

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on behalf of the Student:

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Appearing on behalf of the Board:

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Appearing before:

Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board offer appropriate programs for the two years preceding the Due Process Complaint?
2. Did the Board offer an appropriate program for the 2015-2016 school year and extended school year?
3. Does Student require clinical services and residential placement?
4. Should the Board be required to reimburse Parents for the costs of tuition and education related expenses at Wellspring?
5. Should the Board be required to financially support the costs of clinical services and residential placement at Wellspring for the 2015-2016 school year and extended school year?

PROCEDURAL HISTORY/SUMMARY:

The Parent filed the Due Process Complaint/Hearing Request on May 21, 2015. The Hearing Officer was appointed on May 22, 2015 and conducted a Prehearing Conference on June 19, 2015 wherein the hearing issues above were identified. Hearings were conducted on the following dates: August 20, 2015, October 9, October 15, October 27, October 28, November 5, November 17, December 11, December 21, 2015, and January 26 and February 26, 2016.

The Student executed a Power-of-Attorney to her parents so that they could represent the Student at the Hearing. The Parents presented four witnesses. They were: Mother; Sandy Rodriguez, Newtown Special Education Supervisor; John Franklin, Licensed Clinical Social Worker, Yale-New Haven Hospital; and David Ferguson, Licensed Clinical Social Worker, Wellspring Foundation. The Board presented seven witnesses. They were: Tom Brant, Newtown High School School Psychologist; Julie Haggard, Newtown Public Schools Director of Pupil Services;

Deidre Croce, Newtown High School Guidance Counselor; Cate Brainard; Newtown High School Special Education Teacher; Todd Morgan, Wheeler Clinic Special Education Teacher; Lauren Vincens, Licensed Clinical Social Worker, Wheeler Clinic; and Sandy Rodriguez, Newtown Special Education Supervisor.

The Board's exhibits B-1 to B-147 were admitted as full exhibits. The Student's exhibits P-1 to P-20 were admitted as full exhibits. The Power-of-Attorney was also made a Student exhibit P-7. The Due Process Complaint/Hearing Request was admitted as HO-1.

This Hearing Officer granted the parties' requests for extension of the mailing dates of the Final Decision as follows: On June 19, 2015, the mailing date of the Final Decision was extended from to September 15, 2015 so that the parties could engage in mediation. On August 20, 2015, the mailing date of the Final Decision was extended to November 20, 2015 to add hearing dates. On November 5, 2015, the mailing date of the Final Decision was extended to January 14, 2016 to add hearing dates. On December 21, 2015, the mailing date of the Final Decision was extended to February 29, 2016 in order to add hearing dates. On February 28, 2016, the mailing date for the Final Decision was extended to April 29, 2016 for the parties to submit briefs.

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

SUMMARY:

The issues in this Due Process hearing involve whether the Board failed to provide a free and appropriate public education in the two years prior to the filing of the Due Process Complaint for a 19 year old high school student who was identified under the category of Serious Emotional Disturbance. Student was enrolled at Newtown High School in March of 2014. She was placed by the Newtown School District at the Wheeler Clinic, a state approved special education school in January of 2015. At the time of the hearing, Student was enrolled at the Arch Bridge School; a state approved special education school at Board expense and parentally placed in a residential treatment program at Wellspring Foundation. Parents believe that the Board failed to provide Student with a free and appropriate education from the time that Student was enrolled in the school district. Further, Parents believe that the Student required clinical services and residential treatment in order to access her education.

STATEMENT OF JURISDICTION:

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

FINDINGS OF FACT:

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

1. At the beginning of the hearing Student was nineteen (19) years old and attending a residential treatment program at Wellspring Foundation and receiving her education at Archbridge School. At the last hearing date, the Parents reported that the Student had been discharged from Wellspring and was completing a high school class online. She was taking courses at community college and it was anticipated that she would graduate from high school in June 2016. (Testimony, Mother)
2. Student is a resident of Newtown. She attended Newtown Public Schools until the end of seventh grade. She attended Faith Academy, a private Christian school, for eighth to tenth grades. Though Student attended Faith Academy, she maintained friendships with other children in Newtown and continued to reside in Newtown. The Student was academically successful at Faith Academy in the 8th and 9th grades. In the 9th grade, she developed anxiety after negative peer interactions at school. In the fall of 2012, when Student was in the 10th grade, Student began to experience episodes of panic attacks and bouts of crying, which had progressed to suicidal thoughts and cutting. (B-36)
3. The Parents worried and sought immediate medical help. Her therapist and Margaret Connaghan, APRN referred her for inpatient treatment at an inpatient psychiatric treatment center. Student was a patient at Silver Hills Hospital from November 12, 2012 to November 16, 2012. While at Silver Hills, Student was rated as high risk in the area of suicidal ideation with constant suicidal thoughts; having a lethal plan with moderate risk of carrying out the suicide plan. (Testimony, Mother; B-36)
4. Student's birthday is 12/14/1996. Her birthday in the tenth grade was marked by the horrific tragedy now commonly known as the "Newtown School Shooting". On that day, gunman Adam Lanza, a former student, went to Student's former elementary school and committed mass murder killing school staff and children. The shooting placed additional stressors on Student's mind but had not developed to the point of post-traumatic stress disorder. However, it was a recurrent shadow in her depression. (Testimony, Ferguson) By spring of 2013, Student who already suffering major depression and anxiety and was refusing to go to school and asking to come home during the school day. Absences increased and by the end of the school year, Student was absent from Faith Academy 30 times. Despite her absences, however, Student was able to earn enough educational credit for the 10th grade. (Testimony, Mother; B-40)
5. The Parents sought psychiatric treatment for Student. Because of Student's school refusal, Parents attempted to homeschool Student. However, by mid-November of 2013, it became clear to the Mother that Student was not progressing in homeschooling. (Testimony, Mother)
6. The Mother testified that her daughter had not been receiving any education at home because she had given up on homeschooling and that she was "desperate" to get help for her daughter at this time. The Mother went to the Newtown Schools' Central Office intending on requesting educational services for her daughter. The Mother thought she was doing everything she had to do to procure educational services from Newtown Schools. The record is devoid of any evidence that school district staff explained the

process of enrollment of a student with a disability in need of special education to the Mother. The Mother was told by Board staff that she had to bring supporting documentation for a referral for special education. (Testimony, Mother)

7. Thereafter, the Mother called all of the Student's mental health providers and obtained letters for the school district. She wrote a detailed letter explaining the Student's mental health history; compiled the Student's Faith Academy report cards and treating provider letters. (Testimony, Mother; B-44, B-44a) This package was delivered to the Newtown Schools Central Office on December 4, 2013. (B-45, Testimony, Mother).
8. The Mother's letter was comprehensive and provided a portrait of Student. The Mother stated that she had attempted to homeschool Student since the fall of 2013 but had not been successful. She provided a detailed history of the Student's mental health treatment, including hospitalization in November 2012 at Silver Hills Hospital; an Intensive Outpatient Program at Yale, which had been completed on November 11, 2013 and a description of the mental health providers and their treatment of Student. As of December 3, 2013, the Student was hospitalized a second time at Yale-New Haven Hospital. Two of the letters provided by the Mother to the Board, including the letter from Yale-New Haven Hospital were not included in the Board's exhibits. (B-44, B-44a, B-40, B-41, B-42, B-29-B-35, B-37-B-39).
9. Richard Baird, LCSW, a Licensed Clinical Social Worker, provided information that Student could appear non-anxious when she really was. In his letter, he stated that "[Student] demonstrated a sense of humor and a full range affect which did not match her stated moods that [Student] reported as a front to avoid showing her depression." (B-42)
10. Rebecca Ambrose, LMFT, a Licensed Marriage and Family Therapist, stated that she had been consistently treating Student since May 2013 and that she was currently treating Student on a weekly basis. She shed light that the source of Student's anxiety in the school setting. She stated that
 "[w]hen discussing challenges in the school environment, [Student] experienced frequent panic attacks, set off by academic performance issues and social interaction situations.... When discussing possible solutions, [Student] states that she is very motivated to re-engage in an academic environment that is emotionally supportive of her mental health needs. She has discussed with me that a therapy school is of great interest because she can work through the emotional difficulties with trained staff, while gaining the academic and social learning appropriate for her age. I agree this would be a more productive and healthy option for [Student]." (B-42)
11. Margaret E. Connaghan, MSN, APRN, a psychiatric nurse practitioner, stated that the Student's current treatment plan included medication intervention and individual counseling and questioned whether Student would require a therapeutic placement. She stated as follows:
 "[Student's] struggle academically appears in large part due to anxiety. The family is requesting your help and guidance in determining the best approach to [Student's] education. It is unclear about her ability to attend Newtown High School and she may require placement in an alternative environment." (B-43)

12. A Planning and Placement Team meeting ("PPT") convened on December 20, 2013. In attendance were: Robin Lawler-Pavia, Administrator; Parents; Lee Keylock, Regular Education Teacher; Anne Catlin, Special Education Teacher; Tom Brant, School Psychologist; Deidre Croce, Guidance Counselor; Sherry Earle, PhD and Dimitri Thorton, Psychologist-Intern. By this time, Student had been released from Yale-New Haven Hospital and was at the Derby Intensive Outpatient Program. (B-46; Testimony, Mother)
13. At the time of this PPT, Newtown Schools had the following information about Student's presentation and behavior which impeded learning: 1) That the Student anxiety increased to a degree in the tenth grade that she began avoiding going to school or wanted to go home when she was in school; 2) That the behavior resulting in the disability was refusal to go to school or avoidance of staying in school; 3) That anxiety stemmed originally from interactions with school peers and academic performance issues; 4) That the Student hid this anxiety with an affect that made it appear as though she was not anxious; 5) That the Student's anxiety and depression was so severe that it require repeated extensive mental health treatment and two hospitalizations. (B-44, B-44a, B-40, B-41, B-42, B-29-B-35, B-37-B-39).
14. The PPT agreed to conduct an initial evaluation. This would include a psychoeducational evaluation, which included academic achievement and intelligence testing; rating scales; projective measures; clinical interview. A social and developmental history would also be taken. The Parents signed releases for the school to obtain school records from Faith Academy and to contact the Derby IOP. (B-46)
15. Mr. Brant testified that there was a need for evaluative data about Student. On cross-examination, he acknowledged that a diagnostic placement in the school setting could have been an option to collect data on Student's behavior and functioning but he had not considered it. (B-46, B-47, B-48, B-49).
16. Dimitri Thorton, MA, conducted a Psychosocial and Development History Report. He reported information based upon a file review and questionnaire to Parents. His report did not include the information provided by Richard Laird, LCSW that the Student's affect did not match her mood. Newtown High School Psychologist administered assessments to Student. These assessments were performed at the school district Central Office because Student was too anxious to enter the Newtown High School building. (B-52, Testimony, Brant)
17. The PPT convened on February 21, 2014 at the school district Central Office. The purpose of the PPT was to determine eligibility and develop an Individualized Education Program ("IEP") for Student. (B- 54). Prior to the meeting, the Parent had been trying to have the PPT scheduled to an alternative location from the high school. The Student did not want to come to the high school building because of her anxiety. On February 5, 2014, the Mother emailed Tom Brant, the School Psychologist. She stated, "Just wanted to follow up with you. When we saw you last week you said you were going to try to get the mtg moved out of the high school, I was wondering if you had any luck? [Student] really needs to attend and I know it will be very difficult if not impossible, to get her to the High School for the mtg. Thanks for everything." (P-5).

18. In attendance were: Julie Haggard, Administrator; Father; Mother; Student; Karin Sherman, Regular Education Teacher; Anne Catlin, Special Education Teacher; Tom Brant, School Psychologist; Ana Mendes, Guidance Counselor; Dimitri Thornton, School Psychologist Intern; Sherry Earle, PhD. (B-54; Testimony, Mother; Testimony, Haggard)
19. The PPT reviewed the checklist for eligibility under the State of Connecticut "Guidelines for Identifying and Educating Students with Emotional Disturbance" and found Student eligible to receive Special Education and Related Services under the category of Emotional Disturbance. (B-54)
20. The program proposed included four hours of homebound tutoring weekly which was to result in 1.0 credit in junior English and 1.0 credit in elective art as an independent study with an art teacher; 90 minutes of counseling; and 30 minutes of transition per week. Counseling goals included improving skills of self-awareness and self-concept generally to identify anxiety-provoking situations. The PPT meeting summary stated "A counseling goal for social/emotional that aligns with outside support will be drafted to include areas such as self-worth, self-esteem, self-advocacy, self-efficacy, time management, focus and behavior regulation." (Testimony, Brant). (B-54)
21. The Student was upset about the program being offered. She did not want to come to Newtown High School. She felt she needed to be in a therapeutic day school. (Testimony, Mother; Testimony, Brant). The Mother expressed uncertainty about whether the Student's psychiatrist, Dr. Lustick, would approve of a plan to have Student come to the school. She asked if Dr. Lustick had yet been contacted. She was asked to sign a release to speak with Dr. Lustick. (Testimony, Mother; Testimony, Brant)
22. The Mother left the PPT with the Student because they were in a rush to get to the IOP and Student was upset. She took the papers with her. (Testimony, Mother; Testimony, Brant)
23. Julie Haggard, Special Education Director, testified that the Mother took the papers with her to decide whether she was going to enroll her in Newtown schools. The PPT summary states "Parent did not sign consent for placement into special education and took the document home with her to sign if she decides to enroll her daughter in the Newtown Public Schools." (B-54, Testimony, Haggard) However, the Mother believed that she was doing everything necessary to enroll Student in school. The Mother was uncertain about the program. (Testimony, Mother).
24. Ms. Haggard testified about her extensive responsibility for the school district's services in the wake of the Newtown shooting. She testified that it is a fairly large district. Her many responsibilities include being the lead administrator for the Newtown Recovery Program for mental health supports for trauma to the district's students in the wake of the shooting. She attended only one PPT meeting concerning Student. The administrator who was responsible for the Student's case was Robin Lawler-Pavia who has since retired. Her knowledge about the case was based upon her memory of what Ms. Lawler-Pavia told her. She testified that Robin Lawler-Pavia gave the parents information about enrollment but stated on cross-examination that she was on the phone in her office when this happened. She just saw the parents walk by. (Testimony, Haggard)
25. During her testimony, Ms. Haggard confused Student with another student. Much of her testimony did not match the information in Board exhibits. Though she was emphatic

about her memory and knowledge about the case, her testimony was contradicted by other sources. For instance, Ms. Haggard blamed the Student's anxiety, school fears and lack of progress on the parents. She testified that the Parents frequently switched mental health providers. The medical records did not support this. It was true that Students saw different providers as a result of hospitalization and intensive therapy; but she had consistently received treatment from a therapist and APRN. She testified that had the Parents kept the Student in school, the Student would not have had a phobia about school. However, this was contradicted by Student mental health provider letters that characterized Student's anxiety as school-related dating back to her attendance at Faith Academy. (B-B1, B- 42, B-43, B-44a).

26. The Rebecca Ambrose LMFT and Margaret Connaghan APRN provider letters suggested exploration of a therapeutic day placement option. Ms. Haggard testified that a therapeutic placement was discussed at the PPT. The PPT minutes do not reflect such a conversation and the IEP does not list therapeutic placement as an option that was considered. The Mother denies this was discussed. Ms. Haggard testified that the Parents told the PPT that Student's psychiatrist, Dr. Lustick, did not agree that a therapeutic placement was necessary and the issue was dropped. The Mother denies that this ever happened. Therapeutic day placement is an alternative placement under the IDEA. If it was discussed by the PPT, it should have been included in the PPT minutes or listed as an option that was considered. (Testimony, Haggard; Testimony, Mother; B- 54).
27. At the time of the hearing, Student was in a residential treatment facility. One of the issues in this hearing is whether Student required a residential placement. Ms. Haggard testified that the Student was placed in residential treatment because there was conflict in the home and the Student needed to get away from her parents. This is contradicted by the Board's own Social and Developmental History, which reveals that there was a close family relationship. Student has a very close relationship with Mother. Student has always relied on her mother for support. (B-53). The Mother took the witness chair to rebut this testimony. She appeared very upset by Ms. Haggard's suggestion. Further, the Board's educational record also contains details of the fact that Student's mental illness was school related. Student first experienced anxiety and depression relating to peer interactions at school. The Board's interviewer reported that "[t]he effects of the anxiety and depression also resulted in somatic symptoms culminating into nearly daily calls to [Mother] to leave school. [Mother] would have some success with getting [Student] to school, often having to sit in the office with [Student] coming back to the office to check in with her mother" (B-53) Indeed, the manner in which Ms. Haggard made her remarks appeared to be insensitive and cavalier considering the painful subject of the Student's mental illness.
28. Finally, Ms. Haggard testified that the PPT reviewed the input of all medical providers and that they were in agreement with the IEP. She testified that Tom Brant, the School Psychologist had had the input of Student's treating providers and that this information was used in creating the February 20, 2014 IEP for Student. This testimony was contradicted by the testimony of Tom Brant himself. In fact, Mr. Brant testified that he, in fact, had not contacted any medical providers prior to the February 2014 PPT. (Testimony, Brant). Ms. Haggard's testimony has been contradicted by so many sources that the Hearing Officer cannot credit her testimony.

29. Mr. Brant's testimony was also problematic. His testimony is contrary to the record. Mr. Brant testified that he did not contact any of Student's medical providers to get input into the development of the February 20, 2014 IEP because it had not appeared from medical provider letters that these medical providers were then currently providing treatment to Student. The medical provider letters and health records provided to the PPT contradict this. For instance, Rebecca Ambrose, LMFT and Margaret Conneghan, APRN both stated in their letters that they were currently treating Student. Further, the hospital records revealed Margaret Conneghan, APRN was the referral source for hospitalizations. Mr. Brant either did not read the letters carefully or at all during the PPT planning process, or did not accurately testify about the real reason why he did not contact Student's providers for input or further information. (Testimony, Brant; B-40; B-41).
30. Ms. Haggard testified that the PPT provided a few hours of home tutoring at Parent request because the Parents did not want to overwhelm Student. Ms. Haggard testified that the Student was receiving treatment in an IOP and was not available for courses. The Mother denied this and testified that the IOP was for a limited amount of time and the Student was able to take courses. Mr. Brant, contrary to Ms. Haggard and consistent with the Mother, testified that the PPT agreed to provide home tutoring in order to ease the Student back into school. (B-40, B-41, B-42, B-44).
31. From February 25, 2014 to March 11, 2014, the Mother emailed Mr. Brant to see if he had spoken to Dr. Lustick. Mr. Brant emailed that they were "playing phone tag". On March 14, 2014, Mr. Brant emailed Mother to let her know he had spoken to Dr. Lustick. He wrote, "I tried to explain [the IEP] to him regarding the number of hours of education/counseling/and transition services [Student] will be receiving." The February IEP minutes stated that the PPT agreed that "[a] counseling goal for social/emotional that aligns with outside support will be drafted to include areas such as self-worth, self-esteem, self-advocacy, self-efficacy, time management, focus and behavior regulation." It appears that Mr. Brant did not ask for Dr. Lustick's input. The goal was not added to the IEP. On March 17, 2014, the Mother wrote back to Mr. Brant, "I will see Dr Lustick today at 830. I don't anticipate he will go with the new options so I want to sign the IEP today as I am nearing a deadline. I still cannot find a date. I also need to register [Student]. Who can I meet with to sign papers...I am available today. Thanks." Later that morning, Mr. Brant wrote back, "I asked someone to get in touch with you regarding the IEP. As I understand you do not have a deadline to send the form back by. However, we cannot start services until we have the form signed." (B-129).
32. Student received a total of 10 hours of tutoring from Excel Tutoring, a board contractor for English literature from April 5, 2014 to the end of the school year in 2014. (B-118). The Mother testified that the tutoring sessions were held at a Dunkin Donuts shop. (Testimony, Mother). Student received her art tutoring in a one-on-one setting away from other students. (B-61). Mr. Brant testified that he had expected that Student would receive a half a credit each in English and the Art class. The Student did receive a half a credit in Art but only .25 credit for English. (Testimony, Brant; B-62; B-114).
33. The PPT convened on May 29, 2014 to review the Student's IEP. In attendance were: Robin Lawler-Pavia, Administrator; Father; Mother; Student; Carol Skolas, Regular Education Teacher/Art Teacher; Anne Catlin, Special Education Teacher; Lauren

Beeson, Social Worker; Tom Brant, School Psychologist; Ana Mendes, Guidance Counselor and Katherine Matz-Special Education staff. The PPT reviewed progress. The Social Worker reported that she had been meeting with Student and that sometimes the meeting was held at the Central Office and sometimes at the high School and that even though progress was being made, the Student was having difficulty coming into the high school. The Art Teacher reported that Student worked well in a one-on-one setting and stated that the Student had encountered the art classroom after school filled with students and became uncomfortable. She was taken out of the classroom to the Art Teacher's office to relieve her anxiety. The Student was unwilling to sit in a classroom with a staff member. The PPT discussed Extended School Year Services for Senior English through the department of Continuing Education and reduced counseling to 45 minutes per week. The minutes reflect that the Student was on target to receive the half credits for English literature and Art during the spring semester. The Student eventually received only half of the credit planned for English and half a credit for Art. (B-61; B-145)

34. The PPT proposed services and classes for the next school year, which would be a full schedule to be held in Newtown High School. The IEP included resource room for critical skills academic support class and reduced counseling to 45 minutes once a week. Behavioral interventions included the following: "Encourage self-advocacy, Positive Reinforcement, Support in organizing materials." Despite the reports of the Student's difficulty entering the high school building and being with other students, there were no behavioral interventions to support anxiety in school or preplanning in the event that Student would become anxious and want to leave class or school. The PPT summary inexplicably declares, "She is not anxious about attending school in the fall because it is a fresh beginning for everyone." Mr. Brant did not recall that these were the Student's own words. (B-61; Testimony, Brant)
35. The Student continued to experience anxiety and inability to enter the school building. On June 4, 2014, the Mother wrote an email to Mr. Brant. She stated, "I was hoping to get her there but she has been having such anxiety it is making her sick....I think if you are able the only way it will work is if you come down to mrs croce's office and ask her if she could meet with you for a short time. I am not sure I will get her there tomorrow but I have been stressing the importance especially bec she has a question on one of her classes." (P-5; Testimony, Mother)
36. The Student took two English courses at the high school in classes with other students. She attended a total of 10 days of school beginning on July 7, 2014 for a total of 8 hours. In the middle of this period, Student experienced an increase of symptoms due to anxiety. On July 21, 2014, Student was hospitalized a third time. She returned and completed 6 more days of school. She received a half credit each for Senior English I and Senior English II. (B-116) Student received a total of 1.75 credits toward graduation from March 20, 2014 to the end of Extended School Year. (B-145)
37. The 2014-2015 school year began on August 26, 2014. (B-122) On the fifth day of school, Student began to ask her mother to come home from school. Her mother refused to pick her up from school. This was to be the general strategy and advice from the school to the Mother. A few weeks later, Student was not completing her work. She spent her free periods in the school courtyard, which was a private area of the school. Catherine Brainard was Student's Special Education Teacher. She was assigned to be

Student's case manager at the beginning of the school year and had not previously met Student. She read the Student's file in order to get acquainted with Student. She met the Student on the first day of school. (P-5; Testimony, Brainard)

38. Ms. Brainard testified that the Student would ask to leave the classroom and sometimes went to the courtyard. Because the Student's affect and demeanor did not show her anxiety, Ms. Brainard could not tell that Student was anxious or panicky. She testified that she had had a lot of students with emotional disturbances and thought she could assess anxious behavior. However, Student gave no sign of emotionality and seemed very personable. She did not believe the Student needed help with anxiety. She thought the Student was leaving to meet a boy when in fact she left to get away and to call her Mother to be picked up. (Testimony, Brainard; Testimony, Mother)
39. On September 16, 2014 (a month after the beginning of school), Deidre Croce, Guidance Counselor, wrote to Mr. Brant, Ms. Brainard and Katherine Matz, another Special Education staff, "We need to stay closely aligned on communicating about [Student]. *The honeymoon period is over and as Tom said in his prior email, she is starting to show signs of increasing anxiety and is looking for ways out of classes and school in general.* I saw her during her lunch period and she is adamant about going home. I talked to her, called Mom and did a lot of back and forth and was able to convince her to stay until 1:00, but it was a struggle. *I think this is going to keep escalating so we need to focus keeping her in school as long as possible every day.*" (P-5). Ms. Croce testified that it was the school's practice to keep students going to school. Sometimes students would eventually overcome their anxiety. Sometimes it worked and sometimes it did not. (Testimony, Croce)
40. While the Student was experiencing anxiety, she attempted to see the school nurse or hide in the bathroom, for which she received conduct referrals. Student was disciplined and had to serve detention for conduct arising from her disability. Mr. Brant testified that he had not been aware that the Student received conduct referrals for truancy. He testified that the school's disciplinary staff was not informed that Student was a student with the disability of emotional disturbance. (Testimony, Mother; Testimony, Brant; Testimony, Brainard; B-65).
41. During these anxious periods, Student would sometimes seek out Ms. Croce for support. Ms. Croce testified that Newtown Public Schools did not have staff to provide clinical support services for students. School Psychologists, Social Workers and Counselors all provided school based supports, which meant that the school staff would talk with students about strategies to access school only. (P-5) (Testimony, Croce)
42. Student continued to struggle with anxiety and attendance in classes at Newtown High School throughout September into the fall of 2014. She did not go to class or complete work. Mr. Brant, Mrs. Brainard and Mrs. Croce decided among themselves on a plan, which consisted of insisting that the Student stay in the room until the entire class was over. Student continued to miss class and did not engage in schoolwork. (P-5)
43. On October 16, Ms. Croce sent an email to the Mother stating, "we just had our meeting with the teachers regarding [Student's] progress... the Teachers had indicated concern in her level academic engagement." (P-5). At the same time, staff agreed to put the Student on "pass restriction". Mr. Brant testified that this meant that Student would not lose

academic credit or receive discipline for needing to leave class to see the nurse or a counselor for her anxiety when it arose. (P-5). It is difficult for this Hearing Officer to understand why such an accommodation would not have already been included in the Student's May 29, 2014 IEP. At that time, the PPT increased the Student's educational hours to a full time schedule in a school building in which Student was experiencing heightened anxiety. That Student had previously experienced school anxiety was information that the PPT had as early as December of 2013. The events that unfolded could have easily been anticipated with the information that was already available. There was no planning to avoid this situation and the Student did not access the curriculum or receive benefit from school.

44. Student continued to struggle with attendance and classwork throughout the fall of 2014. On October 27, 2014, Student was again admitted to Yale-New Haven Hospital for treatment for suicidal ideation. (B-75) On October 28, 2014, Mr. Brant emailed the staff that the Student had been approved to receive an "incomplete" for the first quarter of the semester. Student returned to school but was continuing to struggle with anxiety with school. (P-5).
45. A PPT convened on November 14, 2014. In attendance were: Sandy Rodriguez, Administrator; Mother; Father; Candi Dietter, Regular Education Teacher; Cate Brainard, Special Education Teacher; Tom Brant, School Psychologist; Suzanne Tyler, Social Worker; Deidre Croce, Guidance Counselor; David Roach, Assistant Principal; Rosann Morcell, the Student's outside therapist; and Katherine Matz, Special Education Teacher. The PPT reviewed the Student's performance. She had between 15-21 absences in each class. The Student's therapist talked about the Student's recent hospitalization and stated that clinicians had not determined specific diagnoses. The PPT proposed to place Student in a therapeutic day school. A review of the November 14, 2014 IEP reveals that IEP goals that were repeated from Student's February 21, 2014 IEP without mastery or with limited progress. The PPT summary reported that Ms. Brainard had stated that the Student had mastered transition goals but this information did not match pages 3 and 4 of the IEP, which showed limited progress. Nevertheless, the PPT minutes note that Student was on schedule to graduate at the end of the school year if she finished her classes. (B-73)
46. The Student eventually enrolled in Wheeler Academy at the Wheeler Clinic ("Wheeler"), a state approved therapeutic day school beginning January 13, 2015. She had earned only 1.75 credits toward graduation at Newtown High School from March 2014 to January 12, 2015. (B-145)
47. Student consistently attended Wheeler for 17 school days when Wheeler was in session. Because of snow days or holidays, the Academy was in session three to four days per week during the first five weeks of Student attendance. (B-119) Initially, Student was enthusiastic about being able to attend a therapeutic day school. The Wheeler check sheet data summary revealed that Student initially followed directions; had good days and made "excellent" effort. But by the second week, her behaviors began to devolve. The Mother testified that after the second week, it was a struggle in the mornings to get the Student to go to Wheeler. (Testimony, Mother)
48. A PPT convened on February 12, 2014, which served as Student's Annual Review. The PPT agreed that Student would need a fifth year in order to graduate from high school.

Student had not earned enough credits toward graduation. (Testimony, Rodriguez; Testimony, Mother; B-99)

49. Lauren Vincens is a Licensed Clinical Social Worker. She was Student's clinician at Wheeler. She testified that she encouraged the Student to seek her out if she was overly stressed at school. She testified that Student experienced increased stress immediately before and after the February 12, 2014 PPT because she had anxiety about not being able to graduate with her same age peers. Student also became very depressed and discussed the Newtown School shooting. In fact, Student had been cutting herself since she had been enrolled at Wheeler. (Testimony, Vincens; Testimony, Ferguson; Testimony, Mother)
50. A few days after the February 12 Annual Review PPT, Student became despondent and suicidal again. She was admitted to Yale-New Haven Hospital on February 18, 2015. (P-13). John Franklin, a Licensed Clinical Social Worker with extensive experience, is employed by the psychiatric observational unit at Yale. He interviewed the Student, reviewed her records and spoke with her private therapist. The Student had told Mr. Franklin that she had been upset that her peers would be graduating in June and going on to college. She would not be able to graduate and move on. These stressors led to her overwhelming emotions. Student also discussed with Mr. Franklin the fact that the Newtown shooting anniversary fell on her birthday. Mr. Franklin testified that his review of the Student's mental health history revealed that hospitalizations were becoming more frequent and had not worked. The Student's mental illness was severe enough to warrant residential treatment. He believed that without residential treatment, the Student would get worse. He thought that the Student might be suffering from Borderline Personality Disorder, which is very difficult to treat. He recommended that Parents contact Wellspring, a residential treatment facility, because it has been successful in treating difficult cases such as Borderline Personality Disorder. Dr. Lustick believed the Student had made limited gains with outpatient care and thought that the counseling services at Wheeler were ineffective. He supported Mr. Franklin's recommendation to Wellspring. (Testimony, Franklin; Testimony, Mother; P-12).
51. After overnight observation, Student was discharged but was readmitted again the following night on February 20, 2014 for a week. (B-102; Testimony, Mother). The family contacted Wellspring and was told that there was nothing available for Student for another few weeks. (Testimony, Mother)
52. David Ferguson is a Licensed Clinical Social Worker and the Clinical Director of Angelus House at Wellspring. He also holds a Masters in Education. Angelus House is the residential house for female patients over 18 years of age. Mr. Ferguson has had extensive experience in psychiatric settings with patients. Angelus House is a secured facility with staff available to ensure patients' safety. It is staffed by a psychiatrist and licensed staff. All of the patients at Angelus House have engaged in self-harm or suicidal ideations. Some have attempted suicide. Angelus House turns away many people because it takes the most difficult cases. Student was accepted because her illness was difficult to treat. (P-14; Testimony, Ferguson)
53. Student was admitted to Angelus House in March of 2015. While at Angelus House, Student did not receive any educational services until April of 2015. Mr. Ferguson testified that initially Student was being evaluated to determine whether she was able to

be safe enough to go to school. On April 22, 2015, the Student was placed at Arch Bridge School, which was part of Wellspring Foundation and serviced students under 18 years of age. Sandy Rodriguez, Newtown Special Education Supervisor, testified that she believed that the placement at Wheeler was appropriate. She stated that the Board agreed to pay for tuition and transportation from Angelus House to Arch Bridge School in order to be collaborative with Parents. (Testimony, Ferguson; Testimony, Rodriguez; B-109)

54. Mr. Ferguson testified that the Wheeler placement did not work because it lacked sufficient clinical supports. If Wheeler's clinical supports worked, the Student would not have had to continue to be hospitalized and would not have difficulty with absences and readmission to receiving education. (Testimony, Ferguson)
55. Mr. Ferguson testified that his goal at Angelus House was to treat Student so that she could become stable enough to go to school. Angelus House offered an array of clinical and therapeutic services including counseling and art therapy. The Student had intensive daily counseling support. On occasion in the past, Angelus House has had to send patients to the hospital in emergency situations. However, it is rare because of the level of therapeutic support available. While at Angelus House, Student did not experience hospitalization. She was able to go to school at Arch Bridge voluntarily and had a perfect attendance record. This attendance and educational benefit is a stark contrast to her 11th grade year and ESY in Newtown High School and month at Wheeler. Her grades as of November 4, 2015 were English - 94; Pre-Calculus -85; Civics -97; Chemistry- 93; Art- 95; Vocational Exploration -P. Teachers' comments included "outstanding" and "improved progress"; "good class participation"; "completes work"; "shows interest and effort"; "displays appropriate behavior"; "working to ability with support"; "demonstrates strong work ethic." (P-18; B-120; B-123)
56. This incredible turnaround can only be attributed to the residential placement. Because of the inappropriate programs offered by the Board at Newtown High School and Wheeler, the staff focused on trying to get Student to go to and stay in the school building. There was an amazing turnaround as a result of residential treatment and the skilled work of David Ferguson and staff. After the residential placement in Angelus House, the Student shifted from school refusal to being a diligent student who accessed education and did well at school. Whereas the Board's failure to properly program resulted in the loss of almost a year of school, Angelus House's intensive clinical services allowed Student to receive meaningful benefit from the curriculum. Thanks only to the residential treatment program, Student is able to graduate and attend courses in community college in anticipation of her plans to enroll in a four-year college.

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique

needs” and “prepare them for further education, employment and independent living” and “to ensure that the rights of children with disabilities and parents of such children are protected...” 20 U.S.C. §1400(d)(1).

3. The Act defines FAPE as special education and related services which “(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. §1401 (8).
4. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Regulations of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
5. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v Rowley*, 458 U S 176(1982). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Education Program is “reasonably calculated to enable the child to receive educational benefits?” *Rowley*, 458 U S at 206-207.
6. Addressing the first prong of the *Rowley* inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in *Rowley*, Congress’s emphasis in the IDEA “upon the full participation of concerned parties throughout the development of the IEP,” together with the requirement for federal approval of state and local plans, reflects a “conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP.” 458 US at 206.” *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child’s unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5th Cir. 1989). Compliance with the IDEA’s procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273. 285 (2001). However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child’s educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the “loss of educational opportunities or seriously infringed upon the parent’s opportunity to participate in formulating the [IEP]...” Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877 (9th Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child’s needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland*

County Sch. Dist. 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoenig v. Doe* 484 US 305, 311 (1988).

7. Connecticut Guidelines for the Identification and Education for Students with Emotional Disturbance sets forth best practices and restates school district obligations under the IDEA and Connecticut law. With regard to assessing behavioral needs of students with emotional disturbance, the guidelines state the following: "PPTs are charged with developing IEPs for students who meet eligibility requirements for special education. To meet the requirements of the IDEA, when necessary, the IEP must address students' unique behavioral needs as well as their learning issues. *Teams must explore the need for interventions and supports to address any student's behavior that impedes the learning of the student with a disability as well as the impact of such behavior on the learning of his or her peers.* Consistent with the requirements of IDEA, *teams must conduct an FBA and implement a BIP that includes positive behavioral strategies and support. The IDEA indicates that a BIP, based on an FBA, should be considered when developing an IEP if the student's behavior is interfering with his or her learning or the learning of others.*" The Student's behavior resulting from Emotional Disturbance was school refusal. The Board did not include a functional behavioral assessment and develop a behavioral intervention plan to address the triggers for Student's school refusal and a behavioral intervention plan to prevent or reduce these incidences of school refusal in its December 2013 IEP and initial evaluation. As a result of this failure, the IEP relied heavily on the Student to seek counselors or to find ways to help herself. The objectives relied on the Student to become aware of the triggers and come up with solutions. While Student was easily aware of what triggered her anxiety, Student had limited progress in finding solutions. This procedural violation in failing to properly conduct an FBA resulted in violation of FAPE requirements because the school refusal was not properly addressed and Student could not make progress in her education. (Findings of Fact Nos. 12, 13, 14, 15, 16)
8. The failure to provide meaningful participation to parents as a part of the IEP process can result in a denial of FAPE. School districts should consider input and placement options raised by parents. See *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900 (9th Cir. 2008), *cert. denied*, 130 S. Ct. 90 (2009). The Parents presented the Board with letters from mental health providers giving insight into Student's stressors. These providers raised the issue of a therapeutic day placement. The Parents and Student wanted to discuss therapeutic day placement but this was not discussed or considered as an option. The failure to discuss information provided by Parents at the February 2014 PPT, or to consider therapeutic day placement, impeded the Parents' right to meaningful participation. That the Board later recommended a therapeutic day placement is evidence of a denial of FAPE. (Findings of Fact Nos. 24, 25, 26)
9. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children" *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998), *citing Rowley, supra; KP v Juzwic*, 891 F Supp 703, 71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful" way." *Walczak*, 142 F.3d at 130. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132.

10. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002) (citing *M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)). The Student's program was not individualized on the basis of the Student's functional status; it did not provide the minimum amount of educational benefit provided by state regulations, and it did not meet the unique needs of the Student.
11. The February 2014 IEP did not provide FAPE because it provided less than the required amount of home tutoring under state regulations and the PPT did not consider evaluative data to justify providing less than the required hours of tutoring under law. R.C.S.A. 10-76d-15(e) provides that "instruction shall be provided ...no less than two hours per day or ten hours per week for children in grades seven through twelve. *Where evaluative data* indicates that these time requirements should be modified, instruction time may be increased or decreased upon the agreement of the parent and the board of education or upon a determination made by the PPT as appropriate." (Finding of Fact Nos. 17, 18, 19, 20, 21, 22, 29)
12. The May 2014 IEP did not provide FAPE. The IEP reduced the amount of counseling to help Student with her school anxiety. It failed to confer meaningful educational benefit by offering less than the minimum amount of home tutoring under R.C.S.A. Sec. 10-76d-15(e). It placed Student into the high school without any behavioral interventions directed at Student's school anxiety. State Guidelines contain a worksheet for designing IEPs for Student with Emotional Disturbance. While the PPT used the worksheet to determine eligibility, it did not use the worksheet to design an IEP. Had they done so, they could have considered many factors that they did not consider and were not included in the IEP. For instance, the Worksheet for designing an IEP for Students with ED included considerations such as "crisis plan"; "behavior intervention plan"; "identification of the responsible staff and service implementer for each element of the IEP (i.e. "behavior intervention plan", "family communication"; "progress monitoring plan" "Coordination with outside agency/service provider"). Considering some of these elements may have averted some of the Student's continuing difficulties in school. (Findings of Fact Nos. 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44)
13. The November 2014 IEP placing the Student at Wheeler Clinic for the 2015-2016 school year was inappropriate and did not provide FAPE. Wheeler was not an appropriate placement because Student required significant clinical services and had to be hospitalized just a few weeks after enrolling at Wheeler. That the Student attended Wheeler consistently does not mean that the placement is appropriate for Student's needs. School related issues triggered student's behavioral and emotional problems. Student could not derive educational benefit until she had significant clinical services, which Wheeler did not have. (Findings of Fact Nos. 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55)
14. When a child's behavioral and emotional problems are so closely intertwined with his educational difficulties that he requires residential placement, the school board must pay for that placement as long as it is appropriate. *Mrs. B.*, 103 F.3d at 1114, 1122(2d Cir. 1997) The Student's behavioral and emotional problems are intertwined and she required

residential treatment to receive education. (Findings of Fact No. 46, 47, 48, 49, 50, 51, 52, 53, 54, 55)

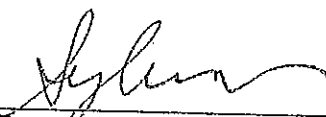
15. If a district fails to provide a FAPE, the child's parent may remove the child to a private school and seek tuition reimbursement from the state. Under the *Burlington-Carter* framework, a parent may recover tuition reimbursement if: (1) the proposed IEP was inadequate to offer the child a FAPE, and (2) the private education services obtained by the parents were reasonably calculated to enable the child to receive educational benefits. *Sch. Comm. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156, 163 (4th Cir. 1991). Under the IDEA, a parental placement, whether residential or not, is appropriate only if it is "reasonably calculated to enable the child to receive educational benefits." *Carter*, 50 F.2d at 163. In addition to the IEP context, evidence of actual progress is also a relevant factor to a determination of whether a parental placement was reasonably calculated to confer some educational benefit. *M.S. ex rel. Simchick*, 553 F.3d at 327.
16. The Parents have the burden of proving the appropriateness of the unilateral placement by a preponderance of the evidence. R.C.S.A. Sec 10-76h-14(c). The Parents have met this burden.
17. The program at Wellspring, which included clinical services, was reasonably calculated to enable the Student to receive educational benefits and did confer educational benefit. In fact, that Student has successfully reaped the benefits and is able to graduate and take courses at a community college is clear evidence that the program was effective. (Findings of Fact No. 54, 55, 56)

FINAL DECISION AND ORDER:

1. The Board did not offer appropriate programs for the two years preceding the Due Process Complaint.
2. The Board did not offer an appropriate program for the 2015-2016 school year and extended school year.
3. The Student requires clinical services and residential placement for educational reasons.
4. The Board is ordered to reimburse Parents for all costs related to the residential placement of Student at the Wellspring Foundation which includes Archbridge School and Angelus House.

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

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



Hearing Officer Signature

Sylvia Ho

Hearing Officer

Name in Print