

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Naugatuck Board of Education

Appearing on behalf of the Parent:	Parent <i>pro se</i>
Appearing on behalf of the Board:	Michelle Laubin, Esq. Berchem, Moses & Devlin, PC 75 Broad Street Milford, CT 06460
Appearing before:	Sylvia Ho, Esq. Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide appropriate programs for the 2011-2012, 2012-2013, 2013-2014 school years?
2. Did the Student derive educational benefit from the Board's program and make meaningful progress?
3. Did the Board follow the recommendations of Dr. David Suscovich's independent psycho-educational evaluation?
4. Was the Board required to follow the recommendations of Dr. David Suscovich's evaluation?
5. Is Student's placement in a specialized program such as Ben Bronz Academy or Eagle Hill School appropriate?
6. Should the Board be required to financially support private out of district placement for Student?

PROCEDURAL HISTORY:

The Parent filed the Due Process Complaint and Hearing Request on November 5, 2013 and the Board received the Complaint on November 8, 2013. The Hearing Officer was appointed on November 8, 2013 and conducted a Prehearing Conference on November 27, 2013 wherein the hearing issues above were identified and an initial hearing date was scheduled for January 9, 2014. The Hearing Officer issued a Memorandum to Parties outlining the conduct of the hearing. This included a requirement that witness lists and exhibits should be sent to the opposing party and Hearing Officer within five (5) business days of the Hearing and the manner in which exhibits should be numbered and labeled. (See R.C.S.A. Section 10-76h.) The Board submitted lists of witnesses and Exhibits B1-B96 in a timely manner. The Parent did not submit exhibits until the first hearing day on January 9, 2014 and the documents were not properly labeled in accordance with the Memorandum to Parties. Parent also attempted to submit for evidence a cell phone and a digital recording device, which purportedly contained a recording of a December 2012

PPT meeting. The Board objected to the admission of the recording device and personal cell phone into evidence. The Parent made an offer of proof that the recording would show that she asked for services that were refused. This hearing officer ruled that the Parent could use the recording to refresh her memory in preparing for testimony and to confront the witnesses who were testifying about the December 2012 PPT. The Parent stated that she understood, but did not use the recording during the hearing. At the end of the hearing, Parent asked to play the recording and when this hearing officer reminded Parent that she could have used it to confront witnesses and she had not, she stated that she misunderstood the order.

Student was also present to be a witness at the first day of the hearing. The Board objected to Student's testimony citing concerns about the welfare of Student in missing school and being subject to cross-examination. This hearing officer asked the Parent to state the purpose of the Student's testimony. Parent stated that the Student could make samples of writing. Parent also stated that if asked, the Student would testify that he liked school and that he thought he was doing well in school. Parent stated that the Student should hear the testimony because he "needs to face facts", presumably as she believes that Student is not doing well in school. Because this testimony would not have been helpful in determining the issues in the case, this hearing officer encouraged the Parent to rethink the possible harm to the Student in missing school and being subject to cross examination given that the Student's testimony would not be helpful to determining the legal issues in the case. Later in the morning, the Parent withdrew the Student as a witness and sent Student to school.

Parent presented as a witness a privately engaged Occupational Therapist who was not aware that she would be a witness at a hearing. The witness did not have the Student's complete record or her curriculum vitae in her possession. On cross examination by the Board's attorney, the witness agreed to send this material to the hearing in the afternoon and return for further cross examination once the Board's attorney had an opportunity to review the material. The Occupational Therapist's file and curriculum vitae were not received in the afternoon. The hearing was adjourned after a few short hours to allow the Parent to re-label exhibits.

The hearing convened again on January 15, 2014. Many of the Parent's exhibits were mislabeled in a different way and did not match copies given to the Board or Hearing Officer. The hearing was adjourned for several hours so that the Parent exhibits could be re-labeled. After several hours, Parent appeared to be frustrated and stated that she would withdraw the Hearing Request and re-file it on another day. I advised the Parent that since the hearing had already commenced, a withdrawal of the Hearing Request would prejudice the Parent's ability to bring the same issues later. I asked the Parent to reconsider. The Board's attorney offered to provide the Parent with the extra copy of the Board's version of the Parent exhibits, which correlated with the Hearing Officer's Parent exhibits. I encouraged the Parent to use this copy and re-label her exhibits after the hearing adjourned. Thereafter, the testimony recommenced with Parent as witness. The Parent witness (Occupational Therapist) did not return to the hearing for cross-examination by

the Board. The Board moved to strike the Occupational Therapist's testimony and the Parent had no objection and withdrew the testimony from the record.

The hearing was convened on two other days, February 20 and March 17, 2014. The Board presented five witnesses. They were the Assistant Director of Special Services; the school psychologist who was also the case manager; and Student's fifth, sixth and seventh grade special education teachers. On January 9, 2014, the mailing date of the Final Decision was extended from January 22 to February 21, 2014 to add hearing dates. On February 19, the mailing date of the Final Decision was extended to March 21, 2014 to add a hearing date. On March 17, 2014, the mailing date of the Final Decision was extended to April 18, 2014 in order to allow the parties to submit briefs and proposed findings of fact by April 1, 2014. Both parties submitted findings of fact and conclusions of law. However, while the Parent's fact section cites a number of exhibits, some references do not correlate to or have information that supports the Parent's proposed finding. In consideration to the fact that Parent is self-represented, in writing this Final Decision and Order, I have carefully reviewed all Parent and Board exhibits to determine if any would support the factual position of the Parent.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law which reference certain exhibits and witness testimony and 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. *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).

SUMMARY:

The self-represented Parent brought this Hearing Request because she believes that the Board failed to provide appropriate programs in the 2011-2012 (5th grade), 2012-2013 (6th grade) and 2013-2014 (7th grade) school years. Parent believes that the Student did not make meaningful progress because the Student did not master his IEP goals. Parent believes that Student is in the seventh grade but reading at a second grade level. Parent believes that the Board did not follow the recommendations of Dr. David Suscovich's independent educational evaluation. Parent believes that the Board refused and did not provide occupational therapy services as recommended by Dr. David Suscovich. Parent believes that Student should have been placed in a small group classroom setting instead of being in a regular classroom. Parent believes that Student should be placed in a private placement. Board believes that it provided a free and appropriate education ("FAPE") to Student in the relevant school years. Board believes that it followed Dr. Suscovich's recommendations even though it was not obligated to do so in order to provide student with FAPE.

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 facts:

1. The Student is currently twelve (12) years of age and attends the seventh (7th) grade at City Hill Middle School. [Testimony, Parent] The Student is currently identified as being eligible for and receiving special education services under the category of Specific Learning Disability. [Exhibit B85]
2. The Student moved from New York City to Naugatuck in 2007 after his kindergarten year. Student has been receiving special education services in the School District continuously since first grade. He attended Salem Elementary School for the first to fourth grade. He attended the Hillside Intermediate School in the fifth and sixth grades. [Testimony, Parent].
3. Parent initially referred the Student for evaluation. Parent was concerned that the Student was reading at below grade level and provided the school with privately obtained evaluations from the Kennedy Center and Mount Saint Ursula Speech Center in New York City. The school conducted comprehensive evaluations that revealed the presence of learning disabilities, speech and language impairment and problems with attention. The Planning and Placement Team ("PPT") determined that Student was eligible under the category of Learning Disabilities. [B7 to B15]. The Student's Individualized Education Program ("IEP") provided for three hours weekly of individual/small group instruction for Student in the areas of reading, writing, math in the resource room and academic support in the regular education classroom. Student also received individual instruction by a speech and language pathologist. Program accommodations and modifications included, among other things, extra time on tests/projects, oral testing, orally read tests/directions, reduced reading, modified grades based on IEP, preferential seating and a number of instructional strategies. The IEP also provided Student with special transportation services. [B15]
4. Student continuously received special education services from 2007-2008 to 2010-2011 school years. In 2008, while Student was in the second grade, Student's IEP increased speech and language therapy and resource room services to four hours weekly. [B22] Student received progress reports with modified grades. Later, in the second grade year, the PPT revised the Student's IEP to add academic instruction in extended school year services. In Student's third grade year, the PPT obtained a psychiatric consultation by Dr. Ryan Loss to address Student lack of motivation and problems with attention. Student was being negative toward schoolwork and had difficulty managing his emotions. Student fought with Parent over homework completion and extra work Parent was giving Student to do at home. Although the

Parent had good intentions, the Parent's plan had backfired. Dr. Loss recommended implementing a consistent school and home based reward system and for Parent to use academic modifications at home, and counseling. [B29] The Parent has ignored Dr. Ross's recommendation and continues to have Student tutored after school for two hours on a daily basis with unmodified worksheets from bookstores. [Testimony, Parent]. The PPT also added speech and language service time to the extended school year program and provided for accommodations for testing on the Connecticut Mastery Tests ("CMT"). The CMTs are a statewide assessment based upon grade level academic content. In the third grade, Student scored at Below Basic in reading (144), math (163) and writing (151). [B31] Progress reports generally revealed limited progress to satisfactory progress on Student IEP objectives. [B34]

5. In Student's fourth grade year (December 2010), Parent shared a privately obtained evaluation of Student by the Kennedy Center with school staff. The evaluation recommended additional supports and modifications, many of which were already in Student's IEP. Apparently, the Kennedy Center evaluator had not reviewed the Student's IEP and Parent had inaccurately reported to the Kennedy Center that Student was in a "general education setting 4th grade classroom setting where he intermittently receive[d] the support of a special education instructor in the class." [B35] In fact, at the time, Student was already receiving three hours weekly of individual or small group instruction in the resource room in addition to the one hour of academic support in the regular classroom. [B30]
6. In response to receiving the Kennedy Center evaluation, the school conducted additional testing to determine the Student's level of functioning. [B-36-42] The Parent was invited to but did not provide information to the school psychologist in the evaluation. [B44, Testimony, Parent] The PPT convened on December 21, 2010 to conduct an annual review and to review testing. The Parent again expressed concern about inadequate support in the classroom. The Parent also discussed social issues for which social work services were offered but declined by the Parent. Academic supports in the classroom were increased to ten hours per week in addition to three hours of instruction in the resource room.
7. The PPT also provided for Student to take the CMT Modified Assessment System ("CMT MAS") for math and reading. The CMT is a statewide measure of student performance based upon grade level content. Special education students whose IEP goals reflect instruction based on grade-level academic content and standards, but whose disabilities preclude them from making enough progress to achieve grade-level proficiency are eligible to take the CMT MAS. [B42] Student took the CMT MAS for reading and math and CMT writing in March of 2011. Scores for CMT MAS were not included in the Board's exhibits. Student scored 144 (below basic) in CMT writing. [B46]

The School Years at Issue in this Due Process Hearing

8. On March 25, 2011, the Parent and Board participated in mediation and reached an agreement that became part of Student's educational record. The parties agreed that the Board's in-district reading expert would conduct a reading evaluation. The evaluation would include a review of the educational record, Parent's outside evaluations, observation of Student in the resource room during reading instruction

and in the regular education classroom, interview the Parent and conduct needed further testing as the expert deemed necessary. The evaluation would result in a report that would, among other things, include instructional recommendations as well as recommendations for reading activities at home. [B50] The reading evaluation was conducted and completed and the recommendations were incorporated into Student's individualized reading instruction program for the Student's 2011-2012 (5th grade) school year. [Testimony G. Guerra]

9. Parent believes that Student did not receive an appropriate program because the fifth grade teacher was not experienced and told her she "did not know what else to do" to teach Student. [Testimony, Parent; Parent proposed findings]. The fifth grade special education teacher had previous experience working as a special education teacher of middle school students, like the Student, in a residential placement and at a large city school district setting. She is a graduate of Boston University, a reputable national university with a nationally ranked School of Education. At the time that she met Student, she had already had five years of work experience as a special education teacher to middle school students with special needs. She first met Student when she taught individualized reading and math to Student in the third grade as a substitute special education teacher in the resource room. During the fifth grade year, Student received five hours of individualized math and five hours of individualized reading from the teacher on a weekly basis. The teacher incorporated the recommendations outlined in the in-district reading evaluation and made modifications as contained in the Student's IEP, including oral testing, rephrasing questions and extended time on tests. [Testimony, G. Guerra].
10. It is likely that the Parent misunderstood what the teacher was trying to convey. The teacher credibly testified that she discussed the Student's lack of motivation with Parent. Student was often tired and put his head down on the desk instead of attending to tasks. Student had also told the teacher that he stayed up at night to help care for his sister and was tired. The teacher had tried a number of techniques to motivate Student that had not worked but she was trying new techniques. It is understandable that Teacher would have expressed frustration over the Student's lack of motivation to Parent because Parent might be able to provide insight or assist with Student in some way. In fact, according to Student's report card, Student was frequently late to or absent from school with 30 tardies and 15 absences. [B58] Measured against the total number school days, Student was either absent or late approximately 25% of the time. The frequent absences and tardies and lack of motivation would have negatively impacted Student's ability to progress.
11. Parent inferred that the teacher's expression of frustration meant that the teacher did not know how to teach Student. This was not the case and the educational record does not reflect this evidence. For instance, data from state and district assessments documented steady progress in reading, writing and math. Student's Connecticut Degree of Reading Power ("DRP") scores improved from 23 to 32 from fall 2011 to spring 2012. Capital Region Education Council ("CREC") reading assessments are a statewide standard measure of progress in reading. CREC assessment of reading comprehension, likewise, improved from fall (6) to winter (8) to spring (14) [Testimony, G. Guerra, B99]. Student received grades of A, B, C and D with IEP accommodations. The fact that Student's grading was not modified, as it had been in

previous years, is evidence of the Student's progress. [B58]. Fifth grade CMT results (March 2012) in writing was at below basic (181) but an improvement over the fourth grade CMT (March 2011) writing results (144). Furthermore, effects of the teacher's individual instruction and Student IEP were lasting. By mid-sixth grade year (March 2013), Student produced a writing score of 209 (basic), which was an improvement over the fourth grade (below basic) score. Student also scored as proficient reader on the CMT MAS [B75]. Student made meaningful progress in the fifth grade and did obtain educational benefit from the 2011-2012 program. [B55, B46].

12. On March 28, 2012, the school sent notice of a PPT meeting scheduled on June 11, 2012 to conduct an annual review of the Student's IEP. The Parent cancelled the meeting and filed a Due Process Hearing Request with the Department of Education. [B56]. The school offered Resolution and parties entered into a Resolution Meeting Agreement whereby the Board agreed to assume the financial responsibility of an independent educational evaluation to be reviewed at a subsequent PPT and Parent agreed to withdraw the Hearing Request. [B-64] The parties agreed that David Suscovich, PsyD., LMFT of Behavioral Health Center would conduct the independent evaluation.
13. Dr. Suscovich completed a thorough evaluation and provided a detailed report dated September 5, 2012, which became part of the educational record as Student's triennial evaluation. In conducting the evaluation, Dr. Suscovich reviewed the educational record, including the Student's previous IEPs and evaluations. The Suscovich report diagnosed Student with learning disorders in reading (Dyslexia); written expression (Dysgraphia); math; learning disorder NOS; functional reading vision problems; anxiety and depression secondary to learning and social struggles; grapho-motor problems; low self-confidence; risk of oppositional defiant disorder and R/O Central Auditory Processing Disorder (CAPD). The report recommended further assessment for CAPD; Grapho-Motor and Functional Vision as well as possible Sensory Integration problems. The Academic interventions include certain teaching techniques, frequent breaks, positive behavior reinforcements, cuing the student to stay on task and "chunking", also known as grouping, information into few bits to improve Student's ability to remember [B67]. Dr. Suscovich suggested a private placement if the School could not integrate the academic interventions into the Student's IEP. Some of Dr. Suscovich's recommendations were already being provided in Student's IEP in areas of individualized instruction and accommodations [B54, p.19]. The new and useful information the school staff gleaned from the Suscovich report was the existence of possible vision problems. As a result of this finding, the PPT addressed vision tracking problems through modifications. [Testimony, L. Klimaszewski]
14. The Suscovich report recommended an assessment by an occupational therapist for grapho-motor concerns. Grapho-motor problems were already addressed in the IEP. [Testimony, L. Klimaszewski]. Instructional strategies recommended by Dr. Suscovich were incorporated into Student's new IEP. [B61]
15. Parent testified that she first became "aware" of the Student's "problems" as a result of the Suscovich report. Parent spoke to Dr. Suscovich by phone. He recommended that parent consult a medical doctor regarding medication for Student's ADHD; receive training to understand the Student's disabilities and an assessment by a Behavioral Optometrist for vision tracking and organizational problems. The Parent consulted a

- Behavior Optometrist who prescribed glasses for the Student and modifications for testing in large font and bubbling answers. The PPT added these modifications to the Student's IEP. [B72-73; Testimony, L. Klimaszewski]. Dr. Suscovich also recommended an occupational therapy consultation. [Testimony Parent].
16. Parent testified that in a December 2012 PPT, the school denied her request for occupational therapy services and that Dr. Suscovich's recommendations were not incorporated into the IEP. At the end of the hearing, Parent attempted to enter into evidence a tape recording, which purported to show that school staff refused to provide occupational therapy services. [Testimony, Parent]. Dr. Suscovich's recommendations for assessment had to do with dexterity and pen holding (grapho-motor) and possible sensory integration issues. The school staff had already incorporated modifications into IEPs to address grapho-motor issues. [B67; Testimony, L. Klimaszewski]
 17. At the December 2013 PPT, the school staff provided a list to show Parent what was being done to incorporate Dr. Suscovich's recommendations, including the grapho-motor concerns, into the Student's program. [B100; Testimony, L. Klimaszewski] The Assistant Director of Special Services described the PPT as a "difficult" meeting with Parent "mistrust" and "misunderstanding". The Parent wanted a guarantee that the Student would master goals by a certain date, which the school staff could not provide. The Parent would not accept the school's explanations that the program was nevertheless appropriate and that Student was making progress. [Testimony, Klimaszewski]
 18. Parent's lack of training in special education methodologies and learning disabilities contributed to her frustration. She testified that Student had not made any progress because Student had not "shown me the work" that he had progressed. She thought that school staff did not know that the Student had "dyslexia". She first learned the term through the Suscovich report and assumed that the school staff did not know this condition existed until the Suscovich report. "Dyslexia", a term that describes a reading disability, had never been used in previous evaluations. Notwithstanding the lack of use of the term "dyslexia", Student's IEP had been addressing weaknesses due to this reading disability since Student's first grade IEP.
 19. Parent also did not understand that the purpose of some educational evaluations was diagnostic of learning disabilities and not assessments of academic performance in the classroom. Parent relied on basic ideas such as grade equivalencies in diagnostic tests that are easier to understand than the standard or percentile scores that provide meaning to special education professionals. [Testimony, Parent; Testimony, K. Maher] During the hearing, Parent misinterpreted AIMS web progress monitoring data to support her position of regression when the data actually showed that the Student was keeping up with his non-disabled peers. [B80, B98, Testimony, Parent; Testimony, L. Grazuna] Parent confused diagnostic testing of functioning with measuring grade level academic performance. Parent also confused the purpose of IEP progress monitoring as evaluations of academic performance. [Testimony, Maher; Testimony, Parent; Parent proposed facts 11] Parent claims that the school did not make changes over the years of special education to Student's IEP and Student has never mastered any goals. There is plentiful evidence that the PPTs made changes in goals and objectives each year and that special education services were added to Student's IEPs

- when appropriate. Either Parent has not reviewed each IEP in detail or does not understand how to read IEPs. Student's IEP was not a static document. The IEPs in the school years at issue presented a snapshot picture of the Student's strengths and weaknesses at that time and reflected the services that were being employed to address those weaknesses. The Student's IEPs were individualized to Student's unique needs. That Student did not master goals did not mean that he did not make progress. The sixth grade special education teacher credibly testified that she did not mark the Student as mastering certain objectives when she could have because she wanted Student to keep practicing the skill so that it would not be lost. [Testimony, Grazuna] The fact that a special education teacher chooses not to mark the student as having mastered an objective because the teacher wants to be allowed to continue practicing a skill with Student is a sign of a thoughtful and skillful, not an incompetent, teacher.
20. Parent also mistakenly believes that CMTs operate on a pass/fail system and that Student has not yet "passed" the CMTs. [Parent's "Closing Argument", April 1, 2014]. [Testimony, Parent] Parent does not understand that people with severe learning disabilities may nevertheless access grade level or higher-level content with accommodations and modifications. [Testimony, Parent] These complex ideas and the purpose of various testing instruments could have been explained with the help of school staff but the Parent refused to accept staff explanations because she lacked trust in the staff. Parent's mistrust fueled a breakdown in communication at the December 2012 PPT and thereafter, leading Parent to make unfounded accusations against school staff. For instance, Parent testified that the Student's good school grades and CMT results had been falsified. [Testimony, Parent] There is no evidence of falsification by school staff or by state officials grading the CMTs.
 21. The Student's 2012-2013 educational record reveals a steady climb in Student academic performance that could be attributed in the Student's IEP. After the Suscovich report, the PPT added social services to address issues of anxiety. [B69] In December 2012, the PPT added a reading fluency objective and added back hours for individual instruction with math previously taken away at Parent's request to put Student in regular math. [B73, Testimony, G. Guerra] The Student's sixth grade report card reveals significant growth in all academic areas. Whereas, Student's report card grades were B, C, and D, the end of the fifth grade year, the sixth grade report card shows growth in all areas. The sixth grade report card shows that Student is an active participant in the class discussion and shows consistent effort. These results show that Student experienced academic growth and was more motivated to succeed than in previous years. [B84]. CREC reading assessments show that Student had improved his reading level from below basic in the fall to proficient in the winter and spring of the sixth grade year. [B90, B99] Furthermore, CMT scores in March of sixth grade are consistent with other assessments. Student's CMT writing score on this statewide standard assessment was 209, the highest end of the basic, just two points below the proficient statewide level of writing. The Student scored at this range against all students, including non-disabled sixth grade students, statewide. This is a clear indication of academic progress. Student also scored at the high end of proficient on the CMT MAS, at a very close level to the statewide goal for reading. [B75] Even though, Student scored 190, in the basic range and clearly needs continued special education instruction in math, Student sub-scores on the CMT MAS showed mastery

of some sixth grade content areas such as place value, basic facts, algebraic patterns and tables, graphs and charts. Student has made meaningful progress and received educational benefit from the 2012-2013 program.

22. The PPT met on June 20, 2013 to plan Student's seventh grade (2013-2014) IEP. The Student's special education teacher reviewed progress and reported that Student's reading had improved such that Student could participate in two periods of Language Arts with support of the special education teacher or paraprofessional; and that he would continue to receive individualized math for remediation and instruction of basic math skills. In the seventh grade year, Student receives 3.7 hours weekly of individualized math instruction and 1.5 hours weekly of pull out academic support. In addition, he receives 7.5 hours weekly of classroom support by the special education teacher or paraprofessional. Student also receives .5 hours of counseling and one period (42) minutes of speech and language support weekly. In total Student receives 12.75 hours of special education services in a 32.5 hours school week. Student spends almost 40% of school time with special educational instructional staff. Of the special education hours, 5.25 hours are spent away from the regular education classroom for direct instruction or support in an individualized or small group setting with a special education teacher or paraprofessional. Student spends 42 minutes a week away from the regular classroom for speech and language support. Student participates in Science, History, specials (e.g. Physical Education and Art), enrichment and lunch with non-disabled students. The IEP has been revised to add goals and objectives. [B85-86, B94]
23. Student's seventh grade special education teacher provided detailed testimony about Student's active leadership participation in the regular classes as well as friendships with his peers. The seventh grade special education teacher also reports that she has observed Student as interested and engaged and enthusiastic about school activities. For instance, Student participated in extracurricular activities with the ski club and football. Student has taken leadership positions on projects with peers. In contrast to the previously negative, anxious and moody fifth grade Student, Student likes and believes that he is doing well at school. Even the Parent confirms this observation. [Testimony, Parent; Testimony, D. Williams] Despite severe learning disabilities, Student is attempting to access grade level books as independent reading. The fact that Student would have chosen to read and asked Parent to purchase for reading *The Hunger Games*, a popular middle school level book is a clear indication that Student is confidently trying to access grade level material at home. [Testimony, L. Grazuna; Testimony, D. Williams] Student's increased enthusiasm and motivation, leadership in class activities and participation in nonacademic areas such as sports as well as positive school relationships are all indications of an appropriate individualized educational program in the least restrictive environment. Therefore, I find that Student is being provided with an appropriate program for the 2013-2014 school year.
24. Lastly, Parent's claim that Student is reading at a second grade level must be addressed. In the summer of 2013, Parent brought Student again to the Kennedy Center for private testing. Parent relies on the results of this evaluation to show that Student had not progressed and is reading on a second grade level. By Summer 2013, Student had had numerous evaluations beyond normal triennial reviews. Parent's anxiety and frustration over Student's academic progress was the driving force behind

these many evaluations. Each time the Parent produced a private report, the school would conduct further assessments. [B4-6, B8, B12, B14, B35, B40-41, B44-45, B50, B67, B92] Undoubtedly, this frequency of evaluations negatively impacted Student's mood and attitude toward evaluations. It is easy to see how these assessments would be laborious and depressing from a young student's perspective. This would be especially true when a child had to miss an extended school year program summer party in order to engage in testing and problem solving in a room with an unfamiliar evaluator. [Testimony, L. Grazuna]

25. Parent believes this evaluation is proof of the inappropriateness of the Student's programs because it shows that Student has made no progress. [Testimony, Parent] After reviewing the evaluation in light of entire educational record, I must disagree with this view. The school's psychologist credibly testified that this variability in Student performance could be attributed to attentional weaknesses. [B67, Testimony, K. Maher] In reviewing all evaluations, there is a lot of evidence that the Student's poor motivation and mood directly impacted Student's scores. [B4, B35, B92] Student generally did poorly when tested by the Kennedy Center when Student was unhappy. Kennedy Center examiners have noted that Student was unenthusiastic and unmotivated. Kennedy Center evaluators described that the Student when engaging in testing "became teary eyed" [B35] or "gave what appeared to be purposefully incorrect answers" [B4] or "did not appear to take pleasure in testing ...and frequently yawned." [B-92]
26. Superficially, the 2013 Kennedy Center report would seem to suggest that the Student made no progress or had regressed. However, this hypothesis is proven untrue after a careful review of the evaluation. For instance, the below average sub-scores in reading accuracy and comprehension contradict the above average sub-scores in reading fluency. This suggests that the Student rushed through the reading passage and was not paying attention. In fact, the idea that the Student would regress to a "2nd grade reading level", as the Parent claims, is at variance with Student's score as a proficient reader in the 6th grade CMT MAS reading assessment. The math results (2nd and 8th percentile), likewise, would even suggest that Student had regressed to an early elementary basic level. However, this contradicts results from 6th grade CMTs where Student had already mastered expected 6th grade basic math facts. [B75] This particular variance is a good example of how Student's lack of motivation played a role in this evaluation because the examiner also reported that Student had asked, "How many more math pages do I have to do?" [B92] A picture emerges of a child who did not want to be there to be tested on that day and who wanted to get the test over with. I, therefore, cannot find this evaluation to be reliable. Finally, no single evaluation by itself can determine academic progress, especially when the purpose of the evaluation is diagnostic of functioning and conducted by psychologists. I give weight to teacher observations, progress reports, report cards and statewide DRP and CMT scores, altogether, which can form a reliable picture of Student's progress, which has been steady and substantial given the complexity and severity of his disabilities.

CONCLUSIONS OF LAW AND DISCUSSION:

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq.
2. 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 (Regulation of Connecticut State Agencies [R.C.S.A.] Sec 10-76h-14). The Board has met its burden in this case.
3. 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 Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207.
4. As to the first inquiry, there is no claim for and nothing in the record supports any claim for a violation of the Parents' procedural rights.
5. 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.
6. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* The standard is whether the Student can derive meaningful educational benefit from the proposed program, not everything that might be thought desirable by loving parents. *Tucker v Bay Shore Union Free School District*, 873 F 2d 563, 567 (2d Cir 1989). The Board provided programs that were likely to produce progress. (See Findings of Fact No. 8, 11, 13, 14, 21, 22)
7. 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). As required by the IDEA, the Board reviewed Student's needs at various PPTs on an individualized basis at appropriate intervals. (See Findings of Fact No. 8, 21, 22)
8. The mandate in the IDEA that the IEP team "considers" the concerns of the Parents does not require that it adopt whatever changes Parents request. 34 C.F.R. §300.346(a)(i). The Board has complied with this requirement by considering the Parent concerns at each PPT. The Board had no obligation to fulfill Parent's desire for occupational therapy services when it had already addressed grapho-motor issues raised by Dr. Suscovich's report. The Board investigated and adopted changes

- requested by Parent even when the Board had no obligation to do so. (See Findings of Fact No. 13, 14, 17)
9. When measuring progress, the *Rowley* Court determined that such objective factors as "[t]he grading and advancement system" are important measures of acceptable progress. *Id.* at 203. Further, "[w]hen the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit." *Id.* at 207 n.28. Parent cites *M.S. v. Board of Education of Yonkers*, 231 F.3d 96 (2nd Cir.2000) for the legal proposition that a program can be inappropriate even when the student has passing grades. The *MS* case does not apply in this case. In the *MS* case, the Second Circuit Court of Appeals upheld a state review officer finding that the Board program was inappropriate when the student had passing grades. In that case, the Board admitted that it had no baseline measures of student performance to measure progress and the student's IEP was incomplete. The Court concluded that this lack of baseline data deprived the fact finder from determining subsequent progress. *Id.* In contrast, here, Student's IEPs properly documented baseline data and the Board has documented progress reports showing that Student had satisfactorily progressed in some skills and was working on new skills the next year. The documented progress supports the conclusion that Student has obtained meaningful benefit from the 2011-2012; 2012-2013 and 2013-2014 programs and is making meaningful and steady progress. (See Findings of Fact 11, 21, 22, 23)
 10. In *Mrs. B. v. Milford*, 103 F.3d.114 (1997), the Second Circuit Court of Appeals in interpreting *Rowley* noted that "[a] child's academic progress must be viewed in light of the limitations imposed by the child's disability." Student's learning disabilities are complex, interrelated and severe. Attentional difficulties also interfere with his ability to learn. Given these severe and interrelated disabilities, progress has been slow but steady. Student's steadily improving academic performance shows that the Board's programs were appropriate. (Findings of Fact No. 11, 13, 21)
 11. In addition to the free appropriate public education requirement, IDEA'S preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra*. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classroom. (*Oberti v Board of Education*, 995 F 2d 1204 (3d Cir 1993)). School districts must evaluate whether a child with a disability can be educated in a regular classroom if provided with supplementary aids and services. (*Oberti*, 995 F 2d at 1216, *Mavis v Sobol*, 839 F Supp. 968, 985-986). The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti*, 995 F 2d at 1217. The Board has provided Student a free and appropriate education in the least restrictive environment in the 2011-2012; 2012-2013 and 2013-2014 school years. (See Finding of Fact No. 11, 21, 22, 23)

FINAL DECISION AND ORDER:

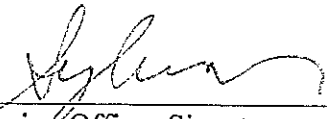
1. The IEPs of the 2011-2012, 2012-2013 and 2013-2014 school years were appropriate and the Board provided Student with a free and appropriate education in the least restrictive environment in these school years.
2. The Student derived meaningful benefit from the above IEPs and made academic progress.
3. Even though the Board was not legally obligated to do so, the Board considered and adopted Dr. Suscovich's recommendations, as they were appropriate to the Student's program.
4. Since the Board provided Student with FAPE for the 2011-2012, 2012-2013 and 2013-2014 school years, it is not necessary to consider the issues 5 and 6 above, involving the appropriateness and financial support of out of district private placement.

COMMENTS ON THE CONDUCT OF THE HEARING, PURSUANT TO R.C.S.A. §10-76h-16(b)

1. Even though the Parent had difficulty with the exhibits, the Parent ably represented her position at the hearing and skillfully conducted cross-examination of Board witnesses.
2. The Board's attorney was professional, respectful, and considerate of the self represented Parent.

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