

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student¹ v. Southington Board of Education

Appearing on behalf of Student:

Student's Parents, *Pro Se*

Appearing on behalf of the Board of Education:

Attorney Craig Meuser
Chinni & Meuser LLC
One Darling Drive
Avon, CT 06001

Appearing before:

Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

Student's Parents ("Parents") filed a Request for Impartial Special Education Hearing on May 9, 2016² (HO-1).³ The Request for Hearing was received by the Board of Education ("BOE") on May 10. The 30-day resolution period ended June 9 and the original deadline to mail the final decision and order was July 23.

On May 12, BOE filed a timely Motion to Dismiss arguing that certain of the eighteen allegations in the Request for Hearing should be dismissed for lack of standing, lack of ripeness for review, lack of subject matter jurisdiction, and/or falling outside the two year statute of limitations. On May 19, Parents filed a timely objection to the Motion to Dismiss. The Motion to Dismiss was granted in part and denied in part.

On May 25, BOE timely filed a Sufficiency Challenge alleging that portions of the Request for Hearing fail to include "a description of the nature of the problem...including facts relating to such problem." The Request for Hearing was deemed sufficient under 20 U.S.C. § 1415; 34 CFR § 300.508; Connecticut State Regulations § 10-76h-3.

A telephonic pre-hearing conference was held on June 13. Parents appeared on behalf of Student and Attorney Meuser appeared on behalf of BOE. The following issues were identified:

1. Did the Board of Education provide Student with a free appropriate public education for the 2013-14 school year from the period May 10, 2014 to the end of the school year?
2. Did the Board of Education provide Student with a free appropriate public education for the 2014-15 school year?

¹ In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally-identifiable information.

² All dates are 2016 unless otherwise indicated.

³ Hearing Officer Exhibits are cited as "HO-#"; Student's Exhibits as "P-#"; and BOE's Exhibits as "B-#."

3. Did the Board of Education provide Student with a free appropriate public education for the 2015-16 school year?
4. Did the Board of Education offer Student a free appropriate public education for the 2016-17 school year?
5. If the Board of Education did not provide Student with a free appropriate public education, is Student's unilateral private placement appropriate?
6. If the answer to Issue #5 is in the affirmative, are Student's Parents entitled to reimbursement for the cost of the unilateral private placement?
7. If the answer to Issues #1, #2, #3, and/or #4 are in the negative, what shall be the remedy?

The parties were told that they would each be given two days to present their case, for a total of four hearing dates.

The parties were scheduled for a resolution session on June 20. Hearing was scheduled for July 7. On June 27, Parents requested a continuance of the hearing until July 14, 15, or 18 to give them more time to prepare. BOE objected to a postponement of the hearing date. The request was granted and the July 7 hearing date was rescheduled for July 18.

On June 29, Parents requested an extension until Saturday, August 6 of the deadline to mail the final decision and order because they needed additional time to gather records, submit witness lists and exhibits, and prepare for the hearing. The request was granted and the deadline to mail the final decision and order was extended until Friday, August 5. The parties were reminded that they would each be granted two days to present their case.

Additional hearings were scheduled for July 26 and 27. In a memorandum to the parties and in each notice of hearing, the parties were reminded to comply with the evidentiary orders regarding submission of witness lists and exhibits.

At the July 18 hearing, Parents requested a third hearing date to put on their evidence. The request for an additional hearing date was denied. Hearings were held on July 26 and 27. At the July 27 hearing, on the record, BOE's Attorney requested a 30-day extension of the timeline in order to accommodate a fourth hearing date to allow two days for each party.

Parents objected to the request for an extension because they wanted a decision issued prior to the start of the school year and they were not available August 9-16. After fully considering the position of all parties, the request for an extension until September 2 was granted on the record and the last day of hearing was scheduled for August 17.

Findings of Relevant Fact⁴

1. Student is very bright and identified by BOE as gifted and talented (P-26, B-1, B-5; Testimony of Father; Special Education Coordinator 1, Special Education Coordinator 2,⁵ School Psychologist). His IQ is in the 98th percentile (Very Superior range compared to same aged peers) (B-1).
2. Student consistently scores very highly on assessments in many areas and his scores show improvement from year to year. His lowest scores are in the areas of processing speed and

⁴ In the Discussion, Findings of Fact are cited as "FOF-#."

⁵ Special Education Coordinator 1 was the Special Education Coordinator until June 30, 2015. Special Education Coordinator 2 replaced Special Education Coordinator 1 effective July 1, 2015. Special Education Coordinator 2 was present in the hearing room as BOE's representative on July 18. She testified on August 17. Her testimony is weighed accordingly.

executive functioning (P-26, P-31, B-1, B-3, B-10, B-11, B-17). These weaknesses impact his performance in the classroom (B-1, B-2, B-3).

3. Student was found eligible for special education services under the primary disability of Specific Learning Disability (“SLD”) on December 20, 2012 during fifth grade (P-7, B-4). An Individualized Education Program (“IEP”) was developed to provide Student with special education services and accommodations. Parents participated in the Planning and Placement Team (“PPT”) meeting to develop the IEP (B-4).⁶
4. On April 2, 2013, the PPT met to review and revise Student’s IEP (B-6). Student’s IEP was revised to include services to support Student in transition to middle school the following year. The PPT recommended counseling and completion of behavior rating scales; Parents declined these services (B-6; Testimony of Special Education Coordinator 2, Special Education Coordinator 1, Mother).
5. On April 30, 2013, Student was referred for an Occupational Therapy (“OT”) screening (B-8). The OT screener indicated that Student was not meeting grade level expectations for writing and recommended adaptive paper for classroom writing assignments. Notebooks with lower case line and spacer paper were provided. A school-based OT evaluation was also recommended.
6. At an April 30, 2013 PPT, Parents consented to an OT evaluation, which was conducted in May 2013 (B-9, B-10).
7. The OT evaluation report indicates that Student does not qualify for direct OT services and made recommendations to encourage further development of handwriting, keyboarding and word processing skills (B-10).
8. In May 2013, Student underwent an independent psychological evaluation to determine if he was struggling with executive functioning deficits, whether he required additional accommodations to address areas of academic deficit, and to determine his cognitive levels of functioning (B-11). The evaluator’s report was quite lengthy and “not reader-friendly.” (Testimony of Special Education Coordinator 1). Special Education Coordinator 1 thought there was a lot of important information in the report and that it was important for the PPT to understand. To be efficient in referring to the salient points regarding Student’s needs, Special Education Coordinator 1 prepared a summary of the report (B-12). The evaluator’s recommendations were reviewed by the PPT and incorporated into Student’s June 14, 2013 IEP (B-13, B-16, B-18).
9. Student was provided with five weeks (20 hours) of handwriting supports during summer 2013 (Testimony of Special Education Coordinator 1).
10. In July 2013, Student was referred to an Optometrist who recommended Section 504 services, including more time on tests, leniency about handwriting, give him notes if he has trouble copying in enough time, and limit the amount of text on a page (B-15).⁷
11. Optometrist’s recommendations were reviewed by the PPT and incorporated into Student’s August 22, 2013 IEP (B-16; Testimony of Special Education Coordinator 1, School Psychologist). The IEP was amended to remove counseling services with the social worker per Parents’ request; one vision therapy⁸ exercise to be conducted during the school day;

⁶ Parents attended and participated in all PPT meetings cited herein unless expressly indicated otherwise.

⁷ BOE did not receive any subsequent updates or changes in recommendations from Optometrist (Testimony of Special Education Coordinator 1, Special Education Coordinator 2).

⁸ BOE believes that vision therapy is a medical service; no doctor has recommended vision therapy as an educational service (Testimony of Director of Pupil Services, Special Education Coordinator 1, Special Education

daily manuscript handwriting practice per the OT's recommendation; dropping social studies to provide one daily special education support study class;⁹ provision of a computer for note-taking, organizing homework, and producing written assignments when appropriate; and continuation of recommendations from the June 14, 2013 IEP, which include 14.83 hours of weekly special education services; math and handwriting goals and objectives; OT, general education, and special education teachers consult 30 minutes per month; second set of books for classes that use text books; Parent meeting every six weeks; syllabi and rubrics provided to Student and Parents in advance; extended time for tests, assignments, projects, and written work; and email homework assignments to Parents (B-16).

12. The purpose of rubrics is to provide Student with a visual check in the process of completing assignments, to be able to see required components and what content he should address, and to give him a chance to self-check and be sure he is following what is expected (Testimony of Special Education Coordinator 1).
13. At a November 7, 2013 meeting, the PPT recommended discontinuing direct instruction in handwriting skills due to Student's demonstration of improved legibility and spacing and focus on continued use of technology to access curriculum (B-18). The PPT declined Parents' request to remove Student from scheduled classes for vision therapy. The resulting IEP included accommodations recommended by a Consultant from the Board of Education and Services for the Blind ("BESB") (P-2; Testimony of Special Education Coordinator 1, Director of Pupil Services¹⁰).
14. At the January 30, 2014 PPT meeting, which was Student's annual review, Parents requested that his primary disability designation be changed from SLD to Visual Impairment (P-55, B-19). The PPT denied the request based on the Federal Register definition of Visual Impairment and based on the BESB Consultant's report and recommendations (B-19). The BESB Consultant told Special Education Coordinator 1 that Student was not Visually Impaired (Testimony of Special Education Coordinator 1).
15. Although Student does not meet the criteria for Visual Impairment, BOE provided services and accommodations to meet his vision needs, including assistive technology and OT services (Testimony of Director of Pupil Services). The PPT took Optometrist's report into consideration when reviewing Student's present levels of performance and in making IEP recommendations (Testimony of Special Education Coordinator 1). With increased font size and related accommodations, Student could perform successfully.¹¹

Coordinator 2). To appease Parents, a previous assistant principal agreed to provide one session of vision therapy per day if they could locate an appropriate setting within the school building. She then determined that there was not an appropriate location due to school renovations. Special Education Coordinator 1 felt that it was not appropriate to offer because it is a medical service and had not been recommended by any doctor as an educational service (Testimony of Special Education Coordinator 1).

⁹ It is BOE's policy to pull a student from Social Studies if they need supports in the resource room (Testimony of Assistant Principal). The PPT felt that Student's knowledge is quite broad and he would not be hampered by not having Social Studies class but would benefit from reading the text. In order to satisfy Student's inquiring mind, the Special Education Teacher uploaded Social Studies text for Student to access with the BOE-provided laptop (Testimony of Special Education Coordinator 1).

¹⁰ Director of Pupil Services has been employed by BOE since October 20, 2014. She was present in the hearing room as BOE's representative on July 26, July 27, and August 17. She testified on July 26. Her testimony is weighed accordingly.

¹¹ Student often selected font size 11 even though the larger size 14 was recommended. BOE set the laptop to default to size 14 (Testimony of Special Education Coordinator 1).

16. At the January 30, 2014 PPT meeting, goals and objectives were recommended to address written expression with emphasis on citing evidence and sources; multiplication and divisions skills required for efficient execution of algebraic equations and fraction/decimal operations; and organization/executive function skills. The PPT recommended removing mastered subtraction objectives (B-19). The January 30, 2014 IEP eliminated Student's 46 minutes of support at Parent's request so that he did not get pulled from Unified Arts since he is a musician. All remaining supports and services remained in Student's IEP without modification (B-19).
17. Student's January 30, 2014 IEP was far-ranging, reaching academics and specialized support services and was implemented in an inclusion setting (Testimony of Special Education Coordinator 1). Student received additional specialized services under the oversite of the Special Education Teacher.
18. The IEP provided Student access to a software program that converts speech to text and vice versa (Testimony of Assistant Principal¹²). The program can be used for writing tasks that might be tedious for students with executive functioning issues. The OT assisted with the implementation of this portion of Student's IEP.
19. The January 30, 2014 PPT meeting lasted for three and one-half hours, which was comparatively lengthy (B-19; Testimony of Special Education Coordinator 1).
20. On April 6, 2014, Parents consented to a math reevaluation of Student (B-20).
21. On April 7, 2014, Student's IEP was amended to include accommodations for the Smarter Balanced Field Test. The accommodations included color contrast, color overlay, magnification, masking and non-embedded calculator for calculator-allowed items (B-21; Testimony of Special Education Coordinator 1).
22. Pursuant to the IEP, BOE provided Student with a laptop for the period May 28 through June 19, 2014 (P-11).
23. On May 16, 2014, Parents and BOE agreed to participate in a facilitated IEP (B-23). BOE members of the PPT felt that Parents were not satisfied no matter what they did and thought that an independent facilitated PPT meeting might improve the relationship and make Parents satisfied (Testimony of Special Education Coordinator 1).¹³
24. On June 3, 2014, Parents submitted a Request for IEP Facilitation. On June 10, 2014, BOE submitted the Request to Attorney Howard Klebanoff to serve as the facilitator.
25. At the conclusion of his sixth grade year (June 2014), Student's grades ranged from B+ to A+ (B-30).
26. The PPT met on September 25, 2014 at the request of Parents (P-59, B-25; Testimony of Special Education Coordinator 1). Parents expressed concern about homework assignments, wanted assurance that Student's planner was enlarged, and wanted to specify how time was split for special education (Testimony of Special Education Coordinator 1).
27. The PPT adopted certain recommendations in response to Parents' concerns, including: teacher will email parents same day that Student is missing a homework assignment; enlarged planner, worksheets, and daily announcements; direct support and instruction in

¹² In February 2014, Assistant Principal joined BOE Middle School staff. In that capacity, she is responsible for supervising special education teachers and paraprofessionals; she attends all PPTs, including those for fifth graders transitioning into sixth grade (Testimony of Assistant Principal).

¹³ There were delays in scheduling the facilitated PPT due to Parents' specific requests about and objections to certain facilitators and by the personal schedule of the agreed-upon facilitator (Testimony of Special Education Coordinator 1).

- organizational strategies; provision of math binder with hole-punched pocket folders and dividers to assist with organizational strategies; academic support in literacy, writing, and math; BOE to provide Student with laptop with programs to support his executive functioning needs; Learning Specialist to upload Social Studies book to laptop; enlarge worksheets to size 14 font or larger; teachers to use dark markers on whiteboard; extension of homework due dates to five days beyond original due date; Week in a Peek¹⁴ email to Parents; accommodations for Smarter Balanced Field Test to meet his vision needs B-25).
28. Because Student is a twice exceptional student, the PPT wanted him to focus on developing his strengths as well as weaknesses. The Math Coordinator directly oversaw Student's Math support and enrichment program (Testimony of Special Education Coordinator 1).
 29. The PPT declined Parents' requests for direct instruction in manuscript and cursive writing, vision therapy, and reimbursement for instrumental music tutoring (P-9, B-25).
 30. Parents requested that Student's primary disability category be changed from SLD to Other Health Impaired ("OHI") based on his vision impairment (P-9; Testimony of Mother). The PPT declined the request because there was no diagnosis indicating that Student had a health issue or medical diagnosis of Visual Impairment (Testimony of Special Education Coordinator 1, Director of Pupil Services).
 31. Pursuant to the IEP, BOE provided Student with a laptop and software for the period November 3, 2014 through June 20, 2015 (P-10). The provided software was requested by Parents, was expensive, and was not in use in the district prior to Parents' request (Testimony of Special Education Coordinator 1).
 32. On December 5, 2014, Student was involved in an incident in his resource room that resulted in disciplinary action. Student was suspended for three days (B-26; Testimony of Mother, Father, Director of Pupil Services). Following this incident, Mother requested that Student be removed from the resource room because she felt that the Case Manager in that room did not have good classroom management (Testimony of Mother). Student was removed at Mother's request. For the following three weeks, during his resource period, Student sat in the teacher leader's office to receive his IEP services and to make up missed work from being suspended for three days. He went from a small group setting to one-on-one for those three sessions. He then worked with a paraprofessional in the school counselor's conference room because Parents did not want him in the resource room (Testimony of Assistant Principal).
 33. The PPT met on January 16, 2015 to conduct Student's annual review (P-22, P-23, P-61, B-27). Parents did not attend due to schedule conflicts and notified BOE that morning; BOE made attempts to reschedule (Testimony of Special Education Coordinator 1, Director of Pupil Services). The PPT conducted a record review and considered teacher reports and assessments, including present levels of achievement and performance. Services, supports, and accommodations from the September 25, 2014 IEP remained in place (B-27).
 34. In preparation for the facilitated PPT meeting, Special Education Coordinator 1 asked Parents for input into the agenda; they did not provide anything in advance (Testimony of Special Education Coordinator 1). Special Education Coordinator 1 prepared an agenda based on what she felt the PPT wanted to achieve. The agenda included introductions, procedural safeguards, facilitator's guidelines, extent of Student's participation in meeting,

¹⁴ Week in a Peek is a weekly syllabus showing what will be conducted in the coming week so that Student can see it ahead of time and Parents can see in advance what Student will be learning. This allows Parents to support Student with his assignments and they can make sure he has what he needs or let school know if something was particularly difficult (Testimony of Special Education Coordinator 1).

- review of performance, review of current accommodations, recommendations, home/school communication, and after school support (B-29).
35. On March 27, 2015, the parties participated in a facilitated PPT meeting conducted by Attorney Klebanoff (P-25, B-23, B-29; Testimony of Father). Parents were represented by an attorney at the facilitated PPT which lasted three hours (Testimony of Father, Special Education Coordinator 1, Director of Pupil Services).
 36. Parents brought a written list of agenda items to the facilitated PPT meeting (B-29). Parents' agenda items were incorporated into the meeting (Testimony of Special Education Coordinator 1).
 37. The facilitator initiated dialogue about items, put notes on a whiteboard, and solicited responses from the parties (Testimony of Special Education Coordinator 1).
 38. The facilitator recommended a private neuropsychological evaluation, to which Parents agreed. The PPT recommended that Student's planner be in an electronic format; that a view of the planner be emailed to Parents daily; supports for literacy, math, language arts, science, world language during the remainder of seventh grade; supports for literacy, math, language arts, science, world language during eighth grade; continue existing accommodations for enlarged materials; five day extended deadline for homework; use of laptop and related software to support executive functioning, reading, and writing needs; Week in a Peek emailed to Parents; and visual support accommodations for the Smarter Balanced Field Test. Student was also provided with specialized transportation (B-29).
 39. At the end of the facilitated PPT meeting, Middle School Principal asked Parents if all of their concerns were addressed and they responded yes (Testimony of Special Education Coordinator 1).
 40. The March 27, 2015 facilitated IEP was designed to support Student through the remainder of seventh grade and to be carried over to eighth grade (B-29; Testimony of Special Education Coordinator 1).
 41. A neuropsychological evaluation was conducted on May 4, 2015 (P-27, B-31). The evaluation confirmed previous assessments indicating that Student is very bright, scores in the superior or higher range on many tests, and has weaknesses in processing speed, working memory capacity, executive functioning, and focused attention.
 42. The neuropsychological evaluation recommended that Student continue to qualify for special education; that current services continue with particular emphasis on executive functioning; extended time for in-class and standardized tests in an environment free from distractions; access to a word processor for extended writing assignments and exams; occupational therapy to strengthen fine motor skills and increase his stamina for note-taking; assistance in getting started on unfamiliar and less structured tasks; guidance in articulating alternative approaches to a task; assistance in building stronger meta-cognitive skills; seated in less distracting area of classroom in proximity to teacher for prompting; chunking tasks; reduce distracting materials on his desk; provide visual and oral instructions; daily planner; and organizational supports (P-27, B-31).
 43. BOE staff did not have direct communication with the author of the evaluation report and did not request specific recommendations be included (Testimony of Special Education Coordinator 2).
 44. At the conclusion of his seventh grade year (June 2015), Student's grades ranged from B- to A+ (B-30). Student's grades, scores, and assessments indicate that he improved from sixth grade to seventh grade and that he is way above his peers. His literacy and math assessment

results were at the highest level. Special Education Coordinator 1 was “blown away” by his outstanding progress (P-26; Testimony of Special Education Coordinator 1).

45. Pursuant to the IEP, BOE provided Student with a laptop for the period July 14 through August 27, 2015 (P-12).
46. The PPT met on August 20, 2015 (B-32). The purpose of the PPT was to review the results of the neuropsychological evaluation and recommendations and to adjust Student’s IEP as necessary (Testimony of Special Education Coordinator 2). The PPT reviewed the evaluation and recommendations, and responded to Parents’ questions. The PPT lasted nearly two hours (Testimony of Special Education Coordinator 2).
47. The PPT changed Student’s primary disability category to OHI-ADD/ADHD based on the recommendation of the neuropsychological evaluation and the agreement of the PPT (B-32; Testimony of Director of Pupil Services, Special Education Coordinator 2). There are some differences but the overall supports needed are similar for the labels of SLD and OHI-ADD/ADHD (Testimony of Special Education Coordinator 2). Student’s difficulty honing in on one thing and struggling with attention to task is consistent with an OHI-ADD label. Parents were given an opportunity to ask questions and did not object to the change in category at the PPT meeting (Testimony of Special Education Coordinator 2). The only concern Parents raised at the PPT meeting was to request vision therapy, which was again denied.
48. The PPT updated Student’s goals and objectives and accommodations and supports based on his present levels of performance and to reflect recommendations from the neuropsychological evaluation. The PPT extended Student’s deadline to complete homework assignments to be seven days after the original due date. The PPT recommended counseling supports, consistent with the neuropsychological evaluation. Parents refused counseling for Student (Testimony of Mother, Special Education Coordinator 2).
49. At the August 20, 2015 PPT meeting, Parents read a prepared statement rejecting the eighth grade IEP and indicating that they intended to unilaterally place Student at a parochial school (P-30, B-32; Testimony of Mother, Father, Special Education Coordinator 2). Student did not attend BOE’s Middle School for eighth grade. Parents unilaterally placed him at a parochial school (Testimony of Mother, Father).
50. BOE participated in development of a service plan for Student while unilaterally placed at the parochial school (Testimony of Special Education Coordinator 2).
51. Student participated in achievement testing as part of his triennial evaluation in May 2016 (B-33). Different assessments were completed so as to not repeat any previously done (Testimony of Special Education Coordinator 2). His scores were consistently in the above average and superior range with the exception of those impacted by a time element. Student’s untimed numerical operations results were 98%. He needs time to correctly compute to be able to solve higher level algorithms (Testimony of Special Education Coordinator 2).
52. BOE conducted a record review, behavior rating scales, and executive functioning rating scales as part of his triennial evaluation in May 2016 (B-34). The Behavior Rating Inventory of Executive Functioning (“BRIEF”) and Behavior Assessment for Children Second Edition (BASC-2) were administered.
53. Results of the BRIEF assessment which was completed by two teachers, Student, and Parents, indicate that Student is in the average range for behavioral regulation and that he may have difficulty sustaining working memory with a negative impact on his ability to remain focused; holding information in active memory for processing, encoding, or mental

- manipulation; planning and organizing information which has a negative impact on his problem solving; and keeping materials organized and readily available (B-34).
54. Results of the BASC-2 assessment, which was completed by two teachers, indicates that Student is in the average range for externalizing and internalizing problems, attention problems, emotional symptoms, functional communication, and personal adjustment; has some difficulty maintaining attention at school; generally displays clear, logical thought patterns; may at times avoid social situations or appear to be alone; has difficulty adapting to changing situations, recovering from difficult situations, and making decisions; may be at-risk in interpersonal relationships (B-34).
55. The PPT met on June 3, 2016 to plan an IEP for Student's ninth grade year (P-62, B-35). The parochial school Regular Education Teacher and Principal attended and shared their observations of Student's performance. The PPT reviewed Student's performance and spring 2016 assessments. The PPT determined that Student is eligible for special education under the primary disability category of OHI-ADD/ADHD. The resulting IEP included academic/cognitive and gross/fine motor skills goals and objectives; accommodations and modifications consistent with evaluation recommendations and Student's present levels of performance (B-35).
56. The June 3, 2016 PPT meeting was long and gave everyone plenty of time to discuss the IEP (Testimony of School Psychologist, Special Education Coordinator 2).
57. Student's annual review occurs in January each year (B-19; Testimony of Director of Pupil Services, Special Education Coordinator 1).
58. Student's IEP does not stop at the end of the school year (Testimony of Director of Pupil Services). The IEP is designed to address Student's needs for the remainder of the then current academic year as well as the first half of the next academic year.

Conclusions of Law

1. BOE found Student to be eligible for special education and related services as defined in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401, et seq.; Connecticut General Statutes § 10-76a, et seq.
2. The Hearing Officer has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ("FAPE") to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the PPT, or (C) to prescribe alternate special educational programs for the child. Connecticut General Statutes § 10-76h(d)(1).
3. Student has the burden of production in a special education due process hearing. Connecticut State Regulations § 10-76h-14.
4. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Connecticut State Regulations § 10-76h-14.
5. The PPT includes the parents of a child with a disability. 34 CFR § 300.321.
6. Where parents allege a procedural violation under the IDEA, a Hearing Officer may find a denial of FAPE if the violation 1) impeded the child's right to FAPE; 2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE; or 3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E); 34 CFR § 300.513(a); Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2001 (2007).

7. The standard for determining whether FAPE has been provided is a two-pronged inquiry: first, whether the procedural requirements of IDEA have been met, and second, whether the IEP is reasonably calculated to enable the child to receive educational benefits. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).
8. The proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2d Cir. 1997).
9. An appropriate public education under IDEA is one that is “likely to produce progress, not regression.” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 (2d Cir. 1998). The IDEA does not require that the school district provide the best available educational program or one that maximizes a student's educational potential. Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1121 (2d Cir. 1997).
10. Factors to be considered in determining whether an IEP is reasonably calculated to provide a meaningful educational benefit is whether the proposed program is individualized on the basis of the student's assessment and performance and whether it is administered in the least restrictive environment. 20 U.S.C. §1412(a)(5)(A); 34 CFR § 300.114(a); A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), aff'd, 47 Fed. Appx. 615 (2d Cir. 2002); M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D.Conn. 2000).
11. At the beginning of each school year, BOE must have an IEP in effect for each child with a disability. 34 CFR § 300.323(a).
12. A student's IEP must be reviewed not less than annually and revised as appropriate. 34 CFR § 300.324(b).
13. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEP was developed. B. L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 537 (D. Conn. 2005).

Discussion

Each of the issues identified in this case is addressed in this Discussion section. All of the parties' arguments and evidence have been reviewed and considered by the Hearing Officer and are not necessarily individually addressed here. Certain arguments and claims will be addressed for illustrative purposes.

Parents' allegations and concerns center on several areas:

That they were not treated as full members of the PPT in that they were not invited to all PPT meetings, IEPs were pre-planned prior to PPT meetings, and they were not given materials to review in advance of PPT meetings in order to be prepared to participate. The credible evidence supports a finding that Parents were invited to all PPT meetings; had an opportunity to ask questions, present recommendations, and invite advocates or other relevant professionals to participate; that certain of their requests were implemented; and that they had time at PPT meetings and before IEPs were implemented to raise additional concerns. There is also credible evidence that the PPT convened regularly at Parents' request. See, FOF-3, FOF-4, FOF-11, FOF-13, FOF-14, FOF-26, FOF-35, FOF-46, FOF-55.

That IEPs were not fully or timely implemented; that “BOE writes things down but they do not come to fruition.” This allegation will be addressed below under each section as appropriate.

That BOE did not develop and put into place a new IEP by June 30 of each year. IEPs do not expire at the end of each school year. The Individuals with Disabilities Education Act (“IDEA”) requires BOE to have an IEP in effect at the beginning of each school year for each child with a disability. 34 CFR § 300.323(a). The credible evidence supports a finding that BOE had an IEP in effect for Student at the beginning of each school year at issue in this case. See, FOF-11, FOF-14, FOF-21, FOF-46, FOF-55, FOF-58.

That BOE’s actions were for the purpose of getting funding and not in Student’s best interests. The credible evidence supports a finding that PPT decisions were not based on funding but were based on providing Student with FAPE.. For example, at Parents’ request, BOE purchased an expensive software package for Student that was not in use elsewhere in the district (Testimony of Special Education Coordinator 1). There is no credible evidence that the PPT recommended services strictly based on which educator had time available to provide services. The credible evidence supports a finding that the services, supports, and accommodations were tailored to Student’s needs, as discussed below.

That BOE interfered with their communications with BOE staff. Parents allege that they were not treated as partners in the IEP process, that BOE blocked their family email address, and that administrators filtered their emails so that they were not delivered directly to the staff to whom they were addressed (Testimony of Mother, Father).

BOE’s Technology Analyst credibly testified that he did learn that the email server, which is operated by an outside vendor, automatically blocked one of Parent’s email addresses because the server thought the email was sending spam. Technology Analyst testified that sometimes legitimate emails will set off flags in the server and will get blocked without any human intervention. Technology Analyst credibly testified that he was never asked to block Parents’ email address.

Parents were able to communicate with BOE administrators and teachers via other personal email addresses (Testimony of Mother, Father). BOE administrators regularly communicated with Parents via email and were never asked to block Parents’ email (Testimony of Special Education Coordinator 1, Director of Pupil Services). Parents regularly copied many people on emails; BOE staff would discuss who should respond to cut down on confusion (Testimony of Special Education Coordinator 1).

In early 2015, emails from Parents to BOE staff were rerouted to go directly to Middle School Principal, Assistant Principal, and Special Education Coordinator 1 (P-18; Testimony of Mother). Those administrators reviewed the emails and forwarded them to the appropriate staff for a timely response. BOE took this action because staff were upset about the tone of Parents’ emails, including what they considered inappropriate comments about staff members, and because the emails often included recipients who were not the most appropriate to be involved or to respond. This process enabled teachers to focus on Student’s needs and teaching instead of difficult emails from Parents (Testimony of Special Education Coordinator 1). The administrators ensured that any issues related directly to Student and his education were addressed by the appropriate staff person (Testimony of Assistant Principal). There is credible evidence in the record that Student’s education did not suffer as a result of the rerouting of emails and Parents’ concerns were timely addressed.

That BOE harassed Student in retaliation for Parents filing multiple agency complaints against BOE administrators and Board Members and for Parents’ persistent advocacy for Student. BOE administrators recognize Parents’ vigorous advocacy on behalf of Student. Parents did not produce evidence that any of their advocacy or complaints against BOE officials in any

way impacted Student's educational program or the provision of FAPE. Administrators working directly with Student and his educational program did not witness any bullying, harassment, or discrimination or receive complaints of such (Testimony of Special Education Coordinator 2, Special Education Coordinator 1, Director of Pupil Services).

Special Education Coordinator 1 testified that Parents are "loving advocating parents." She acknowledged Parents' frustration and lack of trust of certain administrators and wished that all parties could communicate together and work together. There is credible evidence in the record that any frustration felt about Parents' advocacy had no negative impact on Student's education.

I. Did the Board of Education provide Student with a free appropriate public education for the 2013-14 school year from the period May 10, 2014 to the end of the school year?

Parents allege that Student's sixth grade curriculum was not accessible to Student. As examples, Mother cited incidents where Student received poor quality copies of materials and where he said he had to take scissors and a glue stick to school to cut and paste materials onto cardboard to access his curriculum (Testimony of Mother, Father). Father testified that Student has bifocals and it was difficult for him to read the cut out articles. Mother complained to school administrators (Testimony of Mother). Special Education Coordinator 1 acknowledged that Mother complained about the quality of copies made for Student, that it may have taken more time for music materials to be enlarged, and that some staff were better than others at implementing the enlargement requirement at the beginning. When Special Education Coordinator 1 learned about the situation, she immediately remedied it (Testimony of Special Education Coordinator 1).

Parents also allege that no textbooks were provided to Student in sixth grade. Mother went to a BOE board meeting to complain about the availability of textbooks (Testimony of Mother, Father). Not all classes have textbooks (Testimony of Assistant Principal). BOE was using fewer textbooks and more original articles and online sources to access common core curriculum until textbooks were written to support the new curriculum (Testimony of Special Education Coordinator 1).

Due to the statute of limitations, the scope of this issue is limited to the short time from May 10, 2014 to the end of the school year in June 2014. There is no evidence that the complained of actions took place during that time period. Special Education Coordinator 1 credibly testified that she learned about certain of Parent's concerns in fall of Student's sixth grade year (fall 2013) and remedied them.

The IEP in place from May 10, 2014 to the end of the school year included the following services and supports:

- Goals and objectives to address written expression with emphasis on citing evidence and sources; math skills, multiplication and division skills required for efficient execution of algebraic equations, and fraction/decimal operations; and organization/executive function skills;
- Five hours per week Language Arts support for double block;
- Three hours per week Math support;
- Two hours per week Science support;

- 3.83 hours per week support study in lieu of Social Studies. The support study will address math skill building, development of technological and self-organization skills and homework;
- One hour per week organizational skills support;
- 46 minutes support study every 3 days Unified Arts rotation per Parents' request for no Family/Consumer Science;
- One hour per month consultation among OT, general education, and special education teachers;
- Online Science resources and Social Studies reading material continue to be made available via laptop (Special Education Case Manager to send passwords to Parents);
- Google Read/Write Text Help installed on laptop provided to Student and implemented to assist with reading/writing assignments;
- Continue implementing Google Voice Extension;
- Continued use of accommodations recommended by BESB Consultant as included on page eight of IEP;
- Continue enlarged font for all music sheets and use wider music stand;
- Continue to reinforce Student's expected use of large font and brightness contrast provided for reading materials and his wearing of eyeglasses;
- Continue to receive extended time for all tests, projects, and timed work;
- Continue providing rubrics for Student's use to support independence in executing sequential procedures in academic tasks;
- Continue providing Student with a second set of books for home use for classes that require text books;
- Continue providing information regarding major assignments along with their rubrics and due dates to Student and Parent ahead of time via email and hard copy, including permissions forms and school activity notices; The PPT declined Parents' request for direct handwriting skills, including cursive writing and will continue to encourage Student to generalize directly taught handwriting skills in written work and to reference handwriting rubric entered in his laptop by OT;
- Continue to focus on use of technology for successful production of Student work;
- Accommodations and modifications to materials/books/equipment, tests/quizzes/assessments, organization, environment, behavioral interventions and supports, and instructional strategies.

Special Education Coordinator 1 credibly testified that the PPT solicited Parents' input, incorporated recommendations from evaluators, reviewed present levels of performance, and discussed and updated Student's services and accommodations to meet his needs. Special Education Coordinator 1 also credibly testified, with examples, that Student's IEP goals and objectives and accommodations supported his progress. Student's IEP for the period May 14, 2014 to the end of his sixth grade year included appropriate recommendations and accommodations tailored to Student's needs and was implemented in an inclusion setting.

BOE provided Student FAPE for the 2013-14 school year from the period May 10, 2014 to the end of the school year.

II. Did the Board of Education provide Student with a free appropriate public education for the 2014-15 school year?

Student's January 30, 2014 IEP did not stop at the end of the school year but was designed to address his needs for the remainder of sixth grade and the beginning of seventh grade (FOF-58). Effective for the 2014-15 school year, the IEP provides for the services, accommodations, modifications, and supports identified above in Issue One (pages 18-19) with these changes for seventh grade:

- Language Arts support reduced from five to three hours per week due to no double block of Language Arts in seventh grade;
- Elimination of 46 minutes support study during Unified Arts per Parents' request.

The PPT determined that the IEP was working successfully for Student and it was continued (Testimony of Special Education Coordinator 1). At the conclusion of his sixth grade year, Student's grades ranged from B+ to A+ (FOF-25).

The PPT met on September 25, 2014 at Parents' request and adopted additional recommendations: teacher will email parents same day that Student is missing a homework assignment; planner enlarged and made more accessible to meet his needs; direct support and instruction in organizational strategies during academic support time; see Literacy Specialist in a one-on-one setting two days a week for writing support; see the Math Coordinator for enrichment in a one-on-one setting two days a week; see the Learning Specialist in a small group setting for academic support one day a week; provision of math binder with hole-punched pocket folders and dividers to assist with organizational strategies; Learning Specialist to upload Social Studies book to laptop; BOE to provide Student with laptop with programs to support his executive functioning needs; continue to enlarge worksheets to size 14 font or larger; teachers continue to use dark markers on whiteboard; continue to receive enlarged copies of daily announcements; extension of homework due dates to five days beyond original due date; Week in a Peek email to Parents; accommodations for Smarter Balanced Field Test to meet his vision needs include color contrast, color overlay, magnification, and masking (FOF-26, FOF-27).

BOE implemented the revised IEP and ordered a laptop and software for Student, which was delivered to him on November 3, 2014 (FOF-31). Parents allege that it took too long to provide Student with the laptop and related software. BOE's Technology Analyst credibly testified that the required laptop was not readily available and had to be ordered. There was an issue with the original computer order and so it took time. Once it was received, it had to be specially configured and then specific software loaded.

Special Education Coordinator 1 credibly testified that they knew that technology was the way to go for Student; that she followed up with the consultant Parents spoke to in identifying appropriate software; that she arranged for the consultant to come out and demo the software for several staff; that they recommended purchasing it for Student; that the software programs that were requested by Parents were new to the district; that it took time to obtain the technology and train staff to use and implement; and that there were glitches that were worked out. Parents allege that it took months; records indicate that it was less than six weeks between the PPT meeting and Student's receipt of the configured laptop.

On a couple of occasions when Student had difficulty accessing textbooks, he asked for assistance in getting them loaded to his Bookshare account. When Parents expressed concern about Student's access, Technology Analyst assisted Student in resolving the issue and provided a document for Parents and Students to reference at home for help (Testimony of Assistant Principal).

Parents allege that the resource room was “free play,” that Student sat there “waiting for the bell to ring,” and that the classroom was not properly managed. BOE administrators were not aware of these allegations prior to hearing (Testimony of Director of Pupil Services). BOE administrators testified as to the supports and services that Student received and the progress he made as a result. In addition to supporting Student with his IEP goals and objectives and academic support, he was provided enrichment activities in the resource room.

On December 5, 2014, Student was involved in an incident involving BOE data (FOF-32).¹⁵ Following this incident, Mother requested that Student be removed from the resource room because she felt that the Case Manager in that room did not have good classroom management. Student was removed at Mother’s request. For the following three weeks, during his resource period, Student sat in the teacher leader’s office to receive his IEP services and to make up missed working from being suspended for three days. He went from a small group setting to one-on-one for those three sessions. He then worked with a paraprofessional in the school counselor’s conference room because Parents did not want him in the resource room (FOF-32).

Student’s annual review was scheduled for January 16, 2015; Parents did not attend (FOF-33). The PPT met without Parents, as scheduled, to conduct a records review and then continued Student’s existing IEP until a PPT could be scheduled with Parents in attendance. A facilitated PPT was held on March 27, 2015 (FOF-35). The facilitated PPT lasted three hours. Parents, who were represented by an attorney, had an opportunity to discuss their concerns and BOE staff responded to Parents’ questions.

Parents agreed to a private neuropsychological evaluation for Student (FOF-38). The facilitated IEP also provided that Student’s planner be in an electronic format with a checklist that Student can edit to track due dates, missing assignments, and upcoming assignments; daily announcements to be embedded in electronic checklist; view of the planner to be emailed to Parents daily; see Literacy Specialist one-on-one three days a week for 46 minutes focusing on writing support, organization, and executive functioning skills; see Math Specialist for enrichment in a one-on-one setting two days a week (no special education hours); Math support in an inclusion setting three hours per week; Language Arts support in an inclusion setting for three hours per week; Science support in an inclusion setting two hours per week; World Language (Spanish) no special education hours; continue to enlarge worksheets to size 14 font or larger; continue to use dark markers on whiteboards; continued use of laptop and related software to support executive functioning, reading, and writing needs; five day extended deadline for homework; Week in a Peek emailed to Parents; accommodations for 2015 Smarter Balanced Field Test to meet his vision needs include color contrast, color overlay, magnification, and masking; continue specialized transportation; continued provision of math binder with hole-punched pocket folders and dividers to assist with organizational strategies; and graph paper to be included in binder (FOF-38).

The March 27, 2015 facilitated IEP was designed to support Student through the remainder of seventh grade and to be carried over to eighth grade (FOF-40). The PPT had specific conversations about both seventh and eighth grade during the facilitated meeting to ensure that they were differentiating between those years and what Student needed (Testimony of Special Education Coordinator 1).

¹⁵ Following the incident, Student’s laptop was taken by BOE to examine and determine whether the data was compromised. Parents allege that Student did not have access to the laptop for an unreasonably extended time during the investigation. One school day following the incident, BOE Superintendent indicated that the laptop could be returned to Student (P-16). Student was without the laptop for a brief time (Testimony of Technology Analyst).

Although at the PPT meeting they agreed to the five day extension for completing assignments, Parents later complained about it. Parents allege that five days is not reasonable, that it is arbitrary, and that Assistant Principal randomly picked that time frame without any basis. Parents did not offer a specific time frame but felt it should be open-ended.

Special Education Coordinator 1 testified that the state standard is to provide one and one-half times as long for assignments. The PPT did not feel that worked well for Student. In order to give him sufficient time and to get meaningful feedback from teachers on his work, the PPT agreed to five days. Beyond the five day period, class discussion would have moved on and the extra time would not be meaningful (Testimony of Special Education Coordinator 1). Given the supports, services, and modifications provided to Student, as well as his present levels of performance, the five day period is reasonable (Testimony of Special Education Coordinator 1, Special Education Coordinator 2).

At the conclusion of his seventh grade year, Student's grades ranged from B- to A+ (FOF-40). Student was enrolled in Advanced Math in seventh grade. It is a more rigorous curriculum than regular math and will allow Student to move into eighth grade algebra instead of pre-algebra (B-30; Testimony of Assistant Principal).

The PPT solicited Parents' input, incorporated recommendations from evaluators, reviewed present levels of performance, and discussed and updated Student's services and accommodations to meet his needs. Student's IEP goals and objectives and accommodations supported his progress. During the 2014-15 school year, Student's IEPs included appropriate recommendations and accommodations tailored to Student's needs and were implemented in an inclusion setting. BOE provided Student FAPE for the 2014-15 school year.

III. Did the Board of Education provide Student with a free appropriate public education for the 2015-16 school year?

Pursuant to the March 27, 2015 IEP, Student had a neuropsychological examination on May 4, 2015 (FOF-41, FOF-42). The evaluator's report was received by BOE in late summer and a PPT was convened on August 20, 2015 to review the results and recommendations and to adjust Student's IEP as necessary (FOF-46). At the two hour meeting, the PPT changed Student's primary disability category to OHI-ADD/ADHD and updated Student's goals and objectives and accommodations and supports based on his present levels of performance and to reflect recommendations from the neuropsychological evaluation. Review of Student's present levels of performance and his assessments indicated that he was making gains and that the services were supporting him in making meaningful progress (FOF-46, FOF-47, FOF-48).

Although Parents had requested multiple times to have Student's primary disability category changed from SLD to OHI, they disagreed with the change because they wanted it to be OHI-Visual Impairment (Testimony of Mother, Father). Parents provided no medical records or diagnosis indicating that Student met the definition of Visual Impairment. The change in category was consistent with the evaluator's recommendation (Testimony of Director of Pupil Services). Student's services are tied to his specific needs; not the label (Testimony of Director of Pupil Services, Special Education Coordinator 1).

Effective for the 2015-16 school year, the IEP provides for the services, accommodations, modifications, and supports identified above in Issue Two (pages 22) with these changes for eighth grade:

- Page 7: Update goal #1 evaluation criteria and discontinue goal #2 Math;

- Page 8: reflect recommendation in neuropsychological evaluation report;
- Page 11: reflect discontinued Math goal; add academic support class three hours per week; reflect organization and executive function skills support five hours per week in Science and Math; add OT consult;
- Continue specialized transportation;
- Recommend counseling supports for social skills per neuropsychological report recommendation (Parent refused counseling);
- Reconvene in December 2015 for annual and triennial review;
- Provide Student with seven days beyond original due date for missed homework assignments;
- Continue home/school electronic communication.

The only concern Parents raised at the PPT meeting was to request vision therapy (FOF-47). They then read a prepared statement indicating that they intended to unilaterally place Student at a parochial school (FOF-49). BOE staff felt that BOE could provide Student FAPE and refused Parents' request to place Student in a private or parochial school (Testimony of Special Education Coordinator 2). Student did not attend BOE's Middle School for eighth grade. Father testified that Parents' concern was not with the IEP itself but "with the people" at BOE.

Student's weaknesses are in executive functioning, organizing his work, and planning how long a task will be. His IEP provides direct instruction to help him plan how long an assignment should take, how to break it down into smaller tasks, timing his projects, using a calendar to plan, and how to plan to complete his work (Testimony of Special Education Coordinator 2). Each of these areas are addressed through his IEP goals and objectives and accommodations (B-32).

The proposed 2015-16 IEP included appropriate recommendations and accommodations tailored to Student's needs and were proposed to be implemented in an inclusion setting.

BOE participated in development of a service plan for Student while unilaterally placed at the parochial school (FOF-50). BOE received updates from the parochial school staff during Student's eighth grade year. Parochial school staff observations about Student were not contrary to BOE's observations and experience (FOF-50; Testimony of Special Education Coordinator 2).

BOE offered Student FAPE for the 2015-16 school year.

IV. Did the Board of Education offer Student a free appropriate public education for the 2016-17 school year?

In preparation for developing an IEP for Student for ninth grade at BOE High School, BOE recommended academic assessments to get a present level of performance (FOF-51, FOF-52, FOF-53, FOF-54).

The PPT met on June 3, 2016 to plan Student's ninth grade IEP (FOF-55). The parochial school Regular Education Teacher and Principal attended and shared their observations of Student's performance. The PPT reviewed Student's performance and spring 2016 assessments. The PPT determined that Student is eligible for special education under the primary disability category of OHI-ADD/ADHD. The IEP includes academic support two days in a six-day cycle for 46 minutes; co-taught English 9; continued use of the laptop with related software; email Father weekly with progress updates and information on large assignments (B-35).

The IEP includes academic/cognitive and gross/fine motor skills goals and objectives; accommodations and modifications consistent with evaluation recommendations and Student's

present levels of performance (FOF-55). Services include: 3.75 hours per week Language Arts support in inclusion setting; 1.5 hours per six-day cycle of academic support in small group or individual setting; half hour per month OT in small group or individual setting. Accommodations and modifications include:

- Materials/Books/Equipment: Access to computer, assistive technology, notes when available, supplementary visuals, access to word processor, Bookshare¹⁶, and colored paper or colored overlays in all classes and settings; rubrics with assignment for Student to use as guide.
- Tests/Quizzes/Assessments: Extended time, extra time for tests/projects/written work; 1.5 times extended time for tests/quizzes/projects/written work; responded verbally (adult scripting) on tests/quizzes as needed, for all classes and settings.
- Organization: Assignment pad, chunked assignments, clear expectations/explanations of daily events, clear work space, daily homework list, folders to hold work, graphic organizers, list sequential steps, post routines, rubric, templates for written work; graph paper for math work, assignment expectations available in written format or electronically, assignment book reflected in editable electronic format, for all classes and settings.
- Environment: Clear work area, organized and structured classroom, preferential seating, in all settings.
- Behavioral Interventions and Support: Cue expected behavior, positive reinforcement, redirection, structure transitions, structured work plan, reinforce self-advocacy skills, all settings.
- Instructional Strategies: Check work in progress, clear expectations, cueing/prompts, graphic organizers, model appropriate strategies ad skills, provide models, provide notes/outline, visuals to support instruction, instructional templates available on desk or in binder to reduce eye shifts, visual and auditory prompts to support instruction, in all settings.
- Other: Assistance organizing self/materials, maintain math notebook, prompt notetaking in all subjects, font size 14 recommended, enlarge music sheets, individual wider music stand to accommodate distance needs, use of dark markers on white/smart boards, computer font 14 unless Student chooses to decrease it,¹⁷ felt tip marker, WYNN software loaded on his computer, simplify visual presentation of printed materials, do not have too much on a page, all settings.

The IEP addresses Student's visual and executive functioning needs (Testimony of Director of Pupil Services). Many of the accommodations help with Student's visual issues; for example, access to computer and WYNN software, supplementary visuals, colored paper and overlays, extended time, preferential seating, checking work in progress, queuing prompts, modeling, notes and outlines, visuals to support instruction, font size 14, enlarged music sheet, wider music stand, dark markers on white board, felt tip marker. Many of these are supports that

¹⁶ Bookshare highlights words for Student so that he can read along and hear it. It also allows him to access all print that teachers assign. It is a supplementary tool to the WYNN software which is also provided (Testimony of School Psychologist).

¹⁷ Student sometimes did not take advantage of the supports provided to him because he did not want to look different from other students. He was conscious of the fact that he had a laptop and other students did not; he preferred to have textbooks rather than enlarged papers or laptop so he would not stand out (Testimony of Special Education Coordinator 1, Assistant Principal).

Student had in previous IEPs and which were shown to be successful (Testimony of School Psychologist).

Student's executive functioning deficit is his greatest weakness. His low processing speed may be average for other students but is low for him based on his high intellectual capacity (Testimony of School Psychologist, Director of Pupil Services). Many of the accommodations help with Student's executive functioning needs; for example, graphic organizer, check work in progress, queue/prompt during instruction, modeling, provide completed model, notes/outlines, assist in organizing supplies, prompt for note taking (Testimony of School Psychologist).

All of the services and accommodations, which take into consideration evaluations and recommendations, will help him because they are tailored to his needs and learning style and because he is a bright child. The IEP informs educators of Student's ability level and how he best learns. The parochial school staff who were present were in agreement that the IEP reflects Student's present levels of performance and his needs (Testimony of Special Education Coordinator 2).

BOE's High School Guidance Counselor will assist Student and Parents with selecting his courses, including honors/advanced classes. Per the IEP, his services, supports, and accommodations will apply to all classes and settings.

BOE has no concerns about Student's ability to handle ninth grade work with the services and supports provided by the IEP (Testimony of Special Education Coordinator 2). The PPT believes that the spring 2016 assessments that informed the IEP were comprehensive and that there are no other areas that need to be further explored (Testimony of Special Education Coordinator 2). Student continues to progress which is evident by his scores. The achievement tests get harder each year so a consistent score shows progress for his age and grade. Credible evidence supports a finding that Student is making meaningful progress. BOE offered Student FAPE for the 2016-17 school year.

V. If the Board of Education did not provide Student with a free appropriate public education, is Student's unilateral private placement appropriate?

As indicated in the above Issues One through Four, BOE provided Student with FAPE. Therefore, it is not necessary to determine whether Student's unilateral private placement is appropriate.

VI. If the answer to Issue #5 is in the affirmative, are Student's Parent's entitled to reimbursement for the cost of the unilateral private placement?

As indicated above in Issue Five, BOE provided Student with FAPE. Therefore, it is not necessary to determine whether Student's unilateral private placement is appropriate and Parents are not entitled to reimbursement for the cost of the unilateral private placement.

VII. If the answer to Issues #1, #2, #3, and/or #4 are in the negative, what shall be the remedy?

The answer to Issues One through Four are not in the negative and so no remedy is due.

FINAL DECISION AND ORDER

1. The Board of Education provided Student with a free appropriate public education for the 2013-14 school year from the period May 10, 2014 to the end of the school year.
2. The Board of Education provided Student with a free appropriate public education for the 2014-15 school year.
3. The Board of Education provided Student with a free appropriate public education for the 2015-16 school year.
4. The Board of Education offered Student a free appropriate public education for the 2016-17 school year.
5. Based on the determination as to Issues One through Four, it is not necessary to determine whether Student's unilateral private placement is appropriate.
6. Based on the determination as to Issues One through Five, Student's Parents are not entitled to reimbursement for the cost of the unilateral private placement.
7. Based on the determination as to Issues One through Four, no remedy is due.

Comment on the Conduct of the Proceedings:

An underlying current in this case was the relationship between Parents and BOE staff. Parents and BOE staff alike were very clear in their testimony that there is a trust issue between the parties. Father even testified that his concern was not about the IEP but about the people. Parents clearly did not like or trust certain of the BOE officials. BOE officials expressed concern about communications from Parents that were perceived as inappropriate and sometimes offensive; but not about their advocacy on behalf of Student. There are examples in the record of BOE implementing or changing services and accommodations as a result of Parents' vigorous advocacy on behalf of Student.

The Hearing Officer's findings and conclusions are based on the totality of the evidence, both testimony and documentary, and not on the personality and attitude of witnesses. Credibility determinations were made and are commented upon in the decision.

Parents committed a fair amount of their two days of hearing and some of their cross-examination of BOE's witnesses on what they perceived as unfair, discriminatory, illegal, and/or otherwise inappropriate conduct on the part of BOE officials. The non-education complaints that Parents filed against various BOE officials with multiple agencies were not before this Hearing Officer. Whether those complaints have merit is not relevant to this case. The Hearing Officer makes no findings or conclusions with regard to the circumstances surrounding other agency complaints or allegations.

The Hearing Officer's findings and conclusions are focused on Student's educational program and whether BOE provided Student FAPE; not on what Parents believed to be the motive for certain BOE actions or inactions.

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

JANIS C. JERMAN

Hearing Officer

Name in Print