

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Orange Board of Education

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

Appearing on behalf of the Orange Board of Education: Atty. Craig S. Meuser, Chinni & Meuser LLC, 30 Avon Meadow Lane, Avon, CT 06001

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

This hearing was requested on July 5, 2006. This hearing officer was assigned to the case on July 6. A prehearing conference was held on July 20, 2006. Hearing dates were scheduled for August 30, September 5 and 8. The parties were directed to file witness lists and exhibits by August 23. The Parents filed Exhibits P-1 through P-16. The Board filed Exhibits B-1 through B-29. The hearing convened on August 30, 2006. The parties agreed to extend the decision deadline from September 18 to October 2, 2006. The first matter heard was objections to exhibits. The Board objected to Exhibits P-1 through P-4 and P6 on relevancy grounds. They were marked for identification, subject to later offer and hearing on objections. Exhibits P-5 and P-7 through P-16 were entered as full exhibits. The Parents' attorney had no objections to Exhibits B-1 through B-29, which were entered as full exhibits. The request for due process was marked as Hearing Officer Exhibit (HO) 1. Because it did not contain any statement of issues, the Parents' Statement of Issues dated August 22, 2006 was entered as Exhibit HO-2. The Parents' attorney presented an opening statement. The Board's attorney reserved his opening statement until commencement of the Board's case. The Parents then presented testimony from the Mother. Exhibit P-4 was admitted over objection. Exhibits P-1 through P-3 were admitted after the Board withdrew its objection.

The Mother completed her direct testimony on September 5. Additional hearing dates were agreed on for September 21, October 20 and 27 and November 2 and 13. The decision deadline was extended to December 7, 2006. The Mother testified on cross-examination and completed her testimony on September 8. On September 21 the Parents offered Exhibits P-17 through P-19, which were marked for identification subject to the five-day rule. They then called Charles Preston Wiles, M.D., the Student's treating psychiatrist since 1992, and Diane Bourdeau, Director Foundation Middle School. Ms. Bourdeau was not available to complete her

testimony on October 20, so that date was cancelled and October 30 was added as a hearing date. Ms. Bourdeau completed her testimony on October 27. The Board was allowed to replace pages 35-38 of Exhibit B-15 with pages 35-37, over Parents' objection. Exhibit B-30 was admitted as a full exhibit. The Father testified on October 27. The Parents reserved the right to recall the Mother on the next hearing date regarding the substituted pages in Exhibit B-15. At the beginning of the October 30 hearing, the Parents rested their case, reserving the right to present rebuttal witnesses following the Board's case.

The Board's attorney presented his opening statement and called Suzanne Powers, Speech and Language Pathologist, formerly employed by Orange public schools and currently employed by Shelton public schools, to testify. On November 2 the Board called Diane Downey, school social worker employed by the Orange public schools; Jodi D'Alexander, fifth grade teacher, Peck Place School; and Susan DeFrank, paraprofessional, Peck Place School. December 4 and 14 were agreed on as additional hearing dates and the decision deadline was extended to January 8, 2007. On November 13 the Parents offered new exhibits P-20 through P-33. The Board's attorney objected to their admission because they were not within the five-day rule and because they were offered after the Parents rested their case. The exhibits were marked for identification. The Board offered Exhibits B-31 through B-40. The Parents had no objection to Exhibits B-31 through B-33; B-35 and B-37, which were entered as full exhibits. The others were marked for identification. Ms. DeFrank completed her testimony. The Board then called Diane Goncalves, Director of Special Services for pre-kindergarten through grade six for the Orange public schools. Exhibits B-36 and B-40 were admitted into evidence over Parents' objection. The December 4 hearing was cancelled because the Board's attorney was ill. December 18 was added as a hearing date and the decision deadline was extended to January 11, 2007. The hearing continued on December 14. The Parents offered Exhibits P-34 through P-38. Exhibit P-34 was admitted as a full exhibit without objection. The others were marked for identification. Ms. Goncalves continued her testimony. Exhibit B-38 was admitted over objection. Page 22 of Exhibit P-33 was admitted as a full exhibit. Ms. Goncalves completed her testimony on December 18. Exhibit P-39 was withdrawn as unnecessary because it was duplicated in Exhibit B-17 page 2. The Parents' attorney requested an additional hearing date to conduct recross-examination of Ms. Goncalves and to offer rebuttal testimony by the Mother. January 10, 2007 was agreed on as the final hearing date. The decision deadline was extended to February 5, 2007. On December 20 the Parents' attorney wrote to the Hearing Officer advising her that the Parents wished to forego the January 10 evidence and rest their case on the evidence completed on December 18. The Board's attorney sent a letter on December 21 agreeing that the Board had rested its case on December 18.

Both attorneys requested a briefing schedule. Briefs were due on February 1, reply briefs were due on February 8 and the decision deadline was extended to March 5, 2007 with agreement of both parties. Timely briefs and reply briefs were filed on February 1 and 8.

The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record. To the extent that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. Bonnie Ann F. v. Callahan Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993).

ISSUES

1. Did the Orange Board of Education offer the Student an appropriate program for the extended school year (“ESY”) for the summer of 2006?
2. If not, was the Foundation School program appropriate?
3. If so, is the Orange Board of Education financially responsible for the program and placement at the Foundation School for the 2006 ESY?
4. Did the Orange Board of Education offer the Student a free appropriate public education (“FAPE”) for the 2006-2007 school year?
5. If not, does the program and placement at the Foundation School provide the Student with an appropriate program to meet his needs?
6. If so, is the Orange Board of Education financially responsible for the program and placement at the Foundation School for the 2006-2007 school year?

SUMMARY

The Student is a 12 year-old boy who currently attends the Foundation Middle School (hereinafter “Foundation”) in Orange. He has been at Foundation since November 14, 2005 when his parents unilaterally placed him there. Prior to that time he was a fifth grade student at Peck Place elementary school in Orange. He began preschool in the Orange school system, then left for a home-based program. He returned to Orange public schools in kindergarten and remained through November of his fifth grade year. The parties agree that he is entitled to special education under the category of autism. After the Parents filed a due process request in 2005, the parties reached a settlement agreement regarding the 2005-06 school year. The Parents want the Student to continue placement at Foundation where they believe he has made progress in academic and social skills in a small classroom setting of 3 to 4 students with similar abilities to his. The Board believes that the Student benefits from exposure to the regular education classroom and to his non-disabled peers. The Board believes the program offered complies with and is required by the least restrictive environment (“LRE”) mandate of the Individuals with Disabilities Education Act (“IDEA”). The Parents contend that the LRE for this Student is not in the public school, but at Foundation where he can learn without the distractions of large classrooms in a large school.

FINDINGS OF FACT

1. The Student, also referred to as A. herein, has a birth date of August 11, 1994 and is currently 12 years old. He is a sixth grade student at Foundation Middle School. Testimony of Mother and Diane Bourdeau.

2. The Student began receiving services and attending the Board's public schools in preschool at age 3 for part of the school year. The Parents began a home-based ABA (Applied Behavior Analysis) program funded by Orange for one and one-half years. The Student attended the public preschool part-time at age four to four and one-half, then attended a private preschool for one year. Testimony of Mother; and Exhibit B-1 at 3-4.

3. A. attended kindergarten at age 5 and continued through November 11, 2005 of grade five in Orange public schools. In first grade the Student was mainstreamed with an aide. The Parents complained midyear that A. did not have enough language and requested an outplacement. Orange responded by revising A.'s IEP to place him in a special class in a cubicle in a room called the ABA room. He received 1:1 instruction and speech therapy in the cubicle for the majority of the school day. The Student began and ended the day and attended snack time in the regular education classroom for three hours and 40 minutes per week. Id.

4. Triennial testing was conducted in 2003, when A. was in second grade. This included a neuropsychological evaluation performed by Mary L. Prevey, Ph.D. Exhibit B-1. The purpose of the evaluation was to "provide updated information about cognitive, academic, and behavioral functioning, and to determine whether factors other than PPD[Pervasive Developmental Disorder]/Autism may interfere with learning (e.g. learning disability)." Id. Dr. Prevey conducted a variety of testing, which included the WISC-III; Halstead Reitan Neuropsychological Battery (Finger Tapping, Stereognosis, Finger Localization); NEPSY (Phonological Processing, Visual Attention, Auditory Attention & Response Set); Grip dynamometer; Lafayette pegboard; Test of Visual Perceptual Skills; Beery VMI; GFW Sound Symbol Tests; Wide Range Assessment of Memory and Learning (Story Memory, Verbal Learning, Sentence Memory, Picture Memory, Design Memory); Peabody Picture Vocabulary Test (PPVT-III); Clinical Evaluation of Language Fundamentals (CELF-III: Concepts and Directions, Formulated Sentences, Word Associations); Kaufman Test of Educational Achievement (KTEA); Human Figure Drawing; Vineland Adaptive Behavior Scale; and Behavioral Assessment System for Children (BASC). Testing was done on three days.

5. On the Vineland Adaptive Behavior Scale, with the Mother as informant, the student achieved the following:

Communication	63	age equivalent 5 years, 7 months
Daily Living Skills	33	age equivalent 3 years, 5 months
Socialization	51	age equivalent 2 years, 4 months
Adaptive Behavior Composite	46	age equivalent 3 years, 9 months

Id. at 11.

6. On the WISC-III the Student scored: Verbal IQ 89 Performance IQ 73; Full Scale IQ 77; Verbal Comprehension 85; Perceptual Organization 71; Freedom/Distractibility 87; Processing Speed 83. Dr. Prevey summarized these results as borderline range in overall intellectual ability, with low average verbal abilities stronger than borderline perceptual-motor skills. Id. at 8. Her impression of A. was that he showed evidence of delays and unevenness in cognitive/motor skill development with significant problems with inattention that interfere with learning. Id. at 12. She found that he was making academic progress. There was no significant disparity between IQ scores and academic achievement, i.e. no evidence of learning disability in

the usual sense. She noted, however, that A.'s delays/deficits in cognitive skills do interfere with learning. Id. at 13.

7. Dr. Prevey concluded that A.'s current educational program seemed well designed to meet his needs, particularly individualized 1:1 instruction in key academic skill areas and intensive speech/language therapy. She recommended that interactions with peers be supervised and facilitated because his social skills were so immature (preschool level). Id. at 13-14.

8. The Parents believed that A. was making progress in reading and math until a "lull in 2004." Since that time, the Parents believe that the gap between A. and his non-disabled peers kept growing and is now "huge." They testified that at the time he began at Foundation A. had no friends, no play dates and had lots of self-stimulating behaviors. Testimony of Mother.

9. On June 6, 2005 at the end of A.'s fourth grade year, a planning and placement team ("PPT") meeting was held to plan for A.'s fifth grade year. Id.; and Exhibit B-5. According to Orange staff reports, as of June 6, A. had completed the first grade reading curriculum and started the second grade materials, and he was working in the sixth topic of the first grade math curriculum. Exhibit B-2. His speech/language therapist, Ms. Powers, reported that A. mastered most of his goals and objectives that year with 2.5 hours weekly of direct therapy within the ABA classroom/resource room. Exhibit B-3. A. was receiving 1.0 hour weekly of direct occupational therapy services and up to one-half hour weekly of indirect services. His therapist reported progress, including the area of functional living skills (washing his face, brushing his teeth thoroughly, cutting food with a knife and fork, placing appropriate size bites in his mouth and removing and replacing dollar bills and coins in his wallet). Exhibit B-4.

10. Both parents participated in the June 6, 2005 PPT meeting. They expressed concern with A.'s lack of progress in math and requested outplacement. The Director of Special Services at that time, Ellie Cruz, was leaving the position. Ms. Goncalves was hired to take her place. Ms. Cruz asked the Parents to wait until the new director arrived and to schedule a PPT meeting in July or August to consider outplacement. Ms. Cruz agreed to gather information on potential outplacements. Exhibit B-5.

11. On June 16, 2005 a PPT meeting was held to consider the Parents' request to place A. at High Roads School in Wallingford beginning on June 27, 2005. The school-based team members requested an independent evaluation at Board expense to look at A.'s strengths and weaknesses and determine if program goals are addressing his needs and to measure progress since Dr. Prevey's 2003 evaluation. The Parents agreed to mediate the dispute regarding outplacement. Exhibit B-7; Testimony of Mother.

12. On June 27, the Parents agreed to withdraw the mediation request and to have an independent evaluation. Exhibit B-10. A PPT meeting was held on June 30, 2005 to approve the evaluation. The Mother signed a waiver of the five-day notice for the PPT meeting and consent for an evaluation by Armin Thies, Ph.D. Exhibit B-11. The evaluation was to consist of a review of records and individually administered tests for receptive/expressive language and achievement in all areas. Exhibit B-12.

13. Dr. Thies is a Board Certified Clinical Neurologist and Clinical Psychologist and Associate Clinical Professor at Yale Medical School. He conducted testing on July 1 and 6, 2005. The tests administered were: Behavior Assessment System for Children (BASC), Parent Rating Scale; Children's Memory Scale (CMS); Comprehensive Assessment of Spoken Language (CASL), Sentence Completion, Nonliteral Language and Syntax Construction; Connor's Continuous Performance Test - Second Edition (CPT-II); Developmental History Form; Gray Oral Reading Test - Fourth Edition (GORT-4) Form A; NEPSY, Arrows and Design Copy; Oral and Written Language Scales (OWLS), Listening Comprehension; Rey-Osterrieth Complex Figure; Symptom Checklist; Test of Written Language - Third Edition (TOWL-3) Form A; Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV); Wisconsin Card Sorting Test (WCST); and Woodcock-Johnson Psychoeducational Battery - Third Edition (W/J-III), Concept Formation, Decision Speed, Retrieval Fluency, Rapid Picture Naming, Analysis-Synthesis, Calculation and Word Attack. Exhibit B-13.

14. Dr. Thies found that many of A.'s test responses revealed illogical and tangential thinking and that he made nonsensical statements. He evidenced virtually no ability to draw inferences, and other executive processes were also dysfunctional. Id. at 4-5. He showed an inability to generalize his learning to other situations or tasks. "[F]ormal testing revealed inadequate, elementary executive processing, in addition to the symptoms of difficulties with higher order executive processes manifested in poor organization, time management, and inferential thinking. . . . [T]he most reliable findings indicate capacity and processing speed equal or above that expected for his intelligence." Dr. Thies concluded that: "abundant symptoms of executive processing disorder, when combined with reports of inattention, supports a diagnosis of ADHD." Id. at 6.

15. In terms of his learning capacity, A. demonstrated verbal learning in the "solidly average range," conceptual reasoning in the low average range and low average learning capacity as shown by scores in reading and writing. A.'s math achievement lags behind, which is consistent with his "relatively poorer nonverbal intelligence." Dr. Thies concluded that:

The achievement scores in reading and writing also indicate that he has maintained his relative position, compared to his peers, at least since 2003. Therefore, he has learned at approximately the same rate as his peers and has benefited from educational instruction in reading and writing. On the other hand, there is some evidence that the gap between his achievement and that of his peers is widening.

Id. He recommended an emphasis on learning functional skills. Id. at 7.

16. Dr. Thies provided a detailed list of recommendations for A.'s instruction and manifestations of ADHD. The testing results and comparisons with prior testing are found in pages 9-26 of his report. On the WISC-IV, A. achieved a standard score of 79 on Verbal Comprehension and 67 on Perceptual Reasoning. Id. at 10.

17. Dr. Thies sent his report to the Board on July 26, 2005. Id. at 1. A notice of a PPT meeting scheduled on August 15, 2005 was sent on July 28, 2005. Exhibit B-14.

18. Bruce Grennon was the Interim Director of Special Services during July and the first two weeks of August. Id. Ms. Goncalves assumed her position as Director of Special Services on August 15, 2005. She met with the Student's Parents on July 27, 2005, at the request of the Superintendent of Schools, to address concerns they had raised about the Student's program. Ms. Goncalves hoped to begin a positive working relationship at the July meeting, and to make the Parents aware that she wanted to work with them to enhance the Student's IEP at the public school. During the one hour meeting, the Parents informed Ms. Goncalves that they believed the time had run out for Orange, and that they felt an out-of-district was the only option for their son. Testimony of Diane Goncalves.

19. Ms. Goncalves chaired the PPT meeting on August 15, 2005. Mr. Grennon attended, along with the school principal, two special education teachers and another teacher. Both Parents attended accompanied by Dr. Preston Wiles, A.'s treating psychiatrist. Exhibit B-15. Dr. Thies' report was reviewed, as was A.'s progress in the 2005 ESY program and a recent Key Math assessment. The Parents' request, supported by Dr. Wiles, for an out-of-district placement was discussed. The school-based team recommended an assessment of A.'s program and social skill development by an independent consultant. Id.; and Testimony of Mother and Ms. Goncalves. The Parents disputed the accuracy of the record of the August 15, 2005 PPT meeting and wrote the Board on August 24, 2005. Exhibit P-1.

20. In a meeting between Ms. Goncalves, the Parents' legal advocate, Ann Terezakis, and the Student's mother in late August, the Mother stated that she and her husband had had difficulty with Ms. Goncalves' predecessors, Pat Miller and Eleanor Cruz, and had grown to hate both of them. She added that "you give me long enough and I'll probably hate you too." Testimony of Ms. Goncalves. Because the Student's mother was so direct about the Parents' unhappiness with the previous two special education directors in the district, Ms. Goncalves sought to give the Parents an opportunity to get to know her and to help them understand the Student's program and possible IEP modifications that could be made to benefit their son. Id. The three agreed on James Loomis, Ph.D., Licensed Psychologist, employed by the Center for Children with Special Needs, LLC to perform the evaluation at Board expense. Id.; and Exhibit B-16.

21. Sometime between the August 15th PPT and the start of the 2005-2006 school year, Ms. Goncalves and the Student's mother discussed the MAPS documents completed by Judy Itzkowitz, Ph.D. Testimony of Ms. Goncalves. Dr. Itzkowitz is an educational consultant who facilitates team discussion and future planning for students with special needs. Exhibit B-36. Typically, the Board does not conduct MAPS evaluations until a student's 5th grade year, but Ms. Cruz arranged for the evaluation in A.'s 4th grade year, reportedly at the Parents' request. Testimony of Ms. Goncalves. Dr. Itzkowitz convened a meeting in May of 2005 with Orange staff members, the Parents and staff members from Amity Middle School. Id.; and Testimony of Suzanne Powers. The participants in the MAPS meeting discussed the Student's dreams for the future, fears about the future and his likes and dislikes. Testimony of the Father; and Exhibit P-34. In her report dated August 16, 2005, Dr. Itzkowitz made recommendations for the student's transition from the Orange public schools to the Amity Middle School, which is in the Amity Regional School District. Exhibit B-36. She stated:

In designing an appropriate educational program, A[.] should be provided with maximum opportunities to be with his non-disabled peers in the fabric of middle school life, using whatever supports are necessary to facilitate scholastic achievement, literacy, communication skills, social interaction and friendship, behavioral and social competence, “functional life skills,” and full membership in the school community.

Id. at 5. The Mother stated that she did not want Dr. Itzkowitz’s report placed in the Student’s educational record or shared with staff. Both Parents testified that they saw no value in the MAPS process. Because she never made a formal written request to have the document removed from her son’s records, the Board never considered removing it. The document will be shared with the Amity Public Schools for transition purposes. Testimony of Ms. Goncalves.

22. On September 16, 2005, Ms. Goncalves wrote to Dr. Loomis and requested that he perform an educational/social skills consultation for A. and to complete his work by October 27, 2005, the next scheduled PPT meeting. She also asked if he could attend the PPT meeting. Id.; and Exhibit B-16.

23. On September 21, 2005 the Board sent a notice of a PPT meeting for October 27. Included on the invitation to attend were Dr. Loomis and the Board’s attorney. Exhibit B-17.

24. The Parents had concerns that the Student’s June 6, 2005 IEP was not being followed as written. The Mother wrote the Board on September 20, 2005, September 21, 2005, and September 26, 2005 to express their concerns over the program, placement, related services hours, daily journals, social skills group and the two community outings that were supposed to have been part of the Student’s IEP. Exhibits P-2 through P-4.

25. On October 21, Dr. Loomis faxed his report to Ms. Goncalves. Exhibits B-18 and P-5. He was not able to attend the PPT meeting. Testimony of Ms. Goncalves.

26. Dr. Loomis based his report on the following: record review, observation of A. at school on September 28, 2005, meeting with team and Mother, review of data, and telephone conversations with Mother, Holly Grande, A.’s special education teacher, and Suzanne Powers, A.’s speech and language therapist. Dr. Loomis provided a summary about A. and his program:

A[.] has struggled with the challenges of an Autism Spectrum Disorder in the context of many evident strengths. At this point he shows good self-regulation and is very compliant within his program. He manages the transitions and demands of the school routine. A[.] shows good social recognition and motivation skills. He is aware of other people around him and often approaches and makes social bids. At the same time A[.] struggles with processing social information and pragmatic communication skills. His academic function is seen to be roughly at a second grade level across the board. He has difficulties with generalization, and

understanding vocabulary. Attentional focus can be inconsistent and he has difficulty with organization skills.

A[.]’s current program includes 13.75 hours per week of special education, 2 $\frac{3}{4}$ hours per week of speech therapy, 1 hour of occupation therapy, and $\frac{1}{2}$ hour per week of adaptive physical education. He participates in a weekly social skills group and “lunch bunch” with the Speech Therapist. The bulk of instruction is done on a one-to-one basis in a resource room apart from the other ABA program students. He joins his mainstream class for the beginning and ending of the day as well as lunch, recess, and some specials. A[.] also participates in speech therapy with a community based private therapist, Kathy Sinclair, every Wednesday morning. On these mornings he arrives a school at 11:00.

Id. at 1-2.

27. Dr. Loomis observed A. in his program for most of a school day. A. approached other students for social interactions but received no response or attention at lunch and recess. A. was independent for transitions between classes and was comfortable walking around the school building. He spent very little time in the mainstream classroom, and when he was in the classroom, there was very little peer interaction. Id. at 3-4.

28. Although he found many strengths in A.’s program, including caring and supportive staff and a high level of individual instruction, there were two areas of concern that led him to conclude the program did not meet his needs. Id. at 5. The two areas were the social skills program and the lack of integration with typical peers and the instructional plan, particularly its isolation away from an appropriate peer group and the teaching plan did not have well defined roles of the special education teacher and the aide. Id. at 6. Dr. Loomis recommended an “aggressive” social skills program, which would provide training of A.’s peers about his disability and his needs in social skills. “A[.] has the skills to benefit from a mainstream program. However, without the components listed above his frustration will likely increase leading to further withdrawal, behavior difficulties and greater academic challenges. If these components cannot be provided, consideration of a special education facility should be made.” Id. at 8.

29. On October 27 a PPT meeting was held to review/revise the Student’s IEP in consideration of Dr. Thies’ evaluation and Dr. Loomis’ report. The Parents attended with Ms. Terezakis. The Board had its attorney attending along with the following staff: Ms. Goncalves, Jodi D’Alexander, regular education teacher, Holly Grande, special education teacher, a school psychologist, Ms. Powers, Kari Panuccio, occupational therapist from ACES, a behavior analyst, and Susan DeFrank, paraprofessional. Thirteen modifications were made to the August 15 IEP. Additional time was offered in the mainstream class for small group and silent reading. Two community outings per month were added. Biweekly parent-team meetings were added. The Parents refused the team’s request to train selected fifth grade students in A.’s regular education

class about his needs and social skills issues. The team refused the Parents' request for outplacement. Exhibit B-19.

30. In a letter dated November 8, 2005, the Parents disputed the accuracy of the record of the October 27, 2005 PPT, and they disagreed with the proposed changes to the IEP. They also added that the Mother made a statement at the PPT meeting that she had a telephone conversation with Dr. Loomis in which he stated that Orange was not ready to fulfill his recommendations at this time. Exhibit P-7.

31. In a letter dated November 9, 2005, the Parents provided notice to the Board of their intent to place the Student at the Foundation School effective November 14, 2005 and requested full funding. Exhibit P-8.

32. The Parents filed for due process regarding the 2005-2006 school year shortly thereafter. Testimony Ms. Goncalves. The Parents' request for placement at the Foundation School by the Board was resolved through mediation. The Parents and the Board subsequently entered into a settlement agreement regarding the 2005-2006 school year. The Student remained at that private school for the balance of the 2005-06 school year. Testimony of Mother. The agreement did not address the summer of 2006. Testimony of Ms. Goncalves.

33. Ms. Goncalves communicated with Dr. Loomis regarding his October conversation with the Mother and requested clarification from him. On December 30, 2005 Dr. Loomis wrote to Ms. Goncalves: "I feel that A[.]'s program at Peck Place was not appropriate as it was constituted at the time of my consultation last September. However, I do not feel that an appropriate program could not be provided at Peck Place and in fact see advantages to A[.] remaining in a mainstream setting." Exhibit B-24.

34. The Parents believe that the Student made appropriate progress at the Foundation School during the 2005-06 school year in all areas including academics, math, use of calculator, homework skills, self care, community outings, money management skills, independence, social skills, reading, writing skills, and improving his behaviors, both in school and at home. Testimony of Mother.

35. In a letter dated April 7, 2006, the Parents wrote the Board and requested the scheduling of a PPT meeting in order to develop a program and placement for the Student. They requested placement at Foundation School for the summer of 2006 and the 2006-07 school year. Exhibits P-10 and B-25 at 1.

36. Ms. Goncalves wrote to the Parents on April 11, 2006 and offered a May 2006 PPT date to propose an ESY 06 program contingent upon receiving full written information about the Student's "academic and behavioral progress" at Foundation prior to the meeting. She offered a PPT date during the week of June 5, 2006 in order to propose a 2006-07 program and placement. She asked the Parents to sign consent for her, Ms. Powers and Ms. Panuccio to observe A. at Foundation School prior to the PPT in May. She also requested copies of any evaluations performed since October 2005. Exhibit B-25 at 2.

37. On April 24, 2006 the Parents wrote to Ms. Goncalves and indicated that they would wait for the week of June 5 to address both the ESY 2006 and the 2006-07 programs. They also returned signed consent forms for the requested observations. Id. at 3-4; and Testimony of Mother.

38. After the Parents consented to observations of the Student at Foundation School, Ms. Powers, Ms. Goncalves and Ms. Panuccio visited the Student's program in May. Exhibit B-26. The Foundation School established the dates when the Board staff could observe, the classes the Board could observe and the length of time for each observation. Testimony of Ms. Goncalves. Foundation staff informed the Board that observations longer than 30 to 45 minutes were disruptive to their program.

39. On May 2, 2006, Ms. Goncalves and Ms. Panuccio went together for the first visit and asked to see an occupational therapy session. During the observation process, the Board staff members were not allowed to speak with any staff at Foundation School. They were walked from the front door to the room, and then escorted back out once the observation was concluded. Ms. Goncalves asked the staff person who was escorting them in the building if they could speak with any staff members and she said no. They were unable to speak to the Student's case manager and/or the director at the end of the first observation, which included an art class and a speech therapy class. No staff member at Foundation School followed up on Ms. Goncalves' request for a telephone conversation. On May 11, 2006 Ms. Powers and Ms. Goncalves were taken to observe a physical education class. Testimony of Ms. Goncalves and Ms. Powers. Ms. Powers' experience with the Foundation School in May of 2006 was similar to her prior experiences observing another autistic student who was unilaterally placed at Foundation. She was denied the opportunity to observe a speech and language session. Testimony of Ms. Powers.

40. The Parents provided the Board with a copy of the narrative Foundation School Progress Reports that had been prepared during January 2006 and April 2006 and also provided a copy of the evaluated goals and objectives from the Foundation School educational plan. Exhibit B-27. During the course of the hearing it was determined that through a copying error, an incomplete copy of the evaluated goals and objectives from the Foundation School educational plan had been provided to the Board by the Parents. At no time prior to the September 8, 2006 hearing date did the Board ever contact the Parents to report that it had only received a partial copy of the Foundation School education plan. Goals ##11 though 24 were not included in the exhibit. The Parents' Exhibit P-17 has the pages missing from the Board's Exhibit B-27. They were provided to the Board in the week prior to the commencement of this due process hearing. Testimony of Mother; Exhibits B-27 at 7 to 21 and P-17.

41. On May 12, 2006, the Board sent a notice to the Parents for an annual review PPT meeting scheduled for June 5, 2006. Exhibit B-39 at 2. On May 24, 2006 the Mother called Ms. Goncalves' office to request a postponement because their attorney was not available on June 5. Id. at 3. Through telephone conversation, the parties agreed to limit the June 5 PPT to the ESY 2006 program and to have no attorneys attend. Testimony of Ms. Goncalves and Mother. Because a new notice was not sent out, the Mother was asked to sign a waiver of the five-day notice requirement at the PPT, which she did. Exhibit B-28 at 7.

42. On June 5 a PPT meeting was attended by Ms. Goncalves, the school principal, the Parents, Ms. Powers, Ms. Grande, Ms. D'Alexander, Delia Daley and a school psychologist. The school-based team members proposed a program from July 5 through August 3, 2006, which was comprised of regular education summer classes in math, reading and computer skills and a social skills program called "TIPS" with speech and language services included. A. would be supported by a 1:1 paraprofessional. Two goals were developed: 1) Maintain academic levels of performance commensurate with levels reported at annual review; Objective #1 Participation in ESY services to address maintenance of skill level in the area of Language Arts (Reading, Writing, Spelling), #2 Participation in ESY services to address maintenance of skill level in the area of Math (including money skills), and #3 Participation in ESY services to address maintenance of skill level in the area of Speech/Language Therapy; and 2) A[.] will maintain social skills levels of performance commensurate with levels reported at annual review; Objective #1 A[.] will participate in ESY services to address maintenance of skill levels in the area of social skills. Id. at 5-6.

43. The total number of service hours was 72, which were comprised of 4 hours per day for two days the first week, then 4 days per week for 4 weeks. Of the 16 hours per week, 12.5 were in special education and 3.5 with non-disabled peers. Id. at 4. The service delivery would be 1:1, and small group instruction in special education and social skills program, and regular education sessions with grade level peers and speech and language services. Id.

44. A. would be involved in TIPS ("Teaching Interpersonal Pro-Active Social Skills") for a significant portion of each day. The TIPS weekly schedule for the summer was attached to the IEP along with a daily schedule. Id. at 8-9.

45. The Board developed the TIPS program to meet the individual needs of multiple students with social skill deficits in the school district. Testimony of Ms. Goncalves. Various school professionals, including school psychologist Shari Chase, special education teacher Delia Darley, interim director Bruce Grennon, clinical psychologist Thomas Fahy, Board Certified Behavior Analyst ("BCBA") Gerry McClellan and Ms. Goncalves worked closely on developing the TIPS program. Id.

46. Special education students were involved in the TIPS program at various hourly levels depending of the severity of their needs and their respective IEPs. Some students spent all day in the program while other students spent a few class periods per day in TIPS. Various grade levels of students, from grade one to grade six, received support in TIPS. The Board created small instructional groups in TIPS based on students' age levels and ability levels. Id.

47. The weekly and daily schedules for the TIPS program were closely aligned with fundamental themes appropriate to the development of socialization skills. Id. Those themes were closely related to pragmatic social skill objectives in the Student's 2005-2006 IEP, and would have benefited the Student. Id.; and Exhibit B-5. The social skill goals would have been worked on in naturally occurring situations. Testimony of Ms. DeFrank and Ms. Goncalves.

48. Many certified and non-certified individuals provided instruction, services and support to the 10 students in the TIPS program during the summer of 2006, including a school psychologist, a speech and language therapist, a special education teacher, an occupational

therapist, a couple of lead therapists and some 1:1 paraprofessionals. Delia Darley, with extensive background experience in working with camps and social skills and groups of children, was the special education teacher. Shari Chase, who developed an extensive integrated social skills program during lunch times at Race Brook School in Orange, was the school psychologist. The speech and language pathologist who worked on the summer program had much experience working with lunch bunch groups and other social skills groups. In addition, the paraprofessionals who worked in the program had extensive experience and training in working with children that were in social skills programs. Testimony of Ms. Goncalves.

49. Older children in the TIPS program had different levels of responsibilities to help some of the younger children complete projects and complete activities. The Student would have benefited from participating in the program with some younger students because he could have been one of the leaders in utilizing the social skills the students were developing. Such conduct would have tended to raise the Student's "self-confidence and comfort level in a variety of social settings." The Board did not intend to "minimize the need for direct instruction with the Student in some of his social skill areas by incorporating the role model approach, rather it planned "to maximize his abilities to be able to support and work with the younger children." Id.

50. Ms. Goncalves observed the TIPS program nearly every day during the summer of 2006 and concluded it was a very successful program. The feedback from all the parents of students who participated in the 2006 TIPS program was overwhelmingly supportive. They indicated it was the best summer program their special needs children had ever experienced in Orange. The Board received parents' compliments for its extremely organized staff, teamwork among staff members, detailed daily and weekly schedules, the variety of activities, the opportunities for inclusion, and frequent feedback to parents. Id.

51. The Student would have received 3.75 hours per week of academic instruction had he attended the Board's 2006 summer program. The Student would have received instruction in the Renzulli computer class, which was designed to allow special education students to pair up with regular education students when completing their assigned projects. The Student also would have received instruction in math and reading each week. Id.; and Exhibit B-28.

52. The Board's speech and language pathologist ran a daily lunch bunch program for students in need of such socialization training and conversational opportunities in the TIPS program. The Student could have participated in this program if he had enrolled in the Board's proposed summer 2006 program. Testimony of Ms. Goncalves.

53. Based on Ms. Goncalves' observations of the Student during the 2005-2006 school year, her knowledge of the Board's program, and her 30 years experience in special education, including working with autistic students, she was confident that the Board's proposed IEP for the summer of 2006 could provide the Student with meaningful educational benefit. Id.

54. On June 7, 2006, the Parents wrote to Ms. Goncalves in response to the June 5 PPT meeting. They complained that the papers (notes, IEP and weekly/daily schedule) sent to them were not presented to them at the PPT meeting. They restated that they requested Foundation School for the summer of 2006. Exhibit P-11.

55. The Student attended the Foundation School 2006 ESY program as a unilateral placement. Testimony of Parents.

56. On June 16, 2006 the Board and the Parents convened a PPT meeting to discuss the Student's 2006-2007 IEP. Both parties had legal representation. The attendees were Ms. Goncalves, the school principal, the Parents, Ms. Grande, a school psychologist, Ms. Powers, a sixth grade teacher, Behaviorist Gerry McClellan, Ann Terezakis and Atty. Meuser. The Board invited a Foundation School representative to attend the PPT, but none attended. Exhibit B-29. When asked near the beginning of the PPT if the Board should get Foundation School by telephone, the Parents said no. Testimony of Ms. Goncalves.

57. At the outset of the June 16th PPT, the Board members discussed the Student's present levels of performance and progress, including a review of his January and April 2006 Foundation School progress reports. Ms. Goncalves, Ms. Powers and Ms. Panuccio reviewed their observation reports from May 2006. The school-based team reviewed the draft goals and objectives they had prepared for the 2006-2007 IEP. The Board gave the Parents copies of the draft goals and objectives before and during the meeting. The Student's speech and language therapist, occupational therapist and special education teacher made detailed verbal presentations regarding their proposed goals and objectives for his 2006-2007 IEP. Mr. Mirabito, sixth grade teacher, gave an overview of the curriculum and emphasis on social skill development. During the June 16th PPT, Ms. Goncalves requested baseline data from Foundation to support their progress reporting. The January and April narrative reports from Foundation School did not appear to be data driven. Exhibit B-29; Testimony of Ms. Powers and Ms. Goncalves. The Parents did not advise Foundation School of this request. Testimony of Ms. Bourdeau. Mrs. Montgomery joined the meeting to describe the social skills/leadership program. Exhibit B-29 at 2.

58. At the June 16th PPT meeting, the team made five recommendations: 1) A[.] would attend his home elementary school for 2006-07 integrated into a sixth grade classroom with 1:1 paraprofessional support; 2) A[.] will receive special education resource room support/speech language services/OT services/social skills group/community outings; adaptive PE; 3) A[.]'s program will be supported by the Orange school system's autism program model to include ongoing consultation with consulting clinical psychologist/BCBA/autism coordinator; 4) ESY services as recommended at the June 5, 2006 PPT remain in effect; 5) ecological assessment to be conducted by Orange school system's BCBA. Id.

59. The Parents and their advocate outlined their concerns about Orange public school services and requested placement at Foundation School for the 2006-07 school year. They were able to, but did not, ask questions about the Board's proposed IEP at the June 16th PPT, make objections to the present levels of performance documentation, or the goals and objectives designed to address the Student's identified needs. Testimony of Ms. Powers and Ms. Goncalves.

60. The proposed IEP has 11 goals and numerous objectives. Goal #1 is to increase reading comprehension skills through 9 objectives. Goal #2 is to increase mathematical skills through 3 objectives. Goal #3 is to increase time skills through 3 objectives. Goal #4 is to increase money skills through 3 objectives. Goal #5 is to increase social/behavioral skills

through 3 objectives. Goal #6 is to improve written language skills through 5 objectives. Goal #7 is to participate in community outings to increase functional life skills through 4 objectives. Goal #8 is given 6th grade Science and Social Studies curriculum, A. will demonstrate comprehension (at instructional level) of content area of subjects as measured by one objective (complete a working portfolio). Goal #9 is to increase attention to task measured by 1 objective. Goal #10 is given a class in Adaptive PE A. will work to improve his gross motor skills through 3 objectives. Goal #11 is to improve pragmatic language/social skills to facilitate improved communication through 12 objectives. Id. at 10-27.

61. The IEP provides 7.5 hours per week of special education instruction by a special education teacher to work on goals 1-6 and 9 in the resource room. Twenty hours per week to work on goals 8 and 9 are provided in the regular education classroom with instruction by regular education teacher and paraprofessional. In addition there are 2.5 hours per week of speech/language therapy in the resource room to work on goals 9 and 11; one hour per week of occupational therapy in the resource room to work on goal 9; one hour per week of social skills groups to work on goals 5, 7 and 9 in all environments in school and community outings; and one hour per week of adaptive PE to work on goal 10 in a small group setting in the gym. Id. at 28. A. will participate in all gym, art, PE as well as the regular education classes in science and social studies. Special education services are delivered in various ways: 1:1, small group instruction at developmental levels, 1:1 paraprofessional support with pre-teaching and parallel curriculum instruction. Speech and OT services are delivered through 1:1 direct instruction. Id.

62. In order to provide an aggressive social skills program as recommended by Dr. Loomis, the Board proposed training non-disabled peers in A.'s class to act as role models. A. would not be present during training of the non-disabled peers. The school social worker and the regular education teacher would identify students who would be appropriate role models. The students would be trained to guide other non-disabled peers on how to function with A. This would entail training the role model students about A.'s disability and how to respond to his behaviors. Testimony of Ms. Goncalves and Ms. Downey. The Parents refused to consent to disclosing information about A.'s disability to non-disabled peers. Id.; and Testimony of Mother. The Board wanted to explain to the non-disabled peers what behaviors A. engaged in when under stress. The staff would ask the non-disabled peers what behaviors they observe that they don't understand. The staff would suggest prompting, redirecting or talking to a non-disabled peer who didn't respond appropriately to A. Testimony of Ms. Goncalves.

63. The Board hired Dr. Loomis to do staff training in the fall of 2005 relating to social challenges, facilitating social development and leading social skills groups for individuals with autism spectrum disorders and developmental disabilities. "The workshops will scaffold skills moving from a global understanding of what social skills processing difficulty is, to training in specific intervention skills and generalization of those skills, with a final session focusing on how to run social skills groups. In the November session there will be an opportunity for staff to share experiences, videos of social groups being conducted, and to ask general questions." Exhibit B-37. Three training sessions were scheduled on September 15 and 19 and November 8. Id. The Special Education Parent Teacher Association (SEPTA) requested inclusion in the sessions. SEPTA was allowed to participate in the September sessions, but not

the November session because Dr. Loomis wanted to discuss case studies and share video tape without parents there. Testimony of Ms. Goncalves.

64. In the spring of 2006 the Board hired an autism coordinator, a position created by Ms. Goncalves with consultants and personnel from Orange and ACES (the regional educational service center). A new board certified behavior analyst (“BCBA”) position as well as a new clinical psychologist position were added. This was done to increase staff training, free teachers to spend more time with their assigned disabled students and to ensure consistent implementation of students’ IEPs. Id.

65. Ms. Goncalves, working with the Board’s autism coordinator, the consulting clinical psychologist, the BCBA, a consultant from CREC River Street Program, and various personnel from both the Orange elementary school district and ACES, created the parent training program for the 2006-2007 school year, which would have benefited the Student and his parents. Id. Topics included “Introduction to Applied Behavior Analysis,” “Behavior Supports for Children with Autism,” and “Facilitating Social Skills and Play Skills outside the Educational Environment.” Exhibit B-40. Many of the training sessions were designed in direct response to conversations with parents, committee meetings with parents and consideration of their concerns about important topics regarding the lives of special needs students, such as the need for additional social skills training. Id. and Testimony of Ms. Goncalves.

66. The Board offered a character education program to all sixth grade students, including the Student, that would have included guided programs in the classroom led by a special education teacher and the classroom teacher, the DARE program, the Don’t Laugh at Me Program, Character Counts and Book Buddies with first grade students. Testimony of Ms. Powers, Ms. Downey and Ms. Goncalves. The Student would have been a good candidate for working with younger children in the Book Buddies program, where the older students read to the younger students. Testimony of Ms. Powers.

67. The Board recommended that the Student be the beneficiary of a Leadership Training Program (“LTP”) for students in his sixth grade class who had demonstrated leadership skills in kindness and respect who would help shape the Student’s social skills in the regular education environment. Testimony of Ms. Downey. The LTP was based on research indicating that schools cannot “teach social skills in isolation . . . [they] have to provide natural modeling opportunities and generalization opportunities.” Id. The LTP and other Board programs in the Student’s 2006-07 IEP, such as language group, pizza parties, cafeteria social skills and community outings, were developed to extend the Student’s opportunities for generalization beyond the 1:1 setting. Id.; and Testimony of Ms. Goncalves.

68. In the 2005-06 school year, the LTP promoted positive social skills and relationships between a female disabled student and regular education students in the fourth grade. Id.; and Testimony of Ms. Downey and Ms. DeFrank. Ms. Downey teamed with Ms. Montgomery to provide training sessions to the fourth grade non-disabled peers. In the training programs, the regular education students learned how to offer suggestions, to do prompting or to redirect the disabled student in a kind and unobtrusive way. Id. Also, they were taught that if they observed another regular education student becoming uncomfortable with a behavior that

may be exhibited by a disabled student, they should work to explain why the behavior may be happening. Testimony of Ms. Goncalves. By the end of the year, the regular education students were asked to help facilitate social interactions involving all students and activities throughout the disabled student's entire day, including electives like art, and music, and on the playground at recesses. Id. The LTP was a "home run" for both the disabled student and for her non-disabled peers. Testimony of Ms. Downey. It "was amazing in how these [regular education] kids gelled with the [disabled] student." Id. The participants in the LTP became a circle of friends for the disabled student. Ms. DeFrank, who worked as the 1:1 paraprofessional for disabled student for most of the 2005-2006 school year agreed that the student benefited greatly from the support and guidance provided by the participants in the LTP. Testimony of Ms. DeFrank. The regular education students took so well to the program that when the female student needed support, Ms. DeFrank was able to fade back and let the peers intervene to help the child through a social situation. Id. The LTP was adopted as an extension of earlier programs for socialization in order to enhance the social skills aspect of the Board's autism program, as recommended by Dr. Loomis. Testimony of Ms. Goncalves. "It is important to train the [Student's] peers in his classroom . . . with regard to [the Student's] needs – how to best communicate with him and how to provide the type of structure he needs to be socially successful." Exhibit B-18 at 7.

69. The Board had requested permission from the Parents to train regular education students in the Student's class in 2003-04, 2004-05 and 2005-06 school years, but they declined each request. Testimony of Ms. Powers.

70. Dr. Wiles was not familiar with any of these programs in the Orange public schools. Other than attending the August 15, 2005 PPT meeting, he had not been involved directly in the Student's program. He received reports on the program and the Student's progress primarily from the Mother. He had not observed the Student in his public school program in several years. As A.'s treating psychiatrist, he monitored A.'s medication. Psychotherapy had not been found to be helpful. Testimony of Dr. Wiles.

71. The Foundation summer program is a shorter version of the full year academic program. The school day is one hour shorter. All classes are carried over from the regular program except language arts instruction is reduced by one hour. The program runs for five days a week for four weeks. Foundation did not produce any written progress reports regarding the Student's performance toward his IEP goals and objectives during the summer of 2006. Testimony of Ms. Bourdeau.

72. After the June 16th PPT, the Student's Mother rejected the Board's offer to send the Student's completed 2006-07 IEP by certified mail, which was the normal practice. She told the district to leave the IEP with Ms. Goncalves' secretary. The Student's mother picked up the IEP approximately 10 days after the IEP concluded. Testimony of Mother and Ms. Goncalves.

73. The Parents rejected the proposed IEP at the June 16th PPT meeting and filed for due process in writing on June 30, 2006. Id.; and Exhibit P-15. The Parents were not interested in any program except Foundation School. The Board's proposed IEP did not "come close to replicating Foundation School." Testimony of Father.

74. On June 30, 2006, Ann Terezakis sent the Board's attorney a copy of the Foundation School's June Progress Report for the Student. Exhibits P-12 and P-13. There was also enclosed June testing on the Woodcock-Johnson III Test of Achievement Clusters. Exhibit P-14.

75. None of the material received after the June 2006 PPT meetings would have changed the proposed IEPs for the ESY 2006 or the 2006-07 school year. Testimony of Ms. Goncalves.

76. Based on Ms. Goncalves' observations of the Student during the 2005-2006 school year, her knowledge of the Board's program, and her 30 years experience in special education, including working with autistic students, she was confident that the Board's proposed IEP for the 2006-07 school year would provide the Student with meaningful educational benefits, both academically and socially. Id.

CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that A. is a child with autism. 34 C.F.R. Section 300.7(c)(1).

2. The Board has the burden of proof on the appropriateness of the programs for the 2006 ESY and the 2006-07 school year. Conn. State Regs., Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207. The Board must establish these by a preponderance of the evidence. Conn. State Regs., Section 10-76h-14. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998).

3. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including benchmarks or short term objectives related to meeting the child's individual needs." 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.347; Roland M. v. Concord School Committee, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991).

4. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parents, the results of the most recent evaluations, any results from district assessments, and whether the student requires any assistive technology devices and services. See 34 C.F.R. Section 300.346. Courts must also consider whether the program is "individualized on the basis of the student's assessment and performance" when determining the appropriateness of

an IEP. See A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), aff'd, 47 Fed. Appx. 615 (2d Cir. 2002) (citing M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)).

5. As for the first prong of the Rowley inquiry, nothing in the statement of issues for the hearing sets forth any claim for a violation of the Parents' procedural rights. The Parents' attorney was questioned on this issue at the hearing to clarify the matter prior to closing briefs being filed. He argued that the Board committed procedural violations in convening the two June 2006 PPT meetings and in designing the 2006 ESY and 2006-07 IEPs. Both parties briefed these procedural issues. Only the two June 2006 PPT meetings are relevant to this proceeding. Any alleged procedural violations concerning the 2005 PPT meetings were encompassed in the parties' settlement of the prior due process proceeding on the 2005-06 school year. The Parents do not dispute that they received proper notice of and attended the PPT meetings or that they received a copy of their procedural safeguards at each PPT meeting. The Parents contend that there is a contested issue of fact as to whether or not the Board had provided them with a copy of draft goals and objectives for review either before or during those PPT meetings, considered their concerns about enhancing the Student's education, and provided them with the opportunity to have meaningful input into the development of those IEPs. In support of their claims Parents cite 34 CFR §300. 346(a)(1), which provides:

In developing each child's IEP, the IEP team, shall consider—

- (i) The strengths of the child and the concerns of the parents for enhancing the education of their child;
- (ii) The results of the initial or most recent evaluation of the child; and
- (iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.

There is nothing in the language quoted which requires the Board to provide the Parents with a draft copy of the IEP prior to or during a PPT meeting. This may be a good practice, but it is not mandated by IDEA or its regulations. In any event Ms. Goncalves gave credible testimony that copies were made available to the Parents prior to and during the PPT meetings.

6. As required by the IDEA, the PPT listened to the concerns of A.'s Parents and their legal representative for enhancing his education, which they believed necessitated an outplacement at Foundation School. Parental participation does not require that the Board acquiesce to the preferences of the Parents. A.E. v. Westport Board of Education, 46 IDELR 277 (D. Conn. 2006). The PPT considered the strengths of the Student based on the recent January and April 2006 progress reports from Foundation School, as well as Orange staff observations in May 2006. The PPT reviewed the most recent evaluations (Dr. Thies and Dr. Loomis) and developed IEPs based on A.'s individual needs at that time. Written prior notice was provided to the Parents as mandated by IDEA and 34 CFR Section 503, which the Parents do not dispute.

7. The Parents argue that there is no page in the June 5 ESY 2006 documents pertaining to present levels of performance and that the goals are based on maintaining levels of

performance reported at the annual review, which did not occur until June 16. Ms. Goncalves explained that the PPT meeting on June 5 was intended to cover both ESY 2006 and the 2006-07 school year. Orange staff had written draft IEPs for both programs in anticipation of the June 5 PPT meeting. Because the Parent's legal representative was not available on that date, the parties agreed to proceed with the ESY portion of the PPT meeting on June 5 without legal counsel. The reason was to give the Parents more time to consider whether to accept the proposed ESY program, which began on July 5, 2006. Eleven days after the June 5 meeting, the PPT met to conduct the annual review and to develop an IEP for the 2006-07 school year. The team also reaffirmed the 2006 ESY program. The failure to fill out a form on present levels of performance at the June 5, 2006 PPT meeting is, at best, a technical violation.

8. Procedural flaws do not automatically require the Hearing Officer to find that a denial of a free appropriate public education has occurred. Instead the Hearing Officer must determine if the procedural inadequacies resulted "in the loss of educational opportunities or seriously infringed upon the parent's opportunity to participate in the formulating the [IEP]" Student v. East Haddam B.O.E., Case No. 05-246 (citing Shapiro v. Paradise Valley United Sch. Dist. No. 64, 317 F. 3d 1072, 38 IDELR 91 (9th Cir. 2003)). There is no dispute concerning whether the Student required an ESY program. The ESY program recommended by the PPT in June 2006 had a combination of academic and social skills components with a four hour per day program for five weeks. The ESY program at Foundation, which the Parents requested, was a continuation of the curriculum in the school-year program, but it was shortened to 5 hours per day for five weeks. See Tobi K. v. Independent Sch. Dist. No. 196, 27 IDELR 482 (D. Minn. 1998) (school district complied with the procedural requirements of the IDEA with regard to the education of a six-year old child with autism. The child's parent fully participated in the IEP process and in all decisions regarding the child). The failure to include the present levels of performance page did not result in the loss of educational opportunities for A., nor did it seriously infringe on the Parents' opportunity to participate in formulating the ESY IEP. Therefore, the Board has satisfied the first part of the Rowley test by meeting the procedural requirements of the IDEA.

9. The second prong of Rowley requires a finding that the IEP is "reasonably calculated to enable the child to receive educational benefits." The evidence here shows that the Student would receive educational benefit from the IEPs. The Parties differ as to whether the benefit was sufficient to meet the legal standard in Rowley. "IDEA requires only that school districts provide an 'appropriate' IEP, gauged by whether the IEP is 'sufficient to confer some educational benefit.'" Board of Education of the Hendrick Hudson Central School District v. Rowley, supra. In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is "whether the educational program provided for a child is reasonably calculated to allow the child to receive 'meaningful' educational benefits." Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). The Court has also cautioned that meaningful educational benefits are "not everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2nd Cir. 1989). "Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." Hall v. Vance County Bd. Of Educ., 774 F.2d 629, 636 (4th Cir. 1985). "Of course,

a child's academic progress must be viewed in light of the limitations imposed by the child's disability.” Mrs. B. v. Milford, supra at 1121.

10. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.550 through 300.556; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. Id. “Least restrictive environment” is defined as follows under IDEA:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that such education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. Sec. 1412(a)(5); 34 C.F.R. Sec. 300.550. FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002). In this case the Student would be placed in regular education classes for part of the day and placed in a resource room for 1:1 special education instruction, speech and language therapy and occupational therapy for other parts of the day at the public school. The Parents contend that the Student is isolated in the resource room and cannot benefit from participation in regular education classes because he is too far behind his non-disabled peers academically. They argue, therefore, that A. requires placement in a private school for disabled children and that the Foundation School is an appropriate placement.

11. The Fifth Circuit established a two-part test to determine when mainstreaming is appropriate. First, a student should only be removed from the mainstream “when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.550(b)(2); Daniel R.R. v. State Board of Educ., 874 F.2d, 1036, 1048 (5th Cir. 1989). Second, if placement outside of regular education is necessary for the child to benefit educationally, the PPT must also determine “whether the school has mainstreamed the child to the maximum extent appropriate.” Daniel R.R., 874 F.2d at 1048.

12. Under the Daniel R.R. test, which has been followed by courts in the Second Circuit, “the appropriate yardstick is whether [the student], with appropriate supplemental aids and services, can make progress towards her IEP goals in the regular classroom setting.” A.S. v. Norwalk Bd. of Educ., 183 F.Supp.2d 534, 546 (D. Conn. 2002). When determining the

appropriateness of a given placement, courts will also consider evidence of a student's progress in that placement. Here the Board provided individualized instruction in core academic subjects of reading, writing and math at his level, as well as speech and language therapy, occupational therapy and adaptive physical education. In fifth grade (2005-06) the Student was generally working at the second grade level. In June 2006 he was at early third grade level in reading. In this case, A.'s disability requires removal from regular education classes for part of the day in order for him to receive an appropriate education. He can also benefit from participation with non-disabled peers. The IEP offers mainstreaming for activities where participation with non-disabled peers would be appropriate for A., such as music, art and PE, as well as parallel curriculum in science and social studies and small group reading instruction at his level in the regular education classroom.

13. The Board had an obligation to provide a program designed to meet the Student's unique needs. 34 C.F.R. Section 300.1. In this case, the District followed the opinions of three outside consultants, including a recognized expert on autism, who were paid by them to do evaluations of the Student. The Board's programs offered the right balance between special education and regular education. R.L. by Mr. and Mrs. L. v. Plainville Bd. of Ed., 363 F.Supp.2d 222 (D.Conn. 2005). Based on the evidence, including the psychoeducational evaluations and Dr. Loomis' report, and the legal standard, it is concluded that the current IEP is appropriate to produce meaningful educational benefits.

14. A district must make any placement and service decisions for a child based on their individual needs. 34 C.F.R. 300.300(a)(3)(ii), see also Oberti v. Board of Education of Borough of Clementon School District, 995 F.2d 1204,1214 (3d Cir. 1993). A comparison must be made between the educational benefits the child will receive in the regular classroom and the benefits the child will receive in a segregated program. Id. at 1220. The Parents assert that A.'s program requires so much alteration that it does not resemble the general education program, it is no longer appropriate. They cite Oberti at 1221-222; and Jay School Dept v. Maine State Educational Agency, 39 IDELR 259 (2002). A separate setting may be the most appropriate and least restrictive environment for a student. DeVries v. Fairfax County School Board, 882 F.2d 876 (Cir. 1989). It is well settled that the least restrictive environment for a child depends on his unique needs. The Board has sustained its burden of proving that the proposed IEP program meets A.'s needs for a combination of specialized instruction and contact with non-disabled peers.

15. The Parents argue that the IEP was inappropriate because it was not based on current evaluations. They claim that the Board was required to perform formal testing and evaluations in June 2006 prior to drafting the IEPs. They point to 34 CFR Section 300.532 for the premise that Dr. Loomis' September 2005 report was not an evaluation of A.'s social and emotional status and therefore could not form the basis of determining the content of A.'s IEP. This is too narrow a view of Section 300.532. See 300.532(b). More relevant is Section 300.536 (Reevaluation):

(b) That a reevaluation of each child . . . is conducted if conditions warrant a reevaluation, or if the child's parent or teacher request a reevaluation, but at least once every three years.

A. had a comprehensive neuropsychological evaluation in August 2005 by Dr. Thies. There was no need to repeat this in 2006.

16. Given the appropriate IEPs offered by the Board, it is not necessary to evaluate the appropriateness of the Parents' preferred placement at Foundation School. Conn. State Regs., Section 10-76h-14(b). Burlington Sch. Comm. v. Department of Educ., 471 U.S. 359 (1985); Florence Cty. Sch. Dist. v. Carter, 114 S.Ct. 361 (1993). See also, In the Matter of Student with Disability, 33 IDELR 263 (SEA CT 2000) ("it is well established that if it is determined that a local school district can provide a FAPE for a student, it is not relevant that the private placement's program is appropriate, better than, different from that proposed by the district or preferred by the parent."); and A.E. v. Westport Board of Education, *supra*.

FINAL DECISION AND ORDER

1. The Student was offered a FAPE for the ESY 2006 in the LRE.
2. The Student was offered a FAPE for the 2006-07 school year in the LRE.
3. The Board is not responsible for the program and placement at Foundation School for the ESY 2006 or the 2006-07 school year.

COMMENTS ON CONDUCT OF HEARING

The parties are commended for ably presenting their respective positions at the hearing and in the post-hearing briefs in a difficult case.