

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Plainfield Board of Education

Case No. 03-101

Appearing on behalf of the Parents: Attorney Anne Louise Blanchard, Connecticut Legal Services, Inc., P.O. Box 258, Willimantic, CT 06226

Appearing on behalf of the Board: Attorney Michael McKeon, Sullivan, Schoen, Campane & Connon, LLC, 646 Prospect Ave., Hartford, CT 06105

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student should be identified as eligible for special education and related services.
2. If so, whether the Board shall provide the Student a free, appropriate, public education.
3. Whether the Student is entitled to compensatory education.
4. Whether the Board failed to evaluate the Student.
5. Whether the Student is entitled to an independent psychological evaluation.

PROCEDURAL HISTORY:

The Parent requested this hearing on April 10, 2003, and a prehearing conference was held on April 17. The hearing proceeded on May 1, 7 and 21. The mailing date of the decision was initially extended 30 days at the request of both counsel to accommodate the scheduling of hearing dates. Thereafter, the mailing date was extended 21 days, and an additional 7 days so that the parties could submit briefs after receipt of the hearing transcripts. The Parent's counsel and Board's counsel submitted briefs by June 30.

The Parent's witnesses were James Blair, the Board Director of Pupil Services; Mark Bishop, the Board special education supervisor; Attorney Barbara Rossiter, court-appointed guardian ad litem for the Student; Michael Onnembo, a social worker at the public defender's office; Christie Kelly, a juvenile court probation officer; Cynthia Saunders, Psy.D.; and the Mother.

The Board's witnesses were Sherry Hinchey, a Board reading teacher; Elizabeth Finn, Ph.D., the Board school psychologist; and Dawn Guntner, the Board school social worker.

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

SUMMARY:

The thirteen year old Student's educational history has been plagued by chronic absenteeism. He was diagnosed with dysthymia, as well as possible diagnoses of panic disorder and separation anxiety disorder by juvenile court-ordered evaluators in a pending truancy petition. The Parent requested that the Student be determined eligible for special education and related services. While the Student's absences and noted lack of motivation had a negative impact on his education, the Board members of the PPT did not determine that the Student was eligible for special education and related services. Consequently, the Parent requested this due process hearing.

FINDINGS OF FACT:

1. The Student is thirteen years old, and during the 2002-2003 school year, he was enrolled in the seventh grade at the Board middle school. [Exhibits B-1, B-72]
2. In 1998, when the Student was in second grade, he was identified as eligible for special education as learning disabled. [Exhibit B-21]
3. In April 2001, the Planning and Placement Team [PPT] met and determined that the Student should be exited from special education. No psychological testing was completed at the time the Student was determined to be ineligible for special education, but the results of educational testing indicated that all skills were within the average range. [Exhibit B-38]
4. On September 26, 2001, the Principal of the Plainfield Central School notified the Mother that the Student had had four unexcused absences. [Exhibit B-42] The following day, September 27, the Student's Father gave Plainfield Central School written authorization to forward the Student's records to Kelly Middle School,

- which is part of the Norwich Public Schools. [Exhibit B-43] Subsequently, on October 2, 2001, the Student was officially withdrawn from the Plainfield Public Schools and transferred to the Norwich Public Schools. [Exhibit B-4, B-49]
5. The Student attended Kelly Middle School in Norwich from October 2, 2001 through January 9, 2002. During his time in the Norwich Public Schools, the Student had 40 absences, 28 of which were unexcused and twelve of which were excused. From October 2, 2001 through October 25, 2001, the Student attended school on only two days, on both of which he was tardy. [Exhibit B-49]
 6. On October 25, 2001, the Norwich Public Schools convened a PPT meeting. Although the Norwich PPT noted that the student had previously been in special education, it did not recommend any evaluations. Instead, the Norwich Board recommended that a truancy referral be filed. [Exhibit P-1] Consequently, Norwich filed for truancy with the Juvenile Court in Willimantic, Connecticut. [Exhibit B-51] Additionally, the school nurse's records at Kelly Middle School in Norwich indicated that the teachers were requested by the family and principal not to send the Student to the nurse because the Student will want to go home; the principal requested that if the Student came to the health office, nurses were to send the Student back to class by directive from the parents. [Exhibit P-2]
 7. The Student's parents were divorced in December 2001 following a lengthy separation. That same month his father remarried. [Exhibit B-56] The student presently resides with his mother, maternal grandparents and two half-siblings in Plainfield, a placement which Dr. Saunders noted in her April 3, 2002 psychological evaluation was seemingly by default. [Exhibits B-56, B-68] In one year, the Student moved on four occasions between his Mother's residences and his Father's home in Norwich. [Exhibits B-56]
 8. The Student's family has been characterized as very dysfunctional, with a great deal of family conflict. [Testimony Dr. Saunders, Exhibit B-56] The Mother reported that there is tension within her home due to her own mother's excessive use of alcohol. The Student has reported that his grandmother is mean, and the Mother has acknowledged that the Student's grandmother verbally assaults and emotionally abuses him. The State of Connecticut Department of Children and Families ["DCF"] has been involved with the student's family, with referrals for inadequate supervision, emotional neglect, and physical neglect. [Exhibit B-56]
 9. On January 7, 2002, the Mother provided the Norwich Public Schools with written authorization to transfer the Student's records back to Plainfield Central School. [Exhibit B-48] The student's last day of official enrollment in the Norwich Public Schools was January 9, 2002. [Exhibit B-49]
 10. The Juvenile Court officials were aware that the Student had returned to Plainfield. [Testimony Ms. Kelly] On February 5, 2002, the Student's Probation Officer contacted the director of pupil services at the Plainfield Board of

- Education requesting the status of any recent special education testing completed on the Student, the scheduled date for the PPT meeting, and that information be provided regarding the Student's attendance at the Board middle school [Exhibit B-51]
11. Between January 10 and February 5, 2002, the Student had two excused absences due to illness, as well as six days tardy and one early dismissal. [Exhibit B-54] From February 6 through March 14, 2002, the Student had three additional excused absences and three unexcused absences, three days tardy and one dismissal. Subsequently, on March 14, 2002, a Planning and Placement Team [PPT] meeting was scheduled for March 26 to address attendance issues/truancy. [Exhibit B-52]
 12. The Student was not determined eligible for special education and related services at the March 26 PPT meeting. It was noted in the PPT summary that the PPT determined that while the Student is capable, his absences impact his education. The PPT summary noted the conclusion that the PPT would reconvene after the outside evaluation by the court-ordered evaluator was completed. [Exhibit B-55]
 13. The juvenile court contracts with Natchaug Hospital to conduct the court-ordered evaluations; Dr. Saunders is the primary evaluator for this contract. [Testimony Attorney Rossiter]
 14. Dr. Saunders conducted her psychological evaluation of the student on April 3, 2002. [Exhibit B-56] Her evaluation of the Student included interviews with, and an assessment of, the family. [Testimony Dr. Saunders] Dr. Saunders' evaluation consisted of: clinical interviews, a review of the court records, the Thematic Apperception Test, the Wechsler Abbreviated Scale of Intelligence, the Incomplete Sentence Blank, the Behavioral Assessment System for Children [BASC], Parent Rating Scales, and the Adolescent Self-Report. [Exhibit B-56]
 15. On April 22, 2002, the PPT met, and continued the PPT to a date when the court-ordered testing would be complete and available for the PPT to review. [Exhibit B-57]
 16. In June 2002 the Student was promoted to seventh grade with reservations as he received two or more Fs. [Exhibit B-61] His report card for the fourth term included comments that the Student's absences were affecting his success, and noted inconsistent effort and that his homework completion was unsatisfactory. [Exhibit B-60]
 17. The Student's scores in the Connecticut Mastery Test, taken in September 2002 in the Student's seventh grade are incomplete, as several sections of the CMTs were not taken. [Exhibit B-63]

18. The PPT reconvened on September 19, 2002, to review Dr. Saunders' evaluation which had been released by the juvenile court. [Exhibit B-65] In her evaluation, Dr. Saunders concluded that the Student has a dysthymic disorder [300.4], a parent-child relational problem, and noted a rule-out of separation anxiety disorder. [Exhibit B-56]
19. Dr. Saunders' evaluation, completed for the juvenile court system was specifically addressed at assessing the Student's functioning to explain his school refusal, and to assess his current level of cognitive and emotional functioning. [Exhibit B-56] Dr. Saunders described the Student as dysthymic, a condition which she testified includes irritability, mood lability, and a sense of hopelessness and anhedonia over a two year period. Dr. Saunders' testing showed a sense of sadness, hopelessness and lack of connectedness. Although the Student saw himself as normal, Dr. Saunders testified that this self-image was usual for a depressed child. Dr. Saunders testified that that naiveté, in terms of how you are in the world, is another sign of dysthymic disorder. [Testimony Dr. Saunders] The Mother confirmed that the Student displays anhedonia, in that he lacks interest in his former pastimes, such as playing football and fishing. [Testimony Mother]
20. Dr. Saunders noted that the Student should have a complete physical exam to address the Student's "ongoing somatic complaints which may or not be reality based." [Exhibit B-56]
21. Dr. Saunders noted that the Student has the raw materials, the capacity, to learn. Nevertheless, based on her clinical opinion, the Student's presentation, and his psychosocial background, she viewed the Student as a depressed child. Due to that depression, the Student cannot get himself motivated to go to school on many days. When the Student does go to school, he's having a good day. This variability is consistent with dysthymic disorder. [Testimony Dr. Saunders]
22. At the September 19, 2002 PPT meeting, the Board determined that Dr. Saunders' evaluation did not reveal a disability that prevented the Student from benefiting from educational instruction. Consequently, the Board determined that the Student did not qualify for special education services. Inexplicably, the September 2002 PPT consisted of only four people: Mark Bishop, the administrator/designee; the Student; a regular education teacher and the school psychologist. No special education teacher was present, nor were either of the Student's parents. [Exhibit B-65] No documentation was submitted to the hearing to note the steps taken to contact the Parent for this PPT.
23. Dr. Saunders recommended that the Student undergo a psychiatric evaluation, which was completed by John Haney, M.D. [Testimony Attorney Rossiter, Exhibits B-56, B-68]
24. On January 21, 2003, Dr. John Haney conducted the psychiatric evaluation for the court. While Dr. Haney did not testify at the hearing, his evaluation was

- submitted as an exhibit. Dr. Haney does not note that the Student has dysthymia in his report, although he does note that there is a rule-out of Panic Disorder without Agoraphobia. And, although Dr. Haney did not diagnosis the Student with anxiety, he suggested that a tricyclic might be more successful in relieving the Student's anxiety. As Dr. Haney did not testify at the hearing, it is difficult to analyze the apparent inconsistencies in his report. Therefore, the conclusions of Dr. Saunders are given more weight in assessing the Student's presentation, even though her evaluation was completed in April 2002. [Exhibit B-68, B-56] Dr. Saunders testified that she had reviewed Dr. Haney's evaluation and stated that there was nothing in that evaluation that would lead her to believe that the Student was no longer depressed. [Testimony Dr. Saunders]
25. On February 27, 2003 the PPT convened to review the evaluations. At the time of the PPT meeting, the teacher reports were uniformly indicating that the Student's lack of attendance was having an adverse affect on the Student's educational performance. Teachers' reports noted that the Student's "attendance creates problems because he is absent quite often," that the Student is "absent an inordinate amount of time," that the area of weakness for the Student is "lack of motivation; absences," and that the Student's "absenteeism is the #1 hurdle blocking his success." The teachers' reports also noted that the Student "does not actively participate in class," and noted a weakness in motivation. [Exhibit B-72] The Student's difficulty in attending school, and his noted lack of motivation, are consistent with his diagnosis of dysthymia. [Testimony Dr. Saunders]
26. In Dr. Saunders' evaluation, she noted that DCF had recorded allegations of educational neglect as far back as 1998. [Exhibit B-56] The Student had had a pattern of absenteeism since first grade, and the Student's mother reported at the Student's February 27, 2003 PPT meeting that the pattern of absenteeism has gone on for so many years, it was almost impossible for him to break it. [Exhibit P-7] The Mother has done "everything humanly possible" to attempt to get the Student to attend school. [Testimony Mother]
27. At the February 2003 PPT, the social worker from the public defender's office, the Student's guardian ad litem, the juvenile probation officer and the Mother requested that the Student be identified as eligible for special education under the classification of Emotionally Disturbed based on the evaluations, as the Student's inability to attend school had an adverse affect on the Student's education. [Testimony Ms. Kelly, Mr. Onnembo, Attorney Rossiter, Mother, Exhibits P-5, P-7] The Board members of the PPT did not identify the Student as eligible for special education as they did not see that the Student's emotional issues had an adverse affect on the Student's educational performance. [Exhibit P-7, B-72]¹

¹ At the hearing, testimony was elicited about the process that the Board uses in identifying students as eligible for special education. The checklist used to determine eligibility for identification under the classification Seriously Emotionally Disturbed has additional and/or limiting requirements. These additional requirements, however, did not impact this Student in the analysis of his emotional issues, as his primary characteristic is a general mood of unhappiness or depression. That category did not include any

28. While at the end of the sixth grade, the Student's grades were poor enough for the Board to consider retaining him in sixth grade for a second year, his grades for seventh grade were virtually non-existent, as the Student was not present in the classroom. [Testimony Ms. Hinchey] As of April 4, 2003, the Student was absent 49 days, tardy 17 days and dismissed 3 days from school. [Exhibit B-75] As of the first day of the hearing, the Student had not been present in school for approximately three more weeks. [Testimony Attorney Rossiter]

29. The Parent did not request an independent evaluation, nor compensatory education at the February 27, 2003 PPT meeting. [Exhibits B-72, P-7] The Parent never requested an independent evaluation. [Stipulation of Attorney Blanchard]

CONCLUSIONS OF LAW:

1. A student is eligible for special education and related services if he is found to be a "child with a disability." The term "child with a disability" means a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services. 20 U.S.C. Sec. 1401(3), 34 C.F.R. Sec. 300.7(a)(1)

Emotional disturbance is defined under the federal regulations as follows:

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (C) Inappropriate types of behavior or feelings under normal circumstances;
- (D) A general pervasive mood of unhappiness or depression;
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems;

additional requirements for identification. Reference was also made at the hearing to Exhibit B-77, which is entitled "Guidelines For Identification and Programming for Students with Disabilities in the Plainfield Public Schools." While Board representatives testified that the guidelines were consistent with the *Guidelines for Identifying and Educating Students with Serious Emotional Disturbance* issued by the State of Connecticut Department of Education in 1997, there appears to be inconsistencies between the two documents. Furthermore, some of the Board's guidelines in B-77 appear to be inconsistent with state and federal law. The Board is cautioned to carefully review its guidelines, and ensure that the guidelines are consistent with current law.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have an emotional disturbance. 34 C.F.R. Sec. 300.7(c)(4)

2. If, after evaluation, a child is found to have an emotional disturbance, the team must also find that the child, by reason of this condition, requires special education. 34 C.F.R. Sec. 300.7(a)(1). Special education is defined as “specially designed instruction”. 34 C.F.R. Sec. 300.26(a)(1). Specially designed instruction means adapting “the content, methodology, or delivery of instruction...to address the unique needs of the child...[and]...ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children”. 34 C.F.R. 300.26(b)(3).
3. Taking these requirements together, in order to find a student eligible for special education services as a child with having a Serious Emotional Disturbance [SED], the Planning and Placement Team (PPT) must find that the student exhibits one of five characteristics of emotional disturbance (1) over a long period of time (2) to a marked degree, such that it (3) adversely affects the student’s educational performance, (4) causing the child to require specially designed instruction in order to receive a free appropriate public education.
4. The evidence does not support, nor does it appear to be any claim is made that the Student meets the criteria for (1) an inability to learn that cannot be explained by intellectual, sensory or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; or (3) inappropriate types of behavior or feelings under normal circumstances.
5. It is unclear whether the Student has a tendency to develop physical symptoms associated with personal or school problems. Evidence presented at the hearing indicated that the Student had somatic complaints, but there was insufficient information to draw the conclusion that these complaints were not due to actual medical problems. Therefore, as will be noted, *infra*, the Board will be responsible for the cost of a medical evaluation to determine whether these are somatic complaints.
6. As to the remaining characteristic of Emotional Disturbance, it is found that the Student does have a general pervasive mood of unhappiness or depression. It also appears that the Student has developed fears associated with personal or school problems. That anxiety, separation anxiety and/or panic disorder must be further addressed in an evaluation.
7. The evidence indicates that the Student does have a psychological disorder which could fall under one or two criteria for Emotional Disturbance, and it has been shown that this disorder has had an adverse impact on the Student’s educational performance. The Board apparently challenges identification in part because the Student has not been diagnosed with major depressive disorder, as opposed to

dysthymic disorder. The regulations do not require that the Student be diagnosed in a certain category in DSM-IV to be entitled to eligibility for special education and related services. Rather, for identification, the emotional disturbance must be a condition exhibiting one or more of the listed characteristics over a long period of time and to a marked degree that adversely affects a child's education performance. 34 C.F. R. Sec. 300.7(c)(4)

8. From the testimony presented, it was noted that when the Student was present at the Board school, the Student exhibited no inappropriate or deviant behaviors at school. Nevertheless, the Student was absent from the school frequently, and to such a degree that he was failing courses. He was noted to be lacking motivation when he was at school. The Student's presentation and these absences have been attributed to the Student's dysthymia, and potentially due to a panic disorder and/or anxiety.
9. The Student's psychological disorder(s) has had an adverse impact on the Student's educational performance. The Student does not merely have attendance related problems that can merely be addressed by a truancy petition. The record reflects that the Student's inability to attend school is directly related to his psychological disorder.
10. The Board failed to appropriately evaluate and identify the Student despite the warning signs of the Student's emotional impairment. The Board was aware that the Student had attended a clinical day treatment facility in 2002² [Exhibit B-56], and was aware that the Student had somatic complaints. [Testimony Mr. Blair] The Student has had a long history of attendance problems, which has not been appropriately addressed by the Board. The Board provided five counseling sessions with the school in the fall of 2002, which ended in November after the Student stated he was having no problems. [Testimony Ms. Guntner] These counseling sessions did not avert the attendance problems, and were an ineffective intervention. Nevertheless, the Board still did not evaluate the Student, nor did the Board identify the Student as eligible for special education and related services.
11. Not only did the Board err in failing to identify the Student as eligible for special education and related services, it failed to conduct a comprehensive evaluation of the Student. To determine if a Student is eligible for services under the Individuals with Disabilities Education Act (IDEA), the Board must conduct a full and individual initial evaluation. 34 C.F.R. Sec. 300.531, 20 U.S.C. 1414(a)(1)
12. In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted for each child referred. Conn. Agencies Regs. Sec. 10-76d-9(a) The Board's evaluation should include such psychological, medical, developmental and social evaluations as may be appropriate in determining the nature and scope of the child's exceptionality. Conn. Agencies Regs. Sec. 10-76-9(a)

² According to Dr. Saunders' evaluation, the Student was attending the "IOP" Program at the Joshua Center at the time that she wrote the report. [Exhibit B-56] No documentation of this placement was submitted to this hearing.

13. In evaluating the Student, the Board must utilize a variety of assessment tools and strategies to gather relevant functional and developmental information about the child. 34 C.F.R. Sec. 300.532(b) The Student should be assessed in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. 34 C.F.R. Sec. 300.532(g) The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category. 34 C.F.R. Sec. 300.532(h) The Board failed to assess the Student in all areas of suspected disability.
14. In interpreting evaluation data, the Board shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and ensure that information obtained from these sources is documented and carefully considered. 34 C.F.R. Sec. 300.535 The Board's cursory review of the court-ordered evaluations were not sufficient; the Board failed to appropriately interpret the evaluative data. The Board failed to conduct such an appropriate evaluation, despite its knowledge of the Student's psychological issues.
15. Based on all evidence submitted and the testimony given, including Dr. Saunders' evaluation, the Student does meet the criteria to be eligible for special education and related services, as a student with a Serious Emotional Disturbance. The Student's problems are not merely attendance-related. The evidence supports the conclusion that the Student should be identified as emotionally disturbed. The Board had sufficient information of the warning signs of the Student's disabling condition, and evaluative information that the Student should have been evaluated, and identified as requiring special education.
16. The Parent, through her attorney, has argued that the Student is entitled to an independent evaluation, although such an evaluation was not requested by the Parent in a PPT. The Parent's attorney further stipulated that "the parent did not request or the evidence doesn't show any request for an independent evaluation." Counsel for the Parent and Counsel for the Board both briefed this issue, challenging the Connecticut Regulations which provides "No issue may be raised at a hearing unless it was raised at a planning and placement team meeting for the child." Conn. Agency Regs. Sec. 10-76h-3(g) The Parent's attorney argued that because the Connecticut regulation limits parental rights to any matter first raised at a PPT, the statute is a violation of IDEA. The Parent's attorney further argues that the regulatory provision is impermissible as is noted in an Office of Special Education Programs (OSEP) letter which notes that the a state's imposition of any additional steps not contemplated in the scheme of the IDEA are not enforceable. *Letter to Zimmerman*, 34 IDLR 150 (2002), citing *Antkowiak v. Ambach*, 838 F. 2d 635.
17. The Board, conversely, has taken the position that the Connecticut regulatory requirement of raising the issue first in a PPT is permissible as three federal district

court judges in Connecticut have addressed the issue, and all three of them have affirmed the validity of Section 10-76h(a)(1) regulatory proscription against raising issues in hearings without having first presented them to the PPT. *A.S. v. Board of Education*, 245 F. Supp. 2d 417 (D. Conn. 2001); *Banks ex rel. Banks v. Danbury Board of Education*, 238 F. Supp. 2d 428 (D. Conn. 2003), *Lillbask ex rel. Mauclair v. Sergi*, 117 F. Supp. 2d 182 (D. Conn. 2000)

18. In the case of a request for an independent evaluation, the Parent failed to follow the prerequisite to have this matter decided on her claim for an independent evaluation. Therefore, the necessity of raising the issue in a PPT does not have to be decided. The federal regulations provided that a parent has the right to an independent evaluation at public expense. 34 C.F.R. Sec. 300.502(b)(1) The regulations further provide, however, that “[i]f a parent *requests* an independent evaluation at public expense, the public agency must, without unnecessary delay, either (i) Initiate a hearing under Sec. 300.507 to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense . . .” 34 C.F.R. Sec. 300.502(b)(2)[Emphasis added] Therefore, as a prerequisite to litigating the issue of an independent evaluation in a due process hearing, the parent must first request an independent evaluation. It is uncontroverted that the Parent did not so request an evaluation prior to hearing.
19. Nevertheless, a comprehensive evaluation is ordered in accordance with the Sec. 10-76h-3 of the Connecticut regulations. While there is enough evaluative date to identify the Student, a more comprehensive evaluation is necessary to appropriately draft an Individualized Education Program for the Student. Therefore, a comprehensive independent evaluation shall be completed for the child. This evaluation shall be provided in accordance with Sec. 10-76h-14 of the Connecticut Regulations which provides that the hearing officer may require a complete and independent evaluation, the cost of which shall be paid by the public agency. The comprehensive evaluation shall include a comprehensive psychological evaluation, as well as a psychiatric evaluation and an educational evaluation if recommended by the psychologist. It shall also include a medical evaluation to rule out the Student’s possible somatic complaints. Transportation to the evaluations shall be provided by the Board.
20. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act.
21. The Parent is seeking an award for compensatory education for the Board’s procedural violations. An award of compensatory education is a remedy permitted when a school district commits a gross and egregious IDEA violation. *Garro v. State of Connecticut*, 21 IDELR 126 (2d Cir. 1994) As this is a remedy, as opposed to a discrete issue, it is unnecessary to determine whether the Parents are required to raise the issue of compensatory education at a PPT prior to proceeding with the hearing.

22. Therefore, the issue of compensatory education is appropriately presented to this hearing.
23. Procedural flaws do not automatically require a finding of a denial of a free appropriate public education [FAPE]. Procedural inadequacies, however, that result in the loss of educational opportunity or seriously infringe the parent's opportunity to participate in formulating the Individualized Education Program [IEP], clearly result in a denial of FAPE. *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F. 3d 1072 (9th Cir. 2003), *accord, W.A. Pascarella*, 153 F. Supp. 2d 144, 35 IDELR 91 (D. Conn. 2001) The procedural violations claimed by Parent are the failure to provide educational records, some of which were not retained by the Board. The Parent also asserts that the Board's forms and procedures violated the procedural safeguards. It is found that the violations do not rise to the level of gross and egregious IDEA violations and, therefore, no award of compensatory education is entered.
24. The second inquiry is a determination of whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-207. It is elemental that when a child with a disability is not determined eligible for special education and related services, although he should have been so identified, the Board has failed to provide a free appropriate public education [FAPE] to the child. As the Board failed to identify the Student at the PPT meeting in February 2003, the Student has been denied FAPE since that time. Therefore, the Board shall immediately provide the special education and related services as outlined in the final decision and order.

FINAL DECISION AND ORDER:

1. The Student is eligible for special education and related services as Emotionally Disturbed.
2. The Board shall provide the Student eight weeks of tutoring, 5 days per week, 3 hours per day. The Board shall also provide the Student with eight weeks of counseling for two times per week, one hour each session, and two sessions, once per month, of family counseling. The psychologist for the individual and the family shall be selected with consensus of the Mother, the guardian ad litem, and the social worker from the public defender's office. This is an interim program to be commenced immediately, and continue until the evaluations are completed and the IEP incorporating the recommendations from the evaluations is developed. This tutoring and counseling interim program shall not exceed eight weeks, at which time the comprehensive evaluation of the Student shall be completed. If the evaluations are completed and an IEP is developed in less than eight weeks, this interim program shall terminate.

3. The Board shall provide a comprehensive evaluation of the Student at Connecticut Children's Medical Center [CCMC] by an appropriately licensed psychologist and medical physician to be used to determine a program for the Student. The psychological evaluation shall include educational recommendations for the Student. If the evaluating psychologist requires additional information from an educational evaluator, the Board shall provide for an independent educational evaluator recommended by the evaluating psychologist. The Board shall further provide an evaluation by an appropriately licensed psychiatrist if such an evaluation is recommended by the evaluating psychologist. The Board shall provide transportation to the evaluations. The evaluations shall be completed within eight weeks, so that an appropriate program can be in place at the conclusion of the tutoring and counseling provided in this order. If CCMC is not able to schedule the evaluations, the comprehensive evaluations must be completed by an independent evaluator selected with the consensus of the Mother, the guardian ad litem and the social worker from the public defender's office.
4. Upon completion of the independent evaluations, the PPT shall reconvene to implement the recommendations of the evaluations without delay.