

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Student: Aaron Schless
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Appearing on behalf of the Board of Education: Attorney Lawrence Campana
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Appearing before: Attorney Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUES

- I. Whether the local educational agency provides the child with a free and appropriate public education?
- II. Whether the program at the parent's unilateral private placement provides the child with an appropriate program?

SUMMARY

The parents claim the local education agency failed to provide the Student with an appropriate program; the program as written or implemented failed to provide required psychological services in the Student's individualized education program (IEP). The IEP did not appropriately program for the Student's mental health needs, and relied on self-advocacy skills of the Student in order for him to access the services provided in the IEP. The local education agency (LEA) failed to adhere to the teaching strategies outlined in evaluations and the Student learning profile. The failure to offer an individual aide for the child rendered the IEP inappropriate and the LEA failed to properly implement the child's IEP.

The LEA argues, when the parents disputed the appropriateness of the Student's program, their unilateral removal to a private special education school was premature. They did not allow sufficient time for the child or the school to adjust to the Student's transfer into the LEA district in August 2005. Since the child had

attended a private school for the previous three years, and the child was accepted to attend a private special education school prior to coming to the LEA high school, the Student was not invested in succeeding in the program provided in the IEP. The LEA requested recusal of the hearing officer, which was argued and denied on the first day of hearing. The LEA requested the burden of proof that the LEA provided the Student with a free and appropriate public education (FAPE) be shifted to the parent to reflect recent case law applicable to due process proceeding.

FINDINGS OF FACT

1. The Student is diagnosed with anxiety disorder not otherwise specified, school phobia, social phobia with panic, he is identified as a language impaired student, with deficits in expressive language, auditory processing and long term memory, with learning disabilities in the area of visual perception, receptive vocabulary, and figurative language. He was first identified as a special education student in 1996. He is eligible to receive specialized instruction and services pursuant to the Individuals with Disabilities Education Act (IDEA 2004) and its predecessor (IDEA) as amended, for all times relevant to the claims in the hearing. (P-1, P-3, B-3, B-6)
2. Historical material is here because it is consistent with the Student as he presents today and establishes the needs to address weaknesses, anxiety, slow processing speed, self-advocacy, and difficulty understanding directions. His strengths are cooperation and motivation which are noted as long-term characteristics about the Student. The IEP dated 12/8/00, fifth grade, B-3 page 3, notes similar strengths and weaknesses, and at B-7 p.2 the meeting summarizing the year, notes the child had a good year and is much happier now thanks to support and positive comments from teachers. The IEP developed in January 2002 notes the child's strengths are academic achievement, decoding skills, math reasoning, motivation, cooperation and perseverance and he is pleasant. Under weaknesses are: needs strategies to answer more complex questions; slow processing speed; needs more time for written language skill; and test taking difficulty due to anxiety. In B-15 p. 3 in the section titled "How the Student's disability affects his or her involvement or progress in the general curriculum", the IEP notes the child has difficulty processing auditory information particularly in a large group. He needs additional clarification and time. He needs support to complete inferential questions or those that require cause and effect (auditory processing is in the fifth (5th) percentile on the Woodcock Johnson Test of Cognitive Ability (B-13 p.2). The instructional strategies noted are short concrete tasks, clear concise directions which are verbalized and "re-auditorized" to check for understanding, positive feedback, frequent reinforcement of learned material, additional clarification and extra processing time. Because the Student is shy and quiet, the teacher needs to keep a close eye on him to make sure that problems are not internalized. On B-23 p.3, an IEP developed in January 2002, the Student's strengths are noted as cooperative, automatic recall, short-term memory and written expression. The Student's needs and concerns are visual perceptual, figurative language, anxiety, self-advocacy and long term retrieval memory. The

IEP, B-28 p. 15, notes in the behavior management section, the Student needs TLC (really essential), expectations need to clear to ease anxiety and he needs to be drawn out. The 2001-2002, school year was difficult for the Student even though the report card B-26 p. 3 indicates very acceptable grades. The parent describes the Student in B-29 p. 1, as drowning with a high level of anxiety. The LEA offers the support center placement, but the parents believe it will make the Student, who already feels different, feel even more different. (Exhibit B-3 B-13, B-15, B-23, B-26, B-28, B-29)

3. The Student attended the LEA schools from kindergarten until the sixth grade. He then attended a private special education school for the 2002-2003, 2003-2004 and 2004-2005 school years before his return to the LEA high school for the 2005-2006 school year. Prior to return to the LEA school in 2005 the parties evaluated the appropriateness of the return to the high school on four occasions. See exhibits, B-39, B-55, B-57 and B-63. The child was accepted to attend at least one other private school for the child's high school placement, but the Student and the parents decided to attend the LEA high school. The IEP for 2005-2006, the year is in dispute is Exhibit B-68. The Student attended the LEA high school from August 2005 to February 2006, when the parents unilaterally made a private placement for his special education.
4. The LEA retained an independent evaluator to conduct a psychiatric evaluation dated April 2003, to determine the child's placement for the 2003-2004 school year. The evaluation concludes the child has anxiety disorder, not otherwise specified, with school phobia, social phobia, and panic features; multiple learning disabilities; and a sensitive G.I. system. The evaluator predicts the anxiety disorder and school phobia are aggravated by a large school setting; an inability to self-advocate when stress levels are elevated, and predicts the child will function better in a structured, teacher directed program with guidance and support. The report notes after sudden and severe regression in the 2001-2002 school year, the child recovered lost capacities and is functioning reasonably well while in an extremely supportive educational environment. In 2002-2003, he is functioning well in three spheres; family, school and peers. He continues to be anxious with a very sensitive, tentative style while coping with a cognitive profile that is markedly uneven. He is conscientious, hard working and able to keep up in the past by that diligence despite his cognitive limitations. In the past, when stresses at home and increased expectation required autonomous functioning, the Student broke down both academically and socially. The result was the Student felt overwhelmed in the learning environment and he was unable to take initiative to get the support he needed. It appears he does well in the very small intimate setting with its "personal trainer" type learning of the private placement.

Educational recommendations are as follows:

1. The Student has a generalized anxiety disorder that is clearly exacerbated by his experience of attending school in general and a large school even more so.

2. The Student's anxiety interferes with learning because he tends to shut down and become internally oriented when stressed or frustrated and has an extremely difficult time advocating for himself when in that mode. In fact the Student's difficulty in advocating for himself in general is a significant obstacle to his further growth and development.
 3. The Student's difficulty in learning negatively impacts his sense of self. He sees himself as a slow learner, not measuring up to his peers. He is negatively impacted by his view of himself as a very nervous person who has trouble in social situations.
 4. The Student will tend to function better in a setting that is structured, predictable and teacher directed with substantial guidance and support. Large group settings with varying expectations will be more difficult. Individualized tutorial to do pre-learning of new material should make it easier for him to cope in class. Practicing self-advocacy in small steps will be very important to his development. Regular meetings to review social stories may also help address a non-verbal learning disabilities type profile. (Ex. B-39)
5. An evaluation completed April 2004, Exhibit B-55, reports a Full Scale I.Q. of 90. The evaluator notes the Student has been attending a private placement for the past two years. The child reports he is more confident in academics, volunteers more in class, has developed friendships and maintained friendships at home. He is an active participant in sports. His easiest and most successful class is civics. His most challenging is math. On a typical night he does one hour of homework which he completes independently, at home where he resides with his family. He takes medication for anxiety and continues counseling one time per month. The Behavior Assessment for Children (BASC) which reports the Student's attitude toward school, teachers, locus of control, somatization, social stress, sense of inadequacy, relation with parents, interpersonal relations, self-esteem, and self-reliance all fall within the average range. The evaluator concludes the Student has a language based learning disability in reading comprehension, characterized by an overall weak understanding of the text, poor strategies for answering questions and low frustration. Writing is weak in encoding, theme and sentence development. (B-55)
6. Exhibit B-57 is a consultative update to B-39. The parents report improvements emotionally, socially and academically during 2002-2003 and 2003-2004 school years in the private special education school. The child seems to be doing a lot better with anxiety and he was not at all anxious about going back to school. The child has developed close relationships with teachers and peers. He has five or six good friends in town who attend the public school. He became anxious when he developed a stomach virus which triggered fear due to vomiting and had one panic attack around the anniversary of his aunt's death. The child's treating therapist reports the child has reduced anxiety with medication, but has a phobia about vomiting in school with increased anxiety around the anniversary of his aunt's death. The psychologist notes improvement in anxiety after a year on medication. In evaluating whether the child should return to the public school the evaluator

cautioned the child might become overly dependent on support making the transition more jolting. The transition could result in a failure. Transition will be a big jump whenever he does it. The evaluator recommends the following:

1. A clearly identified staff advisor with whom the child is comfortable who can guide and support his daily experience with a note that the person should be identified and begin meeting with the child ASAP so that some relationship is established prior to the school year beginning.
 2. Vigorous academic support to help the child stay on top of his subjects from the very beginning in a tutorial setting that feels safe and secure.
 3. A weekly review of progress with the child, his parents and a coordinating administrative staff member to closely monitor his areas of success and challenge.
 4. Contact between staff advisor and therapist as needed to identify areas that need further attention.
 5. A classroom environment that is well controlled and a well controlled classroom. (B-57)
7. The parents retained an independent neuro-psychologist for a psycho-educational evaluation dated January 2005, Exhibit B-63. The evaluator holds a Masters and Ph.D. and is a diplomat in clinical psychology and neuro-psychology (hereinafter referred to as, clinical psychologist). He testified on June 22, 2006 about the evaluation he performed Exhibit B-63. On the WISC IV, the Verbal Comprehension standard score is 91, a Perceptual Reasoning standard score of 92, a Working Memory standard score of 110, a processing speed standard score of 88 (low average), a full scale I.Q of 92. The results are consistent with the LEA triennial, of April 2004. (B-55, B-63 p.6)
8. The Woodcock Johnson (WJ-III) portion shows a deficit in long term memory and shows the Student's depth and breadth of general knowledge is in the 14th percentile, lower than that predicted for the Student's intellectual level. A low performance in comprehension and knowledge suggests that something is happening to the building blocks or the acquisition of knowledge. The Student has a good ability to acquire declarative knowledge, the ability to know facts, but is deficient in procedural knowledge which is the ability to take the facts and use them. An illustration of the Student's ability to retain facts but inability to use the fact is calculating $5 \times 5 = 25$ to apply it to the calculation of the square footage of a 5×5 room. The psycho-educational evaluation, Exhibit B-63, compares the declarative knowledge and procedural knowledge, as tested in the information subtest of the WISC IV and the long-term memory subtest of the Woodcock Johnson III. The WISC IV taps the ability to retain facts which have had a significant amount of repetition and rehearsal. The Woodcock Johnson III, test of long term memory, requires the subject to learn, store and retrieve a series of visual auditory associations. The test is designed to look at associative memory rather factual memory. (Ex. B-63 pp. 9,10 Testimony, psychologist, Tr. 6/22/06 pp. 10, 44, 90)

9. The evaluator notes performance on the long-term retrieval subtest in the first (1st) percentile is a significant problem. A very low score can explain why comprehension and knowledge is also low. Knowledge acquisition depends on long-term memory. Comparison of long-term retrieval and short-term memory, ninety-third (93rd) percentile and working memory, ninetieth (90th) percentile results in the Student being able to hold information for short periods of time and work with it but the decay of the information is relatively rapid. (B-63 p.9, Testimony, clinical psychologist, Tr. 6/22/06, p.10)
10. Processing speed on the Woodcock-Johnson shows the Student is in the third (3rd) percentile for perceptual motor scanning and tracking and in the fifth (5th) percentile in decision speed test, resulting in slow processing speed, significantly inhibiting intellectual capacity. Slow processing speed, seriously interferes with many areas of academic functioning. The Student is prone to fatigue because it takes longer to do things, he may get bored because he is functioning with the same material so long and it interferes with long-term memory. The Adolescent Test of Word Retrieval was administered, resulting in a first (1st) percentile score. The clinical psychologist concludes, even though the Student has information in his brain it is very difficult to find the words to explain the information. (Exhibit B-63, Testimony, clinical psychologist, Tr. 6/22/06, p.11)
11. Listening comprehension is deficient at the eighteenth (18th) percentile, a 5.5 grade equivalent for a Student expected to perform high school work, a significant deficit in ability to sit and listen to material effectively. (Exhibit B-63 p.15, Testimony, clinical psychologist, Tr. 6/22/06, p.12)
12. In areas of academic skills, the child does not have a reading, writing or math learning disability but reading fluency is at the 6.9 grade level, passage comprehension at the 6.7 grade level and overall reading comprehension in the 6.9 grade level, with vocabulary in the 7.1 grade level. Compared to basic reading skill at the 8.9 grade level, broad reading in the 7.5 grade reflects the Student is functioning in a "hole" in terms of grade level material presented in a traditional 9th grade class. (Testimony, clinical psychologist, Tr. 6/22/06, p.13)
13. Referencing the Student's performance in math, the clinical psychologist notes math calculation ability is 10.8 grade equivalent, but application is 7.6 grade equivalent, and math reasoning 6.9 grade equivalent, which illustrates the difference between declarative knowledge and procedural knowledge (Testimony, clinical psychologist, Tr. 6/22/06, p.14)
14. The clinical psychologist explains the small class size recommendation, is because the Student has a great deal of anxiety about school, at a level that interferes with his ability to function effectively in class. The Student experiences fear as the class size increases. He fears criticism, embarrassment and is afraid his words make him look dumb. The Student's processing speed requires very special accommodations for individual attention in class. His word retrieval skills were so low. He is frustrated

in a large class, not being able to answer questions or find information he needs. He can function more effectively in a small class. (Testimony, clinical psychologist, Tr. 6/22/06, pp.14,15, 16)

15. The clinical psychologist states the Student should not be stimulated beyond his ability. The Student needs to be assigned to classes with skill levels compatible with his skill level. He needs to be given materials with which he feels he can be successful and confident. With ninth and tenth grade level material, he is going to experience an inability to do the work and a further degradation of his self concept. He will withdraw and be unable to function. A 6.9 reading comprehension level requires material with vocabulary, level of grammar complexity, and the degree of abstraction at that level, to offer material at a higher level is like asking a student who never had Algebra suddenly to do Calculus; it would be very difficult. (Testimony, clinical psychologist, Tr. 6/22/06, pp.16, 17, 18)
16. When asked to opine about the Biology class placement for the 2005-2006 year at the high school, the clinical psychologist believes the class size is overwhelming because the Student's listening comprehension was low enough that comprehension would deteriorate as the class size increased. The psychologist expects the Student's anxiety level would increase. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 20, 21)
17. The clinical psychologist acknowledges he had not seen the child for nine months but did not expect any significant change from the time of testing until the time the child attended the biology class nine months later, unless very intensive remedial work had been done in cognitive processing deficiencies. The disabilities are neurologically produced. Nothing much would change in the nine month period. It is not something that just changes suddenly with a growth spurt, it's a disability. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 20, 21)
18. The clinical psychologist states that leaving the class to go to the bathroom, absences from school and numerous visits to the school nurse could be a manifestation of anxiety and stress. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 22)
19. The clinical psychologist explained standard scores are the raw score converted into an age-based comparison of the population. When using grade equivalencies, the clinical psychologist did not use age equivalencies to recommend programming for a student, as cautioned by the test publishers of the WISC IV, but distinguished the use of grade equivalencies for education programming based on the Woodcock Johnson evaluations, which can be used for judgment about the level of materials the Student can process. He believes it is his role to describe the type of program that a student needs, not judge whether a school can provide a certain type of program. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 26, 27, 32)
20. The clinical psychologist clarifies she believes the Student should be exposed to ninth grade curriculum, but the Student needs a special approach to ninth grade

curriculum. The class needs to be tailored and taught in such a way that it accommodates his needs. This can best be met in a small class environment with a lot of individual attention and teaching to the Student's educational needs rather than a curriculum that is standard for ninth grade or tenth grade. Recognizing the various cognitive ability levels for which schools program, the clinical psychologist cautions there is a distinction between modifying classes for different cognitive ability levels and modifying a class for the special needs in the way a child learns. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 32, 33)

21. The Student's level of functioning would suggest he would find it difficult to learn within a large classroom setting. On the Understanding Directions subtest the Student was in the low average range at a 4.8 grade equivalency. The Oral Expression cluster measures linguistic competency and expressive vocabulary. The Student scored in the low average range. (B-63 p. 15) On the Adolescent Word Finding test, which is conducted orally, the weak performance indicates an area of disability for the Student. Oral language remediation can be addressed through speech and language therapy. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 35, 36)
22. The clinical psychologist would expect the Student to have difficulty in classes with a lecture format and less difficulty with hands on manipulative classes. An appropriate accommodation would be provision of visual materials. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 35, 36)
23. The psychologist explained the test areas of comprehension and knowledge differ from the Woodcock Johnson and the WISC, because the WISC asks for factual information and the Woodcock Johnson makes a more in depth exploration of comprehension and knowledge. Exposure to less than grade level work can affect a student's performance in comprehension and knowledge. (Testimony, clinical psychologist, Tr. 6/22/06, p. 37)
24. The Student has slow processing speed and he could require extended time on tests and projects. The clinical psychologist testified he believes he has a learning disability in the area of long-term memory, and requires more than extra time and repetition. When new concepts are introduced repetition is one way to accommodate a long-term memory disability, but a long term memory deficit is an inability to store material in a chained or linked fashion. The way the cortex works is that neurological connections are not being automatically established for pieces of data. When it is necessary to come-up with a composite of information or to suddenly need to integrate material, he is wondering around his cortex trying to find all the separate facts. (Tr. 6/22/06 p. 56). An appropriate intervention helps the him store material in a way that one piece of data follows another so he can see the sequential reasoning, at the time the material is presented. (Testimony, clinical psychologist, Tr. 6/22/06, p. 45)

25. The clinical psychologist would expect the Student to have problems with self-advocacy, because he is anxious about not being as bright as his peers, which prevents him from exposing himself to the teacher or to whoever he has to go to for help. (Testimony, clinical psychologist, Tr. 6/22/06, p. 48)
26. The clinical psychologist testified he believed the Student is accustomed to a good remedial approach, small class size and individual attention he received in three years at the out of district placement. He did not appear to be ready to transition to the high school. The clinical psychologist did not see any signs of learned helplessness, but the Student was anxious about large class size and a large school which is related to the anxiety not learned helplessness. The psychologist agrees some of the Student's anxiety is associated with the anniversary of a family member's death, but there is school anxiety as well. (Tr. 6/22/06, p. 57) The Student required a program to minimize anxiety. That would be a program that does not place him in a situation that exacerbates or triggers anxiety, as well as, having therapeutic interventions. If he is placed in an environment that triggers and exacerbates his fears, anxiety can manifest in any of the symptoms that we see such as nervousness, fear of entering the environment or somatic symptoms. The clinical psychologist made attempts, without success, to speak with school personnel to inquire about the type of program the child would have. (Testimony, clinical psychologist, Tr. 6/22/06, pp. 50-54)
27. Anxiety is found to be triggered by school circumstances as well as the aunt's death in 2002, or the anniversary of the death. In 2005-2006 the problems started soon after the beginning of the school year, far removed from the anniversary date. The problems emerged at a time the child was feeling unable to cope the program provided at the LEA high school. The clinical psychologist makes an association with the aunt's death, but independent school factors are well established as anxiety triggers as well. The child demonstrated an ability to cope with emerging anxiety issues and manage the anxiety when he attended an appropriate supportive education program.
28. The psycho-educational evaluation along with B-39, B-55, B-57, available to the IEP team at the time the Student's IEP, B-68, was being prepared for the 2005-2006 school year, identifies specific areas of weakness, strength, needs, and concerns and makes recommendations to support the child's learning disabilities and support requirements. Exhibit B-63 at p. 9 delineates the Student's strengths and weaknesses with memory and gives a specific strategy for accommodating the learning disability. At B-63 page 11, the Student's processing speed is referenced, and the impact of slow speed in scanning, tracking, copying and general visual-motor work, taking away time and energy from reasoning and problem solving. Exhibit B-63 p. 14 and 15, results of Oral Language skills, predict a diminished capacity to sit in class and absorb orally presented material; and that it is very difficult for him to learn in a large classroom setting. His score in Understanding Directions is low average and at the 4.8 grade level. Word Retrieval (B-63 p. 19-20), tests the ability to find the correct word. It is important to describe the Student's difficulty with

word retrieval to fully understand the level of struggle he has in his effort to learn new material, find the words necessary to process data and place it in his memory bank related to previously acquired information. There are numerous examples. Each of the subtests on the word finding manifested the same type of functioning and all subtests scores were in the first (1st) percentile.

29. The emotional assessment portion describes the Student. He experiences an excessive amount of anxiety not related to academic function during the 2004-2005 school year. The anxiety was initially identified in association with familial trauma and fear of loss. He is highly accommodating, and developed an approach to the world that acknowledges his feelings that others are more competent than he is and he tends to withdraw or be non-assertive because of this. His lack of self-confidence most likely results in actively avoiding situations that might present a threat of failure. It is important to note the Student is highly motivated to achieve and persists in efforts to attempt to compensate for his weaknesses. He has an optimistic outlook, a drive to succeed and a strong sense of hope for the future. (B-63 p.20)
30. With regard to peer relationships, the Student tends to feel awkward, is shy with peers but has a strong desire to form close relationships with peers, is motivated to do so; and in a supportive environment, he should be successful in relating to others. (Exhibit B-63 p.20)
31. The report states the Student has struggled with significant learning disabilities his whole life. He is slowly learning to compensate for them; it is clear he is in the process of developing more efficient ways of learning. The Student's skills in reading, written language, math and oral language are significantly behind a ninth grade level and even if the child is placed in ninth grade he would be below his peers in the public school system. His anxiety level must be factored in to understand his educational needs. He is relatively fragile and requires a very supportive and protective environment to function well. He requires small class size, where he can receive a great deal of attention and where there is a definite program to minimize anxiety that might be created by threatening his fear of exposure of his inabilities. (Ex. B-63 p.21)
32. In 2005-2006 the Student's case manager/school psychologist understood his role was to monitor the Student, make accommodations, modifications or class changes that might be needed as concerns arise. To meet the counseling IEP requirements, in his role as psychologist, he must see the Student for counseling on a regular basis and monitor his emotional functioning. "I was attached to a program where I could see him work and check in with him." Counseling directly with the child was scheduled once every eight days one to one or in a group. The case manager reiterates he is to see the child once every eight days for counseling, which became less frequent as the child's absences increased. The anxiety was not obvious and the mother informed the case manager it was an issue, but the case manager testified it took months to assess the child's status regarding anxiety. (Testimony, case manager, Tr. 6/27/06 p. 152, 154, 155, 158-159)

33. One conclusion drawn from the case manager/psychologist's testimony is the confusion about his dual role to monitor the child's class behavior and performance as case manager; and provide counseling as the school psychologist. The counseling was intended to be direct individual or group therapy at times was treated as informal checking in with the Student. The case manager testified when he checked on the Student in class, he didn't appear to need or want individual counseling. The case manager also referenced seeking to pull the child out from the cafeteria for counseling and the child declined. The case manager acknowledges the parent told him about the child's difficulty and acknowledges the psychiatric nurse practitioner spoke with him about the Student's problem, thereby alerting the case manager to the fact the Student's problems were not outwardly visible. Not only did the case manager/school psychologist fail to maintain the front line by meaningfully monitoring the child in school; he failed to pursue understanding the child's crisis from staff, or when the parent and nurse practitioner alerted him to the Student's problems. The case manager testified he did not see the Student once every eight days when the child was ill. The attendance records B-87 and communications with the family B-78 places the time in December. Exhibit B-78 indicates the child was seen for counseling one time during the first month of school. The 45 minutes every eight days did not appear to happen nor was the informal checking with the child helpful.
34. The case manager acknowledged prior to transition to the high school for the 2005-2006 school year the parents presented the child to the school on two occasions. There were three PPT meetings. (Tr. 6/27/06 pp. 152, 172)
35. The case manager/psychologist testified the Student's poor to failing biology grade did not hit my or Sally's radar, referencing the Learning Center support staff. In essence the case manager's job was to be the one to monitor the Student, or make inquiry when needed. The case manager was aware the parents presented the child on two occasions prior to the start of school as recommended in the Student's psychological evaluation, B-57; evaluations which he as a professional psychologist was uniquely qualified to understand. The strong clear recommendation to begin the year with a clearly identified advisor with whom the child is comfortable who can guide and support his DAILY experience was not followed. The person identified should begin meeting with the child ASAP so that some relationship can be established prior to the school year beginning. The case manager/school psychologist identified himself as the Student's case manager three weeks after the start of the school year at a time the parent was already reporting the Student's struggle with school. The case manager testified he was monitoring the child's work, he should have known the child's status and should have proposed a meeting so everyone could see the full picture and modify the IEP or its implementation.
36. When the biology class teacher stated the child will not be getting his unique program any time soon, the case manager should have investigated the support the child received, reviewed the psychological data contained in the child's record and alerted the biology teacher about appropriate teaching strategies in her regular

education class. If other personnel had responsibility for these actions, the case manager should have called them into action. The circumstances required immediate action to make modifications or remove the Student from the biology teacher's class. The conclusion here is the case manager failed to provide the services required by the child's IEP. If it is the claim the Student's IEP, as written, was implemented then the IEP required modification. Either the implementation of the IEP or the IEP itself failed to program for the child's mental health needs, support services and modifications for the child to progress in the general curriculum.

37. It is credible that the Student was reluctant to open up to the case manager, but nothing prevented the case manager from reading the evaluations or accessing the individual professionals who assessed the child or were involved in his treatment. Even if the case manager was not immediately aware of the full scope of the Student's needs and details of his therapy, he should have gathered sufficient information at school and from the parent that would make him jump at the chance to talk with the treating psychiatric nurse, as the parent requested. There was a release to discuss the Student's case and the psychiatric nurse called the counselor to discuss the call. Even if telephone tag prevented immediate communication, too much time elapsed from December 18, 2005 until the first phone conversation January 26, 2006.
38. A psychiatric nurse practitioner testified she starting treating the Student at the request of his psychiatrist Dr. Lustbader. She has a Masters in Clinical Psychology and an R.N. and M.S.N. from Yale and works as a psychiatric nurse practitioner. At the Yale Child Study Center she trained in child psychiatry, child psychopharmacology, Tourettes Syndrome, Obsessive Compulsive Disorder and had training in cognitive behavioral therapy. She is independently licensed to prescribe medication. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 4-5.)
39. Treatment began in November, 2005, when the Student's treating psychiatrist (Dr. Lustbader) became concerned about his increased anxiety, specifically fear of vomiting, trouble sleeping and school issues. Dr. Lustbader referred the child to the psychiatric nurse because she specializes in anxiety disorders and the cognitive treatment of anxiety disorders. The child received treatment for three to four months. Vomiting was the initial focus of treatment, which was successfully treated. The Student was cooperative and the parents were very involved acting as a coach; he was able to make progress. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 4-5)
40. School issues became the focus for treatment. The Student has problems with learning disabilities, feeling anxious about school and being in a new environment. He was very tearful about having no friends, and he hadn't been able to make friends. The therapeutic work was to help with a smooth transition. He became more socially isolated and anxious. He felt intimidated about going to ask for help and felt overwhelmed with the size of the school. (Testimony, psychiatric nurse practitioner,

Tr. 5/25/06, p.7) The witness is credible in her assessment that the school issues became the focus of treatment. Anxiety associated with the trauma of the aunt's death has an impact on the child as noted in the triennial evaluation B-55, but is well managed when the child school program is appropriate as noted in Dr. Lustick's evaluation, B-39 and B-57. After sudden and severe regression in 2001-2002 the child recovered lost capacities and is functioning reasonably well in an extremely supported educational environment. The child is doing a lot better and was not at all anxious about going back to school. When the school environment provided adequate support, the Student performed adequately even when his anxiety from outside of school on occasion intensified.

41. The Student was intimidated to ask for help because he felt like an outcast. He felt like this with his peers and teachers. The psychiatric nurse testified the child's self-esteem was plummeting. Dr. Lustbader and the psychiatric nurse worked together and were very concerned about the Student. He was not just anxious, but very depressed and feeling like a failure. The hope was that involvement in basketball would provide the Student with a community but he felt others talked about him and he felt left out. The Student felt overwhelmed by large classes, feeling so anxious in class he said he couldn't hear the teacher's words. He was fearful of making a mistake, and saying something wrong that would cause the other students to laugh at him. "I would work with him to test out the belief but he was very, very, very fearful. I encouraged him to ask one question to test his belief. He would come back and say he couldn't do it." (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp.8-10)
42. As the Student's anxiety grew he became more depressed, the gravity of his sleep problem grew, just before the Student left the district's school, both Dr. Lustbader and I had a discussion that we were very concerned about him finishing the year [at the high school]. I don't recall if we suggested the parents seek [another] placement." We chose not to increase medication because he had a good dose we really thought it was an environmental problem. Even though he had a vomiting phobia and other anxieties, it was really becoming about school. His anxiety was so high that he couldn't learn in the environment. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, p.10)
43. The psychiatric nurse testified the Student has constant physical and psychological illness caused by stress. The Student had multiple sinus infections. A letter from Dr. Parker states that sinus infections are the result of acid reflux which is caused by stress. (Exhibit P-7, Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp.8-10)
44. The witness contacted the child's case manager/school psychologist, but there was a lot of telephone tag and no actual conversation until late January. She testified the conversation sounded like we were discussing two different children. The perception at school was that the child was not showing signs of stress or having problems. The psychiatric nurse told the advisor /psychologist that anxiety is not always apparent, it is not easily detected but behaviors such as avoidance, not going

to school, going to bathroom frequently are signs of avoidance. The psychiatric nurse practitioner tried to express to the advisor/school psychologist that the Student was actually very anxious, that the Student had a panic level of anxiety at times. Other testimony and evidence provides the date the parent notified the case manager to contact the psychiatric nurse practitioner as December 18, 2005 and the day they actually spoke to one another, as January 26, 2006. (B-78 p.11, Tr. 5/12/06 pp. 56, 150, Testimony, psychiatric nurse practitioner, Tr. 5/25/06, p. 12)

45. The case manager/school psychologist expressed a concern to the psychiatric nurse that the parents were feeding into the problem letting the Student stay home and the he just was not trying, he was not using the resources at the school which was the reason for his lack of success. The school case manager/school psychologist made a number of suggestions that he would recommend to school staff. There was no further communication from the case manager. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 12-13)
46. Both the psychologist and the witness believed the Student's anxiety was so high that it was impossible for him to go for help or learn in the high school environment. The Student's anxiety immobilized him. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, p. 13)
47. When the psychiatric nurse was asked why the treatment did not focus on increasing the Student's function in the community where he lives. She explained the Student is taught strategies to become aware that he is experiencing tension, alterations in breathing a rapid heart rate, sweatiness, headaches or stomachaches. Next the Student applies skills to calm himself, by taking deep breaths, testing the reality of the thoughts, and applying coping self-statements. The psychiatric nurse was unable to pinpoint the time that discussion of the Student changing schools commenced but it was after working extensively with the Student for two to three months. Research shows the techniques can be effective in 6-22 sessions. The witness reported working with the Student for approximately 15 sessions, when the Student changed schools. During counseling other issues emerged, the Student looked depressed felt like a social misfit and felt isolated. He had ongoing sleep problems, his grades were slipping and he felt like giving up. The recommendation was made to change schools because of the depression and the anxiety. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 32-33, 34, 36, 40-41)
48. The nurse practitioner testified she believed the Student was sincere in trying to be successful with school and wanted to be part of a group of friends. The Student was not manipulating anyone that he sincerely wanted to be successful in the high school, but the environment had become too aversive for him. Based on fact gathering from the Student, his parents and the case manager/school psychologist, the therapist concluded he did not have friends to join for weekend activities. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 41-43). On cross examination the nurse practitioner testified she spoke with the case manager/school psychologist, who did not recognize the depressive features but confirmed observing some of the

features of anxiety without understanding how severe they were. The nurse practitioner had the impression the case manager/school psychologist thought the child was lazy, and was not trying to use the resources available to him at the high school. The practitioner understood the child's reluctance to use school resources because the high level of anxiety can distort one's perception. She believed the Student's anxiety was high when he came to see her in November and that the social problems really exacerbated his problems. The psychiatric nurse believes the child has an ability to successfully relate to peers. The Student did not feel comfortable any part of the school day. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 43-46, 51, 52)

49. The child executive processes are in the average range. Achievement is in the average range for reading, mathematics, and written language. (is the achievement consistent) He testified he did have a learning disability in the areas of long term memory. It is noted that processing speed on the certain sub-tests of the W-J III the child had a very low performance. The evaluator testified the child did not have a learning disability in areas of reading, mathematics or written expression. The child has a weakness in oral language resulting in difficulty with material presented orally, such as classroom lecture. The use of accompanied visual materials is recommended. Repetition is recommended to accommodate the weakness in long-term retrieval. (Testimony, psychologist 6/22/06, Tr. pp. 30, 36, B-63)
50. The child's IEP dated, April 15, 2005, included six special education classes, Basic English, Basic World Civilization, Word Retrieval, Learning Strategies and Comprehensive Reading and Academic Laboratory. The IEP planned for two special education resources and Freshman Forum, a class to aid all students transitioning into the high school and address the Student's self-advocacy needs. The IEP provides for counseling, and speech and language services. Special education includes goals in written language skills, reading comprehension, word finding, self advocacy and organizational, study skills. The IEP was to be implemented for ninth grade in the LEA high school. (B-66, B-68, Testimony, Parent)
51. The Basic English and Western Civilization classes are taught by special education teachers. They are individually paced, allocate time for review and implement strategies for learning such as reading skills, note taking and memory development. Word retrieval is designed to help students develop compensatory strategies. A special education teacher is assigned to academic lab which is supported by a study hall. (Testimony, Crandall pp. 15-18, 22-24, 36-38, 59)
52. The Individual Learning Strategies course provides academic support in one room and an adjacent space to allow students experiencing emotional difficulties to decompress. The course objective is to have the students become independent learners and they are encouraged to monitor their own work. The class objectives are to have a student take ownership of their work, create a connection between the student and teacher and for the student to know a staff member is aware of his needs. The class did not provide the intended support. (Testimony, Joyce, pp. 97-98, 190).

53. The Student had a mainstream biology class designed for students with lower math and reading abilities. There were 18 students in the child's class. The biology teacher has an undergraduate degree in biology and a Masters degree in curriculum and development with two years of teaching experience prior to teaching the Student's class in the 2005-2006 school-year. (Testimony, Tr. 6/27/06 pp. 86-87.

The progress report, dated 10/6/05, had a biology grade of C- and a comment requesting the child come in to see the teacher outside of class for extra help. The comment is added with the hope the parents will ask the student why they aren't getting extra help. (B-84, Testimony 6/27/06 p. 20) The teacher recalls the child coming to her for extra help on two occasions in the first semester and she recalls telling him and teachers in his supported study hall, academic lab on other occasions the Student can come to see her for extra help. The next interim report, Exhibit B-93 p. 2, is a report for students who receive extra academic support which are sent to parents, guidance counselor, and the case manager. The report indicates the Student's attendance and behavior is adequate and he did not have any tests or quizzes during the first four weeks. The "D" grade reflects homework performance. (B-93 p.2, Tr. 6/27/06 pp. 27-29) The Student is given an article review assignment sheet at the beginning of the year. Some of the missing assignments are on this sheet. The interim report, 11/29/05, (B-93 p.5), notes the child is making too many trips to the bathroom during science class. He always came back to class in a reasonable amount of time. The comment was written in the report so others would be aware of the behavior. (Tr. 6/27/06 p.33) On 11/29/05 the child did poorly on a quiz and had an F grade in the class. The parent's suggestion that bathroom trips could be due to anxiety was ignored.

54. On December 21, 2006 the child B-85 p. 1-3, the teacher's grade sheet, on November 4, 2005 the child's score for tests and quizzes is 63 of 119 or 53 percent. The teacher reports she did not analyze the child's performance other than to note he performed equally poorly on multiple choice and short answer testing format. The teacher clarifies the guidance counselor learning center tutor and case manager/school psychologist was kept informed of the child's progress. The second quarter reports reflect the child is missing all assignments and scored 34 out of 60, on a midterm exam. It is a large midterm with 80 to 100 questions, covering all topics from the first day of class. In preparation for the exam, all students received a review sheet. They need to review their assignment and lab reports. Everyone on the child's team was aware of the mid-term exam. (Exhibit B-85 p.3, Testimony Aversano, Tr. pp. 40-43, 44-47)
55. This teacher is largely responsible for setting the stage for the child's performance in mainstream classes, which he appears to be capable of taking with a successful outcome with appropriate supports. Biology is a required course for college bound students. The teacher seems to have managed the child in her class from her desk. She sent notices to the appropriate personnel, but appeared to pass off all special education matters to others. The parents were notified of missing homework assignments, it is reported lab sheets were addressed in one of the special education

support classes. The teacher provided the content of missed Biology classes to the academic lab. The teacher testifies a large amount of the lab report work was completed in class but she reports working with the child individually on one lab report that she recalls was not turned in for credit, and failure to turn in homework accounted for a poor grade. The Biology teacher provides a review sheet one week prior to the mid-term exam. There is in-class review and practice tests. Review sessions were not individualized although the teacher informed the child of her availability to help with difficult material. When the parent requested the teacher forward review material to help the child over a school holiday the teacher refused stating it was too early to review. If she was familiar with the child's learning profile she would understand the need more review. The child received a D in the class, but only after the team arranged for him to receive a modified grade. He didn't learn much biology but the teacher believes he learned the importance of due dates and of being organized. To the contrary the child did not turn in work on time. The biology teacher wrote to another staff member "that the child would not be getting his unique program anytime soon" (B-78, p. 79, Tr. 5/12/06, p. 85). The biology teacher suggested the child attend the review sessions offered to all the students who attended her class. In September and October the biology teacher commented the child had good attendance for her class, yet poor class attendance is cited as a reason the child did poorly in class. The child's poor performance in biology class preceded the poor attendance. (B-87, B-93 p. 5, Tr. 6/28/06, pp. 21, 44-46, 93-94,149)

56. The Student's problems in biology started at the beginning of the year. The teacher failed to follow through with the academic supports provided in the IEP. She hoped a written comment to the parent would encourage the parent to send the Student for extra help available to typical students not the unique needs of the special education student. The biology teacher did not provide the program modifications or adequately facilitate access to academic support. The teacher's grades and progress report should have alerted her to the fact that she needed to do more to accommodate the special education child in her mainstream class.
57. The Student exhibited physical and psychological symptoms. The biology teacher's grade sheet states the child needs outside of class help as early as October 7, 2005. From November 1, 2005 to December 23, 2005 the child had eight absences due to sinus infection. He had only one absence in the first eight weeks of school. (B-87 p.1, Tr. 5/12/06 p. 66). The child made twenty three visits to the school nurse during the time he attended the LEA school. (Tr. 6/27/06 p.3). The parents presented a physician's note from a Dr. Parker who treated the child. The physician states acid reflux disease caused by stress can cause sinus infection. (P-7 Tr. 5/12/06, p.66)
58. Several staff members noticed the child frequently left the classroom to go to the bathroom. (B-93, p.5, Tr. 5/25/06 p. 56). The case manager/school psychologist, was not aware of the frequency with which the child left classes, but agrees that such behavior generally raises a red flag as an indication of a stress problem. (B-93, Tr. 5/25/06 p.56). The Student's emotional state was reported to him on or about

December 5, 2005 (B-78 p.11, Tr. 5/12/06, p.72) and requested in writing the advisor speak with the child's therapist on December 18, 2005. The parent provided a fax number to forward any necessary releases for the conversation between the advisor and the therapist. (Tr. 78, p.20.) The advisor did not speak with the therapist until January 26, 2006. (Testimony, parent Tr. 5/12/06 pp. 56,150-151) Both the therapist and the advisor reported attempts to speak with one another.

59. As late as January 26, 2006 the case manager/school psychologist believes the high school has a good program and that the student was doing okay. The case manager/psychologist states he had one phone conversation with the psychiatric nurse, "I thought it wasn't particularly helpful to me, although, hopefully, it was helpful to [the Student], I gave her a fair amount of description of my concerns at school. I felt that we had a good program. That he was doing okay and that within the confines of our ability to be flexible and to continue the process of providing accommodations and modifications, as well as, ultimately curricular changes that we were doing fine". The case manger stated the conversation with the psychiatric nurse was "useless...., She offered nothing. And therefore it was enough" he agreed with the therapist the child was using avoidance tactics by leaving class but he characterized the child as refusing to use the resources available to him. He testified his conversation with the therapist was useless because she offered nothing and even when informed the Student's stress was causing illness he believed one conversation with the therapist was enough. (Tr. 6/27/06, p. 229).
60. The parent was credible when she reported the child's case manager/school psychologist did not understand the Student's difficulty with self-advocacy. It was reasonable for the parents to be very concerned the Student was not receiving the program as agreed upon in planning the Student's IEP. (Tr. 5/12/06, p. 147) The advisor stated he did not know what the Student was feeling. A reasonable statement but from the time the parent notified the advisor of extreme concern for the Student's emotional state the advisor testified he met with the Student individually approximately six times between August 24 and January 31, and monitored the Student in his Independent Learning Class. (Testimony, Tr. 5/12/06 pp. 147, 152) The Student reported to the parent he met with the advisor on an individual basis only once. (Tr. 6/29/06 Pp. 89-90) The case manger communicated information about the child's disabilities to his teachers after the parents requested he make the teachers aware of the Student's learning issues. (B-78 p.87) The case manager/ school psychologist was to meet with the Student one time every eight days for counseling. (B-66 p.15, B-78 p.2, Tr. 5/12/06, p. 170, Tr. 6/27/06 pp.152, 156). The case manager testified he was to meet with the Student on a fairly regular basis, but did not have a set time to meet with the Student. The case manager testified the child's grades were decent until the end of the semester when it was clear the Student was no longer invested in the high school. (B-83, Tr. 5/12/06 P. 186) The special education department leader and Word Retrieval instructor understood the child was to receive individual counseling once every eight days. (Crandall, testimony pp. 6/27/06 pp. 7, 9-10)

61. The case manager testified that he was informed the child's anxiety was under control during the spring prior to the child entering the high school. He checked in with the Student in the group sessions and asked if he needed help. When the child replied "no" counseling services were not provided. (Tr. pp. 157,184, 194, 209, 210)
62. In November 2005, the parents engaged a psychiatrist and his associate, psychiatric nurse practitioner with a Masters clinical psychology in specializing in anxiety disorders. (Testimony, practitioner Tr. 5/12/06 Pp. 73,119 Testimony, parent, Tr. 5/25/06 p. 4-5) The therapist worked with the Student to reduce stress and anxiety and believed he was engaged in working to succeed academically and socially. (Tr. 5/25/06, p. 30-35, Tr. 5/25/06 p. 42) The Student made progress with specific areas of his anxiety. The therapist and psychiatrist concluded the Student's stress and anxiety caused an emerging depression and recommended the parents place the child in a different environment. The signs of the emerging depression are avoidance, declining grades, decreased motivation, no social contact and problems attending school. The psychiatrist believed the Student's underlying anxiety is exacerbated by academic pressure. (B-73 p.3, Tr. 5/25/06 pp. 10, 34, 41)
63. The Student experiences increased anxiety near the anniversary of the death of a family member, who died in 2002. The LEA argues that it is the fear of loss related to the death more than stress from academics and social concerns that triggers the child's anxiety. The psychologist also concludes the child has difficulty with self-advocacy because of his fear of not appearing to be bright. (B-63, Tr. 6/22/06 p.48, 59) The anxiety is likely to increase as the size of the class increases. (Tr. 5/28/06 p. 28)
64. The Student perceived himself as excluded from the mainstream population due to his status as a special education student. He reported to the therapist he had no friends. Previous to returning to the LEA school he had friends. (Tr. 5/25/06, pp. 7,9,39, 40 59 Tr. 5/12/06 p. 130, 135, Testimony, parent)
65. The Department Chair for Special Education testified the Student always tried his best. She taught the Student's Word Retrieval, a class focused on developing compensatory skills. The teacher believed he felt comfortable with the small class size. She believed the strategies used at the Student's private placement February 2005-June 2006, are very good strategies to use with the Student. The Department Chair used a modified version of the strategies in her classes because she thought the program could become boring. The teacher reported the parents requested the Student have individual review sessions to prepare for semester exams, at a time the child had very low grades in two subjects. (Testimony Department chair/Teacher Tr. 6/28/06 11,71,75, Testimony parent, Tr. 5/12/06. p. 163)
66. There is sufficient testimony to conclude the Student was well-behaved and not truant. The absences are found to be related to illness and anxiety.

67. It was reasonable for the parents to believe the LEA was not likely to respond to the Student's serious decline. They tried to engage the LEA in the problem solving to meet the Student's need. If school personnel didn't know the extent of the Student's problems reviewing recommendations contained in the evaluation, B-39, B-57, and B-63, was appropriate. The parents requested the case manager communicate with the treating therapist to understand the extent of the child's anxiety. The parents requested the case manager review teaching strategies with the regular education teachers. If the case manager had reviewed the relevant classroom data, parent's information and the psychiatric nurse's information, a picture of a very impaired child would have emerged. If school personnel were not aware of the Student's problems they should have known. It was reasonable for the parent to believe the child was not receiving an appropriate program and it was reasonable for them to be very concerned about the child's safety and follow the professional guidance of the child's psychiatrist and psychiatric nurse practitioner when they placed the child in the out of district placement.
68. The Student is attending a college preparatory school for students with learning differences. The goal is to teach the students to become independent learners. The Student receives a curriculum based on his evaluations. (Testimony 5/23/06, Tr. pp. 5,7,8,11,22)
69. Teachers at the out of district placement are trained in School Atune a course developed by Dr. Mel Levine, which focuses on a student's specific weakness within a disability diagnosis. He is taught a vocabulary linking strategy, Lexacon, and a sentence writing strategy developed at the University of Kansas. (Testimony 5/23/06, Tr. pp. 9, 21-22, 46, 165)
70. The Student attends small size classes for the most part and a science class with four students. The Student earned Academic Honors for 9th grade (P-18 p.2, Testimony 5/23/06, p.14)
71. The Student does not appear to have difficulty attending school and requires far less therapeutic intervention. There is testimony the Student's house parent is trained in Project Adventure, but there nothing in the record to indicate the child's need for a residential placement.
72. The parents report the child has adapted to the new school and are pleased with his progress. The child has regained a capacity to attend school with less anxiety and disruption from illness.
73. The proposal made at an IEP meeting on February 23, 2006 to involve a behavior consultant was made after the child left the LEA school. The Student was receiving very effective treatment from the treating psychiatrist and psychiatric nurse. The therapists tried to engage the school team in the Student's treatment for nearly three months. The family fully cooperated with the school team to evaluate the Student's needs. The Student had three full psycho-educational and neuro-psychological

evaluations in a two year span. The Student was being treated by psychiatrist and psychiatric nurse who had a wealth of information about the Student. The school team was invited to communicate with them for additional information. The school team had ample information.

74. The psychiatric nurse concluded the Student improved after he left the high school. At a follow-up treatment session, the Student appeared more relaxed and calm, had a brighter affect, made better eye contact smiled appropriately, and reported he made some friends. Initially, he was fearful about going to the out of district placement and was homesick. He felt he was getting a lot of support with academics and he was not feeling overwhelmed and anxious. The nurse practitioner does not believe the child requires a program away from the family home. (Testimony, psychiatric nurse practitioner, Tr. 5/25/06, pp. 18-19)

CONCLUSIONS OF LAW

1. The Student is identified as a student with disabilities pursuant to the Individuals with Disabilities Education Improvement Act (IDEA of 2004) and its predecessor the Individuals with Disabilities Education Act 20 U.S.C. § 1400 *et seq* as amended (IDEA) and Conn. Agencies Regs. § 10-76a-1(d). There is no dispute between the parties as to the child's eligibility to receive a free and appropriate public education (FAPE). The hearing record establishes that the child was eligible to receive a FAPE for all times relevant to the hearing. The LEA argues *Schaffer v. Weast* 546 U.S. ___, No. 04-698 (U.S. 2005) is applicable to the present case. The Court holding is limited to states which do not have statutes or regulations assigning the burden of proof in due process cases. In Connecticut, regulation specifically assigns to the LEA the burden of proving, by a preponderance of the evidence, that a student's program and placement is appropriate. Conn. Agencies Regs. § 10-76h-14.
2. Whether a program is appropriate is determined by the two-prong test articulated in *The Bd. of Education of the Hendrick Hudson Sch. Dist. v. Rowley*, 459 U.S. 176 (1982). The first prong requires the LEA must follow the procedural requirements of IDEA. The Supreme Court notes emphasis on the procedural requirements of IDEA reflects a conviction that adequate compliance with the prescribed procedures would in most cases assure much if not all of what congress wished in the way of substantive content in an IEP, *Walczak v. Florida Union Free School District*, 142 F.3d 119 (2d Cir. 1998) quoting *Rowley*, 458 U.S. 176, at 206. The parents make no claim of procedural violations. The second prong of *Rowley* requires the individual education plan ("IEP") offered by the LEA must be reasonably calculated to enable the child to receive an educational benefit. The benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177 206-207, *Mrs. B. v. Milford Board of Education*, 103, F.3d 1114 (2d Cir. 1997).

Subsequent decisions elaborate on how much benefit is sufficient to be meaningful. The act requires educational *progress* rather than a program that is merely of benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 183 (3rd Cir. 1988), *cert. denied* 488 U.S. 1030 (1989) (Emphasis original). The IDEA was enacted to assure that all children with disabilities have available to them a free and appropriate public education which emphasizes special education and related services designed to meet their unique needs, supported by such services, as are necessary to permit the child to benefit from the instruction, *Rowley*, 458 U.S. 176, 188-189. A free and appropriate public education is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction. Such instruction and services must comport with the child's IEP. *Hendrick Hudson v. Rowley*, 458 U.S. at 201-204. The IDEA does not require states to maximize the potential of handicapped children, *id.* at 197 n. 21, 102 S. Ct. 3034, but must be reasonably calculated to receive educational benefits, *M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Ed.*, 226 F.3d 60, 62 (2d Cir. 2000). The record provides the child moved from satisfactory grades and good school attendance at the beginning of the year to declining grades D-F in the regular education classes and frequent had absences due to illness.

The Student's psychiatric nurse describes a sudden and severe regression in anxiety symptoms, similar to that described by Dr. Lustick in B-39. The program lacked sufficient supports and services which led to the child's inability to be successful with the curriculum. He experienced increased anxiety and illness due to increased stress and ultimately he was school and class avoidant. Grades and attendance declined. It was impossible to prepare the decision in this case without providing the detailed treatment summaries of the psychiatrist and psychiatric nurse practitioner. If the Student is ever to benefit from treatment from these professionals in the future without a sense of betrayal, it is advisable the parties move to keep the records and decision in this case sealed.

3. In order for FAPE to be offered, a school district must show it complied with the statutory elements of an IEP; the goals and objectives in the IEP are reasonable, realistic and attainable, the special education and related services must be tailored to reasonably accomplish the goals in the IEP. *Board of Education of the County of Kanawha v. Michael M.*, Civil Action No. 2:99-0609, USDC for the Southern District of West Virginia (April 26, 2000), at pp. 18-19. Failure to follow the recommendations and learning strategies outlined in the child's evaluation was not reasonable. The child needed more supports and services tailored to his individual needs in order to progress in the general curriculum.
4. School commenced in August of 2005. Prior to the placement of the child the parties evaluated the child on four occasions. The child's strengths, needs and concerns have been consistent over time. The Student's IEP addresses the impact anxiety has on the child's education, as early as January 2002. When the parties evaluated the child's return to the LEA school for the 2004-2005 school year, the

- LEA commissioned an evaluation B-39 which is updated by B-57. The report notes after sudden and severe regression in the 2001-2002 school year, the child recovered lost capacities and is functioning reasonably well while in an extremely supportive educational environment. In the 2002-2003 school year, the Student is functioning well in three spheres: family, school and peers. The parents report improvements emotionally, socially and academically from 2002 to 2005 while attending the private special education school. Dr. Lustick's update, B-57, concludes overall, the Student seems to be doing a lot better with anxiety and he was not at all anxious about going back to school. There is sufficient evidence that school experiences exacerbate the child's anxiety. The lingering anxiety related to the aunt's death is not the sole reason for the child's anxiety. The record establishes the child can cope with the anxiety and reduce the impact on school performance when the school environment is appropriate.
5. The parents explored other school placements for the 2005-2006 school year and he was accepted at the school he now attends. Instead they chose to send the child to the LEA high school. The nurse practitioner testified she believed the Student was sincere in trying to be successful with school. There is specific a finding the parents and the child were sincere in wanting the child to be successful in the LEA program. The high school environment however had become too aversive for him.
 6. The Student's evaluation contains detailed recommendations for program, strategies and instruction for the child to progress in LEA's school. A clearly identified staff advisor with whom the child is comfortable who can guide and support his daily experience that person should be identified and begin meeting with the child ASAP so that some relationship is established prior to the school year beginning. The case manager/school psychologist failed to oversee the program early enough to provide a smooth transition, as the evaluation suggested, even though the parent brought the child to school before the beginning of the school year. There was no significant support for the Student's daily experience. Not only was the case manager not aware of the child's school experience he chose to disregard the information supplied to him by the parent and the nurse practitioner. There was no weekly review or close monitoring of the child's successes and challenges.
 7. There was no need for school staff to guess at the learning strategies that were appropriate for the child. Dr. Raymond carefully analyzed the Student's unique learning needs in B-63. The evaluation contains essential information relevant to educating the child. It was reasonable for the parents to rely on the case manager/school psychologist to oversee implementation of the Student's program to minimize the impact of the Student's disabilities on his participation and progress in the general curriculum.
 8. The record is replete with evidence that the program overwhelmed the Student and failed to provide him with support for his special education needs from the

beginning of the year. The Student experienced success in English and Western Civilization; the classes implemented strategies to help the student learn. The child performed poorly in his mainstream classes of Algebra and Biology. The Biology teacher sums up her attitude towards providing the child with a program designed to meet his individual needs when she wrote to another staff member, [the Student] won't be getting his unique program anytime soon. The Biology teacher suggested the Student come in for after-school help and attend review sessions along with the rest of the regular education students. The Student's poor test performance is described by the Biology teacher as typical for high school freshman. The Student's performance in Biology supports a conclusion the material supplied to and time allocated to support for Biology in the learning center class was inadequate. Freshman Forum a class designed to aid all students transitioning into the high school and address the child's self-advocacy needs did not meet the child's individual needs. An inability to self-advocate somehow became the Student's responsibility to keep the staff informed rather than a skill the staff was intended to teach or facilitate for him. The case manager/school psychologist holds the child responsible for the manager's failure to allocate time in his schedule to provide counseling services or oversight of his program. IDEA 2004, 20 U.S.C. 1414 (d)(3)(A) mandates the IEP team shall consider the child's strengths, concerns of the parents for enhancing the education of their child, results of the recent evaluation and the academic, developmental and functional needs of the child.

9. The IEP contains modifications to the mainstream curriculum. If the modifications and supplementary supports and services are sufficient it is unlikely the child would have experienced the serious and dangerous decline described by the psychiatric nurse practitioner. Both she and the psychiatrist conclude the child's problems were sourced in the school environment. The Student became socially isolated and anxious, felt intimidated to ask for help and felt overwhelmed with the school size. His self-esteem plummeted and the Student was not just anxious, but very depressed and feeling like a failure. He felt overwhelmed by large classes, feeling so anxious in class he said he couldn't hear the teacher's words. He was fearful of making a mistake, and saying something wrong that would cause the other students to laugh at him. He had sleep problems, his grades were slipping and he felt like giving up. The recommendation was made to change schools because of the depression and the anxiety.
10. The case manager/school psychologist, the Department Chair for special education and the parents all understood the child was to receive counseling services one time every eight days. In addition the case manager/school psychologist was to monitor the child's progress and challenges at school. The findings of fact make clear the child did not receive the services required by the IEP. If it is the LEA's claim the Student's IEP as written was satisfactorily implemented then the IEP required modification for the Student to make progress in the general curriculum. IDEA of 2004 provides each LEA is responsible for

- initiating and conducting meetings to review and revise the IEP as appropriate to address any lack of expected progress towards the annual goals in the general education curriculum; information about the child provided by the parent; or the child's anticipated needs. 20 U.S.C. § 1414(d)(3)(A)(i)(ii)(I-IV). If the supports and services in the IEP are not sufficient at a time or the Student is experiencing a serious decline, the IEP team needs to make revisions.
11. The LEA had the opportunity to provide an appropriate program for the child. The parents made requests early and provided professional corroboration of the need to make revisions to the program or its implementation as required by the child. Effective change was denied until the child's performance was very impaired.
 12. The Student was unilaterally placed in a private special education school in February, 2006. Five months after the child returned to the LEA program. The LEA argues the unilateral placement in February 2006 was premature because the parent had not given the Student or the LEA sufficient time to adjust to the his return to the LEA school after spending three school years in another private placement. Connecticut General Statutes § 10-76h(a)(3) provides that "a party shall have two years to request a hearing from the time the board of education proposed or refused to initiate or change the identification, evaluation, educational placement or the provision of a free and appropriate public education placement for such child or pupil ...". There is no minimum time stated in the statute. It is not unusual for parties to dispute a program immediately after the implementation or for the dispute to occur immediately after the IEP is proposed. IDEA intends for parties to promptly assert a child's educational rights. One fundamental goal of the statutory scheme codified in the IDEA is to promote the expeditious resolution of educational programming disputes *M.D., M. and Mrs. .D. v. Southington Bd. of Education*, 334 F.3d 217 (2003).
 13. The LEA claims the parents did not provide them with timely notification of their intent to make a unilateral placement at an IEP meeting. The meeting in which the parent planned to inform the LEA was cancelled when one of the LEA team members became ill. The record does not make it clear why other LEA personnel could not attend the meeting instead. The testimony provides, members of the school staff were aware the parent intended to remove the child from school. The LEA received written notice of the parent's intent to remove the child from school on February 10, 2006. The LEA knew or should have known of the serious nature of the Student's mental and physical state which prompted the parent to remove the child from the LEA school. The assessment of the psychiatric nurse and psychiatrist cannot be ignored, it might have placed the child in danger to wait for further delays. The briefs presented at the conclusion of the case are somewhat contradictory as to the timing of absences due to illness school, vacation or withdrawal. There is sufficient evidence in the record that the parents were very concerned about the child. The parent's testimony is credible; when they report, in exploring education options for the child they learned there was an

opening for immediate placement at the private school. In this case the school team had notice of the child's struggles, if the administration was unaware of the need for modifications to the program or its implementation they only had to look to their own staff members for failing to inform them of the child's needs. Delay in placement to permit notification could result in serious emotional harm to the child. IDEA 2004 at Section 612(a)(10)(C)(iii).

14. The evidence is overwhelming that the LEA's program fails to provide the child with a free and appropriate public education.
15. Once a determination has been made that the LEA did not offer FAPE, it must be determined, whether the private school placement is appropriate. *School Comm. of Burlington v. Department of Educ. of Mass.*, 471 U.S. 359, 369 (1985) provides the court is empowered to order school authorities to reimburse parents for expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP is proper. In selecting a unilateral placement, parents are not held to the same standards as are school systems. Since *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 114 S. Ct. 361, 126 L.Ed.2d 284 (1993), under the reauthorization of the IDEA in 1997, it is well settled that the unilateral placement does not have to meet the standards of a least restrictive environment (LRE), nor even does the unilateral placement have to include certified instructors in special education. *Norton School Committee v. Massachusetts Department of Education*, 768 F. Supp. 900 (D. Mass. 1991) establishes the test for unilateral placement reimbursement may not be made in a vacuum. When a school district fails to meet its obligations in providing a FAPE for a child, the choice of parents left to their own devices and resources need not be a precise fit. The least restrictive environment guarantee ... cannot be applied to cure an otherwise inappropriate placement. The child's record indicates he made progress in the private special education school. The psychiatric nurse observed improvement in the Student's mental state. The need for a residential placement is not established in the record. The nurse practitioner testified she does not believe the Student requires a program away from the family home. There was no evidence in the record to support the residential portion of the placement is required to educate the child.

FINAL DECISION AND ORDER:

1. The local educational agency did not provide the child with a free and appropriate public education for the 2005-2006 school year.
2. The program at the Forman School is appropriate to meet the child's educational needs for the 2005-2006 school year.
3. The LEA is financially responsible for the cost of the program and placement of the child for the 2005-2006 school year.

4. The LEA is not responsible for residential component of the placement at the Forman School.