

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Killingly Board of Education

Appearing on behalf of the Parents: Attorney Lawrence Berliner  
Klebanoff & Phelan, P.C.  
433 South Main Street – Suite 102  
West Hartford, CT 06110

Appearing on behalf of the Board: Attorney Lawrence J. Campane  
Sullivan, Schoen, Campane & Connon  
646 Prospect Avenue  
Hartford, CT 06106

Appearing before: Attorney Justino Rosado, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is D. eligible to graduate in June of 2000?
2. If D. is not eligible to graduate in June of 2000 should she be enrolled in VISTA for the 2000-01 school year?
3. Is the board responsible for an independent assistive technology evaluation for D. by Judy Sweeney?
4. Is the board responsible for reimbursing D's parents for the costs of the VISTA evaluation?
5. Is D. entitled to compensatory education until the age of 21?

**SUMMARY:**

The student is an 18 and ½ year-old young woman whose parent objected to the student graduating in June 2000. The student has been identified as mentally retarded and therefore eligible for special education and related services as required in the Individual with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401 et seq.

The student was eighteen years old when the due process hearing was commenced. On July 27, 2000, the student testified at the hearing that she was in accord with the due

process hearing and it was her desire that her mother represent her at the hearings. The student was not present for most of the hearings.

To the extent the summary of facts and findings of fact actually represent conclusions of law, they should be considered and vice versa. *Bonnie Ann F v. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

**FINDINGS OF FACT:**

1. The student had been originally identified by the Board as being neurologically impaired, and eligible to receive special education and related services as required in the Individual with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401 et seq. (Board's Exhibit # 3)<sup>1</sup>
2. In 1998 a licensed psychologist who diagnosed the student as mentally retarded evaluated her. The student was tested with the Weschsler Intelligence Scale for Children-3<sup>rd</sup> Edition. The results of this test were: Verbal IQ 73, Performance IQ 59 and a Full Scale IQ of 66. This placed the student in the intellectually deficiency range of the 1<sup>st</sup> percentile. (Exhibit B-41)
3. The student's achievement in the Weschsler Individual Achievement Test were as follows:

<sup>1</sup> Hereinafter "B" followed by the number of the exhibit shall note Board's Exhibits.

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SUBTESTS: STANDARD SCORE: GRADE:

Basic Reading	62	3.6
Mathematics Reasoning	50	1.8
Spelling	55	2.9
Reading Comprehension	57	2.2
Numerical Operations	44	2.6
Listening Comprehension	75	3.9
Oral Expression	84	4.0
Writing	56	K.2
COMPOSITES: Reading	49	2.8
Mathematics	45	2.4
Language	76	4.2
Writing	49	2.7
TOTAL COMPOSITES	43	2.5

The student appears to be in the 2<sup>nd</sup> to 4<sup>th</sup> grade level in most areas. The psychologist felt that the student should not be expected to learn or perform academic tasks even remotely approaching her age or grade level. The psychologist recommended an integrated environment for the student to learn her basic living and consumer skills,

specialized vocational training within the context of a job-training program. This would build the student's confidence and practical skills. (Exhibit B-41). This could be a residential program. (Testimony Dr. Coyle)

4. The psychologist concluded from his evaluation that the student's primary diagnosis was Mental Retardation (MR). (Exhibit B-41). The student is not able to tell the difference between right and wrong. On September 9, 1998, an annual PPT was held; the team recommended that the student be reevaluated for a possible reclassification as MR. (Exhibit B-36)
5. A PPT was convened on February 2, 1999, at which the student's classification was changed from Neurologically Impaired to Mental Retardation. This change was based on the 1998 psychological evaluation and an Adaptive Behavior analysis that was done. The student's Adaptive Behavior Evaluation Quotient was 61 with a percentile of .03. (Parent's Exhibits-4 & 5)<sup>2</sup>
6. During the student's 1997-1998 school year, she was placed in a mainstream program with resource room and a Step Program. (Exhibit B-22)
7. The Step Program is a vocational training program, which places the student in jobs. The Board pays the student an hourly stipend when she is on the job. The program is not designed for the student to step out of high school and obtain a job. The student started her 1<sup>st</sup> job <sup>2</sup> Hereinafter "P" followed by the number of the exhibit shall note Parent's Exhibits. February 27, 2001 -4- Final Decision and Order 00-075 through the Step Program on October 1997 and ended in March 1998. The student was let go from her position because she was accused of taking money. This job was in the school cafeteria. The Step Program did not provide the student another position for the balance of the school year. (Exhibit B-24, Testimony of Board Job Coach)
8. During the 1998-1999 school year the student's case manager approached the Job Coach and requested that another job be obtained for the student. A position was obtained for the student at the school library. The student's responsibility was to put fictional books on the shelf by either letter "B" or "H" and to dust the shelves. The job coach was with the student 75% of the time. (Testimony of Board Job Coach)
9. The student could not grasp the concept that she only needed to read the 1<sup>st</sup> letter in order to file the books. With the dusting, the student had problems reaching high places because of a knee problem. The student also had an attendance problem, she did not show up on her workdays and would show up when not required. This job only lasted one month; she was terminated because she was not reliable or dependable. (Testimony of Board Job Coach)
10. On April 8, 1999 a PPT was held. The PPT was concerned about the student's inappropriate laughing and the student's affectionate mannerisms. The PPT felt that counseling from an outside agency might assist in dealing with the student's unresolved issues. Counseling in school was to be on as need basis. (Exhibit B-27)

11. The parent attended all the PPT meetings except the PPT of 6/15/99. The mother asked two other people to speak on her behalf at the PPT. (Testimony of Mother)
12. Prior to her 12<sup>th</sup> grade, the student attended two classes in the Independent Living Skills Program "ILSP". This program was later renamed the Chrysalis Program. The ILSP was refused at the PPT of 6/15/99 by the PPT. (Testimony Mr. Jeer)
13. The student visited the Transition Academy for 3 days. At the academy the student would be able to learn how to function independently once she graduated from high school. A June 2001 graduation date was a decision entered on the IEP by the student's case manager not the PPT. (B-23 pg.11, Testimony Mr. Jeer). It was the mother's impression that the student's graduation date was 2001 and that the student would only partake of the graduation ceremony with her class. (Testimony of Mother)
14. The PPT had discussions about enrolling the student in the Transition Academy for a 5<sup>th</sup> year after high school but it was not a recommendation. Preliminary approval was obtained for the Transition Academy from the Director of Special Education. The reason for placing the student at the Transition Academy was proximate control and the student required a job/vocational component. The goals and objectives of the 6/15/99 IEP were prepared by the Transition Academy. The Board has on other occasions held back the diploma of students who go to the Transition Academy. The idea of possibly holding back the student's diploma was not because of insufficient credits. (Testimony Mr. Jeer)
15. In the PPT of November 19, 1997, a transition plan was developed for the student. (Exhibit B-23). Student's 6/15/99 transition plan was to increase her employable skills, job readiness and independent living skills through the Transition Academy. (Exhibit P-6). The Transition Academy prepares students for the work place. (Exhibit B-22). The PPT team agreed to transition the student to the Transition Academy for the 1999-2000 school year; the team felt that the Transition Academy offered the best possible solution for the student. The student would still be able to access the Board's Youth Club upon completion of her day at Transition Academy. (Exhibit B-48)
16. In her 10<sup>th</sup> year, the student was engaged in inappropriate behavior in hallways and the school dance. She treated the people she worked with in the cafeteria very rudely and was caught lying and cheating in her assignments. The student was also inappropriate in her behavior outside of school and at home. (Exhibit B-27, Testimony of Mother)
17. The social worker was working with the student's inappropriate behaviors; she was concerned about the student's judgment in choosing people. In the 11<sup>th</sup> grade the social worker was seeing the student once per week while in the 10<sup>th</sup> grade she was seeing the student 1-2 times per day. (Testimony Ms. Wood)
18. The student was involved in youth club activities. The social worker often counseled the student during events that occurred during the day while involved in activities. The student went on field trips with this group. The Transition Academy would

prepare the student for the adult world, at the time of the 6/15/99 PPT, the student was not job ready. (Testimony Ms. Wood)

19. In the 11<sup>th</sup> grade the student was leaving the classroom without permission and no one could attest to her whereabouts. The mother requested a one on one assistant for her daughter in order to keep track of the student. The assistant was not provided. (Exhibit B-48, Testimony of Mother)
20. There was a concern that the student was socially vulnerable because of her disability. It was the experience of the guidance counselor that "MR" students are also socially vulnerable. (Testimony of Guidance Counselor)
21. At the October 1999 PPT meeting, there was a discussion about an assistive technology evaluation "ATE", which was to be performed by Ms. Sweeney. The Transition Academy could provide the proper program for the student and with proper support the student could live independently. If the student were to graduate now with proper support she could live in a group home. (Testimony of DMR Worker)
22. The Assistant Director of Special Education "ADSE" created the addendum of the June 15, 1999 PPT (page 4) outside of the PPT process. The addendum was created in order to comply with a State Department of Education compliance review. (Testimony Ms. Brouwer)
23. The "ADSE" was responsible for setting up the Assistive Technology Evaluation with the recommended evaluator Ms Sweeney. The evaluator did not have an open date for the evaluation until May 2000. At the January 28, 2000 PPT meeting, it was recommended that the Assitive Technology Evaluation be done by Ms. Aubon. The mother did not sign a release for the evaluation. The evaluation did not take place. (Exhibits B-61, B-67 & Testimony Ms. Brouwer)
24. The student was not able to attend the placement at the Transition Academy. After the June 16, 1999 PPT meeting the Board was notified that the Transition Academy had closed. The "ADSE" called the parent and met informally with her to discuss the options for the student. (Testimony Ms. Brouwer & Mother)
25. The Board stipulated that it did not obtain any consent from the mother prior to the time it changed the student's program from the Transition Academy to the Chrysalis and Step Program. (Stipulation)
26. From September 30-October 3, 1999, the parent sent the student to visit the VISTA Academy in Westbrook, CT, as a placement option for the student. The student was accepted in VISTA. It is not accredited by any state agency but other Boards have funded students at VISTA through the PPT process. (Testimony of Mother, and C. Reczek)
27. The VISTA Center evaluated the student in three community workshops, the library performing stock and general maintenance, Goodwill Store, sweeping and mopping at

the local animal shelter and she worked with a vocational counselor to assess her basic clerical skills, dexterity and understanding of the world of work. Through some verbal and written exercises the evaluation gleaned that the student had not yet defined her vocational goals. (Exhibit B-55)

28. The VISTA evaluator stated that the student could not identify 3 jobs that interested her nor could the student obtain a job on her own and maintain it for 6 weeks. The evaluator stated that the student could not call a taxi nor go out into the community and explore opportunities on her own. The student lacked money management abilities. (Testimony of C. Reczek)
29. On or about 2/7/00, Dr. Coyle sent a consultation letter as a follow up to his 1998 evaluation. The letter was an endorsement of the VISTA Program. The psychologist felt that this was the best chance for success at independent living for the student. Immersed in programs with people of like disabilities would give the student models and promote self-esteem. (Exhibit P-12, Dr. Coyle)
30. The VISTA evaluation made the following recommendations for the student; vocational counseling, vocational support services, training in health care and management, meal preparation, money management, budgeting, instruction and counseling in community integration, training and support in time management and personal counseling. (Exhibit B-55)
31. The student's job coach felt that VISTA would be beneficial for the student but considered any programming after high school would benefit the student. She stated that that type of programming is not necessary for the student to obtain employment and make a living. (Testimony of Board Job Coach)
32. The "ADSE" visited VISTA in February 2000. She saw the clients leave for work but did not see people at jobs; nor did she see any clients in any community based program The program mainly services "MR" students. (Testimony "ADSE")
33. In September 1999, the student commenced her 12<sup>th</sup> grade in the Chrysalis Program. One of the main changes in the Chrysalis Program "CP" is that it includes the Step Program with the "ILSP". The "CP" addresses all of the goals and objectives of the Transition Academy. A PPT meeting was not held prior to the start of the 1999-2000 school year to discuss the change in program and the dissolution of the Transition Academy. (Testimony Ms. Brouwer)
34. The parent was not comfortable with "CP" but felt her daughter had no other option. A PPT meeting was held on October 5, 1999 to discuss the change in placement from the Transition Academy to the Chrysalis and Step Program. (Testimony of Mother)
35. The goals and objectives of the June 16, 1999 were discussed at the October 5, 1999 PPT meeting. There was a discussion of adopting this IEP for "CP". The October 6, 1999 PPT does not show the IEP of June 16, 1999 being accepted for "CP". (Testimony of Ms. Brouwer)

36. The goals and objectives created by the Transition Academy were identical to the goals and objectives of "CP". The mother did not receive any progress reports about the student's IEP. The mother had no knowledge that the goals and objectives developed by Transition Academy (Exhibit B-48) had been met. The mother states that Goal # 2 has not been met. The student does not know how to cook and mother does not have any knowledge of her daughter being able to travel. The student does not know how to obtain an apartment or complete a rental application. (Testimony of Mother)
37. The student's special education teacher in "CP" saw the student doing inappropriate interactions and violating personal space. These issues were dealt with by role-playing in the classroom. In the IEP goals and objectives that were used in "CP" the student only completed one job try out of three in Goal #1 objective #1, but the objective was marked satisfactory. In Goal#1 page 1, objective # 2 was not done but the progress was satisfactory, for objective # 3, the student only attended a job fair and this was also marked satisfactory. Objective #4 was completed but the student only went through the process. She spent most of the 4<sup>th</sup> quarter doing this objective and the final sample was done on a computer. On objective #6, the witnesses could only remember one area of interest the student identified. (Testimony Special Education Teacher "SET")
38. The job tryout was at Pierce Baptist Home; this was the only job looking for students. The student also had a problem with this job placement; the student took some money from someone's pocket book. She was required to change clothes in school and not at the Home as other employees. (Testimony of Board Job Coach)
39. The student went shopping various times as Goal 2 Objective 1 stated but did not prepare meals or use a stove. In Goal # 3 objective 4 the student did not understand what was being taught, but student's progress was marked satisfactory. Goal 4 Objective #3 was explained to the student but she did not understand the objective. The progress on this objective was marked satisfactory. Objective # 4 of goal 4 was not completed, student did not register to vote nor was the objective introduced. In Goal # 1 only one of the 4 objectives was completed (objective #1) but the progress on the goal was marked satisfactory. (Testimony of "SET" and Exhibit B-79)
40. The student had met her academic requirement and was ready to graduate in June 2000. There were no evaluations done for graduation because the Board did not have the parent's permission. (Exhibit B-75 and Testimony Ms. Brouwer)

### **CONCLUSIONS OF LAW:**

1. The student had been identified by the Board as being mentally retarded, and eligible to receive special education and related services as required in the Individual with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401 et seq.
2. The parent's in their post trial brief (Paragraph 1 page 5) have brought up the issue of failure to identify the student in a timely manner. This issue was not an issue properly

raised for this hearing and not before this hearing officer. Connecticut General Statutes (“CGS”) Section 10-76h (a)(2), Section 10-76h (a)(5)

3. Connecticut General Statutes Section 10-221a provides criteria for graduation from high school. It sets forth the minimum number of credits required, i.e., 20 credits, and the minimum curriculum requirements. There is a specific reference to students requiring special education, which provides that “[t]hese requirements shall apply to any student requiring special education pursuant to Section 10-76a, except when the planning and placement team for such student determines the requirement not to be appropriate.” It is the IEP, which “should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade”. *Hendrik Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.C. 3034, 3041 (1982), at 204. The student needs to not only obtain sufficient number of credits but complete IEP goals. *Woodland Hills School District*, 30 IDELR 927. (MR student had more than the sufficient amount of credits to graduate but had not completed IEP goals. Did not graduate but was allowed to participate in High School ceremony)
4. In determining the appropriateness of an educational program, the Second Circuit Court of Appeals has continually relied on the standard established by the U.S. Supreme Court in *Rowley*. In that case the Court provided a two-pronged test: (1) Did the Board conform to statutory procedures? and (2) Was the educational program offered by a Board reasonably calculated to allow a student to receive some meaningful educational benefit. In determining what constitutes sufficient educational benefits, the Court held that “... [the IEP] should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade.” *Id.* at 204.
5. The Board has stated that the student has sufficient number of credits and has completed her IEP goals. The parent did not present testimony refuting that the student had earned sufficient credits to graduate, but contend that the student is not ready to graduate. The record clearly shows that the Board and the Parent agreed to a placement at the Transition Academy (“TA”) for the school year 1999-2000. The record clearly shows that the TA closed after the 6/15/99 PPT. The Board has stipulated that the placement of the student at CP was not made by the PPT at or before the placement. The 1<sup>st</sup> prong of *Rowley*, looks to see if the Board conformed to statutory procedures. The parent contends that the placement by the Board at CP was a gross procedural violation because the parent did not have written prior notice. 20 U.S.C. Section 1415(b)(3)(A), 34C.F.R. Section 300.503(a)(1)(i). I do not agree. The TA closed and the Board advised the parent of the closing and even had informal conversations about options for the student. (Findings of Facts # 24). The Board has an obligation to provide a FAPE to the student. The closing of TA required that the Board take extreme measures to ensure the student a place to continue her education in August 1999. To convene a PPT would have been very difficult if not impossible since summer vacation had begun. The Board did not hide the closing of TA nor not inform the parent, but maintained contact with the parent over this issue. If there was any procedural violation it was minor. The Board did not initiate the change in



placement but the closing of the TA caused the student to lose her placement and forced the Board to take remedial action and place the child in CP.

6. The parent took issue with the student's 1999/2000 IEP because it was drafted, as the board conceded, for the placement at the Transition Academy. There were no objections during the school year to these TA goals or to their wording as set out in the June 1999 IEP by either the parent or her advocates. Such goals and objectives addressing TA and TA staff are clearly an oversight on the part of the board; however, the parent never raised this as an issue until this hearing commenced. It is the Board's duty as well as the parent's to ensure that the student has goals in her IEP that are attainable. That the Board unilaterally accepted the goals prepared by TA as the goals for the student at CP is a procedural violation. Such a finding "...[does] not automatically render an IEP legally defective." *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912, 111 S.Ct. 1122, (1991) (citing *Doe v. Defendant I*, 898 F.2d 1186, 1191 (6th Cir. 1990)); *see* *Urban*, 89 F.3d 720, 726 (10th Cir. 1996) (holding that a deficient IEP "did not amount to a denial of an appropriate education"); *O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School District No. 233*, 144 F.3d 692, 702 (10th Cir. 1998) (noting that "technical deviations" from the IDEA's requirements do not "render an IEP entirely invalid"). There is no definitive means by which to gauge when exactly a procedural violation can become so great so as to negate a free appropriate public education ("FAPE"). Generally, "there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912, 111 S.Ct. 1122 (1991); *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992) (holding child denied FAPE where school developed IEP independently – without participation of child's parents or teachers). If a procedural violation, however, does not cause prejudice to the degree of a denial of FAPE, the tribunal should deny relief. *Logue By and Through Logue v. Shawnee Mission Public Sch. Unif. Scho. Dist. No. 512*, 959 F.Supp. 1338, 1348 (D.Kan. 1997) (*citing* *Thomas v. Cincinnati Bd. Of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990)). In sum, determining whether or not a procedural violation is so great as to negate FAPE, a fact specific inquiry must occur. There must be a finding that a gross procedural violation has occurred and, that as a result of such violation there has been a loss of opportunity – be it that of the parent or child – resulting in demonstrable harm. *See* *Garro v. Connecticutdnd Cir.* 1994); *Mrs. C. v. Wheaton*, 916 F.2d 69 (2nd Cir. *State of* 1990); *Burr v. Ambach*, 863 F.2d 1071 (2nd Cir. 1988).
7. Addressing the second prong of the *Rowley* inquiry, it must be determined whether the educational program provided for the student was reasonably calculated to allow her to receive "educational benefits." *See Rowley, supra*, 458 U.S. at 206-07. The IEP developed for the student must be reasonably calculated to provide some "meaningful benefit." *Id.* at 192, 102 S.Ct. at 3043-44. While *Rowley* did not establish one standard for determining what constitutes meaningful educational benefit, this standard contemplates more than "mere trivial advancement." *Mrs. B. v. Milford Board of Education*, 1997 WL 7572 (2d Cir.(Conn.)), *citing, Polk v. Central*

*Susquehanna Intermediate Unit 16*, 853 F.2d 171, 183 (3d Cir. 1988); *Hall v. Vance county Board of Education*, 774 F.2d 629, 636 (4th Cir. 1985). The testimony of the witnesses does not show that the goals and objectives were met in a meaningful way. First, the Board refused placement at the KHS and STEP program on 6/15/99 stating that KHS was not and could not provide the structure and control that was necessary to an appropriate placement for D. The IEP was not modified after the change to CP. The Board unilaterally accepted the goals of TA as the goals for CP. The Board was required to ensure that the staff at CP was capable of assisting the student in meeting these goals. Testimony from the mother, special education teacher, job coach and Ms. Reczek showed that various objectives were not met but marked that the student's progress was satisfactory. (Findings of Facts # 28, 36, 37, 38 & 39). This is a denial of FAPE to the student. The Board is not required to prepare the student for a job but is required to have transition services, "designed within an outcome-oriented process, that promotes movement from school to post-school activities...". 34 C.F.R. §300.29(a)(1). The student would not have been able to proceed to any post-school activity because she is not adequately prepared to adapt from school to adult life whether it be employment or independent living. These goals are part of the students IEP and she is required to receive meaningful benefit from the goals not just a passing grade.

8. An IEP must include a statement of needed transition services for a child 16 or older. This is defined as a coordinated set of activities for a student with a disability that: "1) Is designed within an outcome-oriented process that promotes movement from school to post-school activities.... 2) Is based on the individual student's needs, taking into account the student's preferences and interests; and 3) includes i.) instruction; ii) related services; iii) community services; iv) the development of employment and other post-high school adult living objectives; and v) if appropriate, acquisition of daily living skills and functional vocational evaluation." 34 C.F.R. Section 300.29. Here, the student was not provided such services. Moreover, no instruction was provided for the student's inappropriate on the job behaviors, such as lying and stealing that resulted in the student losing 2 of her school based jobs and almost losing her nursing home placement due to stealing at that job site.
9. The IEP did not provide any assistive technology that would enable the student to benefit from the instruction. The Board asserts that the parent did not give them permission to do the assistive technology evaluation. The Board just like the parent has access to Due Process in order to obtain evaluations that they deem necessary to be able to provide the student with FAPE. The Board chose not to seek due process and therefore, not seek an evaluation that would have provided insight to the student's progress in school and assist in the transition the student to post-school life.
10. The parent also seeks reimbursement for the VISTA report that was presented to the PPT. The Board states that no independent tests were completed at VISTA; rather, a staff member employed by VISTA interviewed the parent and student, and observed the student during her stay at the program. The stay at VISTA was more than just an interview. It is clear that the purpose of VISTA's involvement with D was to assess the suitability of the VISTA program but in order to make that decision she had to be

seen by the staff and had to stay at VISTA for four days. The report clearly states that the student had to complete community worksites, attend groups and participate in activities. This is much more than an interview. The evaluation was of the students vocational and life skills which were the goals and objectives that the student did not show any progress even though the progress was marked satisfactory. (Exhibit B-55, Findings of Facts #27)

11. The parent's seek compensatory education for the student. This is denied as there has not been a showing that the procedural violations were gross.

**FINAL DECISION AND ORDER:**

1. The student is not eligible to graduate in June of 2000.
2. The student shall be enrolled in VISTA for one year, the 2000-2001 school year. The PPT shall be convened as soon as possible to revise the IEP and effect placement.
3. The student is not entitled to compensatory education.
4. The assistive technology evaluation shall be done if the PPT with input from the VISTA staff, still find it necessary.
5. The Board is responsible for reimbursing the parent for the cost of the VISTA evaluation.