses on all areas of his educational needs. The program at the Academy is not appropriate and does not provide the Student with the special education and related services the Student requires.

14. On February 22, 2012, the parties attended a PPT to review the evaluations ordered during the hearing. (Findings of Fact No. 35) This due process hearing does not address the appropriateness of the IEP developed at that PPT.
15. The IEP that is the subject of this hearing was created on June 3, 2011 and the parties did not request to amend the hearing to include the appropriateness of the February 22, 2012 IEP. “An IEP is a snapshot, not a retrospective,” and “must take into account what was objectively reasonable at the time the IEP was drafted.” *Roland M. v. Concord Sch. Committee*, 16 IDELR 1129 (1st Cir. 1990), *cert. denied*, 110 LRP 66026, 499 U.S. 912 (1991).
16. To the extent that a procedural claim raised by the Parents is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

**FINAL DECISION AND ORDER:**

1. The Board's 2011-2012 IEP is not appropriate and does not provide the Student with FAPE.
2. The unilateral placement of the Student at Ben Bronz Academy is not appropriate and does not provide the Student with FAPE in the LRE.
3. The Board is not responsible for the placement of the Student at Ben Bronz as of September 1, 2011.
4. Within two weeks of the publishing of this decision and order, the Board shall hold a PPT meeting to plan the administering of an educational assessment and/or any educational assessment the PPT deems necessary in order to plan the Student's 2011-2012 IEP.
5. No later than two days after receiving the results of the assessments ordered by the PPT, *Supra*, the Board shall provide the Parents with copies of all the assessments performed of the Student.
6. One week after receiving the results of the assessments, the Board shall hold a PPT to create the Student's 2011-2012 IEP.
7. The Board shall provide the Student with an extended school year program (ESY), as designed by the PPT to assist him in his transition to the Board's school and avoid any regression. The ESY program shall be for 6 weeks, a minimum of 4 hours per week, and shall be provided and completed before the regular 2012-2013 school year begins.