

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 15

Appearing on behalf of the Student: Attorney Alyce L. Alfano
Klebanoff & Alfano, P.C.
433 South Main Street
Suite 102
West Hartford, CT 06110

Appearing on behalf of the Board: Attorney Frederick L. Dorsey
Attorney Jennifer M. Rockwell
Siegel, O'Connor, Zangari, O'Donnell
& Beck P.C.
150 Trumbull Street
Hartford, CT 06103

Appearing before: Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

I. ISSUES:

1. Whether Region #15 Board of Education ("Board") offered the student a Free Appropriate Public Education ("FAPE") for the 2003-04 school year?
2. Whether the Board offered the student a FAPE for the 2004-05 school year?
3. Whether Franklin Academy is an appropriate placement for the student?

II. SUMMARY AND PROCEDURAL HISTORY

The student is a fifteen year old male currently in the tenth grade at a private school, Franklin Academy ("Franklin"). The student has been an identified special education student since before kindergarten and has been educated in the Region 15 public school since kindergarten. He has been diagnosed with a non-verbal learning disability. There is no disagreement that he is an intelligent student who has always done well in school academically. At the beginning of his ninth grade year (2003-2004) for reasons of concern about his emotional and social well-being his Parents unilaterally placed the student at Franklin, a school for only disabled children. The Board believes that the student could, and can still, make meaningful educational progress at the Region 15 school and that such placement is the least restrictive environment ("LRE"). The

Board also maintains that the academic and extra curricular offerings at Franklin are not appropriate for the student.

The parents' initial due process request was filed and withdrawn in 2003. Parents' counsel made the current due process request on April 1, 2004. The parties participated in a pre-hearing conference with the hearing officer on April 13, 2004. On July 15, 2004, at the first day of the hearing, the Parents were allowed, over the Board's objection, to add the issue of whether the Board offered the student an appropriate program for the 2004-05 school year. The hearing continued on September 2, September 23, September 28, October 7, October 21, and November 10. On the seventh day of hearing, Board counsel informed parents' counsel that he intended to rest the Board's case, without calling Pam Albon, the student's case manager and special education teacher or Rose Fox, the student's school counselor, who was responsible for implementing the social goals on his IEP. Both of these witnesses were on the Board's submitted witness list although it is not uncommon to name witnesses who are not called. Parent counsel requested that the Board produce Ms. Albon and Ms. Fox for questioning, as they were both key in the student's educational program when he attended the Region's middle school. The Board objected to this request. The parties submitted briefs and, because the witnesses were so central to the student's program, an order issued that the Board produce those two witnesses for questioning on the final day of hearing. Thus, on December 1, 2004, after the Board concluded its case, Ms. Albon and Ms. Fox appeared for questioning by counsel about their role in the student's program. The parties agreed to a post-hearing brief and reply brief schedule and a date for mailing of the final decision of March 1, 2005.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

III. FINDINGS OF FACT:

1. The student was born on September 10, 1989. He was fifteen years old and attending tenth grade at Franklin Academy at the time of this hearing. P-3, P-4.
2. There is no dispute that the student has been educated in the Region 15 schools through his eighth grade year and that he has always been and continues to be eligible for special education services and that his identification is as a student with a nonverbal learning disability. B-1, B-37, Record as a whole.
3. The student received occupational therapy, physical therapy, speech and language services, guidance services, and instruction in the resource room. B-9. Based on PPT determinations of the student's progress, the student no longer receives occupational therapy, physical therapy or speech and language services. B-9, B-10.
4. The student attended the Board's middle school for the sixth through eighth grades. In sixth grade, the student received an A+ in Strings, A's in language arts, social studies and science, B+'s in math, physical education, computers and music, a B in technology education, a C in art and a C+ in family consumer

- science. B-1. In seventh grade, the student received A+'s in problem solving and music, A's in language arts, science, U.S. history, Spanish, health, technology education and strings, a B+ in art, B's in physical education and computers and a C+ in art technology. *Id.* In the eighth grade, the student received an A+ in U.S. history, A's in language arts, math, science, Spanish and health, a B in physical education, an A and C in music, a B and D in technology education and a C in orchestra. *Id.*
5. On the sixth grade Connecticut Mastery Test ("CMT"), the student scored at or above the mathematics and reading goal levels and at level three, two levels above eligibility for intervention, for the writing goal. B-1. On the eighth grade CMT, the student's scores significantly improved in comparison to State goals and his peers. He scored at goal for mathematics, above goal in the advanced level in reading, and at goal for writing. The student was above the school and district average scores in all three of these goal areas. *Id.*
 6. During his sixth grade year the student was spending four to five hours on homework so the Parents hired a Region 15 teacher to tutor the student. This helped the student with his organizational and research skills. The tutoring continued throughout his middle school years and was a significant part of the student's academic success. Testimony of Father.
 7. At home, the parents noticed that social events were one time occasions with no follow-up invitations. The Parents tried to involve him in scouting which worked well at the Cub Scout level but at the Boy Scout level there was a lack of the structure and social supervision that the student needed. *Id.*
 8. Since he was eight years old the student has attended sleep-over summer camp for a couple of weeks a summer. *Id.*
 9. The Parents noticed the student appeared depressed during his sixth grade year and was isolating himself; they took him to see a psychiatrist who prescribed anti-depressant medication for him. *Id.*
 10. The student had four stressors on him which contributed to his depression in middle school according to the Parent. These are 1) his lack of ability and success socially, 2) his weight (he is somewhat overweight) 3) his move to the middle school from elementary school and 4) the death of his cat. Of these his lack of social ability and success is the strongest contributor to his depression in the Parent's viewpoint. However the treatment plan of both Dr. Gallo or Dr. McWilliams (both psychiatrists who treated the student) relied on medication and not social skills training. *Id.*
 11. In seventh grade the student became increasingly aware of his social weaknesses and asked his parents where he could go to learn how to make friends, in the same manner that he learned other things. He cannot learn social skills incidentally. *Id.*
 12. The student participated in orchestra during this time but was by himself during any of the 'down' time such as when they came off stage. He would sit by himself not talking or interacting with other students. *Id.*
 13. In the spring of the student's seventh grade year, the school psychologist, LaRue Clemens, performed a psychological evaluation of the student. This report stated "[that] socially and emotionally [the student] appears to be a child who feels that he is different from his peers...he avoids social situations at school because there

- are not other kids like him... Presently, [the student] is having some intrusive thoughts about death that he is unable to explain.” In her concluding recommendations, Ms. Clemens finds that the case should be monitored closely. B-13
14. In her testimony, Ms. Clemens explained that she did not see a need to monitor the student closely herself after she met with him a few times in the spring of 2002 because she had probed whether his intrusive thoughts of death could be caused by external reasons such as a death in the family or scary movies and the student denied this but subsequently Ms. Clemens learned that he had attended meetings with a psychic. He seemed to enjoy using a vocabulary unique to the psychic world. His thoughts had been about death in the sense of coffins but not in the sense of hurting himself or others. Testimony of LaRue Clemens.
 15. Ms. Clemens did not see the student on any regular basis during his 8th grade year. She did not counsel him. In addition, Ms. Clemens did not share the contents of her evaluation with any of the student’s 8th grade teachers except for Ms. Albon, his case manager and special education teacher and Ms. Fox, his school counselor. *Id.*
 16. In seventh grade the student developed strategies to avoid recess. These strategies included unusually frequent trips to the nurse. Testimony of Father. Regarding his social isolation, Ms. Clemens testified that she observed the student avoiding the lunchroom by obtaining passes to visit various teachers during lunchtime. The student stated that he was avoiding lunch because he didn’t have anyone to sit with. Ms. Clemens addressed this by making sure he went to lunch and had someone to sit with. Testimony of Ms. Clemens.
 17. At the May 16, 2002 PPT at the end of the student’s seventh grade year the team agreed to four recommendations: 1. Provide 2 hours of resource support services a week. 2. Provide .5 hour of counseling service a week. 3. Monitor physical therapy this year (physical therapy was discontinued but would be monitored) 4. monitor carefully and meet for his annual review or sooner if needed. Under ‘Present Levels of Educational Performance’ “encouragement of peer interaction is needed “ is noted under Social /Emotional/Behavioral and “Socialization w/ peers” is the first listed ‘Concern/Need’. B-10 p. 5.
 18. The student had two goals in his May 16, 2002 Individualized Educational Plan (hereinafter IEP). One is to maintain at least a B average in all academic subjects. B-10 p. 6.
 19. The second goal was “[The student] will improve his social interaction with his peers.” He had two objectives for this goal. They were: “1. [The student] will approach other students and initiate conversation throughout the school. Opportunities exist in classroom, guidance, resource and orchestra and mini-classes. 2. [The student] will engage in conversation with peers for 3-5 minutes throughout the school. Opportunities exist in classrooms, lunch, guidance, lunch bunch, mini-classes, orchestra, special projects.” B-10 p. 7. The sites of the services to achieve these goals included the regular classroom. *Id.* p. 8.
 20. His IEP included approximately twelve modifications all of which listed “all teachers/all year” as the ‘Required Supports for Personnel’ and includes the

- classroom as one of the sites where all modifications/adaptations will be implemented. *Id.* p. 11.
21. At the May 16, 2002 PPT at the end of the student's seventh grade year the Parents were told about the Memorial Mustangs Program (hereinafter the Mustangs), an honor society for which the student would be eligible. The Parents did not know about the Mustangs except for having been told about it at this PPT and they were given the clear impression that the student would be placed in it in eighth grade. The Program's members are generally high achieving, popular and well liked students and the Parents and the student were looking forward to the student having this honor and opportunity. The minutes state: "The team will explore different ways to have [the student] be a greater part of the general school environment including the Mustang Guidance activities or media program at school and encourage him to [be] part of this next year." B-10 p 3. On the morning of the day that the announcement was going to be made at school identifying the new members of the Mustangs, Rosemary Fox, a school counselor who did not attend the May 16, 2002 PPT, called the Mother after the student already left for school. Ms. Fox told her the student would not be admitted into the Mustangs after all. The parents and the student were crushed by this news. Testimony of the Father. Ms. Fox explained that kids are selected for the group and that it is not a special education group. From Ms. Fox's testimony it was clear that the student met all of the objective criteria and he was not selected based only on the remaining subjective criteria. Further, if the Board through the PPT process had not promised this student admission into the Mustangs, there would have been no reason for Ms. Fox to call this family with the news that the student would not be admitted.
 22. In eighth grade the student developed tics that progressed from vocal tics (constant swallowing) to motor tics (a sudden repeated movement of the head as if he was swinging hair off his forehead). *Id.* The tics appeared to be related to the student's anxiety over his upcoming bar mitzvah. The tics did not interfere with the student's class participation and work performance and decreased after his bar mitzvah. Testimony of Ms. Cavanaugh, Mr. Gottfried, Ms. Clemens, Ms. Fox and Ms. Eustace.
 23. The student's eighth grade history teacher did not participate in any of the student's PPTs but was aware from the Pam Albon, the student's special ed teacher, that the student needed extra time and assistance with note taking. The student did not need this assistance with note taking but did occasionally need extra time. In eighth grade history the student was 'a daily star performer on any level any history teacher would ask for.' He was always engaged, volunteered answers, and was a question ahead which history teachers love; he always brought something engaging to the table. He got along very well with his classmates. The student was always one of the first ones selected for team work. He achieved 'A' grades without changes to grading or the curriculum. He was not recommended for honors level history because the volume and pace is much more demanding. Testimony of Eric Gottfried.
 24. The eighth grade teachers met as a group and the student was one of the students this group discussed at times. Mr. Gottfried was not aware of specific goals or

- objectives in the student's IEP about social issues. Surprisingly, he was not aware that classroom teachers had any responsibility for those social goals. Mr. Gottfried does not recall any group meetings at which the student's social goals were discussed. Mr. Gottfried does not typically see his students' IEPs on a regular basis. *Id.*
25. The student was very active and enthusiastic in his eight grade math class. Note taking was never a problem in math. The student received straight As taking the same tests as the other students but with more time. Part of the grade is for class participation which includes going to the board, asking good questions and answering questions. The student earned the top math award out of approximately 75 students. He was a real nice boy and had nice interaction with his peers in class. He was not afraid to seek out adults and his math teacher testified there was no reason he could not be educated in a public school. She had received a summary of the student's IEP from Pam Albon, the special education resource teacher. It contained the student's strengths, weaknesses and modifications. She testified that the description of the student as having a lot of morbid thoughts 'did not fit the [student] I know, in my mind this is surprising.' Testimony of Susan Cavanaugh.
 26. In eighth grade the student had a girl who seemed to like him and the Board teachers would see him with her and he appeared happy about it. Testimony of Ms. Cavanaugh, testimony of
 27. The student participated in the eighth grade class trip to Washington, D.C., where he roomed with other students without problem, although he had to be matched with his foursome, whereas most students picked their own group. Testimony of Mr. Gottfried; Board Exhibit 26. Of note is the fact that none of the Parents' witnesses testified as to any problem the student experienced with this significant social and academic exercise, completed in the final weeks of the student's attendance in public schools, when he was described by Parent witnesses as being in a depressed state
 28. Ms. Eustace was the student's eighth grade Spanish teacher. The student did very well in her class. The curriculum and tests were not modified in any way and he was an A student. The student got along fine with other students. Being a language class the students worked with partners in class. They worked with 11 to 12 different students in the course of class. Students could pick or reject partners and they liked to partner with this student because he was a very good student. The student would laugh along with other students and was indistinguishable from them. She never saw the student's IEP, nor was she aware of any goals or objectives on the IEP for which she was responsible. At the time when she was the student's teacher, she was not even aware that Ms. Clemens had done a psychological evaluation of him. Regular education teachers don't usually see the IEP. Testimony of Patricia Eustace.
 29. Beginning in the late winter/spring of his eighth grade year the student participated in a peer tutoring program and he requested to increase the number of students he tutored because it would help him make friends. *Id.*
 30. Rose Fox was the student's school counselor for his eighth grade year. She was the individual responsible for implementing the student's social goals on his IEP.

- As a school counselor, Mrs. Fox had a caseload of approximately 274 students. Mrs. Fox did not attend the May 2002 PPT at the end of the student's seventh grade year, which put forth his IEP for the eighth grade year. For some reason, the school nurse attended in her place. However, she drafted the social goals and objectives after the PPT. For the performance criteria of those objectives, Mrs. Fox wrote that 25% would be an appropriate number of correct trials. She then testified that although he was "really doing much better than that" she did not reconvene the PPT to correctly revise the student's IEP. Testimony of Rosemary Fox.
31. During his eighth grade year, Ms. Fox saw the student for one class period once every six days in a social skills group, pursuant to his IEP. She sometimes saw him when teaching a "mini" class that all of the eighth graders took. Ms. Fox considered this amount of interaction with the student to constitute "close monitoring", as recommended by LaRue Clemens in her evaluation. Ms. Fox did acknowledge that the student had social skills deficiencies. B-10, testimony of Ms. Fox.
 32. Mrs. Fox cannot remember if she ever conveyed any information directly to the student's teachers about the student. The only conversation that Ms. Fox recalls having with any of the student's teachers about the student is one in which the student's physical education teacher approached her with concern about the student's tics. Ms. Fox herself never noticed any tics, although other teachers did. Testimony of Ms. Fox
 33. Ms. Fox and Ms. Clemens had offices right next to each other and talked about student needs and progress all the time. Testimony of Ms. Fox. Yet, Ms. Fox, the student's counselor, never knew the student was avoiding lunch because he had no one to sit with, although Ms Clemens, the student's school psychologist, knew this. Testimony of Ms. Fox, testimony of Ms. Clemens.
 34. Pam Albon was the student's special education teacher and case manager for his eighth grade year. She testified that the dissemination of information regarding the student's IEP was her responsibility. She further testified that she did not disseminate the IEP to any teacher. Instead, she summarized some information on a teacher-created form and gave it to the student's regular education teachers. The form did not include the student's goals, objectives, performance criteria or evaluative data. Her stated reason for utilizing this form rather than the actual IEP was so that the teachers are not given too much information. A typical eighth grade teacher would have eight to ten special education students in their classes per year. Teachers are told that they can read the full IEP if they want to and sometimes new or younger teachers will. Testimony of Pam Albon.
 35. Pam Albon explained that the eighth grade "team" actually consists of all of the eighth grade teachers. She stated that she and the school psychologist and the two school counselors meet with the team for forty-five minutes every sixth day. She does not have any scheduled meeting times with any regular education teachers beyond that time period. Within that forty-five minute period every sixth day, the team would discuss 12 to 15 students, out of the approximately 180 children in the eighth grade class. Ms. Albon does not recall any team meetings in which the student's social needs or issues were discussed. Testimony of Pam Albon.

36. The student had been attending sessions with a psychiatrist, Dr. Robert McWilliam, since September of 2002. Strangers would notice pretty quickly that there is something odd or strange about the student. He has an extraordinarily high vocabulary and while he does not speak in a monotone he does have an odd tone of speech and a relatively flat affect. Dr. McWilliam noted the tics and the student's increased anxiety associated with his upcoming bar mitzvah. The student does not display the hopelessness that Dr. McWilliams sees in a patient who is depressed and he did not diagnose the student as depressed. Rather the student is diagnosed as having a non-verbal learning disorder, and anxiety disorder and chronic motor tic. The student talked a lot of being rejected and hurt in the past and feeling alone and he reported that he usually sat alone at the lunch table when he attended the Board's public school. The student wants to please his parents. The student experienced some morbid thoughts. These thoughts involved death, dying, cadavers, decaying bodies, massacres, guns and weapons and thoughts of revenge on behalf of Jewish people. These thoughts would wax and wane and were worse in the beginning of the 2002-2003 school year. He is not a danger to himself or others. The parents wanted more academic challenge for the student than the Board was offering. Dr. McWilliam saw the student in August of 2004 and he was happy about going back to Franklin Academy and he was relaxed and content. Dr. McWilliam supports the placement at Franklin because the school specializes in NLD and the student is happy there. Dr. McWilliam does not, however, believe that the student needs a residential placement to learn any academics. He does believe that the student needs a residential placement to learn social skills because there is more interaction with peers after class from the evening until bedtime and on weekends. However, Dr. McWilliam testified the student could learn social skills in a nonresidential setting but not as well. Testimony of Dr. McWilliam.
37. Dr. McWilliam saw the student significantly fewer times during his first year of treatment (2002-2003) than in the most recent year (2003-2004). He saw the student approximately twelve times during the most recent year. *Id.*
38. Dr. Marshall Gladstone conducted a neuropsychological evaluation of the student on May 16, 2003. He administered a WISC III and his results were consistent with earlier testing by the Board. The student's Verbal IQ was 118, his Performance IQ was 87 and his full scale IQ was 104. B-22 pp. 7-8. In total Dr. Gladstone met with the student for one to two hours and his report describes a student with much more significant emotional issues than anyone else described. Dr. Gladstone believes that the student had homicidal and suicidal thoughts, was losing touch with reality, and had psychotic thinking. Dr. Gladstone found stress in the family because there was an expectation from the Parents, especially the Father, that the student should be able to do well. The student wants to please people and "identifies his family as a very significant source of stress." B-22 p 16. Dr. Gladstone determined that the student's feelings of rejection were based in reality, but that the student sensed the rejection more intensely than it actually was because of how painful it was for him. Testimony of Dr. Gladstone. Dr. Gladstone diagnosed the student as having a Depressive Disorder with psychotic features, an Anxiety Disorder, NVLD, and a Chronic Motor Tic Disorder. B-22 p.

- 14 and testimony of Dr. Gladstone. He noted the student presented as different than a typical student because he is physically awkward and uncoordinated but his opinion was strikingly differed from that of Dr. McWilliam because Dr. Gladstone indicated the student had normal intonation when speaking. *Id.*
39. Dr. Gladstone was not personally familiar with the Franklin Academy but was familiar with their reputation for helping students with socializing and he felt this was of primary importance for the student. Dr. Gladstone believed the student was heading towards a breakdown and that he needed intensive special education support that emphasized socialization. However, Dr. Gladstone believed that the student is capable of learning social skills outside of a residential treatment facility and can learn such skills in therapy, structured group, and at home. His report anticipated that the family would play a key role in teaching the student socialization skills: "As his social initiative is likely diminished, he will require a significant amount of support form family members to initiate and maintain social contacts. Parents may wish to design controlled social interactions with specific peers. Those interactions should be time-limited and should utilize familiar routines. Opportunities for [the student] to showcase his other talents (i.e. his sophisticated verbal intelligence) may improve his esteem, among peers, and in turn bolster his self esteem and social initiative. Structured activities, such as a computer or debate club ma provide positive social experiences." B-23, testimony of Dr. Gladstone.
40. As a result of the parents' July 28, 2003 due process request, the parties agreed to participate in an advisory opinion, which is a voluntary nonbinding proceeding.
41. The parents unilaterally placed the student at Franklin Academy at the beginning of the 2003-2004 school year (his ninth grade) and he has continued there to the present time, the 2004-2005 school year, his sophomore year. He was and continues to be a residential student. Testimony of father.
42. Franklin Academy is a boarding school located in Connecticut and it is one of the few schools devoted to teaching students with nonverbal learning disabilities. They emphasize verbal skills and deemphasize spatial skills. They have a dedicated social skills curriculum. Testimony of Rebecca Hays
43. The advisory opinion proceeding was held in front of Hearing Officer Scott Myers on October 30, 2003. This advisory opinion proceeding did not resolve the case.
44. Following this advisory opinion proceeding, a PPT was convened on November 12, 2003. This PPT reviewed Dr. Gladstone's evaluation, which had been provided to the district in July. The PPT did not give Dr. Gladstone's evaluation much weight because of past experiences with Dr. Gladstone and because of errors in his report. In the past, Dr. Gladstone had evaluated another Board student, who he also found to have significant social/emotional issues. The Board staff, however, as here, found a great disparity between Dr. Gladstone's testing and the student's performance on a day-to-day basis. The other student was eventually successful in transitioning from public middle school to PHS. Testimony of Ms. Popowski. Further undermining the reliability of Dr. Gladstone's report is that he had issued two versions. The first report stated that the student had poor academic performance, was a regular education student and a

- special education student, and that the student was mildly immature, dependent, emotional, fearful, nervous and impulsive. The first report further indicated that the student had mild disturbances in sleep, bedwetting issues, poor eating habits, inappropriate sexual behaviors, social withdrawal, socialization difficulties of mild severity, and moderate problems in self-esteem. Further, the first report spoke of the need for the student to continue requiring “intense” special education. B-22. The second report stated that the student was a regular education student with good academic performance, and that the student was mildly depressed and unemotional, had poor self-esteem and social skills, made suicidal statements, and engaged in unspecified unusual behaviors. B-23, testimony of Ms. Clemens. Ms. Clemens testified persuasively that the student had never been getting intense special education and that he had a great deal of success. Also, if the B-22 report were true and accurate it should have been immediately conveyed to the Board because the Board was allowing the student to go on a class trip at this same time period and he would room in a hotel with three other students. If the student exhibited inappropriate sexual behaviors this should have been immediately conveyed to the Board so they could protect the other students and it was not. At this PPT, the district proposed three names of psychiatrists to the parents, for the purpose of conducting an independent evaluation. (B-27, p.2) One of these three names was Dr. Ligorski, the person who ultimately evaluated the student in the winter of 2004. Testimony of Donna Popowski The PPT also made some revisions to the student’s IEP goals and objectives.
45. Donna Popowski, the Director of student Services, arranged for the student’s evaluation with Dr. Ligorski for January 20, 2004. B-28. The parents and the student participated willingly in this evaluation. B-30
 46. In January 2004 Dr. Mark Ligorski evaluated the student. He reports: “[The student] denies that he has been more successful with making friends since he went to Franklin although he says that things are easier with it being a smaller school. He denies being lonely and says he likes being alone. He has made a couple of close friends, one who left Franklin and another who is still there. His father was more enthusiastic about this aspect of things and was able to observe better social interactions between [the student] and his peers at school and [the student] had a friend that he was able to invite home, a first for him,” and “He does well with adults but has a harder time with peers and when in new situations.” P-3 at 3.
 47. Dr. Ligorski diagnosed the student with Axis I: “Major Depression, Recurrent, Moderate. Rule out Bipolar Disorder; Dissociative Disorder; Psychotic Disorder NOS.” B-30, p.5 Dr. Ligorski suggested that immaturity rather than psychosis or dissociation may account for the dramatic quality and loosening of boundaries observed in the student. B-30, p. 2.
 48. Dr. Ligorski concluded that “Franklin Academy’s reported focus on socialization, monitoring stress levels and giving feedback on interpersonal interactions would be exactly the kind of environment to help [the student] learn the rules of social propriety, facilitate his movement into greater emotional maturity and give him the tools for friendship and peer-level interaction.” (B-30)

49. Franklin Academy is a school for students with non-verbal learning disabilities located in Haddam, CT. The staff includes two learning specialists, who have degrees in special education and two counseling staff. Testimony of Dr. Thomas Hays.
50. Dr. Thomas Hays, the educational director from Franklin, testified that Franklin has fifty-five enrolled students, all of whom are disabled. The student/teacher ratio is three to one. Franklin has a relatively loose structure. The goal of Franklin is to prepare the students for college and 98 percent of them are college bound. Every student is part of a four to six person “core” group and each core group has an advisor. The student is with his core group for all day for academics. The entire curriculum at Franklin is dedicated to working with students with non-verbal learning disabilities by accentuating their verbal learning skills and de-emphasizing their visual/spatial skills. Franklin has a dedicated social curriculum, including a class called Individual and Community. A typical day at Franklin includes a morning “core” meeting, followed by a community meeting. The purpose of this initial meeting is to touch base and get organized and socially prepared for the day. The community meeting begins with “affirmations”, where students and faculty make positive comments about other members of the school community. The community meeting then moves on to general announcements for the school population. Two academic classes and a lunch hour follow those two morning meetings. The students then attend a 25-minute core meeting after lunch before beginning their afternoon schedules. The pace of the students’ day is slower than that of a typical high school; there are also less external stimuli – due to the students’ needs. The day continues with afternoon classes, a longer community meeting to deal with social and life skills on a larger level and a “life sports” unit. Life sports recognize that NVLD students are typically not good at team sports so instead they learn sports such as hiking, rock climbing, yoga tennis and golf and weight lifting. This is followed by dinner and some relaxation time. Each student then attends an early evening hall or dormitory meeting to discuss upcoming plans or residential issues. This meeting is followed by quiet homework time and some free time at the end of the evening. The school imposes no restrictions upon the frequency of student visits home on weekends, or upon the frequency of telephone calls home. *Id.*
51. The student had a Super Bowl party at his home for Franklin students last winter. This is the first party the student has hosted at his home since he was a young child. Testimony of father.
52. When the student arrived for the ninth grade at Franklin, he had not fallen behind academically and actually started off at a higher level in math than the other students at Franklin. Testimony of Thomas Hays. The only interaction the student has with nondisabled students is with the children of the faculty who live at Franklin, with whom he has no formal association but who are around the campus a lot. *Id.*
53. The student meets with Dr. Rebecca Hays, the school psychologist at Franklin Academy. He meets with Dr. Hays individually on a weekly basis and has frequent contact with her in addition to those scheduled weekly meetings. She did not know his diagnosis. Dr. Hays described the student as very bright with all the

- features of a non-verbal learning disability. She explained that the student has difficulty identifying his own emotions. Together, they developed a color-coded alert system, similar to the national alert system, to let Dr. Hays know how he's feeling. Dr. Hays saw the student at a high or "red" stress level two times over a six-week period in the Spring of 2004 and, during that time, was at risk for hurting himself during a two-week period. She explained that the student does experience a significant amount of stress and also has some kind of intrusive thoughts. Dr. Hays collaborates on a regular basis with Dr. McWilliam, the student's psychiatrist, but never asked what the student's diagnosis was although she plans to ask this year. At Franklin, the student had to be moved to a more challenging academic group. Testimony of Dr. Rebecca Hays.
54. At the beginning of the Board's case on September 28, 2004 the Board motioned for an interim order that the Board be allowed to observe the student's program at Franklin. The Motion was granted with the conditions that no more than two Board employees participate in the observation, that the student's parents be told of the date and time of the observation and that this be communicated to the student's parents on the day that the date is selected and that the observation occur on one day. Transcript, 9/28/04.
55. On the observation at Franklin, Board staff observed questionable teaching strategies, missed opportunities to teach social skills, a lack of skill to manage a classroom, no formal curriculum, and a lack of knowledge regarding group dynamics. Board staff observed that the student did not interact with peers as frequently as he did at the Board school. A Franklin teacher reported that the student had one friend. Another teacher reported that the student really had it together and that other students needed more direction than the student. When Ms. Clemons mentioned the girl who was his friend from the Board school, the student smiled and said 'that's interesting.' Testimony of Ms. Clemens, testimony of Ms. Popowski.
56. The parents had conversations with Tom Hays regarding the student's placement for the current school year. Dr. Hays cautioned the parents that it would be a mistake for them to move the student from Franklin Academy because he could very easily be pushed into a psychotic break. The parents did decide to keep the student at Franklin for the 2004-2005 school year. Testimony of Thomas Hays.
57. In May of 2004, the district hired Dr. James Black, a psychiatrist, to review the student's records. This review was done without the consent or knowledge of the parents. Dr. Black never met with or saw the student. He never spoke with the parents or the student's psychiatrist, Dr. McWilliam, treating psychologist, Dr. Rebecca Hays, Dr. Gladstone or Dr. Ligorski about their clinical, personal evaluations of the student, although he did review their evaluations. He testified that children know what their parents think and it was not a good idea to introduce this student to a psychic because it risks reinforcing nonreality thinking. Dr. Black does not recommend a residential placement for the student because he is successful in the public schools. A residential placement may tell the student that, in order to be successful, he has to be with other children who are below average academically and socially. Testimony of Dr. Black

58. The Board high school has 1300 students, which is more a reflection of the real world because the vast majority of the students are not disabled. Testimony of Ms. Popowski. The Board high school has now, and in the past had, other students with NLD and successfully implemented programs for their education. PHS, therefore, is experienced in providing inclusive services such as those needed by the student. Testimony of Ms. Lindsey. Board staff received training specifically about NLD from Dr. McWilliam and also has received training in "Building Social Competency in the School Setting." Testimony of Ms. Albon, B-4.
59. The Board has offered the student a program in the regular school setting with social skills training, a social skills group, resource room support, and a variety of extracurricular activities. B-20 The student was at the May 27, 2003 PPT and he said he had friends. Testimony of Ms. Popowski. The special needs of the student would be shared with his regular education teachers through an IEP summary, which would include the student's strengths, learning style, modifications, goals and objectives. A student tutoring program, a strength the student demonstrated at the middle school, is also available in the high school resource room that would allow the student to utilize his superior academics skills as a vehicle to develop social relationships. The program at high school can also provide home support for the family and strong school-to-parent communication. Testimony of Ms. Lindsey. There is a much greater number of more varied extracurricular activities at Board high school than there were at the middle school, which would aid the student in developing his socialization skills by providing him with opportunities to mix with students who have interests similar to his own.. Testimony of Mr. Gottfried.
60. There are three social skills groups at the Board high school with four to six students in each group. Testimony of Ms. Popowski. The students in these groups have NLD or other specific learning disabilities. Testimony of Mr. D'Antonio. The social skills groups are taught by the school psychologist and a special education teacher. Testimony of Mr. D'Antonio, testimony of Ms. Popowski. The groups meet once every four days and focus on the social needs of the students as set forth in their IEPs. The social skills groups have worked on, among many other things, interpreting body language, how to give and receive in a conversation, social cues, problem solving, and how to speak with peers and adults, all of which would address specific needs of the student. The group will examine situations that make the student feel uncomfortable, discuss strategies to handle such situations, role-play and model how to approach those situations, and then discuss what they learned as a group. Testimony of Mr. D'Antonio, testimony of Ms. Lindsey.
61. It is the responsibility of each of the student's teachers to monitor his goals and objectives. Id.
62. Ms. Lindsey, the high school special education teacher, testified that she does have a student who is a National Honors level member.

DISCUSSION AND CONCLUSIONS OF LAW:

1. There is no dispute that the student is entitled to special education and related services as a student identified with a specific learning disability and thereby entitled to receive a free and appropriate public education (“FAPE”) pursuant to 20 U.S.C. §1400 et. seq., the Individuals with Disabilities Education Act (“IDEA”, also “the Act”), 34 C.F.R Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
2. The Act defines FAPE as special education and related services which:
 - “(A) have been provided at public expense, under public supervision and direction, and without charge;
 - (B) meet the standards of the State educational agency;
 - (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
 - (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. Section 1401(8).
3. Connecticut Regulations provide that “the public agency has the burden of proving the appropriateness of the child’s program or placement or of the program or placement proposed by the public agency.” Conn. Reg. 10-67h-14.
4. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al. v. Rowley*, 458 U.S. 176 (1982), 102 S.Ct.3034. The first prong requires determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
5. The procedural guidelines of IDEA are designed to guarantee that the education of each child with disabilities is tailored to meet the child's unique needs and abilities. 20 U.S.C. Secs. 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary or erroneous decision-making. Daniel R.R. v. State Board of Education, 874 F.2d 1036, 1041(5th Cir. 1989).
6. Violations of the IDEA’s procedural requirement do not automatically mean that a denial of FAPE has occurred, however, when the procedural violations result in the

loss of educational opportunity then a denial of FAPE has clearly resulted. *Scottsdale (AZ) Unified School District, supra, 38 IDELR 204.*

7. In the present matter, the Board did not provide the student's teachers with his IEP. Instead the teachers were provided with a summary of the student's IEP prepared by the student's special education resource room teacher. This summary failed to include such basic components as the student's goals, objectives, performance criteria and evaluative material. The IDEA specifically requires that a Board of Education "provide special education and related services to a child with a disability *in accordance with the child's IEP* and make a good faith effort to assist the child to achieve the goals and objectives" of the IEP. 34 C.F.R. 300.350(a)(1)-(2) (emphasis added). This student's teachers did not even know what his goals and objectives were or what their responsibilities were in regard to this student's IEP. This is a procedural violation of particular significance because the intent of the socialization goal was to help the student in the general school population not just in the confines of a resource room, and his regular education teachers would have had a more frequent opportunity to assess this if they knew about it and the extent of the underlying concerns described in the evaluations. Teacher testimony established that the student's teachers never saw the student's IEP, did not collect any data themselves or do anything to further the student's IEP goals, particularly his social goal and objectives. The student's counselor, Ms. Fox, never even knew the student had been avoiding lunch because he had no one to sit with although Ms. Clemens, the school psychologist knew and their offices were right next to each other and they were frequently discussing students during the course of a day. Each regular education teacher would have had no more than ten IEPs to review in a given year. The reason Ms. Albon, the special education teacher, utilized summaries rather than IEPs, is that this was the practice by this Board because having to review the IEPs was deemed too burdensome for certified teachers. Further, it is noted that this belief and practice had a school-wide impact in that only young and inexperienced teachers bothered to review IEPs. This is not reasonable in light of the regulatory requirement that provides that a child's IEP must be accessible to each regular education teacher and that each teacher must be informed of his or her specific responsibilities relating to the IEP. 34 C.F.R. Section 300.342(b)(2) and (3).
8. As to the second prong of the Rowley two-part test, it must be determined whether the IEPs are reasonably calculated to confer meaningful education benefit upon the student. Rowley 458 U.S. at 192, 102 S.Ct. at 3043-44. While the law does *not* require that a school district provide an educational program to *maximize* a student's educational potential (*Rowley* at 3046), the school district must provide more than "mere trivial advancement." Mrs. B. v. Milford Board of Education 103 F.2d1114 (2d Cir. 1997). This student was educated in regular education classes and because his regular education teachers did not know his goals and objectives or their responsibilities under his IEP
9. Further, it is well established that an educational program provided to a special education child under IDEA must be in the least restrictive environment possible. 20

U.S.C. 1412(a)(5)(A), 34 C.F.R. 300.550(b). The Rowley Court noted in the course of its opinion that the IDEA contains a separate specific legal mandate which “requires participating states to educate handicapped children with nonhandicapped children whenever possible.” “Courts have looked to a number of factors to indicate whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA, including, *iter alia*... (2) whether the program administered is in the least restrictive environment.” *M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D. Conn. 2000).

10. School districts must carefully examine the educational benefits, both academic and nonacademic, available to a child with a disability in a regular classroom. Among the factors to be considered are the advantages derived from modeling the behavior and language of children without disabilities; the effects of such inclusion upon the other children in the class, both positive and negative; and the cost of necessary supplementary services. See Oberti v. Board of Education, 995 F.2d at 1216-17; Holland, 14 F.3d at 1401; Greer, 950 F.2d at 697; Barnett v. Fairfax County School Board, 917 F.2d 146, 153-54 (4th Cir.), cert. denied, 112 S.Ct. 175 (1991); Daniel R.R., 874 F.2d at 1048-50; Mavis, 839 F.Supp. at 983, 990.
11. The courts have recognized that a child’s academic performance may be positively affected by the nonacademic benefits of mainstreaming. A child may be better able to learn academic subjects because of improved self-esteem, behavior and increased motivation due to placement in regular education and modeling behaviors. Holland, 786 F.Supp. 874-79.
12. In the instant case it is agreed that the student performed well academically. The evidence was not persuasive that he was on the brink of a breakdown when the Parents decided to place him at Franklin. The experts were in great disagreement about the student’s mental condition. Dr. McWilliam, his treating psychiatrist for the past two years, does not feel that the student is or was a danger to himself or others at the time he testified. Ms. Clemens, the Board school psychologist, did not believe that the student was a danger to himself or others, nor did the student ever act out such behavior at any time while he attended Board schools. Dr. Black did not find any record to support that the student was a danger to himself or others. Instead, the record indicates that the student functions well in a school environment, does not have true hallucinations from a psychosis, and does not have a plan in mind to harm himself or others. The school psychologist at Franklin saw the student at a high or “red” stress level two times over a six-week period in the spring of 2004 and, during that time, was at risk for hurting himself during a two-week period. This indicates a higher level of distress than when the student was in the Board’s public school. Dr. Gladstone, based on his two hour assessment, believes that the student is a danger to himself or others. Dr. Gladstone’s opinion was seriously undermined by the two versions of his report which were strikingly different in significant ways. It gave the impression he did not really know this student. When combined with Ms. Popowski’s testimony about the Board’s other experience with Dr. Gladstone’s work, the impression was of a doctor who repeatedly exaggerates the gravity of a student’s

social/emotional status. In the face of such varied expert opinion, it is of particular significance that the student was exhibiting academic success. What is most compelling is the magnitude of the success he was having in all his academic classes. If he was as dangerously disabled as the Parents argue, it is difficult to believe he would be performing with such excellence and consistency academically. The weight of the evidence supports the conclusion that the student was not in the degree of emotional turmoil described by the parents when they decided to make the unilateral placement.

13. The Parents did establish that the student was having an unreasonably difficult time socially and that the Board's goal and objectives were not effective in addressing his needs in this regard. The Board does not dispute that in middle school he was avoiding lunch because he had no friends and that he was one of the few students that had to be fixed up with a roommate for the class trip which was at the end of eighth grade. While teachers testified as to how he interacted with peers within the confines of the classroom the staff testimony was notable for the dearth of information about his socialization during nonclassroom time, although his objectives clearly anticipate implementation in the whole school environment: "[The student] will engage in conversation with peers for 3-5 minutes throughout the school." B-10. With the exception of one girl he seemed to like and spend some time with in eighth grade, Board witnesses did not describe the student walking with friends in the hallways, hanging around with friends at school functions or coming or leaving school with friends. The staff testimony seemed to agree with the Parents' position that the student's one extracurricular group activity (orchestra) did not result in the camaraderie one would expect in such an endeavor. The parent described the student as sitting alone during breaks in orchestra and the Board staff described tutoring as providing him with much more interaction with peers than orchestra. The student himself was expressing his need for help socializing when he used the vehicle of tutoring to try and foster friendships. The impression was that the student was fending for himself in large part in trying to forge friendships and develop social skills.
14. The cases cited by the parent are very much dependent upon the lack of academic achievement for the student in question. In *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114 (2d Cir. 1997), the 14 year old student, who was diagnosed with a learning disability (LD), had failed to meet academic and behavioral standards in nearly all classes, receiving unsatisfactory or failing grades in virtually all subjects throughout the year. *Id.* at 1117-18. In *In Re: Low Gatos Joint Union Sch. Dist.*, 503 IDELR 380 (SEA CA Feb. 28, 1983), a 16 year old student who was seriously emotionally disturbed (SED) suffered from anxiety, withdrawal, depression and delusions to such a degree that she could not attend classes. *Id.* at 3-5. The student exhibited aggressive, combative behavior and suicidal gestures that included leaning into a fireplace until her sweater ignited, hiding a knife and glass, running away, and scratching her arms. *Id.* at 4. The student had not responded to previously provided outpatient therapy. *Id.* at 6. A 24-hour placement was deemed essential to prevent the student from hurting herself. *Id.* at 7. In *Suffield Bd. of Educ.*, Case No. 04-311 (SEA CT Dec. 1, 2004), a 13 year old

student going into the 8th grade was reading at the 6th grade level, doing arithmetic at the 4th grade level, spelling at the 3rd grade level, and could not generalize skills, make change or tell time. *Id.* at 11, No. 32 and 15, No. 51. Comparison to regular education higher functioning students in his classes was determined to be destroying the student's self esteem, leading to social withdrawal and significant problems speaking in class. *Id.* at 12, No. 34 and 17, No. 5. The student began to develop physical symptoms such as stomachaches and it was increasingly difficult to force him to go to school. *Id.* at 15, No. 50. An outside day placement was ordered to "address needed skill development and emotional support in a more comprehensive way than the piecemeal services offered by the Board." *Id.* at 17, No. 5.

15. These cases do support the fact that educational programming is not limited to academic programming but all of these cases deal with students who had considerably depressed academic achievement related to emotional/behavioral issues. None of these cases stand for the proposition proposed by the Parents that a student who is doing above-average work in all academic areas is appropriately placed in a residential placement, the most restrictive of all placements, because he does not have appropriate social skills.
16. When parents seek reimbursement of expenses incurred at a private school, an award will be entered in their favor if it appears "(1) that the proposed IEP was inadequate to afford the child an appropriate public education, and (2) that the private education services obtained by the parents were appropriate to the child's needs." *M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ.*, 226 F.3d 60, 66 (2d Cir. 2000); *Walczak*, 142 F.3d at 129
17. Franklin is not the least restrictive environment for the student. Not only is the student being taken out of the regular education mainstream, but he is also being placed in a residential program. Residential placement by its very nature is the most restrictive type of placement for a child because it completely removes the child from his family, his home, his community and his school. Only disabled students attend Franklin; the only interaction with nondisabled children is the informal association with the children of the faculty outside of the classroom. In addition, the student stays with the same four to six students all day for his academics. Everyone agrees the student was performing well academically in the public school setting. But within the confines of the public school classroom he was performing well socially also. He was interacting in a frequent, reciprocal manner with his classmates and he was sought out and liked. His academic ability was a strength in the regular classroom setting because typically developing peers recognized and respected his intellect. This is a good place for the PPT to start in fashioning an appropriate IEP for him. The student himself recognized this and appropriately focused on this in his attempt to foster friendships by increasing his peer tutoring experiences. The Board recognized the importance of advancing the socialization goal into the nonclassroom setting, but failed in its implementation. With a proper IEP and proper implementation this student has a lot to gain from a public school setting with a larger number of bright students and frequent interaction with typically developing peers.

FINAL DECISION AND ORDER:

1. The Board did not offer the student a Free Appropriate Public Education for the 2003-04 school year.
2. The Board did not offer the student a Free Appropriate Public Education for the 2004-2005 school year.
3. Franklin Academy is not an appropriate placement for the student.
4. The Board's high school is the appropriate placement in the least restrictive environment for the student.
5. The Board will convene a PPT to plan for the student's transition back to the public high school.
6. The Board will fund a consultant or advocate of the Parent's choosing to attend PPTs with the Parents over the course of the student's remaining high school years to insure appropriate socialization goals and objectives are drafted and that they are implemented properly.
7. In the event the Parents find the student needs tutoring the Board will provide one up to two hours a week during the weeks school is in session over the student's remaining high school years.