

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student<sup>1</sup> v. Enfield Board of Education

Appearing on behalf of Student:

Attorney Courtney P. Spencer  
Law Office of Courtney P. Spencer  
701 Hebron Avenue  
Glastonbury, CT 06033

Appearing on behalf of the Board of Education:

Attorney Christine L. Chinni  
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Appearing before:

Janis C. Jerman  
Hearing Officer

**FINAL DECISION AND ORDER**

**Procedural Posture**

A special education hearing in the above-captioned matter was requested by Student's Attorney via letter dated March 30, 2011.<sup>2</sup> It was received by Board of Education's ("BOE's") Attorney on March 30. The thirty-day resolution period ended April 29 and the original deadline to mail the final decision and order was June 13.

The parties participated in mediation prior to the filing of the request for due process. BOE did not offer Student a resolution meeting after the request for due process was filed.

A telephonic pre-hearing conference was held on April 28. Attorney Spencer appeared on behalf of Student and Attorney Chinni appeared on behalf of BOE. The following issues were identified at the pre-hearing conference:

1. Did BOE fail to provide Student with a free appropriate public education during the 2010-11 school year?
2. Did BOE fail to offer Student a free appropriate public education during the 2011 extended school year?
3. Did BOE fail to appropriately evaluate Student?

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<sup>1</sup> 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", "School" and titles of school staff members and certain other witnesses in place of names and other personally identifiable information.

<sup>2</sup> All dates are 2011 unless otherwise indicated.

4. Did BOE violate Student's procedural safeguards?

At the pre-hearing conference, Student's Attorney indicated her intention to amend the due process request to cover the 2011-12 school year. BOE's Attorney did not object to the amendment and the Hearing Officer authorized the filing of such amendment. On April 29, Student's Attorney filed an amended request for due process, adding the following issue number five: Did BOE fail to offer Student a free appropriate public education during the 2011-12 school year?

The filing of the amended complaint reset the case timelines. The thirty-day resolution period ended May 29 and the original deadline to mail the final decision and order was July 13.

Via letter dated May 10, Student's Attorney requested that the issues be clarified. Absent objection from BOE's Attorney, the issues were restated as follows:

1. Did BOE fail to provide Student with a free appropriate public education from March 30, 2009 through the end of the 2008-2009 school year, during the 2009-10 school year, and/or during the 2010-11 school year?
2. Did BOE fail to offer Student a free appropriate public education during the 2011 extended school year?
3. Did BOE fail to offer Student a free appropriate public education during the 2011-12 school year?
4. Should Student be placed at the Options program for the 2010-11 school year, 2011 extended school year, and/or 2011-12 school year at BOE expense?
5. Did BOE fail to appropriately evaluate Student?
6. Did BOE commit procedural violations that resulted in a denial of FAPE?
7. Is Student entitled to compensatory education?

Due to the statute of limitations, the issues were limited to the time frame from March 30, 2009 to present.

Hearing was scheduled for June 20.

Via letter dated June 16, Student's Attorney requested an extension of the mailing date to accommodate additional hearing dates. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until August 12.

Via letter dated June 21, Student's Attorney requested an extension of the mailing date to accommodate additional hearing dates. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until September 11. Hearings were scheduled for August 8, 12, 17, and 19. The August 12 and 19 hearings were cancelled due to the unavailability of witnesses and/or attorneys.

Via e-mail dated August 30, Student's Attorney requested a 30-day extension of the mailing date in order to schedule additional hearing dates. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until October 11. Hearings were scheduled for September 26 and 28.

Via letter dated September 22, Student's Attorney requested a 30-day extension of the mailing date in order to schedule additional hearing dates. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until November 10.

The September 28 hearing was cancelled to accommodate a personal emergency on behalf of one of the attorneys.

Via letter dated September 27, Student's Attorney requested a 30-day extension of the mailing date in order to schedule additional hearing dates. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until December 9. Hearings were scheduled to convene on October 17, 26, and 28, and November 3. The parties were notified that additional hearing dates would not be granted absent extraordinary circumstances.

The November 3 hearing was cancelled due to widespread power outages, including outage at the hearing site. Hearing was rescheduled for November 30.

Hearings convened on the following dates: June 20, August 8, September 26, October 17, October 26, and November 30.<sup>3</sup>

The parties requested an opportunity to simultaneously file post-hearing briefs without opportunity for reply briefs. Via letter dated December 2, Student's Attorney requested a 30-day extension of the mailing date in order to accommodate a briefing schedule. After fully considering the positions of the parties, the request was granted and the deadline to mail the final

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<sup>3</sup> Most of the hearing dates convened for only a few hours as the parties were not prepared with a full day of witnesses.

decision and order was extended until January 6, 2012. The parties were given until December 19 to file post-hearing briefs.

Via e-mail dated December 14, BOE's Attorney requested an extension until December 23 to file briefs due to a personal matter that kept her out of state. After fully considering the positions of the parties, the request was granted.

Via e-mail dated December 19, Student's Attorney requested a 30-day extension of the mailing date to accommodate the extended briefing schedule. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to February 3, 2012.

#### Findings of Relevant Fact

1. During the 2010-11 school year, Student was a sixteen year old tenth-grader (Stip FOF 1).<sup>4</sup>
2. Student has physical limitations due to a spinal injury (Student's Mother). He has difficulty standing or sitting for long periods of time and is not able to participate in gym class.
3. Student is losing his hearing in his left ear (Student's Mother).
4. Student has been diagnosed with generalized anxiety disorder and post-traumatic stress disorder ("PTSD") (P-8; P-16; P-34; Student's Mother).
5. Student is active in the Boy Scouts and is working on obtaining Eagle Scout status (Student's Mother).
6. Student began attending Enfield Public Schools in December 2005 when he was in fifth grade (Stip FOF 2). Student was initially found eligible for special education services under the category of Speech or Language Impaired (Stip FOF 3; P-4).
7. On April 19, 2006, a Resolution Session was held and an Agreement was reached to include a transfer to another BOE middle school, a neuropsychological evaluation, a psychiatric consultation, and withdrawal of Student's Parent's then-pending due process request (Stip FOF 4; P-7).
8. On June 12, 2006, Dr. Black conducted a psychiatric consultation and determined that Student suffered a resurgence of his PTSD and experienced a "recrudescence of his symptomatology" (Stip FOF 5; P-8). Dr. Black recommended continuation in his then-

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<sup>4</sup> Per Order of the Hearing Officer, the parties filed a Joint Stipulation of Uncontested Facts on June 16. It is cited as "Stip FOF."

current placement; continuation of medication; continued family-oriented psychotherapy to focus on his anxiety; parent/staff collaboration to avoid conflict and resurgence of Student's anxiety; independent activities; and emotional support (P-8). Dr. Black indicated that psychotherapy is essential to Student's well-being but not necessary for satisfactory educational programming.

9. Student attended BOE Middle Schools for sixth (2006-07) and seventh (2007-08) grades and was eligible for special education services under the Speech or Language Impaired eligibility category (P-9; P-11; P-22).
10. In November 2006 and January 2007, Dr. Kulas administered a neuropsychological evaluation of Student (Stip FOF 6; P-16). Dr. Kulas reported that Student has low average intellectual skills, weakness in language processing, auditory processing weakness, difficulties with abstract problem solving in the absence of structure, significant lateralization with his dominant hand that may be suggestive of a focal neurological issue within his right hemisphere, and substantial anxiety resulting in a diagnosis of generalized anxiety disorder (Stip FOF 7; P-16).
11. Student had a physical therapy screening at school in April 2007 (P-21).
12. Student underwent back surgery in January 2008, during the seventh grade school year (P-23). He transitioned back to school two hours at a time and then four hours. He never went to school for a full day for the remainder of the school year (Student's Mother).
13. A Planning and Placement Team ("PPT") meeting was held on June 5, 2008 to conduct an annual review (P-25). At that time, Student's eligibility category was Speech or Language Impairment. The PPT recommended average classes for science, social studies, English, and math; developmental reading; social work services 30 minutes per week; speech and language services once a month for 40 minutes; standard administration of the eighth grade Connecticut Mastery Test ("CMT"); weekly communication log to be sent home and monitored by the special education teacher; all classes scheduled on the first floor to accommodate Student's medical condition; pass for early passing from class; special van transportation; an extra set of books at home (P-25).
14. Student was in eighth grade during the 2008-09 school year (Student's Mother).
15. Student was absent during the March 2009 eighth grade CMT (P-27).

16. A PPT meeting was held on May 29, 2009 to plan an evaluation/reevaluation and conduct an annual review (B-9). The PPT recommended average classes for science, social studies, English, and math with modifications; 30 minutes weekly social work services; speech and language services on a consultative basis; weekly communication sheet sent home for first six weeks of high school monitored by special education teacher; case conference with Student's Parents after four to six week transition period; special van transportation for morning pick-up in ninth grade; use of elevator at high school; extra set of books provided at home; pass for early class transition and to go to nurse or lavatory; guidance counselor at high school to be contact person for transition needs; high school visit with Student and Student's Parents; and reevaluation (B-9).
17. Student's final grades for the 2008-09 school year ranged from B+ to C (P-29). Student was absent 64 times during the school year.
18. In summer 2009, Student was attacked off-campus by a group of kids who attended school with him. Student was hospitalized as a result of the attack (Student's Mother).
19. The attacking students were arrested. In December 2009 and February 2010, the arrested students were issued Orders of No Contact with Student (P-38; P-42).
20. On or around September 12, 2009, Student was involved in a verbal confrontation with a relative of one of the arrested students (P-31).
21. Student's Parents informed BOE about the attack, resulting arrests, and subsequent confrontation (P-30; P-31; P-32; P-33).
22. Student's Parents met with BOE staff on September 16, 2009 to discuss their concerns about Student's safety.
23. Student's Parents felt that BOE was not appropriately responsive to their concerns, did not conduct a bullying investigation, and did not create a safety plan for Student (Student's Mother).
24. On September 18, 2009, Student's Father wrote to Enfield High School Principal indicating that one of the students he deemed to be threatening was not removed from school and asked for another meeting (P-30).
25. On September 24, 2009, Student's Parents wrote to the Assistant Superintendent and Enfield High School Principal asking to re-visit the concerns raised in the September 16, 2009

- meeting, to vent some issues, and to discuss concerns about speech, social workers and weekly progress reports (P-32).
26. On September 24, 2009, Student's Parents wrote a supplemental letter indicating that they had concerns about Student's safety and that the meeting was derailed because BOE staff presented a report that was "unwanted" by Student's Parents (P-33).
  27. Via letter dated October 2, 2009 and faxed to BOE on October 4, 2009, Student's Parents requested a PPT meeting to discuss transferring Student to another school (B-1). In the same letter, Student's Parents requested that Student be exited from special education and that services be removed from his IEP.
  28. A PPT meeting was held on October 13, 2009 to discuss transferring Student to Fermi High School and Student's exit from special education. BOE representatives indicated that the PPT could not place Student at a particular school. Student's Father requested that special education services be discontinued. The Special Education Department Chair recommended that special education services continue for Student. Student's Father refused continuing special education services, including social work services (B-3; P-35).
  29. Student was exited from special education on October 20, 2009 (B-3; B-4).
  30. As of November 23, 2009, the end of the first marking period, Student's grades ranged from D to F and he had numerous absences from classes (P-36).
  31. On December 4, 2009, Student's Parents wrote to the Superintendent indicating that there were continuing concerns about the actions of other students in school toward Student (P-37).
  32. On December 28, 2009, Student's Father requested, in writing, that Student be transferred from Enfield High School due to safety concerns (B-5).
  33. BOE agreed to transfer Student from Enfield High School to Fermi High School, which is another high school operated by BOE (Stip FOF 8; B-5).
  34. Student's Parents kept Student out of school for a period of time until he was transferred to Fermi High School in January 2010 (Student's Mother). Student's Father requested that Student's absences be excused pending his transfer (B-5).
  35. Student's Father also indicated that there is a problem between Student and another Fermi High School student but that, as of that time, the student has not been part of the on-going problems (B-5).

36. Although Fermi High School was not Student's neighborhood school, BOE provided transportation for Student.
37. Via letter dated January 20, 2010, Student's Father requested a PPT meeting and indicated that they would like to reintroduce Student to special education on a trial basis (B-6). Student's Father requested the meeting at a specific date and time, which was honored.
38. Student's Father also requested that Student be able to make up work missed as a result of absence due to illness and requested that Middle School Principal attend the PPT meeting; both requests were honored. Student's Father also requested that the following services be included in the IEP: extra set of books at home; transportation to and from school; contact Student's Parents if any incidents arise; provide elevator access; provide a safe haven (i.e. nurse's office or social worker's office). Student's Father's letter also stated that he "will not accept any other conditions provided by BOE" and that he "will perhaps entertain some of the ideas brought forth by the PPT meeting" (B-6). Student's Father's requests were honored.
39. At a PPT on January 25, 2010, Student was found eligible to receive services as a special education student under the category of Multiple Disabilities, which is his current designation (Stip FOF 9; B-7). The PPT cover page indicated that the purposes of the meeting were to review referral, determine eligibility, and transition planning (B-7).
40. At the January 25, 2010 PPT meeting, Student's Parents signed consent for eligibility and placement (B-7). The PPT recommended that Student receive direct social work services; two support classes daily; tutoring during the school day to assist with transition; exemption from physical education due to medical reasons; health portion of physical education to be covered by a tutor; English and History co-taught classes; van to and from school; permanent pass to the nurse, elevator use, early passing to lunch, and early/delayed passing to classes; copies of textbooks to be kept in the classroom and one copy provided for use at home; building tour; meeting every few weeks with Student's Parents, social worker, assistant principal, and case manager to review transition and academic/social progress; reconvene in May to plan for next school year; grades based on class work and modified homework; Student's Parents be notified of any issues occurring during the school day (B-7).
41. Fermi High School Principal attended the PPT meeting because he knew Student's Parents were unhappy with Student's experience at Enfield High School. Fermi High School



Principal tried to be positive and welcoming and establish a relationship with Student and Student's Parents (Fermi High School Principal).

42. Fermi High School Principal sought to provide Student with a fresh start in a new and welcoming environment (Fermi High School Principal). Fermi High School Principal assigned Student to Fermi High School Assistant Principal's caseload because he thought it would be a good match and that Assistant Principal would work well with Student and Student's Parents.
43. Fermi High School Principal saw Student informally on a regular basis and wanted to make sure that he had a smooth and positive transition. Fermi High School Principal regularly inquired about Student's Eagle Scout project (Fermi High School Principal is an Eagle Scout), how he was doing in school, and whether he needed anything. Student always responded that he was fine (Fermi High School Principal). Student never expressed concerns about safety or bullying to Fermi High School Principal.
44. Student did approach Fermi High School Principal regarding a communication with a school staff member about accessing the nurse's office. Fermi High School Principal interceded on Student's behalf (Fermi High School Principal).
45. Student had a tutor during the school day to help him catch up on his assignments and to complete the academic requirements for courses not completed at Enfield High School (P-41; Fermi High School Principal). Student did well academically during this transition period.
46. On February 12, 2010, the Woodcock Johnson III Diagnostic Reading Battery was administered to Student (P-40).
47. On that same day, Special Education Department Chair emailed Student's Father regarding Student's progress following a case conference. Overall, the progress report indicated that Student was doing well in his classes and made a good transition (P-41).
48. During Student's ninth grade school year, Fermi High School Assistant Principal asked Student if he knew anything about rumors about a fight between two other students. Student indicated that he did not have any information about it. Fermi High School Assistant Principal shared the conversation with Student's Father who got upset and said that BOE was accusing Student of fighting. Student's Father told Student that he could not talk to any administrators without Student's Father's permission (Fermi High School Assistant Principal).

49. Student never told Fermi High School Principal or Assistant Principal that he was being bullied or felt unsafe in school.
50. On February 25, 2010, Student's Social Studies Teacher noted that Student had changed and was now not turning in assignments, was late to class, not maintaining focus, and seemed physically shaky. Student declined to go to the nurse when offered (P-41).
51. Student's Mother testified that Student's transition to Fermi High School was good from January until April 2010.
52. On March 27, 2010, Student was involved in a verbal altercation with students involved in the summer 2009 incident. The incident occurred off-campus as Student was walking home late at night from a friend's house. Student's Parents asked BOE for a "safety net" in school so that Student will not lose what he has achieved in school (P-43). Student's Parents kept Student out of school until March 30, 2010.
53. On April 7, 2010, BOE accused Student of breach of peace and assault on another student (B-8; P-44). BOE alleged that another student asked Student if he was involved in a previous group attack on someone and then made a disparaging comment about people who gang up on one person; that the situation diffused; and they began to walk away when Student turned and hit the student repeatedly (P-49). Student's Father claimed that the other student was the instigator by threatening Student (P-46).
54. On April 7, 2010, BOE suspended Student for ten school days (Stip FOF 10; B-8; P-44). Due to the intervening school vacation, Student returned to school on April 28, 2010.
55. On April 8, 2010, BOE sent Student's Parents a notice of manifestation determination PPT meeting scheduled for April 16, 2010 (P-48).
56. On April 10, 2010, Student's Parents indicated in writing that they would not acknowledge BOE's April 8 letter and would not participate in a meeting without a lawyer (P-47; P-48).
57. A PPT meeting was held on April 16, 2010 to conduct a manifestation determination (B-8). Student's Parents were not present (B-8; Student's Mother). Based on a review of records, the PPT determined that Student's behavior was not a manifestation of his disability (B-8).
58. Following his return to school, his teachers reported that Student was working very hard to complete missed work and was motivated in class (P-41). At that time his grades ranged from C- to F. Student missed more than half of the days in the last marking period (not including his suspension).

59. Contrary to the above statements of Student's teachers, Student's Mother testified that Student was not doing well academically and that he was concerned about his safety when he returned to school after his suspension.
60. Student declined to use the early/delayed passing option (P-41).
61. Student's attendance record for the 2009-10 school year included 57 absences; 35 tardies; 18 homebound; and ten days of out of school suspension (B-10; P-34). He was in school for a full day only 61 out of 181 school days that year.
62. Student's ninth grade grades consisted of one A, four Cs, one D, and two Fs (P-53).
63. Student turned sixteen years old during the 2009-10 school year. The IEP in place at that time included goals and objectives to have a series of formal and informal vocational activities completed by Student and states that, as part of his transition planning, a Learning Characteristic assessment would be completed by June 2010 (B-7). Transition Coordinator did not see a copy of the assessment.
64. A PPT meeting was held on June 14, 2010 for the purposes of plan evaluation/reevaluation, conduct annual review, transition planning, develop IEP, plan program for 2010-11 (B-11). Student's Parents were present and represented by an attorney at the meeting. Student's Father signed consent for reevaluation (P-51).
65. The PPT noted that Student's attendance was impacting his achievement and that if absences continued there would be a need to involve outside agencies to work with the family (B-11). BOE did not involve outside agencies in Student's attendance issues.
66. The PPT recommended evaluations; co-taught English and history classes; modified biology; support class; math class to be determined by Student's final grade in the current year; physical education/health class participation to be addressed with updated medical information; current modifications, goals, and objectives to remain in place until the triennial evaluation is reviewed; an attendance objective; direct social work services continued; van to and from school; a copy of Student's textbooks at home and in the classroom; and a permanent pass to the nurse, elevator use; early/delayed passing to class and lunch (B-11).
67. Student's June 14, 2010 IEP was scheduled to expire on January 25, 2011 (B-11).
68. On June 21, 2010, Student's Parents indicated in writing to BOE that they disagreed with the PPT stipulations and that they were not permitted to participate in some part of the discussion

- (B-14). Student's Parents further indicated that their attorney was fired and that they would provide a rebuttal at a later time.
69. Via letter dated August 11, 2010, Student's Father notified BOE that he would not acknowledge any documents sent via e-mail and that all documents should be sent via U.S. postal service certified mail (B-16). Student's Father also indicated that he had only received two of several documents requested at the June 14, 2010 PPT meeting and that BOE was not to give any correspondence to Student or force Student to sign any documents (B-16).
70. On September 6, 2010, Student's Parents sent BOE a note from Student's Private Clinician indicating that Student was diagnosed with PTSD and generalized anxiety disorder and requesting one-on-one tutoring outside of school until a plan is developed to facilitate a supportive, safe, and accommodating environment at school (P-34). BOE did not convene a PPT meeting in response to the note.
71. Via letter dated September 27, 2010, Special Education Coordinator denied the request for home-bound tutoring for Student on the basis that the submitted documentation did not comply with state regulations (B-19). The letter further stated that Student will be considered truant if he does not report to school upon receipt of the letter.
72. On October 22, 2010, Student's Private Clinician, who was providing therapy and medication management, sent another copy of the note with an estimated return to school date of January 4, 2011 (P-34).
73. A PPT meeting was held on October 25, 2010 to review or revise IEP, develop IEP, and per Student's Parents' request. Student's Parents submitted medical documentation in support of the request for home-bound tutoring (B-20). The PPT agreed to place Student on homebound tutoring until January 4, 2011 (Stip FOF 11; B-20). Student's October 25, 2010 IEP was scheduled to expire on January 4, 2011 (B-20).
74. At the October 25, 2010 PPT meeting, Student's Attorney indicated that Student's Parents had consented to evaluations at the June 14, 2010 PPT meeting. BOE's Attorney stated that Student's Father had withdrawn consent for evaluation in his June 21, 2010 letter which stated that Student's Parents "do not and will not agree with the stipulation set forth by the PPT team." (B-20).
75. At the October 25, 2010 PPT meeting, Student's Parents requested independent neuropsychological, speech and language, auditory processing, psycho-educational, and

physical therapy evaluations (B-20). They also requested placement at Options and two years of compensatory education. BOE denied the requests (Stip FOF 12). BOE felt that it could provide appropriate assessments and program for Student (B-20).

76. On November 1, 2010, Student's Attorney wrote to BOE's Attorney indicating that Student's Parents had not been contacted regarding Student's homebound tutoring (P-56).
77. On November 22, 2010, Student's Parents filed a Complaint with the State Department of Education regarding homebound tutoring and failure to evaluate Student (P-57). A decision was rendered on March 4, 2011. The State Department of Education's Bureau of Special Education concluded that BOE did not timely implement tutoring as recommended by the PPT and that BOE addressed the noncompliance by providing compensatory tutoring to Student (P-58). Further correspondence pertaining to the Complaint occurred on March 11, March 14, March 18, and April 12, 2011 and contests the timely offer and/or provision of compensatory tutoring hours (Stip FOF 14; P-57; P-58; B-22; P-60; P-61).
78. Homebound tutoring began on December 2, 2010 (P-58). BOE owed Student compensatory services for the homebound tutoring that was missed from October 25, 2010 to December 2, 2010 (P-58).
79. On December 6, 2010, Student's Private Clinician sent another copy of the note with a revised return to school date of April 1, 2011 (P-34). Student's Father would not give consent for Private Clinician and School Social Worker to discuss Student's disability or needs (School Social Worker).
80. Via letter dated March 11, 2011, BOE notified Student's Parents that the compensatory tutorial services offered to Student remain in effect and that he is to receive forty additional hours of services. The letter further stated that BOE is not obligated to make up tutoring services missed due to cancellations by Student or Student's Parents (B-22).
81. On March 30, 2011, Student's Attorney forwarded a letter from Student's treating clinicians to BOE's Attorney (Stip FOF 15; P-63). The letter recommended the Options program for Student.
82. On March 30, 2011, Student's Parents filed a request for Due Process with the State Department of Education (HO-1). On April 29, Student's Parents filed an Amended Request for Due Process (Stip FOF 16; HO-2).
83. Student had extensive absences during the 2010-11 school year (P-34).

84. In March and April 2011, Parent's Attorney contacted the State Department of Education and BOE's Attorney to indicate that no compensatory tutoring had been provided (P-60; P-64).
85. Special Education Coordinator testified that Student's tutor was not able to fit the compensatory hours into his schedule during the school year. She did not contact anyone else to provide the compensatory tutoring services during the school year.
86. Student did not attend school during the 2010-11 school year (Student's Mother).
87. The compensatory tutoring services were provided during summer 2011 by Fermi High School Math Chair. She tutored Student in math connections which is a regular education pre-algebra class and in world history which is the ninth grade regular education social studies course. She tutored him in these courses because he failed them the previous school year.
88. Fermi High School Math Chair was scheduled to work with Student for seven sessions that last two to two and one-half hours each (Fermi High School Math Chair). She found Student to be extremely cooperative in the tutoring sessions which took place at the public library.
89. Fermi High School Math Chair believes that Student is very capable of performing grade level work. He was able to complete all of the tasks that she gave him. She pre-tested Student in math and continued from where he could not successfully complete the pre-test. Fermi High School Math Chair spoke with Student's previous tutor to determine where to begin in world history. Student was performing grade level work in the regular curriculum textbook and ancillary associated materials (Fermi High School Math Chair).
90. Scheduling problems arose early in the tutoring sessions. Student and/or Student's Mother cancelled some tutoring sessions. On other occasions, Fermi High School Math Chair went to the library at the designated times but Student did not show up. Fermi High School Math Chair called Student's home and left voice-mail messages. She did not hear back from Student or Student's Parents. She never heard from or saw them again (Fermi High School Math Chair).
91. On August 30, 2011, Special Education Coordinator wrote to Student's Parent to schedule a PPT meeting. She offered three dates on which she was available: September 6, 8, and 13 (P-68).
92. September 6 was the first day of the 2011-12 school year (P-68). There was no IEP in effect for Student at the beginning of the 2011-12 school year (B-20; P-71).

93. On September 6, 2011, Student's Attorney wrote to BOE's Attorney confirming a phone conversation between them on August 30 about availability for a PPT meeting. Student's Attorney asked if BOE was available on September 20 and, if not, asked them to provide alternative dates (P-69).
94. There is no evidence in the record that BOE responded to Student's Attorney's letter.
95. A PPT meeting was held on September 13, 2011 without Student's Parents (P-70; P-71). The purpose of the PPT meeting was to conduct an annual review; transition planning; and develop an IEP. The resulting IEP was based on a review of records and report of Fermi High School Math Chair's tutoring results.
96. The IEP made plans for the current and next school year. The PPT recommended: one period per day of academic support for this year and next year; co-taught English class this year and next; co-taught U.S. History this year; co-taught World History next year; co-taught pre-algebra this year; math in daily living class second semester; direct social work services for twenty minutes per week; meeting with the transition coordinator ten times per year this year and next; CAPT in an alternate setting; implementation of a behavior plan (P-71).
97. The proposed behavior plan was not attached to the IEP or introduced into evidence.
98. The present levels of academic achievement and functional performance section of the IEP indicates Student's grades as follows: English 10 – B; Math Connections – C-; Biology – C; PE/Health - B+; Civics – B; Reading – B; Teen Leadership – B; Modern World History – B (P-71).
99. BOE's Transition Coordinator works with students at both of BOE's high schools. She is familiar with Student but had not yet met him at the time of the hearing (Transition Coordinator). She was asked to attend Student's September 13, 2011 PPT meeting. She was not asked to work with Student prior to this PPT meeting. She had not reviewed Student's records prior to the hearing. She is not aware of his disabilities or capabilities. She did not make any recommendations for Student at the PPT meeting.
100. On September 14, 2011, BOE's Attorney e-mailed Student's Attorney stating that Student's Parents were told that a PPT meeting would be held on September 13 if they did not respond to the letter offering several dates (P-70). BOE's Attorney offered to hold a PPT meeting on September 20, as requested by Student's Attorney, if it started at 11:00 a.m. or earlier.

101. BOE staff were aware that Student's Father was not available before 11:00 a.m. due to his own medical condition (Special Education Coordinator; Fermi Special Education Department Chair; Fermi High School Principal).
102. All PPT meetings provided in the documentary record occurred. There is disagreement between the parties as to what occurred during the meetings and whether all of the meetings were legal under IDEA (Stip FOF 13).
103. BOE staff and teachers involved in Student's education and PPT meetings felt that Student's Father was forceful and demanding and difficult to please. They testified that Student's Father spoke over people at PPT meetings, tried to turn it to the direction he wanted, and disregarded and disrespected other people in the process.
104. Student's Father put restrictions on when and how school staff could communicate with him. Many communications from Student's Father were difficult to decipher.
105. The Options program's mission is to increase the competitive skills of students through academic support; decrease anxieties from other social settings and vocational and transitional services; evaluate students' career interests, aptitudes, and values; and look at how their disabilities affect functioning (Options Director; P-67). The program consists of one-on-one tutoring and limited peer socialization opportunities. Options only accepts students referred by the local education agency ("LEA"). Options implements IEPs prepared by the referring LEA.

#### Conclusions of Law

1. Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. Sec. 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 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. A school district must convene a PPT meeting to determine whether ESY services are necessary to the provision of FAPE. 34 CFR § 300.106.
6. A school district must conduct a reevaluation of each child with a disability at least once every three years, unless the parent and school district agree that reevaluation is not necessary. 34 CFR § 300.303(b)(2).
7. A school district must ensure that a student is assessed in all areas related to his suspected disability. 34 CFR § 300.304.
8. Not later than the first IEP to be in effect when the child with a disability turns 16, the IEP must include transition planning services. 34 CFR § 300.320(b).
9. Not later than one year before the child with a disability reaches the age of majority, the IEP must include a statement regarding notice of transfer of rights. 34 CFR § 300.320(c).
10. The PPT includes the parents of a child with a disability. 34 CFR § 300.321.
11. A school district must take steps to ensure that the parents of a child with a disability are present at each PPT meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually convenient time. 34 CFR § 300.322.
12. A PPT meeting can be conducted without a child's parents in attendance if it cannot convince the parents they should attend and if it maintains a record of its attempts to arrange a mutually agreed on time and place for the meeting. 34 CFR § 300.322(d).
13. A school district must have an IEP in place for an eligible student at the beginning of each school year. 34 CFR § 300.323.
14. A student's IEP must be reviewed not less than annually and revised as appropriate. 34 CFR § 300.324(b).
15. 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).
16. A school district has a right to conduct its own evaluation utilizing the professional(s) of its own choosing prior to a parent obtaining a second opinion through an independent educational evaluation.
17. 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).
18. 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).
19. 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).
20. 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).
21. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEPs were developed. B. L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 537 (D. Conn. 2005).
22. A student may be denied FAPE if bullying or harassment is “severe and prolonged” and if the district is “deliberately indifferent” to the conduct such that the student can derive no

benefit from the services offered by the school district. M.L. v. Federal Way Sch. Dist., 394 F.3d 634, 650-51 (9th Cir. 2005).

23. "It is well established that 'equitable considerations are relevant in fashioning relief' under the IDEA." M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ., 226 F.3d 60, 68 (2d Cir. 2000) (quoting Burlington v. Dep't of Educ., 471 U.S. 359, 374 (1985)).

### Discussion

Each of the issues identified on page two above are addressed in this Discussion section. They are addressed in chronological order, instead of the order as stated above, to provide better clarity and understanding of the facts, issues, and decision. All of the parties' arguments 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.

Where there is found to be a violation of the IDEA, the appropriate remedy is identified in the Final Decision and Orders section after this Discussion section.

#### **I. Did BOE fail to provide Student with a free appropriate public education from March 30, 2009 through the end of the 2008-2009 school year?**

Student was in eighth grade at BOE's Middle School during the 2008-09 school year. Student's most recent evaluation (Dr. Kulas in 2006-07) recommended that Student be serviced in the mainstream classroom with repetition and opportunity for re-teaching (P-16). He also recommended that social development and social interaction skills be made a priority in Student's educational program and that Student must be given the opportunity to fail in order to provide exposure to situations that will decrease his anxiety in the long-term.

The PPT met on June 5, 2008 to conduct an annual review (P-25). At that time, Student's eligibility category was Speech or Language Impairment. The PPT received teacher reports of Student's grades and progress.

The present levels of academic achievement and functional performance section of the IEP indicated that Student was at age appropriate level for language arts, math, non-academic areas, and behavioral/social/emotional. It also noted that Student has weaknesses in language skills and needs reassurance with social perceptions. Student's communication skills were not deemed age appropriate.

The IEP included communication and social/behavioral goals and objectives implemented by, respectively, the speech and language pathologist and social worker. The PPT recommended average classes for science, social studies, English, and math; developmental reading; social work services 30 minutes per week; speech and language services once a month for 40 minutes; standard administration of the eighth grade CMT; weekly communication log to be sent home and monitored by the special education teacher; all classes scheduled on the first floor to accommodate Student's medical condition; special van transportation due to his medical condition; an extra set of books at home; the PPT to meet at progress report time to review his progress; and the following additional modifications and accommodations: extra set of books in each classroom; modified worksheets when necessary; calculator; extra time on quizzes when appropriate; rephrase questions/directions; modified tests if necessary; grade effort and work; assess major concepts in social studies and science; take medical problems into account; elective grades adjusted by the amount of time he is out of class for speech and language therapy and social work services; daily assignment list; seated so he can hear and his back is comfortable; do not reprimand for speaking loudly due to hearing loss; math, English, social studies, and science in a collaborative setting; positive reinforcement; cue expected behavior; check work in progress; review directions; special pass to allow him to pass before and after regular passing time as needed and to leave the classroom for medical reasons (P-25).

The PPT excused Student from physical education due to his medical condition and permitted him to take a full year of shop class instead.

The IEP indicates that no requested actions were refused. Student's Father was present at the PPT meeting and shared information/concerns. Student's proposed program was individualized on the basis of his assessment and performance and was administered in the least restrictive environment.

A PPT meeting was held on May 29, 2009 to plan an evaluation/reevaluation and conduct an annual review (B-9). The resulting IEP primarily dealt with Student's transition to high school for the following school year.

Student, Student's Mother, and Student's Father attended the May 29, 2009 PPT meeting. The notes indicate that Student's Father "is pleased with the transition [Student] has made to [BOE Middle School]. He appreciates the work that the teachers have done over these last two years." He also stated that Middle School Principal has been great assisting Student for the last

two years at BOE Middle School and in working on a smooth transition to high school (B-9). The IEP indicates that no requested actions were refused.

There is minimal evidence indicating Student's performance or progress during his eighth grade year (2008-09). Student was absent for the eighth grade CMT (P-27). His final grades were one B+, one B-, three C+, and four C's (P-29). He was absent 64 times (more than one-third of the 180 school days). Student's Mother testified that Student never attended a full day of school during his eighth grade year due to medical issues related to his back surgery. She also testified that Student struggled with homework and class work, including reading, math and history.

The documentary evidence in this case indicates that Student's Father is not hesitant to contact BOE when he has concerns or disagrees with actions or inactions of school staff. However, there is no evidence of concerns about Student's performance or progress from March 30, 2009 through the end of the 2008-09 school year. The evidence indicates that BOE reviewed Student's then-present levels of performance, progress and needs when designing this eighth grade IEP and that BOE provided numerous accommodations, modifications, and supports to Student during the year. The uncontested evidence further indicates that Student's Father was pleased with Student's transition to BOE Middle School. There is no evidence of any concerns, issues, or problems with Student's 2008-09 eighth grade IEP.

BOE met its burden of proving that it offered Student a free appropriate public education from March 30, 2009 through the end of the 2008-09 school year.

## **II. Did BOE fail to provide Student with a free appropriate public education during the 2009-10 school year?**

Student was in ninth grade and scheduled to attend Enfield High School during the 2009-10 school year. The PPT met on May 29, 2009 to plan an evaluation/reevaluation and conduct an annual review (B-9). At that time, Student's eligibility category was Speech or Language Impairment.

The PPT recommended average classes for science, social studies, English, and math with modifications; 30 minutes weekly social work services; speech and language services on a consultative basis for ninth grade; weekly communication sheet sent home for first six weeks of high school monitored by special education teacher; case conference with Student's Parents and high school staff after a four to six week transition period; special van transportation for morning

pick-up in ninth grade; use of elevator at high school; extra set of books provided at home; pass for early class transition and to go to nurse or lavatory; guidance counselor at high school to be contact person for transition needs; escort assigned to assist in hall passing during transition period; high school visit for Student and Student's Parents; and reevaluation (B-9).

The PPT also recommended the following additional modifications and accommodations: modified worksheets when necessary; calculator; extra time on quizzes when appropriate; rephrase questions/directions; modified tests if necessary; grade effort and work; assess major concepts in social studies and science; take medical problems into account; elective grades adjusted by the amount of time he is out of class for social work services; daily assignments written in planner; seated so he can hear and his back is comfortable; math, English, social studies, and science in an average setting; positive reinforcement; cue expected behavior; check work in progress; review directions; collaborative teachers may provide modified work to be used in average class; special pass to allow him to pass before and after regular passing time as needed and to leave the classroom to go to the nurse or lavatory (B-9).

The present levels of academic achievement and functional performance section of the IEP indicated that Student was at age appropriate level for language arts, math, other academic and non-academic areas, and behavioral/social/emotional. It noted that Student has weaknesses in language skills and needs reassurance with social perceptions and interactions (B-9).

The IEP included a communication and academic/cognitive goal with three objectives that were implemented in the regular classroom by the special education teacher, speech and language pathologist, and regular education teacher; a transition goal (since this IEP would be in effect at the time he turned 16) implemented by the guidance counselor; and a social/behavioral goal with two objectives relative to counseling with the social worker.

The IEP indicates that no requested actions were refused. Student's Parents and Student were present at the PPT meeting. As indicated above, under Issue One, the IEP notes indicate that Student's Father "is pleased with the transition [Student] has made to [BOE Middle School] and that Middle School Principal has been great assisting Student for the last two years at BOE Middle School and in working on a smooth transition to high school (B-9). Student's Parents did indicate concerns about Student's safety and medical issues. Accommodations such as the early passing time, the pass allowing Student to go to the nurse or lavatory at any time, use of the elevator, and extra sets of books were responsive to those concerns.

Student's Mother testified that she told the PPT that Student was not benefitting from special education and that he needed more services. She did not identify what services or types of services she felt were missing from the IEP. The letters from Student's Father primarily raise concerns about Student getting in an altercation or fight with students involved in the summer attack. The PPT meeting minutes do not reflect a request for more or additional services.

At the October 13, 2009 PPT meeting, Student's Parents requested that Student be transferred to another high school and that he be exited from special education against the recommendation of the Special Education Department Chair. Student's Father refused continuing special education services for Student. Student was exited from special education. Student's Father indicated that the request for a school transfer was due to safety concerns related to Student's previous altercations with other students.

Student was on homebound tutoring from January 4 to January 28, 2010 (B-10). In January 2010, Student transferred to Fermi High School and Student's Parents sought to reintroduce special education services.

At the PPT meeting on January 25, 2010, Student was found eligible to receive services as a special education student under the category of Multiple Disabilities (Stip FOF 9; B-7). Student's Mother testified that no one explained why Student's eligibility category was changed from Speech or Language Impairment to Multiple Disabilities.

The IEP indicates that Student was working at grade level in most classes, that he has weaknesses in language skills, and that he needs reassurance with social perceptions and interactions.

The PPT recommended that Student receive direct social work services; two support classes daily; tutoring during the school day to assist with transition; exemption from physical education due to medical reasons; health portion of physical education to be covered by a tutor; English and History co-taught classes; van to and from school; permanent pass to the nurse, elevator use, early passing to lunch, and early/delayed passing to classes; copies of textbooks to be kept in the classroom and one copy provided for use at home; building tour; meeting every few weeks with Student's Parents, social worker, assistant principal, and case manager to review transition and academic/social progress; reconvene in May to plan for next school year; grades based on class work and modified homework; Student's Parents to be notified of any issues

occurring during the school day (B-7). Each of Student's Father's requested items were included in the IEP (B-6; B-7).

Student's Mother testified that Student's transition to Fermi High School was good from January until April 2010. On March 27, 2010, Student was involved in an off-campus verbal altercation with students involved in the summer 2009 incident. Then, on April 7, 2010, Student was suspended for hitting a student at school.

School staff repeatedly indicated that Student's absence from school negatively impacted his academic progress. Student was absent from school 32 times during the first semester (B-10). Student was absent 25 times (not including his suspension) and tardy 28 times during the second semester (B-10). Many of Student's absences were for medical appointments and/or due to his back injury or illness (P-34; Student's Mother). Student also missed time from class during the day to go to the nurse when he had back pain or other illnesses or problems (P-55).

The evidence indicates that, when planning Student's IEPs for 2009-10, BOE reviewed Student's then-present levels of performance, progress and needs and that BOE provided numerous accommodations, modifications, and supports to Student. The IEP was reasonably calculated to enable Student to receive meaningful educational benefits. Student's program was individualized on the basis of his assessments and performance and was administered in the least restrictive environment.

Student's Parents' primary argument is that Student was denied FAPE due to bullying or harassment and that BOE did not take appropriate actions to ensure Student's safety in school. Student's Father wrote several letters expressing concern about Student's safety in school as a result of altercations that occurred out of school. He expressed concern that the other students involved in those altercations, or friends on their behalf, were threatening or would threaten or intimidate Student in school.

BOE provided supports and contacts for Student within school to allow him to discuss any safety concerns and to get himself to a safe location if he felt threatened. BOE staff testified that Student did not express fear or concerns about bullying, even when asked, and that he did not often use the early/delayed passing pass that would allow him to avoid students in the hallways.

The record supports a finding that Student's absences were primarily for medical reasons (i.e. doctor's appointments, pain and discomfort as a result of back injury and surgery,



medication management). There is not sufficient evidence in the record to make a finding that Student was subjected to severe or prolonged harassment or bullying at school or that BOE was deliberately indifferent to any such conduct so as to deprive Student of the benefit of his special education services.

The evidence also supports a finding that Student's Father is controlling, has regularly intervened on Student's behalf, prohibited Student from being a regular active participant in his PPT, and sheltered Student from opportunities to develop necessary coping skills. Dr. Kulas' report states that Student's Parents "appear to be shielding him from opportunities to develop [functional] skills in an attempt to protect him" (P-16).

Student's Parent's concern for Student's health and safety is commendable. However, it cannot be a shield to interfere in Student's academic and social success at school. Dr. Kulas further stated that Student must be given the opportunity to fail in order to provide exposure to situations that will decrease his anxiety in the long-term.

The record supports a finding that Student's excessive absences impact his academic and social progress and success. Teacher reports indicate that Student generally performs well and at grade level when in school and that his absences negatively impact his performance.

BOE met its burden of proving that it offered Student a free appropriate public education during the 2009-10 school year.

### **III. Did BOE fail to appropriately evaluate Student?**

A school district must conduct a reevaluation of each child with a disability at least once every three years, unless the parent and school district agree that reevaluation is not necessary. 34 CFR § 300.303(b)(2). A school district must ensure that a student is assessed in all areas related to his suspected disability.

The most recent evaluations included in the documentary evidence are the neuropsychological evaluation in November 2006 and January 2007 and a physical therapy screening in April 2007 (P-16; P-21). Other than record reviews, Student has not undergone any formal evaluation or assessments since early 2007.

Student should have been evaluated no later than January 2010 unless Student's Parents and BOE agreed that re-evaluation was not necessary. Student had been exited from special education in October 2009 at Student's Parents' request. He was transferred to Fermi High

School in January 2010. Student's Parents requested that a PPT meeting be held on January 25, 2010 to "re-introduce" Student to special education (B-6). The PPT meeting notice indicated that the purpose was to "discuss a referral to special education and consider/plan an evaluation" (B-7). However, the IEP itself does not indicate that planning or reviewing an evaluation or re-evaluation was one of the reasons for the meeting.

Other than a review of records, an evaluation was not offered or conducted. There is no evidence that an evaluation or re-evaluation was discussed. The PPT found Student eligible for special education under a different category: Multiple Disabilities. The Prior Written Notice section of the IEP indicates that evaluation results support the proposed actions. However, it does not indicate what evaluation supports the actions.

The June 14, 2010 PPT meeting notes indicate that this was Student's annual PPT meeting and a meeting to plan his triennial evaluation (B-11). At that meeting, the PPT developed Student's IEP for 2010-11 and Student's Father signed consent for re-evaluation (P-51). The consent identified the following tests: WISC/WAIS; WIAT; BASC; speech and language; and others deemed necessary. The areas of assessment included cognitive, achievement, social/behavior, and receptive/expressive language. The evaluations were to be conducted by BOE's psychologist and speech and language therapist.

BOE did not conduct any evaluation of Student. Special Education Coordinator testified that Student's Father's June 21, 2010 fax stating that Student's Parents "do not and will not agree[ ] with the stipulations set forth by the PPT team" was treated as a withdrawal of consent to evaluate (B-14).<sup>5</sup> The fax indicates that Student's Parents did not feel that they were allowed to "partake in the verbal communication in behalf of our son."

The fax does not state that Student's Parents withdraw consent for evaluation. In fact, the fax does not even mention the evaluation. No one from BOE inquired of Student's Parents as to whether their disagreement with the IEP provisions or PPT meeting process constituted a withdrawal of consent to evaluate. BOE did not follow-up with a timely evaluation or seek to clarify Student's Parent's concerns or position. The issue of the evaluation arose at Student's October 25, 2010 PPT meeting (more than four months after Student's Father signed consent for

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<sup>5</sup> At the pre-hearing conference, BOE's Attorney indicated that BOE had filed a request for due process regarding Student's Parent's failure to consent to evaluation and that they did not believe that the matter had been assigned to a Hearing Officer. BOE's Attorney indicated that she would follow up with the Due Process Unit to determine the status of that request and would then file a motion to consolidate the matters. The Due Process Unit indicated that they had not received any such request for hearing.

re-evaluation). Student's Attorney indicated that Student's Father consented to evaluation and BOE's Attorney indicated that consent was withdrawn via the above-reference fax from Student's Father to BOE. Special Education Coordinator testified that she did not contact Student's Parents to clarify their intention. BOE did not conduct the evaluations or seek timely clarification as to whether consent had been revoked.

BOE failed to appropriately evaluate Student when it did not conduct an evaluation in a timely manner after receiving signed consent for evaluation.

**IV. Did BOE fail to provide Student with a free appropriate public education during the 2010-11 school year?**

The PPT met on June 14, 2010 to plan Student's 2010-11 IEP (B-11). At that time, Student had not been evaluated in more than three years. The present levels of achievement section of the IEP indicates that Student has needs in the areas of decoding skills, reading comprehension, attendance, missing assignments, understanding and applying math concepts, peer interactions, depression and mood swings, disruptive behaviors, organizational skills, spelling skills, social skills, and anxiety as reported by Student's Parents.

Student's IEP does not include goals or objectives addressing most of the areas of concern in the present level of achievement section. The IEP indicates that it will continue the previous year's goals and objectives until his triennial evaluation is completed. The goals include: 1) demonstrate growth in academic and social skills decision making in order to increase self-esteem; and 2) complete series of activities to prepare to transition to competitive employment. As indicated above, the triennial evaluation was not completed.

A week after the PPT meeting, Student's Parents indicated in writing that they do not agree to the stipulations set forth in the IEP. In fall 2010, they requested homebound tutoring for Student, which was eventually ordered by the PPT in October 2010 but did not begin until December 2, 2010. Student's 2010-11 IEP expired on January 4, 2011 (B-20). There was no IEP in place for the remainder of the 2010-11 school year. Student did not attend school during the 2010-11 school year.

The PPT did not plan an IEP that addressed Student's then-present levels of performance or that was individualized on the basis of timely assessments or that was administered in the least restrictive environment.

BOE did not meet its burden of proving that it offered Student a free appropriate public education during the 2010-11 school year.

**V. Did BOE fail to offer Student a free appropriate public education during the 2011 extended school year?**

Student's 2010-11 IEP expired on January 4, 2011 (B-20). Student's PPT did not meet again until September 13, 2011 (P-71). The PPT did not meet to determine whether Student required extended school year ("ESY") services during summer 2011. Special Education Coordinator testified that Student was never offered ESY; that she did not recall it being discussed at his PPT meetings and since the team didn't bring it up, she wasn't concerned about it; and that the PPT did not recommend ESY because Student "doesn't have the profile of a Student that usually gets it."

A school district must convene a PPT meeting to determine whether ESY services are necessary to the provision of FAPE. 34 CFR § 300.106. BOE did not convene a PPT meeting to determine whether ESY services were necessary for the provision of FAPE to Student.

The evidence indicates that Student missed substantial amounts of school due to illness and/or medical issues necessitating him to make up missed coursework; that he performs at grade level when receiving small group and/or one-on-one instruction and re-teaching; and that he benefits from social work services. The evidence also suggests that Student would benefit from tutoring to allow him to catch up missed coursework and to receive re-teaching.

BOE has not met its burden of proving, by a preponderance of the evidence, that it provided FAPE to Student for summer 2011.

During summer 2011, BOE provided Student compensatory tutoring services for time owed from October to December 2010. Student failed to fully take advantage of those services due to personal matters unrelated to his disability that made him unavailable (Fermi High School Math Chair; Student's Mother). Student cancelled and/or did not show up for tutoring sessions in July and August 2011. The Hearing Officer finds that, given Student's unavailability for programming in the summer, he would not likely have taken advantage of an ESY program, if offered as a necessary component of FAPE.

**VI. Did BOE fail to offer Student a free appropriate public education during the 2011-12 school year?**

There was no IEP in place for Student at the beginning of the 2011-12 school year. BOE did not offer to hold a PPT meeting prior to the first day of the 2011-12 school year yet urged Student to return to school on the first day without an IEP. The PPT met on September 13, 2011 without Student's Parents and without making efforts to accommodate Student's Parents' availability. The PPT developed an IEP based on a record review and the report of Student's summer tutor based on a few summer tutoring sessions.

Many of the statements and representations in the September 13, 2011 IEP are not credible or supported by the evidence.

Student should be in eleventh grade during the 2011-12 school year. The IEP indicates that his current grade is ninth. The IEP states that Regular Education Teacher says he is on grade level. However, his previous IEP dated October 25, 2010 indicated reading skills at the sixth grade level, decoding skills at high second grade level, and comprehension at low fourth grade level (B-20).

The IEP indicates that Guidance Counselor reported Student is on track to graduate next year (2012-13) if he passes his classes. Student's transcript from one year earlier indicated that his anticipated graduation date was 2014 (P-53).

The IEP indicates that Student is capable of grade level work, that he performs best in smaller class settings, and that his inconsistent attendance impacts his academic progress. Student's reported tenth-grade grades range from B+ to C-. His ninth-grade grades ranged from C- to F (B-20).

Despite not having been in school consistently, having a record indicating that his absences impact his performance, and having not received or taken advantage of the full schedule of homebound tutoring, it is difficult to imagine how he progressed, advanced his anticipated graduation date, and improved his grades.

The present level of function and performance page makes no mention of Student's behavioral, social, and emotional needs that have consistently been identified in previous IEPs and notes from Student's Private Clinician. Student's previous IEPs consistently state that Student needs reassurance with social perceptions and interactions to feel comfortable in school and that Student's Parents report that he suffers from anxiety (B-7; B-9; B-11; B-20; P-25). There

is no evidence that those social needs have been resolved. In fact, the evidence suggests the contrary since Student has been out of school for an extended period of time and has anxiety revolving around his attendance and health.

The Transition Planning page of the IEP indicates that “Student will not be 17 within one year” when in fact, Student turned 17 six months earlier, as indicated on the front page of the IEP.

The IEP provides increased special education hours in the second semester to add 3.92 hours per week of math in a self-contained classroom. Although the IEP identifies Student’s lowest grade as being in math, the IEP does not provide that increased service until the second semester.

The goal column on page eleven of the IEP is blank. The IEP does not indicate which goals are addressed by which service, service implementer, frequency, date, etc.

BOE did not meet its burden of proving, by a preponderance of the evidence, that it offered Student a free appropriate public education during the 2011-12 school year.

## **VII. Did BOE commit procedural violations that resulted in a denial of FAPE?**

Student’s Amended Request for Due Process (HO-2) alleges the following procedural violations:

Failure to evaluate: This is covered in Issue Three, above.

Failure to mail IEPs in the required timeframe: There is no evidence in the record that BOE failed to appropriately or timely mail IEPs to Student’s Parents. Student has not met the burden of production on this issue.

Failure to hold PPT meetings at a convenient time for Student’s Parents to attend: The PPT convened a manifestation determination meeting on April 16, 2010 without Student’s Parents despite their request that the PPT meeting not proceed without them and their attorney. There is no evidence in the record to indicate that BOE attempted to reschedule the meeting to accommodate Student’s Parents’ request to attend with their attorney. The PPT also met on September 13, 2011 without Student’s Parents and without making efforts to accommodate Student’s Parents’ availability.

Parents are members of the PPT. 34 CFR § 300.321. BOE must take steps to ensure that Student’s Parents are present at each PPT meeting or are afforded the opportunity to participate,

including scheduling the meeting at a mutually convenient time. 34 CFR § 300.322. BOE presented no evidence of any attempt to arrange a mutually agreed on time for the manifestation determination PPT meeting. BOE presented evidence of an initial attempt to arrange a mutually agreed on time for the September 2011 PPT meeting but then appeared to ignore Student's Attorney's response and proceeded at a time not mutually agreed on. BOE then offered to meet at a time that it knew Student's Father was not available.

BOE's actions in conducting PPT meetings without making reasonable efforts to include Student's Parents significantly impeded their opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

Predetermined Student's program: Student's only argument in support of this allegation is that BOE predetermined that Student would only receive in-district service, that only homebound tutoring was offered at the October 25, 2011 PPT meeting,<sup>6</sup> and that no other options were considered (Student's Brief at 40). Homebound tutoring was granted at Student's Father's request. BOE's grant of Student's Father's request does not support a finding of predetermination. Student has failed to meet the burden of production with regard to predetermination.

Failure to provide IEP based on Student's needs: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failure to provide an appropriate program: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failure to keep Student safe in school: Student's Father initially raised concerns about Student's safety in school relative to his back injury. Student was given a special pass to allow him to pass early or late to avoid crowds in the halls and to allow him to go to the nurse or lavatory whenever needed. After the summer fight, Student's Father's safety concerns centered on alleged threats and intimidation in school as a result of the altercation between Student and other students off school grounds in the summer. Student's Father did not raise specific allegations or complaints of actual conduct within school.

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<sup>6</sup> The Hearing Officer assumes that Student's Attorney is referring to the October 25, 2010, not 2011, PPT meeting as it was the meeting at which the PPT granted homebound tutoring. There is no October 25, 2011 IEP in the record.

There is no evidence in the record that Student made any complaints about bullying or harassment. BOE assigned specific staff, who would not normally be assigned to Student, to assist Student in his transition to school and to support his physical, social, and academic needs. School Principal, Assistant School Principal, and/or Social Worker from each of his schools testified that they worked to establish an open, trusting relationship with Student, that Student had a pass to meet with administrators any time he wanted, that Student went to see them to talk about concerns or problems, and that Student, even when asked, never complained of bullying or harassment in school. BOE even transferred Student from one high school to another at Student's Father's request to alleviate any such concerns.

The record supports a finding that, with one exception, the altercations with Student and other students occurred off-campus and outside of school hours. In the one exception, Student punched another student at school.

The record also supports a finding that Student's Father is controlling and over-protective. He attempted to forbid BOE administrators from talking with Student, refused to allow School Social Worker and Private Clinician to discuss Student's anxiety or emotional needs, and refused to accept communications from BOE when they were not what he wanted to hear. This has not helped create a trusting environment for Student. Student's previous evaluators commented on the importance of parent/staff collaboration to avoid conflict and resurgence of Student's anxiety.

There is insufficient evidence in the record to make a finding that BOE failed to keep Student safe in school.

Allowed Student to sit home for several months without any educational programming:

As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failed to provide compensatory services for missed tutoring time: Student received homebound tutoring during the 2010-11 school year. He was granted compensatory tutoring services to make up for BOE's delay in starting homebound tutoring. This was resolved through the Complaint process at the Due Process Unit. Student failed to take full advantage of the compensatory services during summer 2011. This may have been an outstanding issue at the time that the Amended Complaint was filed but has been addressed since that time.



Failed to implement Student's IEP while on homebound tutoring: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failed to provide an appropriate transition program and services: Not later than the first IEP to be in effect when Student turns sixteen, his IEP must include transition planning services. 34 CFR § 300.320(b). Not later than one year before Student turns eighteen, his IEP must include a statement regarding notice of transfer of rights. 34 CFR § 300.320(c).

Student turned sixteen in spring 2010, during his ninth grade year. The first IEP to be in effect at the time he turned sixteen was the May 29, 2009 IEP (B-9). The transition planning page of that IEP indicates that Student was invited to, attended, and participated in the PPT meeting with regard to transition planning. The notes indicate that Student is unsure of his preferences and interests at that time and that he discussed outside interests.

The IEP indicates that he will participate in Career Game through the guidance department during winter of eighth grade. One of his IEP goals was to complete a career inventory to assist in determining vocational areas of interest. Student's IEP called for him to meet with Guidance Counselor four times during the year for this goal.

Student was exited from special education by his parents in October 2010. He was reinstated to special education at Student's Parents' request at a PPT meeting on January 25, 2010. That IEP indicates that the Learning Characteristics assessment will be completed by June 2010. According to the June 14, 2010 IEP, the assessment was completed and reviewed at the PPT meeting (B-11).

The IEP included goals and objectives relative to post-secondary education or training and competitive employment. Student's goal relative to transition to post-secondary education/training included objectives for appropriate interaction with peers and adults; ability to verbalize issues and concerns; completion of daily academic assignments with appropriate modifications; and requesting assistance from teachers when unsure of assignments, directions, or tasks.

Student's goal relative to transition to competitive employment included two sessions in the career center between January and June 2010.

The present level of performance section of the June 14, 2010 IEP is blank with regard to vocational/transition (B-11). It continues to indicate that the Learning Characteristic will be

completed by June 2010 despite the notation that it was completed and reviewed. Under the section regarding notice of transfer of rights, the IEP indicates that Student will not be seventeen within one year. However, Student did turn seventeen within one year of this PPT meeting. There is no indication that he was informed of his rights under IDEA transferring at age eighteen.

The IEP indicates that Student will enroll in vocational courses to assist in determining his area of interest. Student was not present at the PPT meeting. The June 2010 IEP continued Student's previous goals and objectives and added an objective that Student will demonstrate ability to attend school daily, on time, and to remain in class until dismissed. Student's goal relative to transition to competitive employment included three sessions in the career center and/or with Guidance Counselor during the 2010-11 school year.

Transition Coordinator testified that she was not provided and did not see Student's career inventory. The IEP indicates that he took it in 2010 and that it was reviewed at the PPT meeting.

Student did not attend school during the 2010-11 school year. On October 25, 2010, the PPT agreed to homebound tutoring. Student did not receive transition services outside of school during the 2010-11 school year.

The present level of performance section of the October 25, 2010 IEP is blank with regard to vocational/transition (B-21). The transition planning page is unchanged from the previous two IEPs (including erroneously stating that he will not be seventeen within one year). Again, there is no indication that he was informed of his rights under IDEA transferring at age eighteen. Student's goals and objectives were changed. His October 25, 2010 IEP includes one goal: improve his ability to participate in his educational program and make good decisions. His objectives include attendance at daily tutoring sessions, being on time and remaining until the session is completed; complete and submit all assigned work daily; and verbally and appropriately express concerns. The IEP did not include transition planning goals and objectives despite the transition planning page indicating that there were post-secondary education or training and employment goals and objectives in the IEP.

Although there was only one goal in his October 2010 IEP, page 11 of the IEP indicates that goal two is his transition goal and that he will have one transition meeting with the tutor

between October 25, 2010 and January 4, 2011. The transition goal is not included in the IEP submitted into evidence (B-20).

Student's September 13, 2011 IEP indicates that he will have ten one-on-one sessions with Transition Coordinator and that he is enrolled in two periods of Auto I (P-71). The transition planning page continues to indicate that Student will not be seventeen within one year when he was, in fact, already seventeen. Again, there is no indication that he was informed of his rights under IDEA transferring at age eighteen.

Student's September 13, 2011 IEP includes a transition goal relative to transition to two- or four-year post-secondary education programs and a goal to complete activities to prepare for transition to competitive employment. Transition Coordinator attended Student's September 13, 2011 PPT meeting but did not have input on his transition planning goals. She has not met Student and had not seen his career inventory.

BOE has not met its burden of proving that it provided Student appropriate transition planning services.

Failed to provide social skills intervention: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failure to conduct functional behavioral assessment and create behavior intervention plan: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failure to address life skills: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failure to assess Student's need for technology: There is no evidence in the record that Student's Parents identified a need for or requested technology for Student or that BOE failed to assess such need. Student's independent evaluations did not identify the need for technology (P-8; P-16). Student has not met the burden of production on this issue.

Failure to create a program that addresses Student's academic disabilities: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failed to respond to Student's lack of progress in academics: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failed to provide an appropriate IEP: As appropriate and relevant to a particular IEP, this is considered under issues One through Five above in that it goes to the issue of whether BOE offered Student FAPE for a given time period.

Failed to provide appropriate ESY: This is covered in Issue Four, above.

Failed to provide records in a timely manner: There is no evidence in the record that BOE failed to timely provide records to Student's Parents. There is one reference to a document request in the exhibits but it is not clear what documents were requested or whether they were sent (B-16). Student has not met the burden of production on this issue.

Failed to allow Student's Parents to be equal and/or meaningful participants in the IEP process: As indicated above, BOE's actions in conducting PPT meetings without making reasonable efforts to include Student's Parents significantly impeded their opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

**VIII. Should Student be placed at the Options program for the 2010-11 school year, 2011 extended school year, and/or 2011-12 school year at BOE expense?**

Student's Parents seek compensatory education in the form of two years tuition at the Options program. Student's Parents requested, and Student's Private Clinician recommended, that he attend the Options program for one-on-one tutoring and job placement support. Private Clinician based her recommendation on conversations with Student's Parents and a ten-minute conversation with Options Director. She did not visit the program. Private Clinician testified that she was not sure whether the Options program was a classroom setting. Private Clinician did not talk to anyone at BOE about the program and services available to Student. The Options program provides limited opportunity for peer interaction and socialization.

Private Clinician's recommendation appears to be based primarily on whether Student is too fearful to return to BOE's schools. The record is not clear on whether the fear or desire not to attend BOE's schools is that of Student or Student's Father.

Student's last evaluation (2007) recommended that he continue in a mainstream environment and that he be given opportunities to increase self-esteem and social interactions.

Student has not been recently evaluated to determine whether those recommendations and needs are currently applicable and appropriate. There is insufficient evidence in the record to determine whether the Options program is appropriate for Student.

**IX. Is Student entitled to compensatory education?**

As compensatory education is a remedy for certain violations of the IDEA, whether Student is entitled to compensatory education is addressed in the Final Decision and Order below in response to the issues for which the Hearing Officer finds there to be a violation of IDEA.

**FINAL DECISION AND ORDER**

1. BOE met its burden of proving that it provided Student a free appropriate public education from March 30, 2009 through the end of the 2008-09 school year.
2. BOE met its burden of proving that it provided Student a free appropriate public education during the 2009-10 school year.
3. BOE failed to appropriately evaluate Student when it did not complete an evaluation in a timely manner after receiving signed consent for evaluation. BOE shall complete an evaluation of Student within twenty school days of receipt of this Final Decision and Order. The evaluation shall include each of the assessments identified in the June 14, 2010 Consent for Reevaluation (P-51) as well as a physical therapy evaluation. The evaluations may be conducted by qualified BOE staff or, as BOE deems appropriate or necessary, by outside entities at public expense. No later than the earliest of ten school days after completion of all of the evaluations or within thirty school days of receipt of this Final Decision and Order, BOE shall conduct a PPT meeting to review the evaluation results and plan an appropriate IEP for Student. BOE shall make every reasonable effort to ensure the attendance of Student's Parent and/or their designated representative at the PPT meeting.
4. BOE did not meet its burden of proving that it offered Student a free appropriate public education during the 2010-11 school year. An order of compensatory education in the form of tutoring would generally be an appropriate remedy for failure to provide FAPE. Such an order is not made in this case on these facts. Student received homebound tutoring during the 2010-11 school year. He was granted compensatory tutoring services to make up for BOE's delay in starting homebound tutoring. This was resolved through the Complaint process at

the Due Process Unit. Student failed to take full advantage of the compensatory services during summer 2011. An additional order of compensatory education is not deemed appropriate in light of the above facts and the additional Orders in this case.

5. BOE did not meet its burden of proving, by a preponderance of the evidence, that it provided FAPE to Student for summer 2011. BOE shall provide compensatory education in the form of training for all BOE staff and/or consultants who are, or are reasonably foreseeably likely to be, participants in Student's PPT for the 2011-12 and/or 2012-13 school years. The training, which shall last for no less than thirty minutes, shall include the IDEA requirements for convening a PPT meeting to determine whether ESY services are necessary to the provision of FAPE. The training may be conducted by BOE staff or an outside entity at public expense. The trainer shall be someone other than a member of Student's 2011-12 or 2012-13 PPT. Such training shall be completed within twenty school days of the receipt of this Final Decision and Order.
6. BOE did not meet its burden of proving, by a preponderance of the evidence, that it offered Student a free appropriate public education during the 2011-12 school year. BOE shall provide Student with compensatory education in the form of 280 hours of tutoring to cover the 28 week period from the first day of the 2011-12 school year to the latest possible date for a PPT meeting to be convened under Order Number Three above. In BOE's discretion, the tutoring can occur in Student's home or the Enfield public library. If BOE elects for the tutoring to occur in the public library, BOE shall provide transportation for Student to and from the library. Tutoring shall begin no later than ten *calendar* days after receipt of this Final Decision and Order. In the event that Student or Student's Parents cancel a scheduled tutoring session, BOE shall make reasonable efforts to reschedule the session within two weeks. If the session cannot reasonably be rescheduled due to Student's unavailability or non-attendance, Student will be deemed to have waived his right to those scheduled hours of compensatory education. If Student fails to attend a duly noticed tutoring session without any advance notice to the tutor, he will be deemed to have waived his right to those scheduled hours of compensatory education and BOE will not be required to reschedule the missed session.
7. Procedural violations:

- a. BOE's actions in conducting PPT meetings without making reasonable efforts to include Student's Parents significantly impeded their opportunity to participate in the decision-making process regarding the provision of FAPE to Student. BOE shall provide compensatory education in the form of training for all BOE staff and/or consultants who are, or are reasonably foreseeably likely to be, participants in Student's PPT for the 2011-12 and/or 2012-13 school years. The training, which shall last for no less than thirty minutes, shall include the IDEA requirements regarding the IEP Team and Parent Participation. The training may be conducted by BOE staff or an outside entity at public expense. The trainer shall be someone other than a member of Student's 2011-12 or 2012-13 PPT. Such training shall be completed within twenty school days of the receipt of this Final Decision and Order.
  - b. BOE has not met its burden of proving that it provided Student appropriate transition planning services. Within twenty school days of receipt of this Final Decision and Order, BOE will administer at least one informal assessment to assist Student with career and employment planning, as identified in the September 13, 2011 IEP (goal one, objective two). In BOE's discretion, the transition planning assessment can occur in Student's home or the Enfield public library. If BOE elects for it to occur in the public library, BOE shall provide transportation for Student to and from the library. BOE's Transition Coordinator shall attend and participate in the PPT meeting required in Order Three, above, to assist in planning Student's transition planning services.
8. Student's Parents seek placement at the Options program for 2010-11, ESY 2011, and 2011-12. The requested relief is primarily retroactive for the claimed violations of FAPE. There is insufficient evidence in the record to determine that the Options program is appropriate for Student. Remedies have been ordered above for violations of FAPE during the school years in question.

Attachment A – Exhibits

Hearing Officer exhibits are identified as “HO-#”; BOE’s exhibits are identified as “B-#”; and Student’s Parent’s exhibits are identified as “P-#”. The following exhibits were admitted into evidence as full exhibits.

HO-1: March 30, 2011 request for hearing filed by Student’s Attorney  
 HO-2: April 29, 2011 amended request for hearing filed by Student’s Attorney  
 HO-3: Joint Stipulation of Uncontested Facts dated June 16, 2011

B-1: Letter from Student’s Father to Principal October 4, 2009  
 B-3: PPT Meeting Summary October 13, 2009  
 B-4: Transfer/Exit Form October 13, 2009  
 B-5: High School Transfer Request December 28, 2009  
 B-6: Letter from Student’s Father January 19, 2010  
 B-7: PPT Meeting Summary January 25, 2010  
 B-8: PPT Meeting Summary April 16, 2010  
 B-9: PPT Meeting Summary May 29, 2009  
 B-10: Student Attendance Report June 14, 2010  
 B-11: PPT Meeting Summary June 14, 2010  
 B-12: Teacher Report June 14  
 B-13: Teacher Report June 14, 2010  
 B-14: Fax from Student’s Father June 21, 2010  
 B-15: Fax from Student’s Father June 21, 2010  
 B-16: Fax from Student’s Father August 11, 2010  
 B-17: Fax from Student’s Father August 11, 2010  
 B-19: Letter from Special Education Coordinator September 27, 2010  
 B-20: PPT Meeting Summary October 25, 2010  
 B-21: Note from Medical Provider October 26, 2010  
 B-22: Letter from Special Education Coordinator March 11, 2011

P-1: PPT Meeting Summary March 4, 2005  
 P-2: PPT Meeting Summary November 22, 2005  
 P-3: Educational Evaluation 2005  
 P-4: PPT Meeting Summary February 1, 2006  
 P-5: CMT Report March 1, 2006  
 P-6: Report of Reading Assessment April 6, 2006  
 P-7: Resolution Session Agreement April 19, 2006  
 P-8: Psychiatric Consultation Report June 12, 2006  
 P-9: PPT Meeting Summary June 15, 2006  
 P-10: Physical/Occupational Therapy Prescription July 11, 2006  
 P-11: PPT Meeting Summary October 5, 2006  
 P-12: Letter from Medical Provider October 25, 2006  
 P-13: PPT Meeting Summary October 30, 2006



- P-14: PPT Meeting Summary November 22, 2006
- P-15: PPT Meeting Summary January 2, 2007
- P-16: Neuropsychologist Report
- P-17: Neuropsychologist Report Addendum
- P-18: Due Process Unit Response to Complaint January 24, 2007
- P-19: CMT Report March 5, 2007
- P-20: Letter from Pupil Personnel Services April 17, 2007
- P-21: Physical Therapy Screen Report April 24, 2007
- P-22: PPT Meeting Summary June 11, 2007
- P-23: Letter from Medical Care Provider February 11, 2008
- P-24: CMT Report March 2008
- P-25: PPT Meeting Summary June 5, 2008
- P-26: Fax from Student's Father January 4, 2010 (erroneously marked 2009 per parties)
- P-27: CMT Report March 2009
- P-29: Grade Report June 11, 2009
- P-30: Fax from Student's Father September 18, 2009
- P-31: Letter from Student's Father September 14, 2009
- P-32: Letter from Student's Father September 24, 2009
- P-33: Letter from Student's Father September 24, 2009
- P-34: Medical Provider notes
- P-35: PPT Meeting Summary October 13, 2009
- P-36: Grade Report November 23, 2009
- P-37: Letter from Student's Parents December 4, 2009
- P-38: Letter from Judicial Branch December 9, 2009 (redacted copy substituted)
- P-39: Letter from Medical Provider January 6, 2010
- P-40: Score Report February 12, 2010
- P-41: Emails from BOE staff
- P-42: Letter from Judicial Branch February 18, 2010 (redacted copy substituted)
- P-43: Letter from Student's Parents March 29, 2010
- P-44: Letter from Assistant Principal April 7, 2010
- P-45: Incident Summary April 7, 2010 (redacted copy substituted)
- P-46: Letter from Student's Father April 9, 2010
- P-47: Letter from Student's Father April 10, 2010
- P-48: Notice of PPT Meeting April 8, 2010
- P-49: E-mail from BOE staff April 14, 2010
- P-50: Letter from Attorney June 2, 2010
- P-51: Notice and Consent to Conduct Reevaluation June 14, 2010
- P-53: Student Transcript 2009-10
- P-54: E-mail from Fermi High School Principal October 8, 2010
- P-55: Medical Card Report October 12, 2010
- P-56: Letter from Student's Attorney November 1, 2010
- P-57: Complaint to Due Process Unit November 22, 2010
- P-58: BOE Response to Due Process Unit Complaint March 4, 2011
- P-60: Letter from Due Process Unit March 14, 2011
- P-61: Letter from Special Education Coordinator March 14, 2011
- P-62: Letter from Due Process Unit March 18, 2011

- P-63: Letter from Student's Attorney March 30, 2011
- P-64: Letter from Student's Attorney April 12, 2011
- P-65: CV Margaret Ososki
- P-66: CV Scott Wells
- P-67: Options Program Brochure
- P-68: Letter from Special Education Coordinator August 30, 2011
- P-69: Letter from Student's Attorney September 6, 2011
- P-70: E-mails between Student's Attorney and BOE's Attorney September 14, 2011
- P-71: PPT Meeting Summary September 13, 2011

The following exhibits were offered but were not admitted into evidence as full exhibits.

- B-2: Duplicative of Parent Exhibit
- B-18: Duplicative of Parent Exhibit
- P-28: Duplicative of BOE Exhibit
- P-52: Duplicative of BOE Exhibit
- P-59: Duplicative of BOE Exhibit
- P-72: Duplicative of HO Exhibit