

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Darien Board of Education

Appearing on behalf of the Parents: Attys. Phillip J. Cohn and Kevin Chamberlin, Cohn & Associates LLC, 277 Sturges Ridge Road, Wilton, CT 06897

Appearing on behalf of the Darien Board of Education: Attys. Susan C. Freedman and Gwen J. Goodman, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

The Parents' attorney requested this hearing on May 1, 2007 by letter to the State Department of Education (SDE). Hearing Officer (HO) Exhibit 1. The Darien Board of Education received the request on May 2, 2007. This Hearing Officer was assigned to the case on that date. Attys. Freedman and Goodman filed an appearance for the Board on May 4. On May 10, the Board filed a Motion to Contest Sufficiency and Strike. A prehearing conference was held on May 11, 2007. The parties reported that a resolution meeting was scheduled on May 16. The decision deadline was established as July 16, 2007. The Parents' attorney stated that he needed seven days for their side of the case. The Board's attorney estimated five days would be needed. Hearing dates were agreed on for July 17, 19, 23 and 24. The Parents' attorney agreed to send a written request to extend the decision deadline until August 21, 2007. He also stated that he would file a response to the Board's motion on May 14, which he did. He also wrote a letter to the Hearing Officer stating that the Parents wished to have a decision within the original 45-day timeline and did not want to extend it. On May 15, the Board filed an objection to the Parents' request to maintain the original decision deadline, arguing that their attorney had made an agreement to extend it at the prehearing conference. On May 16, the Hearing Officer issued a ruling on the Board's motion, finding the complaint met the sufficiency requirements of the Individuals with Disabilities Education Act (IDEA) and granting the motion to strike various paragraphs of the complaint. The Parents' attorney was directed to file an amended complaint in accordance with the ruling by May 25. In view of the Parents' decision not to waive the 45-day timeline, the Hearing Officer ordered that each party would be limited to one day to present their cases, unless the attorneys agreed to the July dates. If they did not inform the Hearing Officer of an agreement by May 30, two June dates would be scheduled. The Parents would have June 14 and the Board June 25. No agreement on July dates was made.

On May 23, the Parents' attorney filed an amended complaint, which added new claims pertaining to the 2005-06 school year and added numerous facts and claims pertaining to the

2006-07 school year. The Board filed a Motion to Strike the amended complaint on May 29. On May 30, the Parents' attorney filed an objection to the Board's motion. On May 30, the Board's attorney sent a letter to the Hearing Officer stating that the Board would make itself available on June 14 and 25, but that allowing the additional school year in the amended complaint would greatly complicate the hearing and require additional hearing dates. On June 4, the Motion to Strike was granted as to the 2005-06 school year. The Parents' attorney was directed to file an amended complaint by June 8. His requests to require the Board to provide all records by registered mail and to disqualify Dr. Judith McCarty from performing an evaluation of the Student were denied. June 14 and 25 were scheduled for the hearing, the parties were directed to file exhibits and witness lists by June 7 and the decision deadline was set at July 16, 2007. On June 6, the Parents' attorney notified the Hearing Officer that the Parents wished to have the hearing open to the public. On June 7, he filed an amended complaint. On June 11, the Board filed a third Motion to Strike addressed to the second amended complaint dated June 6. On June 13, the Board's attorney advised the Hearing Officer that the Superintendent of Schools had received numerous requests from the media to permit them to set up video cameras, microphones and tape recording devices in the hearing room.

The hearing convened on June 14. There were several television and print media reporters who wanted to place cameras and recording devices in the hearing room. The Hearing Officer ruled that the hearing would be open to the public at Parents' request, but that no "television or still cameras, microphones or other mechanical recording devices, including cell phones with cameras" would be permitted in the hearing room. All those present in the room, including members of the public were asked to sign in. Regarding the third Motion to Strike, the Hearing Officer ruled that the original complaint would be used for the hearing, with matters stricken from that complaint in the May 16 ruling crossed out. Exhibits HO-1 and HO-2. The Board filed Exhibits B-1 through B-91 and its witness list on June 7. The Parents' attorney had no objections, and those exhibits were received into evidence as full exhibits. The Parents filed Exhibits P-1 through P-49 on June 7. The Board objected to Parent Exhibits P-9, P-10, P-14 page 1, P-20, P-24, P-26 page 1, and P-32. They were marked for identification only. The other Parent exhibits were entered as full exhibits. Both parties presented opening statements. The Parents called Kristina Bentley, the Student's private speech and language pathologist, Robin Lawler Pavia, the Director of Special Education for Darien, Tina McCourt, Program Director Rebecca School, Jessica Matteis, Special Education Teacher in Darien, and Robyn Blonder, Speech Language Pathologist in Darien. The Parents' attorney requested permission to call the Mother as a rebuttal witness. The Hearing Officer ruled that she could testify for up to one-half hour at the close of the Board's case.

On June 15, the Board filed Exhibit B-92. The hearing continued on June 25 with the Board's case. Exhibit B-92 was admitted into evidence without objection. The Board called Ms. Pavia, Dr. Julie Bookbinder, Speech Pathologist in Darien public schools, and Dr. Judith McCarty, nationally certified school psychologist and behavior analyst, who works as a consultant to school districts and individuals. The Board rested its case. The Mother then testified on rebuttal. The Parents rested their case. None of the Parent Exhibits marked for identification were entered into evidence during the course of the hearing. The parties were asked to file proposed findings of fact and conclusions of law by July 6, which they did. To the extent that the Parents' brief relied on these exhibits, which were not admitted into evidence,

those assertions were disregarded. On July 11, the Board sent a letter advising the Hearing Officer of several minor errors in its brief. On July 12, the Board's attorneys wrote to the Hearing Officer regarding alleged misstatements of fact in the Parents' brief. Attached to the letter was a letter to Parents' attorney and excerpts from transcripts of the hearing. On July 13, the Parents' attorney wrote a rebuttal letter to the Hearing Officer disputing that his brief contained material misstatements of fact.

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

The Parents submitted the following issues for the hearing:

1. Did the Darien Board of Education (hereinafter "the Board") provide A. (hereinafter "the Student") with a free appropriate public education (FAPE) during the 2006-2007 school year?
 - A. Did the Board provide the Student with special education and related services in conformity with the Student's Individualized Education Program (hereafter "IEP")?
 - B. Did the Board provide the Student with a complete IEP within 5 days of the December 2006 Planning and Placement Team (hereinafter "PPT") meeting?
 - C. Did the Board provide the Student with a safe school environment?
 - D. Did the Board provide adequately trained professionals with the content, knowledge, and skills to serve the Student?
 - E. Did the Board provide the Parents prior notice that their child was being placed in a room with padded walls?
2. If not, is out-placement to the Rebecca School for the 2007-2008 school year appropriate?
3. If so, is the Board responsible for the costs of such outplacement?
4. Are the Parents entitled to receive an award of compensatory education for time lost due to an inappropriate program for the 2006-07 school year?

SUMMARY

The Student is a 7 year-old student who, until March 2007, attended Ox Ridge Elementary School. He would have completed his first grade year in June 2007. His Parents removed him from school in March because of a dispute with Darien about the use of what they call a “padded room.” The parties agree that he is entitled to special education under the category of Autism. Also in March, the Parents requested an out of district placement at Rebecca School in New York City. On March 26, 2007, the Planning and Placement (PPT) discussed A.’s progress on 2006-07 goals and objectives, proposed goals and objectives for 2007-08 and the Parents request for outplacement to Rebecca School. The school-based team rejected the outplacement and the Parents rejected the proposed IEP for 2007-08. In this due process proceeding, the Parents allege that the Board has failed to provide the Student with a FAPE in the 2006-07 school year in myriad ways and that he has not made progress academically or socially. Exhibit HO-1. The Board contends that the Student must be educated in the least restrictive environment (“LRE”), which is at Ox Ridge. The Board further contends that the Parents agreed to the goals and objectives of the 2006-07 IEP, that the Student has made progress on that IEP and that the program offered for 2007-08 offered the Student a FAPE in the LRE.

The Findings of Fact incorporate various portions of the Parties Proposed Findings of Fact.

FINDINGS OF FACT

1. The Student has a birth date of March 19, 2000 and was seven years old at the time of these proceedings. Exhibit B-12 at 2. A. was a member of the first grade and attended the Therapeutic Learning Center (“TLC”) at Ox Ridge Elementary School (“Ox Ridge”) in Darien for the 2006-2007 school year. Id.

2. It is undisputed that he is eligible for special education services under the category of autism.

3. The Student’s IEP year begins in March and ends the following March. Testimony of Robin Pavia.

4. In March 2005, A.’s PPT convened to conduct an annual review of A.’s program at Ox Ridge. Exhibit B-1 at 1. At this PPT, the team also discussed, among other things, A.’s most recent Functional Behavioral Assessment (“FBA”) and the Behavior Intervention Plan (“BIP”) that resulted from that FBA. Id. at 1, 62-68; Testimony, Jessica Matteis. This FBA included proactive behavior strategies to manage A.’s targeted behaviors. Id.; and Testimony, Ms. Pavia.

5. This FBA and BIP were in place as early as 2005, and remained in effect until January 2007. Testimony, Ms. Pavia.

6. During the 2005-2006 school year, the Board provided the Parents with a home program. Id.; and Exhibit B-1 at 45. Through this program, Board employees went into the

Parents' home and provided them with training to control A.'s dangerous behaviors, which included darting, as well as training with regard to A.'s toileting and interactions with his sister. Exhibit B-1 at 45-53.

7. At the Mother's request, Board staff also went to the Tumble Bees program, a community-based program, which is not associated with Darien Public Schools, with A. to implement behavior strategies and assist him in controlling his behaviors. Testimony, Ms. Pavia.

8. A.'s 2006-07 school year began on March 30, 2006 and ended on March 30, 2007. His program includes an Extended School Year (ESY) in the summer. Id.; Exhibit B-12.

9. From March 30, 2006 through June 23, 2006, A.'s IEP was delivered through the regular education kindergarten program for 11.5 hours per week and in a self-contained classroom or related service room for 13.5 hours per week. Exhibit B-12 at 36-37. The ESY program took place from July 3 through August 18, 2006, during which A. had 12 hours per week of special education, 4 hours per week of speech/language therapy and one hour per week of occupational therapy. Id. at 38-39. He also had five hours per week in the regular education classroom from July 3 through August 4, 2006. Id. at 38.

10. From August 31, 2006 through March 30, 2007, A.'s IEP was delivered through the regular education first grade classroom for 5.5 hours per week and in self-contained classroom and related service room for 15.0 hours per week. Of the 32.5 school hours, 12 hours were spent with non-disabled peers. A.'s general education participation was in physical education, art, music, library, lunch/recess, morning and afternoon routines and designated work blocks; and one and one-half hours per week of lunch bunch group with typical peers Id. at 40-41. At lunch bunch, a staff member would take two or three typically developing peers to each lunch and engage in a play activity with A., focusing on the goals and objectives in his IEP. Testimony, Ms. Pavia.

11. This IEP was formulated at a PPT meeting on March 8, 2006. An annual review of the prior year was also conducted. Present at the PPT were Ms. Pavia, the Mother, Kim Rugarber, regulation education teacher, Amy Ofiero, special education teacher, Dr. John Pioli, school psychologist, Ms. Blonder, Kristin Carbine, Occupational Therapist and Stacie Fernandes, Autism Inclusion Trainer. Id. at 2. Triennial Evaluations conducted in February 2006 by Ms. Ofiero (Achievement and Social Skills), Ms. Blonder (Speech-Language), Ms. Fernandes (Community Training at Tumble Bees), B. Spelman, RN (Individual Health Care Plan), Ms. Carbine (Occupational Therapy), Dr. Pioli (Psychological) and Physical Education Assessment were also reviewed. Id. at 69-104.

12. Ms. Ofiero, after conducting five tests and observing A., concluded that: "Concrete academic skills are an area of relative strength for A[.] whereas he performs behind his same-age peers on abstract, language-based activities and concepts, social skills, and play skills." Id. at 76.

13. The Parents stated that they were "thrilled" with Ms. Ofiero's report and very pleased with A.'s growth in language and use. Id. at 4.

14. At or before this PPT meeting, the Mother presented the team with an independent evaluation conducted in March 2005 by Dr. Felicia Morgan, a licensed psychologist with the Center for Children with Special Needs, an organization operated by Dr. Michael Powers. Exhibits B-4 and B-12 at 69; and Testimony, Ms. Pavia. The team looked at this report and ensured that the components recommended by Dr. Morgan were included in A.'s program. Testimony, Ms. Pavia.

15. To complete her evaluation, Dr. Morgan observed a videotape of A. in his home and school. Exhibit B-4 at 5. At home, A. was observed to be active and responsive to some direction, but not all. Id. At school, Dr. Morgan observed A. to be "calmer and more organized in a structured task environment," and more able to follow directions. Id. During an observation at Dr. Morgan's office, the Parent shared that A. "has made tremendous progress since last year when there was minimal speech and he is now able to use a variety of words, short phrases and even some short sentences, mixed together with 'A[.]-ese.'" Id. The Mother also shared during this observation that A. "can ask for things he wants if he is able to see the item and that communication tends to be very concrete, primarily around requesting." Id. Dr. Morgan indicated that A.'s strengths included "that he has made nice progress and responds well to systematic instruction and intensive intervention," and has a loving family committed to his success. Id. at 8. Dr. Morgan further wrote that A.'s weaknesses include his speech and language abilities, inattentiveness and distractibility. Id. at 8-9. Dr. Morgan diagnosed A. with Autistic Disorder, Receptive and Expressive Language Disorder. She made several recommendations for his program, including the following: (1) extend A.'s program to a full day, continuing with his "competent and well-trained teachers," and have the program follow an applied behavior analytic ("ABA") model; (2) implement an applied verbal approach to encourage communication and interacting; (3) one-to-one instruction and support; (4) enhance structure and routine and continue use of visual supports such as social stories, checklists, picture schedules, and sequences that breakdown tasks; (5) improve social reciprocity and social skills with peers by choosing goals from, for example, available programs including Kathleen Quill's manual (Do-Watch-Listen-Say); (6) include more opportunities to be included with typical peers. Id. at 9-11.

16. The PPT considered Dr. Morgan's report in creating A.'s goals and objectives and noted that a majority of Dr. Morgan's recommendations "were already in place." Testimony, Ms. Pavia. Further, the PPT, advised by Dr. Morgan's report, expanded A.'s time in school each week; conducted an ecological assessment; increased inclusion time in his program; incorporated prompt hierarchies and ABA approaches into his program. Id.

17. The PPT discussed whether to retain A. in kindergarten, but the Mother's desire to have him progress to first grade was agreed on. Exhibit B-12 at 6. The IEP for 2006-07 has 14 goals, with multiple objectives in each goal. Progress reports were to be made in June and December 2006 and March 2007. Id. at 11-32. In order for a goal to be considered mastered, every objective within the goal must be mastered. Testimony of Ms. Pavia.

18. On July 21, 2006, the Mother contacted Ms. Pavia and indicated that A. was demonstrating "severe behavioral prob[lems]." She asked to make two "radical" changes to A.'s IEP, which were 1) no inclusion and 2) moving him to a specialized program for more intensive language/social problems. She wanted to explore a program at CES. Exhibits P-3 and B-18 at 1.

19. On July 28, 2006, the Mother requested that a PPT be convened at the start of school in September to modify A.'s IEP to address "continuing behavioral regression." Id. In response, Ms. Pavia sent Ms. Fernandez into the Parents' home to assist the Parents in implementing strategies to control A.'s home behavior. Id.; and Testimony, Ms. Pavia. Ms. Pavia further indicated that a PPT could be convened at the beginning of the 2006-2007 school year. Id. On August 9, 2006 the Mother gave written notice that the Parents were refusing the speech therapy offered for August 7 through 18. Exhibit B-18 at 3. On August 15, 2006, the Mother wrote to Ms. Pavia that A.'s behavior was "greatly improved over the last few weeks." Id. at 5; Exhibit P-4.

20. On August 21, 2006, Ms. Pavia wrote to the Parents to advise them about staff changes for the upcoming school year. She informed the Parents that Ms. Matteis would serve as A.'s special education teacher, and that Ms. Blonder would be providing speech therapy, with Dr. Bookbinder as a speech and language consultant and diagnostician. Exhibits B-20 and P-6.

21. A PPT meeting was convened on September 21, 2006 to address the Parents' concerns. Exhibits B-22 and P-9. The PPT recommended increasing speech hours from 4.0 hours to 4.75 hours and developing a formalized sensory break to be created by Ms. Carbine. Id. at 2. The district agreed to hire A.'s private speech-language therapist, Kristina Bentley, for two hours per week of speech therapy at school. There would be an overlap of time with Ms. Blonder and Ms. Bentley to allow collaboration. Id. at 3 and 30; and Testimony, Ms. Pavia and Ms. Bentley. The services of Maura Barry, autism inclusion specialist, were offered to the Parents to help with A.'s behavior at home. The use of the "quiet room" was discussed. It was explained to the Mother that it is used on occasion and A. is using it to stay safe and calm. She offered to bring in some items for him to use there, such as music with favorite songs. Exhibit B-22 at 3; Testimony, Ms. Pavia. A's goals and objectives were not changed. The Mother did not disagree with any of the actions taken by the team at this meeting nor did she express any concerns about the use of the quiet room. Id.; and Testimony of Ms. Matteis.

22. A.'s school-based PPT consisted of the following staff during the 2006-2007 school year: Jessica Matteis and Nicole Querze, special education teachers; Allison Cafferty, applied behavior analytic consultant; Robyn Blonder, speech and language pathologist; Kristin Carbine, occupational therapist; Nancy Dineen, regular education teacher; Phyllis Kovacs, paraeducator; Robin Pavia, Director of Special Education; Dr. Julie Bookbinder, district speech and language consultant; and Dr. Christine Peck, behavior consultant. Testimony, Ms. Pavia.

23. All of A.'s teachers in the TLC program have had training in educating children with autism. In addition to masters' degrees, they have regular training by Ms. Pavia and by Dr. Bookbinder. They are sent on a regular basis to conferences and different workshops by very leading professionals in the field. Id.

24. The goals in A.'s IEP were "aligned with the regular ed[ucation] curriculum, plus the needs of the child, and the goal can only be mastered if all the objectives in that group are mastered." Id. A.'s goals and objectives were created in this manner because he responds well to sequential learning. Development of A.'s IEP was an ongoing, fluid process because of his complex needs. Id. The grade 1 curriculum overview was presented to parents at the September 2006 open house. Exhibit B-69.

25. The Parents participated in the development of A.'s goals and objectives. Testimony of Ms. Pavia.

26. A.'s educational program is based on the SCERTS communication model, which stands for Social Communication, Emotional Regulation, Transactional Support. Testimony, Ms. Matteis and Dr. Bookbinder; and Exhibit B-76 at 3. The model was developed by Dr. Barry Prizant, a speech pathologist and researcher with over thirty years' experience educating children with autism. Testimony, Dr. Bookbinder. This model is scientifically-based and peer-reviewed, and is "an activity-based model to teach language, communication, and social relatedness to children with Autism Spectrum Disorders." Exhibit B-76 at 3; and Testimony of Dr. Bookbinder. The SCERTS model is a flexible model that allows "those who are working under that model to draw in from different approaches and use them, as appropriate, with any given child." Id. Through use of a transdisciplinary approach to learning, the SCERTS model allows teachers in each discipline to understand the student's global needs and ensures generalization of skills. Id. Dr. Bookbinder provided the school staff in the TLC program with training on the SCERTS model, and on March 4, 2005, gave a presentation to parents on the model, at which the Mother was in attendance. Id.

27. In the fall of 2006, Dr. Julie Bookbinder, speech and language consultant for the Darien Public Schools, began to consult on A.'s case in the TLC program. Testimony of Dr. Bookbinder. Dr. Bookbinder had known A. since he began in the TLC program and was familiar with his needs. Her consultation involved a review of A.'s educational records, including all evaluations; formal and informal observations of A.; and collaboration with A.'s direct service providers. Id.

28. A.'s goals and objectives were created using the SCERTS model checklist. Id. Specifically, the Social Communication aspect of the model appears in A.'s visual schedule, daily mini-schedule, and goals and objectives relating to joint attention. Id.; and Exhibit B-77 at 3. Each school day, A. had a visual schedule and he would check off each task as it was completed throughout the day. Testimony, Ms. Matteis; Exhibit B-55 at 72.

29. The Emotional Regulation aspect of the SCERTS model was incorporated into A.'s program through his sensory diet, which is designed to permit optimal arousal for behavior regulation and learning. Testimony, Dr. Bookbinder; Exhibit B-77 at 3. The district appropriately integrated OT and speech into this Emotional Regulation. Ms. Carbine, A.'s occupational therapist, trained the additional members of A.'s team in how to maintain his arousal level and when to permit sensory breaks throughout his day. Testimony, Dr. Bookbinder. Similarly, Ms. Blonder, A.'s speech pathologist, trained the team members in appropriate language to use to calm him. Id.; and Exhibit B-77 at 3-4.

30. A.'s 2006-2007 program at Ox Ridge also provided Transactional Support, which refers to the programs in place to support A.'s learning. Testimony, Dr. Bookbinder. These supports included curriculum modifications, the visual schedule, sensory diet, a paraprofessional, all of the Special Education services, specialized instruction, and the therapies. Id. Consultation with Dr. Bookbinder and Dr. Peck was included to support the Parents and professionals. Id.; and Exhibit B-77 at 4.

31. A.'s team also took a transdisciplinary approach to A.'s program, which is another important aspect of the SCERTS model. Testimony, Ms. Matteis, Dr. Bookbinder, and Ms. Pavia. The transdisciplinary approach allows for input throughout A.'s day across disciplines to permit generalization of skills. Testimony Dr. Bookbinder and Ms. Pavia; and Exhibit B-77 at 6. Even though a goal or objective may concern occupational therapy skills, A.'s language abilities are also addressed in achieving that goal. Testimony, Dr. Bookbinder. A.'s direct providers consistently work together to ensure that generalization occurs and they are aware of his abilities on a daily basis through the use of data sheets, which travel with A. throughout his day. Id.; and Testimony, Ms. Pavia.

32. The district was committed to constant communication with the Parents. At the start of this school year, the school staff and the Parents sent between school and home a notebook to keep track of A.'s daily activities. Exhibits B-24 and B-42 at 51-69; and Testimony, Ms. Pavia. The Mother used this communication notebook to report on A.'s activities and behavior the previous night and the morning before school, and to inform the staff of specific issues. Exhibit B-24 at 1-2, 5-13 and 15-29; and Testimony, Ms. Pavia. The school staff used this communication notebook to report on A.'s behaviors, progress and daily activities. Exhibit B-24 at 2-6 and 8-35. In January 2007, the Mother requested that school staff initial next to each of her entries to ensure their receipt of the communication book, which they did. Exhibit B-42 at 62.

33. In addition, starting in October 2006, school staff sent home Daily Communication Logs with A. at the end of each day. Id. at 1-50; Exhibit B-53; and Testimony, Ms. Pavia. The Log indicated A.'s daily activities, the location of those activities and the school staff who was present with A. during the activity. Exhibit B-42 at 1-50; and Testimony, Ms. Pavia. The school staff wrote comments each day to describe the activities in which A. partook and, on occasion, wrote questions to the Parents on the top or bottom of the Log. Exhibit B-42 at 1-50.

34. Team meetings, outside the PPT, were conducted between school staff and the Parents twice per month. Exhibits B-27; B-34; B-43; and Testimony, Ms. Pavia. Ms. Matteis and the Mother were consistent members of these team meetings, although other team members attended meetings when requested and when able. Exhibit B-43.

35. The school staff tracked A.'s behaviors on a daily basis and behavioral information was sent home each day. Testimony, Ms. Pavia. At the start of the school year, the school team tracked A.'s behavior through Behavior Sheets. Exhibit B-52 at 1-26. These sheets required staff to tally each negative or inappropriate behavior A. exhibited. Id. School staff also indicated in writing on the sheet whether A. had been placed in the quiet room on that day. Id. at 5, 10, 14, 16 and 21.

36. On or about October 10, 2006, the team decided to collect behavior data using Antecedent Behavior Consequence ("ABC") sheets and agreed to count episodes of behavior, rather than each individual behavior. Exhibits B-25 at 1; B-43 at 6; B-52 at 27-149; Testimony, Ms. Pavia. The ABC sheets were sent home on a daily basis. Id.

37. The ABC sheets require school staff to write out each behavioral incident, explaining the antecedent to the behavior, the actual behavior, the consequence for the behavior and the duration of the entire behavior incident. Exhibits B-52 at 27-149; B-55 at 7; and Testimony, Ms. Pavia. As with the Behavior Sheets, the school staff indicated on the ABC sheet if and when A. used the quiet room on a particular day. Exhibit B-52 at 27, 31, 40, 115 and 125. The Mother frequently wrote comments to school staff in the communication log, which shows that the Parents received these data sheets. Testimony, Ms. Pavia. The Mother agreed in her testimony that she knew the quiet room was used and that she consented to its use. Testimony, Mother.

38. At a January 2007 team meeting, the Mother shared that she had looked through all of the ABC data and determined that A.'s behaviors had decreased. Exhibit B-43 at 19. At the team meeting on February 1, 2007, the Mother was shown the new ABC sheet as reviewed by Dr. Peck. The Mother liked it. Id. at 22.

39. At no time did the Mother report to Ms. Pavia that the Parents were not receiving the communication log, behavior data sheets, or ABC sheets. Testimony, Ms. Pavia. The Mother had been conducting her own review of behavior data from September 21, 2005 through March 31, 2006. She was comparing it with behavior data she was receiving on an ongoing basis in the 2006-07 school year. See exchange of e-mails between the Mother and school staff on October 9, 2006 in Exhibit B-25.

40. The Parents were well aware of their ability to contact and communicate with Board staff, over and above the formal meetings, and often did so through e-mail. Exhibit B-75.

41. In the morning of February 27, 2007, A. had a particularly extensive behavior incident and the staff documented the incident in a report to Ms. Pavia and Dr. Donald Fiftal, Superintendent of Schools. Exhibit B-40; and Testimony of Ms. Blonder. The Parents were notified of this incident through the ABC sheet sent home with A. that afternoon. Exhibit B-40 at 3. The incident began when the Mother accompanied A. to school in the morning. A. had a significantly difficult time separating from his Mother. He was screaming, crying and making animal noises. Id. at 1-2. After the Mother left the school, A. still did not calm down and was thus escorted to the quiet room where he was supervised by Ms. Carbine and Phyllis Kovacs, his one-to-one paraprofessional. Id. at 2. A. eventually calmed down and proceeded with his day after Ms. Carbine provided deep pressure and soothing words. Id. Ms. Blonder, who was present at the start of the incident, testified that the incident was "atypical" because of the Mother's extensive involvement and the fact that the Mother is not ordinarily part of A.'s school-based team or involved in behavior incidents at school. Testimony, Ms. Blonder. As is the school's procedure, this report is for internal purposes, although the Parents were notified of the incident through the ABC sheet. Testimony, Ms. Pavia.

42. At the December 19, 2006 PPT meeting, a consultation to the team by Dr. Peck to develop a new FBA/BIP prior to the annual review in March was proposed. Exhibit B-29 at 3. The school team conducted a FBA in January 2007. Exhibit B-33. The FBA is conducted to assist in the creation of a BIP that includes specific and defined strategies to assist staff in handling A.'s behaviors. Id. at 1. "The goal in the development of a BIP is to provide [A.] with

an opportunity to effectively manage and control his own behavior so that he may continue to experience success in school.” Id.

43. The behavior targeted by the FBA was “[o]ff task behavior defined by screaming, dropping to the ground, banging fist, crying, repetitive verbal requests, and (script like) attempted verbal and physical requests.” Exhibit B-33 at 1. To determine the function of this targeted behavior all team members, including the Parents, completed the Motivation Assessment Scale. Exhibits B-32 and B-33 at 1; and Testimony, Ms. Matteis. An analysis of the completed scales indicated that A. used the targeted behavior to obtain something tangible, such as a preferred activity or object, or to avoid an activity. Exhibit B-33 at 1.

44. The FBA resulted in the development of a comprehensive BIP. Id. at 4; and Testimony, Ms. Matteis. A.’s BIP first instructs staff to control A.’s environment to enable success and minimize behavioral outbursts where such would regularly occur. Exhibit B-33 at 4. The BIP suggests modifications for five settings or situations during A.’s day: transitions; ending a preferred activity; beginning a non-preferred activity; attempting a task that is novel and/or challenging; implication of A.’s sensory breaks. Id. These modifications include increasing the structure of every activity and using a “silent timer” to indicate the duration of an activity. Id.

45. The BIP also included additional proactive strategies for staff to employ with A. Id. These strategies included the use of a visual schedule to show upcoming activities and make expectations clear and cueing and modeling appropriate behavior by encouraging A. to use his words to communicate. Id.

46. Finally, the BIP included reactive strategies to be used when A. exhibited the targeted behaviors. Id. Reactive strategies included the use of verbal and visual cues, which differed depending on the behavior exhibited. Id. at 5. For example, if A. exhibited dropping or darting, the staff members should tell A. that it was time for a certain activity and then explain the series of activities in a “first...then...” format. Id. The staff member should wait one to two minutes and then help A. back to the task and write down the specific directions. Id.

47. At Ms. Pavia’s request, Dr. Peck reviewed the FBA conducted by the school staff and conducted a home visit. Testimony, Ms. Pavia. Dr. Peck agreed with the conclusion that A. was highly motivated by tangible items and escaping from activities. Id.; and Exhibit B-37 at 5. In addressing the Parents’ belief that transitions triggered A.’s behaviors, Dr. Peck explained that, although A.’s behaviors occurred during transition times, the function of the behavior was actually to obtain a desired item or escape from an activity. Exhibit B-37 at 5. The Mother insisted in her testimony that eliminating the transition times in A.’s program would eliminate “60% of the meltdowns.” She gave this as the reason why the Parents are asking for an outplacement of the Student. Testimony, Mother.

48. The Parents were provided with a copy of the FBA and BIP, before it was implemented, and the TLC staff implemented A.’s BIP. All staff members used it. Testimony, Ms. Matteis.

49. The staff members in the TLC classroom are coached in physical management training (“PMT”). Id.; and Testimony, Ms. Pavia and Ms. Blonder.

50. Ms. Pavia and Ms. Blonder are certified PMT coaches. Id. Ms. Pavia and Ms. Blonder provide re-certification instruction for Board staff. Testimony, Ms. Pavia and Ms. Blonder.

51. Ox Ridge has a quiet room, which is located on the same hallway as the kindergarten and first grade classrooms, near the main office and near the nurse's station. Testimony, M. Pavia. This room is used by students within the school who have difficulty regulating their own behavior and need a quiet, contained area to calm down so that they can return to their classrooms to be educated. Id. If a student is extremely disruptive due to his behavioral outburst, or is hurting himself or others, the student can be taken to the quiet room to calm down and stay safe. Testimony, Ms. Matteis.

52. At the beginning of each school year, the TLC staff receives from Ms. Pavia protocol for use of the quiet room. Testimony, Ms. Matteis.

53. Prior to escorting a student to the quiet room, school staff use a variety of methods to calm the student, including talking the student through the problem, instructing the student to use words to express his or her emotions, and using visual cues to allow the student to express his or her needs. Id.; and Testimony, Ms. Pavia. Use of the quiet room to assist students in calming down is a last resort. Testimony, Ms. Matteis.

54. Starting in the spring of 2006, A. "was in distress over a number of changes in his life." His behavior was "more prolonged and more intense and disruptive, and at that time, his teacher, Amy Ofiero, with [the Mother]'s knowledge, switched to walking him to the quiet room." Testimony, Ms. Pavia. On occasion, when other techniques were not effective, A. used the quiet room to calm down during a behavioral outburst. Testimony, Ms. Matteis. Before the quiet room was used, school staff looked to the proactive strategies indicated in A.'s FBA. Id.; and Exhibit B-1 at 64 and 67. These strategies included taking A. to the mini-gym, walking with him, allowing him to use the swing, or showing him his mini-schedule to help him return to the expectations for the day. Testimony, Ms. Matteis. When A. became upset and could not regulate his sensory needs, school staff would often give him the option of going to the quiet room to calm down, which he chose on occasion. Id.; and Testimony, Ms. Pavia.

55. The Parents were aware, from the beginning of the school year, that the quiet room was part of A.'s program. Testimony, Ms. Pavia. Prior to March 2007, the Parents never objected to the use of the quiet room for A. Id.

56. When in the quiet room, A. was always supervised by a staff member, who was either in the room with him or right outside the open door. Id.; and Testimony, Ms. Matteis. School staff would often give A. pillows to lie on while he was in the quiet room, or apply deep pressure to assist him in calming. Id.

57. A.'s staff noted on his Behavioral Sheet or ABC sheet when he used the quiet room, and whether the use was by choice. Exhibit B-52 at 5-125. That data "was sent home daily to the parent." Testimony, Ms. Pavia.

58. On one occasion when A. had elected to enter the quiet room at the beginning of the day, he stood up in the room when he heard the school principal over the public address

system, which amplified into the quiet room. Testimony, Ms. Matteis. A. proceeded to recite the Pledge of Allegiance along with the principal and then put his head down for the moment of silence. Id. There was no credible evidence that A. was frightened by the quiet room, nor that it was it used in a harsh or punitive way.

59. During February vacation in 2007, the Board renovated the quiet room at Ox Ridge. Testimony, Ms. Pavia; and Exhibit B-55 at 7. These renovations included adding gymnasium padding to the walls and floor of the room and mesh wiring in front of the window in the door to prevent the glass from being smashed. Id.; and Testimony, Ms. Matteis. The renovations were made to ensure the safety of the students placed in the room. Id. The padding was specifically added for the safety of another student who was self-injurious. Testimony, Ms. Pavia. Parents with students at Ox Ridge were not personally notified of these changes to the quiet room because it did not alter the procedures for use of the room. The physical location and name of this room remained unchanged. Id.

60. A. received a total of 4.75 hours per week of speech and language therapy, delivered by both Ms. Blonder, the Board's speech pathologist, and Ms. Bentley, A.'s private speech pathologist, who was paid by the Board to provide two hours of speech therapy at school. Id.; Testimony, Ms. Bentley; and Exhibit B-22 at 3. Ms. Blonder provided speech therapy on Monday, Tuesday and Thursday, while Ms. Bentley provided therapy on Tuesday and Friday. Testimony, Mother and Ms. Pavia. Ms. Bentley commenced delivery of services to A. in September 2006 through her contract with the Board. Testimony, Ms. Bentley.

61. The Parents presented no credible evidence during the hearing that speech and language services were not provided as detailed in A.'s 2006-2007 IEP.

62. Ms. Bentley received A.'s IEP upon her commencement of service and was instructed, as part of her contract with the Board, to provide speech services consistent with the speech and language goals and objectives in A.'s IEP. Id.

63. Ms. Bentley and Ms. Blonder had approximately fifteen minutes of "co-treat" time within their schedules. Id.; and Testimony, Ms. Pavia. Ms. Blonder and Ms. Bentley used this co-treat time to, for example, discuss the items they were working on with A. or observe one another provide therapy to A. Testimony, Ms. Bentley. Ms. Bentley and Ms. Blonder had a "professional relationship" through which they could express their opinions concerning A.'s treatment. Ms. Blonder was receptive to her ideas and professional opinion, even though they may not have changed their own professional opinions. Id.

64. As part of A.'s team, Ms. Bentley was instructed by Ms. Blonder to provide data on A.'s progress using the data sheets used by the team. Id.; and Exhibit B-75 at 1-2. However, Ms. Bentley decided, on her own and without consulting any other team member, not to complete the data sheets provided by the Board. Testimony, Ms. Bentley. Ms. Bentley completed an evaluation of A. in February 2007, at the request of the Mother; however, Ms. Bentley did not provide the evaluation to the Board, share it with the PPT, or even mention to the PPT that it had been conducted. Id.

65. Despite differences in her professional opinion as to some of A.'s speech and language goals and objectives, Ms. Bentley was able to effectively contribute to A.'s IEP. Id. Ms. Bentley submitted objectives for the PPT's consideration at the December PPT meeting. Those objectives were considered by Ms. Blonder and several suggested objectives were incorporated into A.'s 2007-2008 IEP, which was created in February and March 2007. Id.; and Exhibit B-75 at 2.

66. Ms. Bentley, who testified on the Parents' direct case, agreed that "there were a number of appropriate things in [A.'s] program," such as his services hours, his one-to-one time, his hours of special education services, and hours of speech therapy. Testimony, Ms. Bentley.

67. A PPT was convened on December 19, 2006, to review and revise A.'s IEP. Exhibit B-29 at 1. Present at this PPT were the Mother; Ms. Pavia; Ms. Dineen, A.'s regular education teacher; Ms. Matteis and Nicole Querze, A.'s special education teachers; Ms. Blonder and Ms. Bentley, A.'s speech pathologists; and Ms. Carbine, A.'s occupational therapist. Id. The Mother explained at the start of the meeting that she had already received her procedural safeguards and did not need another copy. Id. at 2.

68. The team, including the Mother, discussed adjusting A.'s "specials," such as physical education and art. Id. The team agreed to terminate A.'s regular physical education and library classes and replace them with an additional thirty minutes per week of adaptive music. Id. at 2 and 29; and Testimony, Ms. Pavia. The team further agreed to include lunch bunch each day of the week, alternating between lunch with first grade and kindergarten typical peers. Id. These changes resulted in A. spending 7.75 hours per week receiving special education and 28.5 hours per week with typical peers. Exhibit B-29 at 30.

69. Speech and language goals and objectives were discussed during this meeting. Id. at 2. Ms. Bentley and Ms. Blonder actively participated in the discussion of A.'s speech goals and objectives. Id.; and Testimony, Ms. Bentley. There were no changes made to the goals and objectives at this meeting. Exhibit B-29 at 3.

70. The PPT agreed to write an updated FBA with the assistance of Dr. Christine Peck, an experienced behavior specialist who holds her doctorate in applied psychology. Id. at 2-3; Exhibit B-83; and Testimony, Ms. Pavia. Ms. Pavia brought in Dr. Peck to consult with the team because Dr. Peck was well versed in the SCERTS model, having been trained in educating children with autism by Dr. Barry Prizant, the developer of the SCERTS model. Testimony, Ms. Pavia. Dr. Peck had the necessary behavior expertise and could provide the team with hands-on support. Id. The school team provided the Parents with annotated goals and objectives indicating A.'s progress during the first half of the school year. Exhibit B-29 at 7-31. Although the Mother testified at the hearing that she did not receive an annotated IEP at this December meeting, she stated at a PPT meeting in February 2007 that she had received these documents. Testimony, Mother; and Exhibit B-37 at 4. The team agreed that the goals and objectives in A.'s IEP did not need updating. Testimony, Ms. Pavia.

71. No other options were considered and rejected at this meeting. The Mother did not object to any action proposed by the team. Id.; and Exhibit B-29 at 3.

72. The annual review process for A.'s program began on February 12, 2007, and was continued on March 26, 2007. Exhibits B-37 and B-55. The Parents were sent notice of this meeting by letter dated February 5, 2007, and a copy of the procedural safeguards was included with this notice. Exhibit B-37 at 1; and Testimony, Ms. Pavia. Present at the February 2006 meeting were the Parents; Ms. Pavia; Ms. Dineen, A.'s regular education teacher; Ms. Matteis and Ms. Querze, A.'s special education teachers; Ms. Blonder and Ms. Bentley, A.'s speech pathologists; Ms. Carbine, A.'s occupational therapist; and Dr. Peck, clinical psychologist and behavior specialist. Exhibit B-37 at 2. At the commencement of the meeting, the Mother confirmed receipt of her procedural safeguards. Id. at 4.

73. The team reviewed A.'s progress over the year, specifically how much he had progressed on each of his goals and objectives. Id. The school staff noted A.'s progress on his IEP goals through annotations listed under each goal and objective. Id. at 7; Exhibit B-55 at 53-71. Ms. Dineen presented a report on A.'s progress. Exhibit B-36. The annotations and report indicated that A. had mastered 24 of his 51 objectives; he made satisfactory progress on 23 of the remaining 27 objectives. Exhibits B-55 at 53-71; B59 at 5 of 13; and Testimony, Ms. Pavia. A. made satisfactory progress on or mastered 92% of his objectives. The Mother indicated that she had "noticed a lot of progress in his writing that is very nice," and the use of more spontaneous language at home, although she expressed concern about A.'s progress with regard to his communication skills and understanding certain concepts. Exhibit B-37 at 4. Ms. Bentley noted that she had "seen a lot of progress as well." Id.

74. A. had progressed on almost all of the objectives in his IEP for the 2006-2007 school year, even if that progress was minimal. Testimony, Ms. Pavia. For example, on objective number five of goal eight, it appears that A.'s percentage on this task decreased between June 2006 and December 2006; however, the decrease occurred once A. was able to respond to the task without a verbal prompt. Id. "The appropriate way of delivering services is to have a hierarchy of prompts and prompt fading, and that is something we do." Id.

75. Dr. Peck stated that she became involved with A. during the FBA development. She noted that A.'s behaviors had been decreasing throughout the year. Dr. Peck commented that: "the team has done a wonderful job of turning the room around. They are helping him through his schedule and setting him up for his transitions." Exhibit B-37 at 5.

76. The Mother expressed her desire to have A. in a classroom with peers who are at the same developmental age, rather than typical peers. Id.; Testimony, Ms. Pavia.

77. The team discussed the goals and objectives proposed for the 2007-2008 school year. Exhibit B-37 at 5-6. After discussion, the team agreed to revise the goals and objectives and reconvene the PPT. Id. at 6-7. No actions were refused at this meeting, and no additional options were considered. Id. at 7.

78. On March 14, 2007, the Parents withdrew consent for all testing and evaluation of A. Exhibit B-45; Testimony, Ms. Pavia.

79. On March 18, 2007, the Parents prohibited school staff from placing A. in the quiet room at Ox Ridge, based on “significant changes” that had been made to the room. Exhibit B-47; and Testimony, Ms. Pavia.

80. The Mother has no objection to the quiet room itself, only to its padding. Testimony, Mother.

81. On March 18, 2007, the Parents informed Ms. Pavia, in writing, that they would be unilaterally placing A. at the Rebecca School in New York, New York, at public expense, for the 2007-2008 school year. Exhibit B-50; Testimony, Ms. Pavia. Ms. Pavia responded to the Parents’ letter by informing them that their unilateral placement would be discussed at the upcoming PPT. Exhibit B-51.

82. On or about March 19, 2007, the Parents removed A. from Ox Ridge. Exhibit B-54; Testimony, Ms. Pavia. A. has not returned to the Darien Public Schools since that time, although he has never been formally withdrawn from school. Testimony, Ms. Pavia.

83. The PPT reconvened A.’s annual review on March 26, 2007. Exhibit B-55 at 3. Notice of the reconvened meeting was sent to the Parents in a letter dated March 9, 2007. Id. at 1. Present at this meeting were the Parents; Ms. Pavia; Ms. Dineen, A.’s regular education teacher; Ms. Matteis and Ms. Querze; Ms. Blonder and Ms. Bentley; Ms. Carbine; Dr. Peck; and Dr. Julie Bookbinder. Id. at 3. The Mother had been provided her procedural safeguards at the February 2007 meeting. Exhibit B-37 at 1.

84. The team reviewed the goals and objectives for the 2007-2008 school year, which had been revised by the school staff based upon the team’s input at the February 2007 meeting. Exhibit B-55 at 5. The Mother stated that the goals and objectives were unacceptable. She added that she “would not spend two hours of her time teaching Darien staff how to write goals and objectives.” Id.

85. Thereafter, Dr. Peck presented to the team her behavioral consultation summary of A., which was provided to the Parents and discussed with them. Id. at 6, 47-50. In her report, Dr. Peck explained that she had reviewed the FBA conducted in January 2007 and that she concurred with the team’s conclusions regarding A.’s behavior. Id. at 47. Dr. Peck had created a graph of A.’s behaviors throughout the school year, which she attached to her report, which demonstrated a “decreasing trend since September in both frequency and duration.” The “[m]ost dangerous behaviors (those including aggression and/or self-injurious behavior) have not been observed since January 24, 2007.” Id. at 46-48. Dr. Peck also said that: “it is not necessary [that A.] be full time in a self contained program,” although he should have some small group time to supplement his inclusion in the first grade classroom. Id. at 48. Dr. Peck noted that several aspects of A.’s program were well developed and should continue, including structured transitions; the use of the daily schedule; sensory breaks; and highly structured small group activities within the TLC. Id. at 48.

86. There was a discussion of what peers would be appropriate for A. Dr. Peck said that “appropriate peers” for A. would depend on what skills were being targeted. Id. at 6. Appropriate peers for A. in terms of assisting in the development of language skills would be

typical peers. In response to a request from the Mother, Dr. Peck offered to conduct a comprehensive program evaluation for A. in May 2007, when her schedule permitted. Id.

87. Ms. Pavia reviewed her March 8, 2007 observation report, which was submitted to the team. Id. at 6, 51-52. Ms. Pavia observed A. in the TLC room working with Ms. Matteis. Id. at 51-52. During this observation, A. demonstrated abilities to transition between tasks independently, sequence a story with minimal prompts, and successfully identify 70% of his sight words. Id. at 51. Ms. Pavia observed A. mark off all of his completed activities, one by one, on his mini-schedule, and then read the next activity. A. also responded verbally to questions by Ms. Matteis and spontaneously greeted another student. Id. at 51-52.

88. Ms. Pavia noted that she had received the Mother's letter relating to outplacement at the Rebecca School, but that the team believed that the program at Ox Ridge was appropriate for A. Id. at 7. The district continued to offer an independent consultant for A.'s program, as well as "home support of four hours of home programming to facilitate generalization, help with behavioral strategies, implement schedules, and assist with transitions." Id.

89. Ms. Blonder suggested discussing the specifics of inclusion in the ESY program at a team meeting. The Mother stated that there would not be another team meeting and that A. would not be returning to Ox Ridge. Id. At the conclusion of the meeting, the team proposed to, among other things, implement the IEP developed at the annual review and implement the January 2007 FBA and BIP. Id. at 8. The Parents' request for outplacement at the Rebecca School was rejected because the district proposed an appropriate program for A. in the least restrictive environment. Id.

90. On May 14, 2007, Ms. Pavia received from the Parents' attorney a letter detailing the home instruction that A. was receiving at the Parents' expense. Exhibit B-63. This instruction included the following: (1) speech therapy five hours per week with Ms. Bentley; (2) occupational therapy one and one-half hours per week at Rehabilitation Associates; and (3) five hours per week of "educational services" at Shades of Learning in Stamford, Connecticut. Id. Shades of Learning is not a certified special education school. Testimony, Ms. Pavia.

91. In April 2007, Dr. Bookbinder completed an annual consultation report of A.'s program and his progress. Exhibit B-59; Testimony, Ms. Pavia and Dr. Bookbinder. She completes these reports for all students with whom she consults within the Darien Public Schools. Testimony, Dr. Bookbinder.

92. Dr. Bookbinder reviewed A.'s educational record, including Dr. Felicia Morgan's 2005 independent evaluation report provided to the Board in March 2006, A.'s triennial evaluations and A.'s IEPs, and observed A. at Ox Ridge on four dates in February and March 2007. Id.; and Exhibit B-59. Dr. Bookbinder's review of Dr. Morgan's report was consistent with the requirement that the school district review any independent evaluation provided by the parent. Testimony, Ms. Pavia and Dr. Bookbinder. Dr. Bookbinder considered the data collection and analysis by Dr. Morgan to be an important benchmark for determining A.'s progress. Testimony, Dr. Bookbinder. Her report detailed the results from all of the evaluations conducted as part of A.'s triennial review because these results provided a comprehensive view of A. and provided baseline data. Id.

93. Through her annual consultation review, she determined that A. had mastered 24 of his 51 objectives. Id.; and Exhibit B-59 at 5. A.'s 2006-2007 IEP contained many complex objectives that had several parts. Progress was made on most of these objectives. Id. A. "made significant progress on many of the objectives that were not mastered according to the IEP criteria." Exhibit B-59 at 5. While 51 objectives is a lot of objectives for any student, it was not unusual for a student to make progress on, but not master, every objective. Testimony, Dr. Bookbinder.

94. In response to the Mother's concern regarding the decrease in A.'s Mean Length of Utterance (MLU) since June 2005, Dr. Bookbinder explained that MLU is one measure of language development, but MLU does not capture, for example, an individual's vocabulary, consistent use of language or ability to ask questions. Id. Further, the decrease in A.'s MLU was not an indication of lack of progress. Rather, his MLU decreased because his language skills were developing. A. demonstrated a gestalt style of language learning, meaning that he was able to use long, complex utterances but did not comprehend the meaning of his utterances. As A.'s language abilities were developing, he was using more complex words, understanding the meaning of those words, and putting them together into creative utterances. This more advanced speech lowered his MLU. Id.

95. In comparing her observations of A. for this review and her knowledge of A., through informal observations since he began the TLC program, she noticed tremendous progress in his speech and communication abilities. Id. For example during his lunch bunch group, A. was observed to request items and interact with peers with minimal cueing from adults. Id.; and Exhibit B-59 at 7. She also observed that he was oriented throughout the lunch bunch activity. Testimony, Dr. Bookbinder. She noted several instances of spontaneous speech during his work sessions in TLC and during his speech and language therapy session with Ms. Blonder. Exhibit B-59 at 11-12.

96. The Parents contend in their due process complaint that the Board failed to provide A. with "an adequately trained paraprofessional with the content knowledge and skills to serve a child with autism." Exhibit HO-1.

97. A.'s assigned paraprofessional during the 2006-2007 school year was Phyllis Kovacs. Testimony Ms. Matteis.

98. The Parents failed to present any evidence or testimony during the hearing as to the alleged lack of qualifications or experience of Ms. Kovacs in working with children with autism.

99. Ms. Kovacs is an experienced staff member with adequate training, content knowledge and skills to serve A. Specifically, she has a Bachelor of Arts in Elementary Education from Brooklyn College, in Brooklyn, New York, and is a Certified Public School Teacher in New York State. Exhibit B-84. Further, Ms. Kovacs has been instructing children with autism in Connecticut since 1997, as an ABA tutor and a paraprofessional. Id. Additionally, Ms. Kovacs has attended numerous workshops concerning children with special education needs, including children with autism. Id.

100. The TLC program at Ox Ridge in Darien, Connecticut, is an appropriate placement for A. in the least restrictive environment. Testimony, Ms. Pavia, Dr. Judith McCarty and Ms. Bentley.

101. Dr. Bookbinder is a nationally certified speech pathologist with over thirty years experience educating children with autism. Exhibit B-81; and Testimony of Dr. Bookbinder. A.'s team properly based his program on the SCERTS model, a peer-reviewed, scientifically based methodology for educating children with autism. Testimony, Dr. Bookbinder. The SCERTS model provided flexibility for A.'s program and allowed for the use of several methodologies, a preferred strategy for working with children with autism. A.'s program stressed development of social/communication skills and emotional regulation. Additionally, support was provided for all of A.'s teachers and service providers, which included frequent consultation between Ms. Blonder and Dr. Bookbinder, and a transdisciplinary approach was applied to service delivery to enhance generalization of skills. Id. The analysis of A.'s language abilities at the time of his triennial evaluations (February 2006), compared with observations in March 2007, demonstrate growth in A.'s language abilities. Id. A. now has "elements of language" that were "at least one step more developed than what he was producing at the time of his triennial." Id.

102. Ms. Blonder is a certified speech pathologist with approximately eight years experience educating children with autism. Exhibit B-90. A. made progress on his speech and language goals during 2006-2007, improving his speech and language skills. Testimony, Ms. Blonder.

103. Ms. Pavia is an educator with 15 years experience with children with autism and developing programs for children with autism. Exhibit B-80. A. demonstrated progress on all of his goals during the 2006-2007 school year and the program provided him an appropriate education in the least restrictive environment. Testimony Ms. Pavia.

104. Dr. McCarty is a nationally known psychologist who is board certified in behavior analysis. Exhibit B-82. Dr. McCarty holds a bachelor of arts degree in psychology, masters' degrees in counselor education and education administration, and a doctorate in special education. Id.; and Testimony, Dr. McCarty. In addition to her board certification in behavior analysis, Dr. McCarty is a nationally certified school psychologist and a licensed professional counselor. Id. Dr. McCarty has presented on issues relating to autism for national organizations, as well as parent groups, and was appointed by the Governor of Connecticut to sit on the State Advisory Council for Special Education. Id. She was recently selected as part of a national standards project to review autism research and evaluate the best procedures for educating children with autism. Id.

105. In reviewing Dr. Morgan's evaluation of A. and various other records and video tape of A.'s behavior, Dr. McCarty determined that the TLC program provided A. with all of the appropriate services and supports to permit him to succeed. Exhibit B-78 at 3-5. Specifically, Dr. McCarty found the program at Ox Ridge to be "consistent to a T" with the recommendations made by Dr. Morgan. Id.; and Testimony, Dr. McCarty. The school staff at Ox Ridge properly and effectively collect data concerning A.'s daily activities and behavior for easy interpretation and determination of A.'s progress. Id. "The standard in the field of Autism is evidence based

programming consisting of data collection procedures and using scientifically proven techniques. . . . Darien is following this benchmark. . .” Exhibit B-78 at 3. The school staff organize A.’s daily schedule to ensure consistency; plan for generalization of skills through home visits and interaction with typical peers; and provided ABA techniques where appropriate. Exhibit B-78 at 4-5. These procedures and techniques are not only scientifically based, but also well established as appropriate in educating children with autism. Id. The TLC program at Ox Ridge is appropriate to educate A. in the least restrictive environment. Id. at 5; and Testimony, Dr. McCarty.

106. Research has found the use of an exclusionary time out room to be an effective technique to change problem behavior. It should be closely monitored by staff and parents should be informed of its use. The staff should have an FBA that “delineates least intrusive approaches to use first to change behavior.” Exhibit B-78 at 4. The Ox Ridge quiet room met all these parameters. The addition of padding in the room “only adds to its safety for the child who is self-injurious which A[.] could be on occasion.” Id.

107. The Rebecca School opened in September 2006 and currently serves 53 students, 51 of whom are autistic and none of whom are typical children. Testimony, Tina McCourt. There are no non-disabled students at the Rebecca School. Id. The only interaction Rebecca School students have with typical peers during the school day is once per week through a swimming class. The school also invites typically developing high school students to work in the classrooms. Id.

108. The school is physically located on 30th Street, between Madison Avenue and Park Avenue, in New York, NY, over one hour away from Darien, Connecticut, and is housed in a twelve-story building. Id.; and Exhibit B-65 at 1; Testimony, Ms. Pavia. The school uses seven floors in the building, floors one through three and five through seven, which are connected by stairs and two elevators. Testimony, Ms. McCourt and Ms. Pavia. The elevators are operated by push button and are not secured by a safety device. Exhibit B-65 at 2; Testimony, Ms. Pavia. The only outdoor area for the students is a rooftop playground, access to which requires students to take the elevator to the top floor, and then climb a flight of stairs. Id.; and Exhibit B-65 at 4. The physical structure of the Rebecca School would not be a safe environment for A. to be educated. Testimony Dr. McCarty. The hour-long commute to the Rebecca School would only encourage A.’s perseveration on cars, perseveration that “needs to be controlled and transferred to more appropriate play behavior and language.” Exhibit B-78 at 3.

109. The Rebecca School does not collect data concerning the daily functioning of their students. Testimony, Ms. McCourt, Ms. Pavia and Dr. McCarty. The Rebecca School also does not take data on, or have any clear procedure on the tracking of, a student’s behavioral issues. Testimony, Ms. McCourt. FBAs are not completed routinely at the Rebecca School, although Dr. Gil Tippy, the school’s clinical director, explained to Ms. Pavia and Dr. McCarty that an FBA can be completed if necessary. Exhibit B-65 at 4; and Testimony, Dr. McCarty.

110. Each floor of the building has a quiet room and a sensory gym. Exhibit B-65 at 2 of 15; and Testimony, Ms. McCourt and Ms. Pavia. The quiet rooms have windows in the doors that are covered by mesh wiring. Testimony, Ms. Pavia; and Exhibit B-65 at 2. A child may

request to use this room and “it’s also used if the child is having a hard time in the classroom and isn’t able to really regulate themselves.” Testimony, Ms. McCourt. Staff at the school will “move [children] into a quiet room” if necessary. This movement occurs by “two people on either side, under their elbows, helping them to move in if they’re having a really hard time.” Id. Ms. McCourt has not been educated in PMT. The staff members using such techniques are not trained in PMT. Id.

111. The pairing of children with autism and older typical children is “unheard of in the educational literature.” Exhibit B-79 at 3; and Testimony, Dr. McCarty. This pairing of high school-age children and children with autism at the Rebecca School may serve to satisfy the school’s staffing needs, rather than educational reasons. It does not provide the child with autism with an appropriate education in the least restrictive environment. Id.

112. The Rebecca School does not employ any of these behavioral techniques recommended by Dr. Morgan for A.’s program including ABA procedures, tasks with multiple steps, modeling behaviors, prompting and positive reinforcement. Exhibit B-78 at 1. Should A. be placed at the Rebecca School, he is “likely to regress in his skills,” based on the fact that the school does not allow for inclusion with typical peers, application of ABA techniques, generalization of skills, or improvement of behavioral issues. Id. at 5.

113. The Student benefits from interacting with typical peers. Testimony of Ms. Pavia and Dr. McCarty. The program offered by the Board gives the Student access to typical peers who serve as models of appropriate social behavior and language development, which is very important for a child with autism. 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 300.8(c)(1).

2. The party requesting the hearing has the burden of going forward with the evidence. In all cases, the Board has the burden of proving the appropriateness of a program or placement by a preponderance of the evidence. Regs. Conn. State Agencies Section 10-76h-14(a). In cases where a finding is made that the Board’s program or placement or proposed program or placement is not appropriate, the party requesting reimbursement for a unilateral placement must prove the appropriateness of such placement by a preponderance of the evidence. Section 10-76h-14(c). If the Board’s program or proposed program is appropriate, there is no need to determine the appropriateness of the proposed unilateral placement. There is no dispute concerning the standard of proof.

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 academic and functional goals, designed to –(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child’s other educational needs that result from the child’s disability.” 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.320(a)(2)(i); 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 initial or most recent evaluations, and the academic, developmental, and functional needs of the child. 34 C.F.R. Section 300.324(a)(1). 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. Ms. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)).

5. 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.

6. As for the first prong of the Rowley inquiry, the Parents argue that there are numerous significant procedural violations in this case. In their due process request (“Request” or “Complaint”), the Parents raise three specific claims of procedural violations allegedly committed by the Board: (1) the Board “fail[ed] to consider parent input”; (2) the Board failed to consider Christina [sic] Bentley’s (SLP) input”; and (3) the Board failed to provide the December 2006 IEP to the Parents within five days of the PPT meeting. To the extent that the Parents have expanded on these issues in their brief, they are not considered. Only the issues specified in the Complaint (Exhibit HO-1) are properly before this Hearing Officer.

7. In this case, the record is clear that the Parents' received or were offered a copy of their procedural safeguards at each PPT meeting. The Mother’s testimony acknowledged that they received proper notice of, and fully participated in, all PPT meetings. The PPT minutes outline numerous comments, suggestions and requests made by the Parents, primarily the Mother. The PPT also considered Parents' psychologist's (Dr. Morgan) input regarding the 2006-2007 IEP, as well as the outside speech and language therapist’s (Ms. Bentley) regarding the proposed IEP for 2007-2008. The Board even hired Ms. Bentley to provide two hours of speech services to the Student at school from September 2006 through March 2007. In September 2006 the PPT added time for speech and language services and in December 2006 the team eliminated regular physical education and library and added adaptive music, all at the request of the Mother. In response to her concerns about behavior, the PPT retained the services of Dr. Peck to review the FBA and BIP. The team also undertook the development of a new FBA and BIP in the fall of 2006 with Parent participation in the questionnaires. The mandate in IDEA that the IEP team “considers” the concerns of the Parents does not require that it adopt whatever changes the Parents request. As to the third claim regarding the December 2006 IEP, there was no evidence

introduced in the record by the Parents to support this claim. They failed to meet their burden of going forward with the evidence on this claim. The Board complied with 34 C.F.R. Section 300.324(a)(1)(ii). 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 Board has satisfied the first part of the Rowley test by meeting the procedural requirements of the IDEA. In addition, the Board communicated daily with the Parents, offering the Parents the opportunity to raise concerns or questions through daily communication sheets. The Board also offered team meetings outside of the PPT twice per month. These meetings allowed the Parents and relevant Board staff the opportunity to discuss face-to-face the Student's progress, as well as any concerns. Finally, as evidenced by the parties' exhibits, the Parents had ample opportunity to provide input to staff through e-mail.

8. Even if the Parents had proved a procedural violation, which they did not, they did not satisfy an additional requirement of IDEA. In order for a given alleged procedural violation to be considered sufficiently significant to render invalid a proposed IEP or result in reimbursement for a unilateral placement, a procedural violation must have resulted in a denial of FAPE to the student. IDEA provides:

- (i) In general. Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
- (ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies –
 - (I) impeded the child's right to a free appropriate public education;
 - (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
 - (III) caused a deprivation of educational benefits.
- (iii) Rule of construction. Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this subsection.

20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. 300.513. As courts within this circuit have held subsequent to the 2004 amendments, “[p]rocedural flaws do not automatically require a finding of a denial of a FAPE.” Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 (S.D.N.Y. 2007); see also "M" v. Ridgefield Bd. of Educ., No. 3:05-CV-584 (RNC), 2007 U.S. Dist. LEXIS 24691, at *21 n.8 (D. Conn. Mar. 30, 2007) (citing cases from various circuits that held that a plaintiff must demonstrate that procedural errors by the district resulted in the denial of a FAPE). “Only procedural inadequacies that cause substance harm to the child or his parents -- meaning that they individually or cumulatively result in the loss of educational opportunity or seriously infringe on a parent's participation in the creation or formulation of the IEP -- constitute a denial of a FAPE.” Matrejek, 471 F. Supp. 2d at 419. There were no procedural violations claimed that would meet this standard, nor did the Parents' brief argue this point.

9. The second prong of Rowley requires a finding that the IEP is “reasonably calculated to enable the child to receive educational benefits.” The Supreme Court, however, has made clear that “appropriate” under the IDEA does not require that school districts “maximize the potential of handicapped children.” Walczak v. Florida Union Free School District, 142 F.3d 119, 130 (2d Cir. 1998), citing Rowley, *supra*. Rather, school districts are required to provide, as the “‘basic floor of opportunity’ . . . access to specialized services which are individually designed to provide educational benefit to the handicapped child.” Rowley, *supra*, 458 U.S. at 201; see also K.P. v. Juzwic, 891 F. Supp. 703, 718 (D.Conn. 1995) (goal of IDEA is to provide access to public education for disabled students, not to maximize a special education child’s potential). 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.” Ms. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). The Court of Appeals 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.” Ms. B. v. Milford, *supra* at 1121. When determining the appropriateness of a given placement, courts will also consider evidence of a student’s progress in that placement.

10. With these principles in mind, the IEP was appropriate to provide the Student with meaningful educational benefits. As required by the IDEA, the Board reviewed A.’s needs at various PPTs on an individualized basis at appropriate intervals. The IEPs proposed by the Board contained all of the requisite components under the IDEA. The IEPs included 1) a statement of A.’s present levels of educational performance; 2) annual goals and short-term objectives; 3) the specific educational services to be provided; 4) an explanation of the extent to which A. would not participate in regular education programs; 5) any appropriate transition services; 6) objective criteria and evaluation procedures for determining whether objectives are being met; and 7) the proposed initiation date and duration of proposed services. See Walczak, *supra*, at 122; see also Regs. Conn. State Agencies Section 10-76d-11.

11. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parent, the results of the most recent evaluations, the academic, developmental and functional needs of the student, the communication needs of the student, and whether the student requires any assistive technology devices and services. See 34 C.F.R. Section 300.324. 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. Ms. C. v. Voluntown Bd. of Educ., 122 F.Supp. 2d 289, 292 n.6 (D. Conn. 2000)).

12. The Board complied with these requirements in the development of the Student’s 2006-2007 program. In developing the 2006-2007 IEP, the Board reviewed and considered several recent triennial evaluations and assessments, including (i) an achievement and social skills report, (ii) speech and language evaluation report, (iii) autism inclusion report, (iv) health report, (v) occupational therapy report, and (vi) psychological report. In addition, the Board staff

reviewed Dr. Morgan's report, which report had been provided by the Parents to the team prior to this PPT meeting. The PPT also considered the input of educational professionals knowledgeable about the Student's school performance; reports from his teachers and direct service providers; reports and input from the Parents; and progress made towards the previous year's goals and objectives. Goals and objectives were revised to reflect the Student's current abilities and current levels of functioning.

13. It is clear from the evidence and testimony that the 2006-2007 IEP was drafted to meet the Student's identified needs based upon current information and was designed to continue to build upon the Student's 2005-2006 program. The Board's program was custom-made to meet the Student's unique needs. The individualized nature of the Board's program is clearly evident in the 51 objectives formulated to address the Student's unique needs in the areas of academics, social/behavioral functioning, social pragmatics, gross and fine motor skills, and communication. The Board's program was comprehensive, utilizing a scientific, peer-reviewed model -- the SCERTS communication model -- to help the team address many of the Student's needs.

14. The Student's 2006-2007 program consisted of self-contained and mainstreamed classes. The Student received academic instruction in a self-contained environment, with participation in activities with typical peers, including daily lunch bunch (with typical kindergarten and first grade students on alternating days), morning and afternoon routines in the first grade classroom and designated work blocks with first grade students. In his self-contained setting, the Student received one-to-one instruction from qualified special education teachers, with support throughout his entire day, (including his mainstream setting) from an experienced and well-qualified paraeducator. The Parents' Complaint challenges the appropriateness of the Board's program on the basis of, among other things, the training and qualifications of the paraeducator assigned to the Student. Exhibit HO-1. The Parents failed to present any testimony or evidence in support of this claim. Thus, they failed to meet their burden of production. See Regs. Conn. State Agencies Section 10-76h-14. Notwithstanding this fatal defect, this claim fails because the evidence clearly establishes that the paraeducator is a well-qualified and well-trained aide for the Student. The paraeducator has a bachelors' degree in special education and extensive experience in working with children with autism.

15. In their Complaint, the Parents also claim that the Board's program was not appropriate because the Board "fail[ed] to accurately evaluate [A.] for new IEP goals." Significantly, the Parents put forth no evidence in support of this claim, thus failing to meet their burden of production on this issue. See Regs. Conn. State Agencies Section 10-76-14. Even if they had met their burden of production, the claim would still fail because the evidence establishes that that the Board's program was appropriately developed by well-qualified educators with significant experience and training in educating children with autism. The program provided for a combination of self-contained and mainstreamed classes, with appropriate instruction from special educators and support throughout the entire day from a qualified paraeducator. The experienced educators and educational consultants (Dr. Bookbinder, Dr. McCarty and Dr. Peck) who reviewed the program all agreed that the program developed by the Board was appropriate for the Student. It is well settled that hearing officers should give deference to the opinions of local educators. See Rowley, 458 U.S. at 206, 102 S. Ct. at 3050; Hartmann by Hartmann v. London Cty. Bd. of Educ., 118 F.3d 996, 1001 (4th Cir. 1997), cert.

denied, 522 U.S. 1046 (1998) ("local educators deserve latitude in determining the individualized education program most appropriate for a disabled child").

16. The Parents' Complaint raises four specific allegations challenging the appropriateness of the program as implemented by the Board: (1) that the Board's program was not appropriate because the Student allegedly failed to meet all of his IEP goals and objectives; (2) that the Board "fail[ed] to provide appropriate peer interactions and/or comprehensive social skills curriculum. . . .;" (3) that the Board "fail[ed] to compile accurate data, complete data sheets, and evaluate [A.]'s progress towards achieving his IEP goals and objectives; and (4) that the Board failed to complete and implement an appropriate Functional Behavioral Assessment ("FBA"). Each and every one of these claims is similarly without merit.

17. With respect to the claim that the Student failed to meet his IEP goals, the Parents appear to demand mastery of 100% of his goals and objectives. The IDEA does not require perfection. Rather, as set forth above, the program must be reasonably calculated to confer education benefit, something more than "mere trivial" educational advancement. The Board's evidence overwhelmingly establishes the appropriateness of the Student's program, as the Student mastered or made satisfactory progress towards virtually all of this goals and objectives. More specifically, as of March 2007 (three months before the end of the 2006-2007 school year) the Student mastered 24 of his objectives and made satisfactory progress towards mastery of 23 of the remaining 27 objectives. The Student thus mastered or made satisfactory progress on 92% of his goals and objectives. To the extent that the Parents contend that satisfactory progress is insufficient because the Student did not master all goals and objectives, they have no legal authority in IDEA statutes or regulations or case law to support this argument. The Student was making important strides in the acquisition of skills. A parent's assertion that his or her child is not making progress as quickly or as well as they might prefer, does not mean that that program is devoid of benefit for that child and thus is inappropriate. See W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134 (S.D.N.Y., 2006) (finding appropriate the school district's program and noting that the autistic student mastered or made progress on most of her 44 goals and objectives); see also Kearney Bd. of Educ., 35 IDELR 106 (SEA NJ 2001) (finding that, although an eighth grade student with a learning disability failed to read on grade level and received a poor science grade, the district's program was appropriate since he was making progress in receptive and expressive skills and showing better comprehension).

18. The conclusion that the Student made meaningful measurable progress is also supported by the testimony of each and every Board witness who worked with A., as well as the comprehensive, contemporaneous data taken by Board staff. The Student made important progress in gaining communication, academic, social, behavior and other skills during the approximately six school months that he attended Ox Ridge during the 2006-2007 school year.

19. The Parents' second claim -- that the Board's program was inappropriate because it "fail[ed] to provide appropriate peer interactions and/or comprehensive social skills curriculum throughout the day in a smaller scale environment"—was unsupported by the testimony and documentary evidence. The Parents failed to put forth any evidence in support of this claim. See Regs. Conn. State Agencies Section 10-76h-14. In any event, the Board's evidence clearly establishes the appropriateness of the Student's program in the area of the development of social skills and social pragmatics. The Board provided a variety of opportunities for the Student to

develop skills in the areas of peer interactions and social pragmatics, including lunch bunch, morning and afternoon routines in the general education classroom and work blocks in the general education classroom: These were not the only times that the Student worked on social skills and peer interactions. As discussed above, one of the distinct advantages of the SCERTS model was the ability for the Board to provide important reinforcement and generalization in the area of socialization. This comprehensive approach to helping the Student improve peer interactions and social skills was clearly appropriate.

20. The third claim that the Board “fail[ed] to compile accurate data, complete data sheets, and evaluate [A.]’s progress towards achieving his IEP goals and objectives” must also fail. The Parents failed to put forth any credible evidence calling into doubt the accuracy, completeness and evaluation of the extensive data taken by the Board. On the contrary, the conclusion that the Board’s program was appropriate is strongly supported by the accurate, comprehensive and contemporaneous data taken by the Board.

21. The Parents’ fourth claim is that the Board “fail[ed] to complete and implement an appropriate Functional Behavioral Assessment.” The Parents produced no evidence that the FBA was inappropriate. To the contrary, the evidence was overwhelming that the FBA and resulting BIP were appropriately done and implemented. Both outside consultants, Dr. Peck and Dr. McCarty, were very supportive of the Board staff’s work in this area. The Board did precisely what the Parents and the Board agreed upon: the Board took reliable behavioral data and used this data to develop appropriate behavioral interventions.

22. The Parents raised three claims regarding the quiet room. They allege that the Board has failed to provide a safe environment because 1) “A[.] has been inappropriately placed in a time-out room with padded walls. This environment is unhealthy, punitive, and damaging to a seven-year-old, non-verbal, and non-aggressive child with autism”; 2) “A[.]’s placement in this time-out room with padded walls is discrimination based on disability”; and 3) “Failure to provide parents with any notice that their child was being placed in a room with padded walls. Parents were inaccurately told that their child was being placed in a ‘quiet room,’ when in reality this quiet room had been remodeled as a room with padded walls.” The crux of the Parents’ claim is that Board’s program is inappropriate because of the addition of padding to the quiet room, which was done during the February 2007 school vacation. The Student was taken out of school by the Parents in March 2007. The Parents produced no evidence that the addition of padding to the quiet room rendered it inappropriate, nor did their brief cite any statute, regulation or case law to support this claim. Simply alleging that the addition of padding violates the IDEA principle of least restrictive environment (Parents’ brief at 9) is insufficient. The Board produced expert evidence from Dr. McCarty that the addition of padding to the quiet room made it safer, not more dangerous. The quiet room was used under staff supervision, and with the full agreement and support of the Parents. The Parent conceded at the hearing that she did not object to the use of the room but only to its padding. There was no dispute that the quiet room was an appropriate behavior management strategy for the Student. The fact that the quiet room was remodeled to include padding (to protect a student other than A.), and that the Parents were not notified of this change, does not render the quiet room or the Board’s program inappropriate. See, e.g., Boeme Indep. Sch. Dist., 25 IDELR 102 (SEA TX Nov. 22, 1996) (finding appropriate the district’s use of a “time-out” room as part of its behavior intervention strategies for a student

with, among other disabilities, autism); Marion County (FL) Sch. Dist., 20 IDELR 634 (Office of Civil Rights, July 22, 1993) (finding no disability discrimination on the basis of using “time-out” rooms). Moreover, the Board’s behavioral data and behavior interventions were clearly reliable and appropriate, as confirmed by Dr. Peck and, perhaps more importantly, the decrease in the Student’s undesirable behaviors. Although the Parents raise objections regarding the Student’s behavior plan and the use of the quiet room, the Rebecca School -- the Parents requested placement -- does not take behavioral data (FBA) as a regular practice and has a quiet room for use by students (with or without a behavior plan) on every floor.

23. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. Board of Education of the Hendrick Hudson Central School District v. Rowley, supra., 181; 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.114 through 300.120; 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. 300.114. 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).

24. In this case the Student has been educated in the public schools in his home district of Darien in kindergarten and first grade. Section 300.116(b) provides: “The child’s placement—(1) is determined at least annually; (2) is based on the child’s IEP; and (3) is as close as possible to the child’s home.” In this case, the PPT developed an IEP for the Student, which provided for special education and related services and several time periods in the school day with mainstream peers.

25. The Board’s programs offered the right balance between special education and regular education. R.L. by Mr. and Ms. L. v. Plainville Bd. of Ed., 363 F.Supp.2d 222 (D.Conn. 2005):

Because the statute expresses that disabled children should be educated alongside non-disabled peers ‘to the maximum extent appropriate,’ special education services must be provided in the

least restrictive environment consistent with the child's educational plan. Only when "'the nature or severity' of a child's disability is such 'that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily' should a child be segregated." *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998) (*quoting* 20 U.S.C. § 1412(5)).

In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an individualized education program. The IEP is intended to be "the result of collaborations between parents, educators, and representatives of the school district." *Lillbask v. Connecticut Dep't. of Educ.*, 397 F.3d 77, 2005 U.S. App. LEXIS 1655, (2d Cir. Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential, it must provide "meaningful" opportunities and the possibility for more than "trivial advancement." *Walczak*, 142 F.3d at 130.

26. The progress A. has made in the Board's programs, particularly when considering the significant limitations on learning imposed through his disability, is more than trivial and establishes the appropriateness of his program. In fact, each and every Board witness with whom A. has worked testified that A. made considerable progress in gaining academic, social, independence, speech and other skills during his years at Ox Ridge School, despite his severe autism.

27. There is no evidence in the record that the Student requires a placement in a private day school in downtown Manhattan in order to be educated. See e.g., Williams Bay Sch. Dist., 29 IDELR 1141 (SEA WI 1999) (district violated LRE requirement by placing a 13 year-old student with autism in a private special education facility when evidence showed the student was capable of attending, and benefiting from, mainstream classes); see also Jefferson Parish Sch. Bd., 27 IDELR 824 (E.D. La 1998) (LRE for 17 year old with autism was a self-contained life skills classroom on the grounds of a regular education high school where he could be mainstreamed for certain activities during the day). A., like any other student with a disability, is "entitled to be in a situation that affords the greatest opportunity for social and/or academic contact with non-disabled peers." See In the Matter of Student with a Disability, 33 IDELR 263 (SEA CT 2000). This opportunity is afforded to A. by the Board in its Ox Ridge program. And, this opportunity was determined to be quite important by the Board staff who worked with the Student and/or his program. This view was supported by Dr. McCarty, a nationally known psychologist with an extensive background in educating students with autism. The Student needs access to typical peers to act as models for appropriate social behavior and language development. This modeling is provided in the Board program.

28. Given the appropriate program offered by the Board, the Hearing Officer need not evaluate the appropriateness of the Parents' preferred placement at the Rebecca School. See 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.”)

29. The Complaint requests compensatory education, but fails to allege and prove a factual or legal basis for such an award. The evidence is clear that the Board provided an appropriate program. Further, the Parents failed to allege and prove that the Board committed a “gross deprivation of the rights to a FAPE.” See Bruno v. Greenwich Bd. of Educ., No. 02-CV-2192, 2006 U.S. Dist. LEXIS 1885, at*6 (D. Conn. Jan. 6, 2006). Accordingly, the claim for compensatory education fails as a matter of fact and law.

FINAL DECISION AND ORDER

1. The Board provided the Student with a FAPE in the least restrictive environment for the 2006-2007 school year at Ox Ridge Elementary School.

2. There is no need for a determination as to whether Rebecca School is an appropriate placement for the Student.

3. The Board is not financially responsible for a placement of the Student at Rebecca School in New York, New York for the 2007-2008 school year.

4. The Parents are not entitled to an award of compensatory education for the 2006-2007 school year.