

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Student: Attorney Gwendolyn K. McDonald  
State of Connecticut  
Office of Protection and Advocacy  
60B Weston Street  
Hartford, CT 06120-1551

Appearing on behalf of the District: Attorney Paula D. Sullivan  
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State of Connecticut  
110 Sherman Street  
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Appearing before: Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Student's program for the 2003-2004 school year was appropriate.
2. If not, whether the Student is entitled to compensatory education.
3. Whether the Student has met the requirements for graduation.
4. If not, whether the Student is entitled to a free appropriate public education for the 2004-2005 school year.
5. Whether the Student is being provided education in the least restrictive environment.

**PROCEDURAL HISTORY:**

The Student requested this hearing through a correspondence filed on behalf of the Student by the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities [Office of Protection and Advocacy] dated July 6, 2004, and received at the State Department of Education on July 28, 2004. A prehearing conference was held on August 3. The hearing was held on September 8, 15, 17, 27, 30, and October 4, 5, 6 and 15. The mailing date of the decision was extended at the request of both parties to schedule additional hearing dates, and to allow the parties to submit final briefs.

The Student's witnesses were Elizabeth Daly of the Office of Protection and Advocacy, the Student, Bruce Garrison of the Office of Protection and Advocacy, DCF Social Worker Scott Doubleday, Unified School District No. 2 Principal John Mattera and Orv Karan, a psychologist.

The District's witnesses were Regional School District No. 19 special education director Debra Hultgren, surrogate parent Joyce Jolly, and DCF supervisor Sandra Rudin.

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 21 year old Student was precipitously removed from his foster home and his community based educational program and placed in a restrictive out-of-state facility purportedly for noneducational reasons in January 2004. As he was a no nexus student, the Student's educational program became the responsibility of the Unified School District No. 2. His educational program came to a virtual standstill, and the Student regressed. His surrogate parent couldn't locate him for months to determine where the Student was placed, and whether his IEP was being implemented. Under a misrepresentation from the DCF social worker, and under the direction of a letter authored by the Student's out-of-state facility's therapist, the Student was erroneously issued an invalid diploma by a former school district. The Student's IEP has never been implemented by the out-of-state facility. The Student's advocates from the Office of Protection and Advocacy brought this action against USD 2 to seek compensatory education for the district's failure to provide special education and related services to the Student.

### **FINDINGS OF FACT:**

1. The Student is currently 21 years old. The Student was born prematurely in 1988 to parents who were both alcoholics. The Student had numerous medical complications, including an intraventricular hemorrhage at six hours of age. He weighed two pounds at birth, and remained hospitalized for three months following his birth. Due to concerns regarding the parents' ability to care for the child, the state Department of Children and Family [DCF] filed coterminous petitions concurrent with an order of temporary custody in August 1983. The Student never went home with his parents, and a termination of parental rights was granted in January 1988. [Exhibits S-1, S-9]

2. In February 1996, the Student was placed in a foster home until June 2002, at which time the Student was placed in two additional foster homes over the summer 2002. In August 2002, the Student was moved to a foster home in Willington. [Exhibit S-1]
3. After the Student reached 18 years old, his social worker noted that the Student's relationship with DCF changed, as DCF was no longer the statutory, custodial parent of the Student. At age 18, DCF provided support services to the Student, and the Student was allowed to remain with DCF services as long as he was compliant. [Testimony Mr. Doubleday] These services included continued placement at a foster home.
4. When the Student moved into the foster home in Willington, he became the responsibility of Regional School District No. 19 [RSD No. 19]. At that time, the Student was eligible for special education and related services as Other Health Impaired. He had an Individualized Education Program [IEP] in place that was transitional in nature. The Student had completed coursework in terms of credits, but had not completed his transitional goals, so RSD 19 continued his IEP that had transitional services, with goals and objectives related to job skills, interpersonal skills and academics. [Testimony Ms. Hultgren]
5. In April 2003, the Planning and Placement Team met to conduct an annual review of the Student's program. The PPT reviewed the Student's present level of performance, noting that the Student has significant neurological impairment including visual/spatial and visual processing difficulties, as well as fine and gross motor problems. The cognitive issues remained, as there was a question as to whether the Student was able to have long term retention of what he was learning. The PPT noted that the Student's social skills and maturity were far behind young men of his age, and that this needs continual reinforcement in the future. It was noted that the Student's visual processing and spatial problems result in a lack of coordination. As for communication, the Student's exceptional verbal ability belied his lack of social skills. The PPT indicated that the Student had not mastered independent living skills, and his present work and organizational skills were weak. [Exhibit S-14]
6. At the April 2003 PPT meeting, it was noted that the Student's disabilities bar him from attaining the necessary social and life/vocational skills typical for his age. The Student's inability to learn from mistakes or to retain skills taught would continue to retard any progress he makes, according to the Student's PPT. At that stage, the Student needed constant supervision to maintain current skills. The PPT concluded that the next PPT meeting would be held in September 2003 to plan for the Student's final year of transitional services. [Exhibit S-14]
7. The PPT reconvened at RSD. No. 19 on September 22, 2003. At this time, DCF reported that it was working on finding a new living situation for the Student. The PPT scheduled the next meeting to include adult service agencies to work on

- transitioning the Student to adult services when he aged out of his special education services. His current IEP was continued and the Student's goals and objectives were revised. At this time, all goals and objectives indicated that the Student's services were to continue through the end of the school year in June 2004. [Exhibit S-18]
8. In October 27, 2003, an interagency planning meeting was held to plan for the Student's adult services transition. This was not a PPT. At this time, Region 19 was the Student's LEA, and his IEP was community based. [Testimony Ms. Daly]
  9. On December 2, 2003, a PPT meeting was held to discuss the Student's transition planning and to review his IEP. Bruce Garrison of the Office of Protection and Advocacy attended this PPT on behalf of the Student. Nancy Hoyt, educational consultant from Unified School District No. 2 [USD 2] also attended this PPT. The PPT agreed to continue the current IEP, and scheduled the next PPT meeting to be held on January 29, 2004. [Testimony Mr. Garrison, Exhibit S-23] The principal of USD 2 was aware that the representative from USD 2 attended the PPT at RSD No. 19. [Testimony Mr. Matera]
  10. Because USD 2 was attending the PPT meeting in December 2003, it is concluded that USD 2 was aware of the Student at this time, and was involved in the placement decision for the Student.
  11. USD 2 has educational responsibility for "[a] child, for whom no [local educational agency] is responsible, who has been placed in a private residential facility or in the residential component of a regional educational service center, and attends the facility school." *Department of Children and Families, Policy Manual*, Section 45-4, Determination of Educational Jurisdiction.
  12. Meetings continued over this time with the discussion surrounding transition services. These discussions focused on what the Student would do when he left school in June 2004 when he aged out of the special education services. The meetings were convened to help the Student find an adult services provider. Therefore, the issues were who was to be the Student's adult service provider and where would he live. [Testimony Mr. Garrison]
  13. Sometime in early December a representative from Supervised Lifestyles [SLS], a residential facility in Brewster, New York, interviewed the Student. [Testimony Mr. Doubleday]
  14. On January 21, 2004, another interagency planning meeting was held. At that meeting the Student and his advocates heard for the first time that the Student was being moved to SLS in Brewster, New York the next day. [Testimony Ms. Daly, Mr. Garrison]

15. The Student was not given a tour of the SLS facility when he was transported there by DCF on January 22, 2004. He met with the cofounder of the facility and was then dropped off. [Testimony Student]
16. The Student was not given any in-state options for his education and residence. [Testimony Student]
17. The Student's educational program was not considered when the Student was placed at SLS, according to the social worker, as the placement was due to difficulties at the foster home. There was no specific incident which precipitated the need to remove the Student from the foster placement. The foster placement in August 2002 was supposed to have been merely an emergency placement, but it had gone on for much longer than an emergency placement should last. [Testimony Mr. Doubleday] At the time of placement, however, SLS certified its statement of ability to address educational needs on a form from DCF, and indicated that it could implement the IEP. [Testimony Mr. Doubleday, Exhibit B-6]
18. At the time that the Student was moved to SLS, the director of special education at RSD 19 thought the Student had been accepted by the Department of Mental Health and Addiction Services [DMHAS] for adult services and that a bed had opened up in the facility which provided the Student a place to live. [Testimony Ms. Hultgren]
19. If the Student had continued at RSD 19 through the end of the school year 2003-2004, he would have received services through the end of the year, as he was turning age 21 in that school year. [Testimony Ms. Hultgren]
20. Nothing in the record indicates that the Student was to receive his diploma prior to the conclusion of the school year in June 2004 if he had remained at RSD 19.
21. If the Student had requested his diploma while at RSD 19, the director would have taken steps to see if he would continue to accept services until he reached age 21. If the director of special education at RSD 19 had known that the Student was not connected with adult services in January 2004, it would be her opinion that the Student would be eligible for services through the end of the school year, and he would have received his diploma at the end of the school year in June 2004. [Testimony Ms. Hultgren]
22. Region 19 was the LEA until January 21, 2004. [Testimony Ms. Daly] When the Student was abruptly removed from RSD 19, it was the director of special education's guess that DCF had found a "dream placement" for the Student that was to be provided by an adult service provider. Scott Doubleday, the DCF social worker, made the director believe that adult services were to be provided to the Student. [Testimony Ms. Hultgren]

23. The January 29, 2004 PPT with RSD 19 was cancelled by the district's special education director as the Student's nexus had changed. [Testimony Mr. Garrison, Ms. Hultgren] The January 29, 2004 PPT was not scheduled to be an exit PPT, as the Student's IEP was to be implemented through the end of the standard school year, according to the surrogate parent. [Testimony Ms. Jolly]
24. On February 2, 2004, the Student's advocate wrote a letter to the DCF Commissioner discussing the Student's situation. [Testimony Ms. Daly, Mr. Garrison, Exhibit S-26] In that letter the advocate noted that the Student had left his IEP when he was placed in an out-of-state residential facility. The advocate followed up with another letter to the Commissioner on February 25, 2004, noting again that the Student was no longer receiving special education and related services. [Testimony Ms. Daly, Mr. Garrison, Exhibit S-27] In the second correspondence, the advocate discussed the Student's current placement at the residential facility in New York, noting that the therapeutic residential program is based on a behavior system to earn points by complying with a therapeutic milieu on a daily basis. In complying with the behavior system, the Student could earn SLS "dollars" to make a telephone call to his advocate or foster family, or to obtain personal possessions that the facility has locked away in storage. The advocate noted in his letter that the SLS therapist believed that the Student would move from the "little house" at the facility to the "big house" when then he might receive vocational services. The advocate informed the Commissioner that the employment training consisted of policing the facility for trash and cleaning toilets at that time. [Exhibit S-27] No response was received to this correspondence. [Testimony Ms. Daly]
25. The Student's DCF social worker was shown these letters by his supervisor, who asked him to read the letters. The social worker read the letters, and handed them back to his supervisor. He did not act on these letters. [Testimony Mr. Doubleday]
26. In mid-February, the Student's advocate met with the Student's therapist at SLS. At that time the therapist at SLS did not know that the Student had an IEP, and he was surprised to learn that the advocate was working to return the Student to Connecticut as the therapist thought the Student was at SLS for a one year placement. [Testimony Mr. Garrison]
27. In April 2004, the Student's therapist at SLS wrote a letter for the Student to obtain his educational records, including his diploma. [Testimony Student] The Student signed this letter. [Testimony Student, Exhibit B-5] At that time, the Student thought his educational program was complete. [Testimony Student] The Student's diploma was mailed to him at the end of April. Debra Hultgren, the RSD 19 special education director processed the request for a diploma in April 2004, although that district was not responsible for the Student at the time. [Testimony Ms. Daly] The diploma notes that it is awarded this "month of April,

- 2004,” although it does not list a specific date in April when it was issued. [Exhibit B-1]
28. If the special education director had known that the Student was not being transferred to adult services, she would not have automatically issued the diploma. She would have discussed whether the Student should be issued a diploma. The Student was issued the diploma because the social worker told the special education director that the Student would be under adult services and that the Student would no longer require services under an IEP. [Testimony Ms. Hultgren] The diploma was issued, but there was confusion over the placement. According to the special education director, RSD 19 may have been misled in what it was told about the Student’s status, when it issued the diploma. It was the director’s impression that the Student was going to adult services. If she knew otherwise, she would have made many calls prior to issuing the diploma. [Testimony Ms. Hultgren] The social worker’s representation that the Student was being picked up for adult services at that time was not accurate. [Testimony Mr. Garrison]
  29. According to the surrogate parent, the Student would not have necessarily understood the consequences of the receipt of his diploma, as it would depend on how it was presented to him. [Testimony Ms. Jolly]
  30. In January 2004, the Student had not yet fulfilled the requirements for graduation, as he had an ongoing IEP that was being implemented in RSD 19. That IEP was community based. [Testimony Ms. Daly] When the Student left RSD 19, he was still eligible for transition services until the end of the school year. [Testimony Ms. Jolly]
  31. Between Jan. 21, 2004 and May 20, 2004 USD 2 convened no PPT meetings for the Student until one was scheduled after the advocate requested one. [Testimony Mr. Garrison, Exhibit S-30]
  32. The surrogate parent had difficulty in locating where the Student was after he was transferred to SLS by DCF. She only knew that the Student was in Brewster. The surrogate parent placed several calls to the social worker because she suspected that they would need to convene a PPT for the Student. Finally in March or April she learned where the Student was placed. The surrogate parent had no indication that the Student was failing to receive services under his IEP during this time period. She testified that she was probably remiss about not finding out more about the facility, but she made assumptions regarding the Student’s placement by DCF. She had hoped that DCF was placing kids where they should be placed. [Testimony Ms. Jolly]
  33. The documentation generally submitted when DCF transfers a student from a placement is the form 603 to notify the LEA that it was responsible for the educational portion of the Student’s program, as the student is no nexus.

- [Testimony Mr. Garrison] According to the DCF policy manual, the social worker shall send form 603 to the LEA contact person for the LEA which has jurisdiction of the child when a child is placed by the Department. [Exhibit S-46]
34. It was the social worker's duty to issue a form 603 to notify USD 2 that the Student was moving from one town to another, to notify a particular town that a new student is arriving, and in the case of special education, informing them that they should pick up his educational program. This should have been completed on January 22 when the Student moved. The social worker mistakenly failed to issue the form 603 at the time of the move. [Testimony Mr. Doubleday]
  35. USD 2 had actual notice of this transfer of the Student at least two months before the tardy issuance of the 603, and as far back as the time of the placement when Nancy Hoyt of USD 2 was involved with the PPT process at RSD 19.
  36. In addition, USD 2 had notice that the Student was within its jurisdiction, as the Commissioner of DCF was notified of the Student's status in February 2004 by the Student's advocate. [Exhibits S-26, S-27] USD 2 is a department within DCF. [Testimony Mr. Matera] The DCF Commissioner has the responsibility to "administer, coordinate and control the operations of [USD 2] and shall be responsible for overall supervision and direction of all courses and activities of the school district . . ." C.G.S. Sec. 17a-37 A correspondence to the Commissioner is actual notice to USD 2 that the Student was not receiving special education and related services at that time.
  37. In March, the Student's DCF social worker contacted RSD 19 to have the Student's educational records sent to SLS. [Testimony Mr. Doubleday]
  38. USD 2 subsequently forwarded a correspondence to SLS on April 13, 2004 accepting responsibility for the Student at the facility effective February 28, 2004. [Exhibit S-43]
  39. The form 603 was issued by the social worker, indicating an erroneous placement date of 2/21/04, rather than the actual placement in January 2004. [Exhibit S-37] That form was issued in April 2004. [Testimony Mr. Doubleday, Exhibit S-37] A phone call or email from a USD 2 educational consultant prompted the social worker to issue the form 603. [Testimony Mr. Doubleday]
  40. The Student was not working on his IEP community based goals and objectives at SLS. [Testimony Mr. Doubleday]
  41. After the Office of Protection and Advocacy notified USD 2 that it was initiating a legal proceeding against USD 2 on behalf of the Student, a PPT was scheduled for the Student. [Testimony Mr. Matera, Exhibit B-41]



42. A PPT was convened by USD 2 on May 20, 2004. The issues discussed at the PPT meeting included whether the IEP was appropriate and whether the Student was entitled to compensatory education. The Student's advocates noted that the Student's placement was inappropriate because he had an IEP which was not being implemented. At that PPT meeting, USD 2 representatives responded to the discussions by showing the Student's diploma from RSD 19. [Testimony Mr. Garrison] At the 5/20/04 PPT meeting, it was announced that the PPT was to be an exit PPT, although the notice of PPT stated that it was to review the IEP. [Testimony Ms. Daly, Mr. Garrison, Exhibits S-31, S-32A]
43. The PPT reconvened on May 24, 2004. At that PPT meeting the Student's IEP was reviewed and revised. The PPT determined that the Student should have extended school year services so that the Student could work on his current objectives. At the PPT, it was determined that the social worker was to send a corrected form 603 to USD 2 based on the correct date of January 22, 2004. [Exhibit S-33] Nothing in the record reflects that the social worker made this correction to the form 603.
44. At the May 24, 2004 PPT, the PPT members reviewed the diploma that the Student had received from RSD 19, and determined that it would be appropriate for the Student to keep his diploma, as taking back the diploma was not in the best interest of the Student. Nevertheless, the PPT also determined that the Student should continue to receive special education and related services through September 2004. [Exhibit S-33] Therefore, it is concluded that the Student's diploma from RSD 19 was not a valid diploma, as the PPT continued the services despite receipt of the document.
45. The Student's IEP in May 2004 included 10 hours of special education services working towards the Student's academic goals, 30 hours of community based work on vocational/transition goals and objectives, as well as social behavior and communication goals and objectives, and individual and group counseling. [Exhibit S-33] The PPT agreed to continue most of the goals and objectives of two previous IEPs from RSD 19 with some revisions. [Testimony Mr. Matera]
46. USD 2 claims to have "magnanimously" agreed to extend the Student's services to September 2004, as the form 603 was received late. [Testimony Mr. Matera] The record, however, does not reflect that the Student's IEP was implemented after an agreement for any compensatory education due to the failure to provide services.
47. The USD 2 principal does not know whether the Student's IEP was being implemented between January and May 2004, nor does the principal know whether the Student worked on these goals at SLS after May 2004. [Testimony Mr. Matera] The USD 2 principal does not believe it is USD 2's job to ensure that the IEP can be implemented; that was the responsibility of SLS, according to the principal. [Testimony Mr. Matera] USD 2 received no reports from SLS from

- January to September 2004 regarding the Student's progress. [Testimony Mr. Matera]
48. The USD 2 principal took the position that the district had absolutely no obligation for the Student, because he had graduated. [Testimony Mr. Matera] Nevertheless, even if it was believed that the Student's graduation was valid, there were three months, between January 2004 and April 2004, when the Student was eligible for services by USD 2 according to the testimony of USD 2. USD 2 failed to provide services during that uncontested time frame.
  49. Directions and Futures could provide an appropriate program for the Student as it is a business that provides programming and services for persons with special education needs such as the Student. Orv Karan provides the services through these businesses. [Testimony Ms. Daly]
  50. The Student prefers to live in Connecticut, so that he can work in a variety of fields that interest him. The Student believes he needs to learn self advocacy skills, and daily living skills. He testified that he needs to learn how to be a functional member of society in Connecticut. [Testimony Student]
  51. Due to the Student's memory difficulties and history of difficulty in generalizing, the Student must have a program in Connecticut, as that is where he wants to reside, so he can work on daily educational living experiences. According to Orv Karan, a psychologist who has assessed the Student and worked with him, the placement at SLS is causing the Student's regression. The Student is an individual who has great difficulty with short term memory. He learns very slowly about cause/effect relationships. He needs to be taught "in the moment," at the time of the situation so he is cued and reminded of what might be appropriate in that type of situation. [Testimony Dr. Karan]
  52. The current placement at SLS would not be appropriate for the Student, as it doesn't allow him to be involved in the community. [Testimony Dr. Karan]
  53. The appropriate educational environment for the Student is a school without walls. The Student would identify towns or communities where he would want to live in Connecticut and a program could be created that would be built around where he wants to live. It would be a community which would offer recreational opportunities, public transportation, plus a community college in the area. The Student would need to have an apartment, with personnel to work with him. The primary method of teaching the student would be "in the moment teaching" and counseling. He'd need one to one support at all times, with additional supports for those who work with him. The educational services which should be provided to the Student should be a program that teaches him how to deal in the community, how to use the resources of the communities, knows how to make appointments with physicians, learns how to grocery shop. [Testimony Dr. Karan]

54. As of the conclusion of the hearing, an exit PPT had not been held for the Student. The Student's IEP had never been implemented appropriately by USD 2, even after they agreed to provide services to the Student. [Testimony Mr. Garrison]

### **CONCLUSIONS OF LAW:**

1. The Student's purported diploma is determined to be invalid. The Student did not request the diploma in a clear and unambiguous manner. Rather, the letter, written by the therapist in the facility where he was placed, states:  
"To Whom It May Concern,  
I would greatly appreciate it if you would send to me, [the Student], my educational records including my Vocational High School Diploma to the above address in care of Alden Cass [the therapist]."
2. Furthermore, the "diploma" was issued with the misrepresentation from the Student's social worker that the Student was receiving adult services and no longer required special education services. This is an additional reason to invalidate this diploma.
3. Eventually, when a PPT meeting was held by USD 2, special education and related services were agreed to be provided through the extended school year 2004. Therefore, prior to this hearing, USD 2 also determined that the diploma was invalid by its actions in agreeing to provide special education and related services to the Student.
4. Therefore, the Student is eligible for special education and related services through the school year in which he turned 21 years old. Regs. Conn. Agencies Sec. 10-76d-1(a)(7)
5. USD 2 was responsible for the Student's special education and related service as of January 22, 2004, in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
6. The District has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14 The District has not met its burden in this case.
7. The standard for determining whether a District 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. The second inquiry is a determination of whether the Individualized Educational Plan is “reasonably calculated to enable the child to receive educational benefits.” 458 U.S. at 206-207.
8. The requirement of a free appropriate public education is satisfied by “providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Board of Education v. Rowley*, 458 U.S. at 201. Such instruction and services must be provided at public expense, must meet the State’s educational standards, must approximate the grade levels used in the State’s regular education, and must comport with the child’s IEP. *Board of Education v. Rowley*, 458 U.S. at 203
  9. The Student’s IEP was simply never appropriately implemented. The District failed to convene a PPT until May 2004, four months after the Student was its responsibility. Once the PPT adopted the previous IEPs, and provided goals and objectives for the Student in May 2004, which were to be provided through September 2004, these goals and objectives were not implemented at SLS.
  10. 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 Student’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, 38 IDELR 91 (9<sup>th</sup> Cir. 2003), *citing W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F. 2d 1479, 18 IDELR 1019 (9<sup>th</sup> Cir. 1992), *accord, W.A. v. Pascarella*, 153 F. Supp. 2d 144, 35 IDELR 91 (D.Conn. 2001)
  11. The procedural violations in this case have denied the Student FAPE. The actions of the District have resulted in the loss of educational opportunity and seriously infringed on the Student’s opportunity to participate in formulating the IEP. The Student’s placement changed, but no PPT was convened until months later. The Student was in a self contained program, although his IEP was community based. The Student was supposed to receive 30 hours per week of community based education; SLS failed to implement this provision of his program. No exit PPT has ever been held for the Student before his special education services ceased. The Student wanted a program in Connecticut but his program was at a facility in Brewster, New York. The Student’s IEP was never appropriately implemented. The Student was without services for months. This has caused regression in the Student.
  12. Without the intervention of the Office of Protection and Advocacy, the Student surely would have fallen through the cracks. The treatment of the Student was a series of appalling actions and mistakes. The Student was precipitously removed from his foster home and his community based educational program and placed in

a restrictive out-of-state facility purportedly for noneducational reasons. His educational program came to a virtual standstill, and the Student regressed. His surrogate parent couldn't locate him for months to determine where the Student was placed, and whether his IEP was being implemented. Under a misrepresentation from the DCF social worker, and under the direction of a letter authored by the Student's out-of-state facility's therapist, the Student was erroneously issued an invalid diploma.<sup>1</sup> The Student's IEP has never been implemented by the out-of-state facility. The USD 2 principal erroneously noted that it's not his responsibility to ensure that the Student's IEP was implemented by SLS. These gross and egregious violations must be addressed.

13. The team did not consider whether the proposed placement was in the least restrictive environment. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classroom. *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a disability can be educated in a regular classroom if provided with supplementary aids and services. *Oberti*, 995 F. 2d at 1216, *Mavis v. Sobol*, 839 F. Supp. 968, 985-986. The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti*, 995 F. 2d 1217. No such mainstreaming analysis was conducted by the District, and the Student was receiving his education in a restrictive facility.
14. These procedural inadequacies resulted in a loss of educational opportunity and seriously infringed on the Student's opportunity to participate in receiving his Individualized Education Program [IEP]. These procedural violations clearly resulted in a denial of FAPE.
15. An award of compensatory education is permitted when a school district commits a gross and egregious IDEA violation. *Garro v. State of Connecticut*, 21 IDELR 126 (2d Cir. 1994) In this case, the District's procedural violations have risen to the level of a denial of FAPE.
16. The Student is entitled to an award of compensatory education, which shall include two years of services provided by Orv Karan or other similarly situated consultant to provide a comprehensive program to the Student in Connecticut. This compensatory education shall include one to one support at all times necessary. The educational services which shall be provided to the Student shall be a program that teaches him how to deal in the community and how to use the resources of the communities. It shall include appropriate vocational training as

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<sup>1</sup> The Student has not brought an action against RSD 19 for any procedural violations in the issuance of the diploma and the failure to convene an exit PPT. Therefore, no finding is made as to whether any violations by RSD 19 resulted in a denial of FAPE.

determined by the consultant, including, by not limited to receiving one to one support on the job, 5 days per day, 30 hours per week at an outside vocational placement. The compensatory education program shall fully implement the goals and objectives of the Student's IEP of 5/24/04. In addition, USD 2 shall provide an appropriate Connecticut residential placement to allow the Student to receive the educational services, as a related service, unless an adult service provider provides for an appropriate Connecticut placement. Such placement shall not be in a restrictive facility.

**FINAL DECISION AND ORDER:**

1. The Student's program for the 2003-2004 school year was not appropriate.
2. The Student is entitled to a comprehensive program for compensatory education, as is set forth in Paragraph 16 of the Conclusions of Law.
3. The Student has not yet met the requirements of graduation, as he was unable to work on his IEP transition goals in the 2003-2004 school year. At the conclusion of the compensatory education program, USD 2 shall issue a diploma to the Student.
4. The Student is entitled to compensatory education for the 2004-2005 school year, which shall be included in the total of two years of compensatory education.
5. The Student has not been provided his education in the least restrictive environment.
6. The PPT is ordered to convene within 10 days to implement the Student's compensatory education program.