

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

*Student v. District*¹

Appearing on behalf of the Student: Attorney Philip J. Cohn, Cohn & Associates LLC, 277 Sturges Ridge Road, Wilton, CT 06897

Appearing on behalf of the District: Attorney Michael P. McKeon, Sullivan, Schoen, Campane & Connon, LLC, 646 Prospect Ave., Hartford, CT 06105-4286

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Whether the Board failed to provide the Student with a free appropriate public education [FAPE] during the 2005-2006 and 2006-2007 school years and summer time periods when the Student was entitled to FAPE, in that the District failed to:

- a. Recognize the need for a referral to special education
- b. Acknowledge and acted on Student's and Parents' numerous requests for referral to special education
- c. Provide appropriate social skills support and training;
- d. Consider the Student and Parental input in devising an appropriate educational plan
- e. Provide an appropriate individualized transition plan to help the student transition to life beyond high school.

PROCEDURAL HISTORY:

The Parents filed a request for hearing on June 20, 2007. [*Case No. 07-172*] That case was dismissed by a prior hearing officer on the basis that the Parents did not have standing to file a complaint on behalf of a student who is 18 years old. The hearing officer also noted that "[I]n the event that the Student files a due process complaint alleging the same matters, two additional defects in this complaint are noted," that the Student had graduated and that the failure to provide a Section 504 plan is not within the jurisdiction of the hearing officer. [*Id.*] Those notations are *dicta*; the Student was not a party to the prior action.

The Student filed a request for hearing, which the District received on August 10, 2007. [Exhibit H.O.-1] A prehearing conference was held on August 21.

The District filed a Motion to Dismiss the hearing on the basis that the Student had graduated on June 19, 2007 and therefore was not entitled to any special education, that the

¹ The District is not identified in this decision, as this decision may include sufficient information to make it possible to identify the student. IDEA Part B regulations and the FERPA regulations define personally identifiable information to include a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty. 34 C.F.R. 300.32(d)

Parents cannot as a matter of law establish a *prima facie* claim that the Student was entitled to special education services and was deprived of a free appropriate public education, and that the issues were raised in a hearing request already submitted to and decided by another hearing officer which bars the Student from attempting to re-litigate them by the doctrines of *res judicata* and collateral estoppel. [*District's Motion to Dismiss*, 8/29/07] The Student filed a response to the motion.

The Board's Motion to Dismiss was denied. The issues presented were not subject to a claim of *res judicata* or the doctrine of collateral estoppel. The prior matter was dismissed at the outset as the Parents did not have standing to file a complaint on behalf of a student who had reached the age of majority. The Student was prosecuting this present action.

The Motion was further denied on the grounds that the awarding of a diploma to a high school student does not moot her claims for compensatory education. Graduation, while rendering a student ineligible for services under the IDEA, does not render moot a claim for compensatory education for failure to provide FAPE in the past. *See, San Dieguito Union High School District v. Guray-Jacobs*, 44 IDELR 189 (U.S. District Court, S.D. California 2005) While graduation is not a *per se* indication that a student has received FAPE, it was noted that it certainly is a factor in determining whether a student has received FAPE, and the District retained its right to assert claims regarding the Student's educational progress and graduation in the hearing on the merits of the Student's claims. *Id.*

The hearing proceeded on nine days from September through December 2007. Parties were granted extensions of the mailing date of the decision because additional hearing dates were necessary to present their cases. A further extension of the mailing date was granted so that the parties had an opportunity to submit briefs, which were submitted by counsel for both parties.

The witnesses who appeared on behalf of the Student were the Mother; the Student; Armin Paul Thies, neuropsychologist; Lynne Friebel, occupational therapist; Kristina Bentley, speech language pathologist; and the District director of special education.

The District's witnesses the District speech language pathologist, the District physical education and health teacher, the District English teacher and the District school psychologist.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993)

SUMMARY:

The Student with a diagnosis of Asperger's disorder graduated from the District high school in June 2007 with an A average, receiving her diploma with academic distinction. She was president of an extracurricular club for three years, went to prom three years, and was connected with the same social group of peers at school commencing in the later part of her freshmen year.

She was determined not eligible for special education while at the District high school, but did receive Section 504 supports. She brought this hearing request to seek a determination that she was eligible for special education and is entitled to an award of compensatory education.

FINDINGS OF FACT:

1. The Student is 18 years old and graduated from the District high school on June 19, 2007. She was a member of the National Honor Society, achieved an A average and received her diploma with academic distinction. She is attending Sacred Heart University. [Testimony Student] The Student was on a Section 504 plan while attending the District high school, but was not identified as eligible for special education. At the District high school the Student was in regular mainstream courses, including some honors level courses. [Testimony Mother, Exhibit B-46]
2. The Student transferred to the District in August 2003, at which time she was entering ninth grade. Although the Student was not eligible for special education in her prior district, the District convened a Planning and Placement Team [PPT] meeting in November 2003 to determine whether she was eligible for special education. All members of the PPT agreed that the Student was not eligible for special education, although the Student was referred to a Section 504 meeting, and determined eligible under Section 504 for services due to the Student's diagnosis of Asperger's disorder. [Exhibit B-3]
3. The District special education director subsequently wrote a memo to all of the Student's freshmen teachers during the 2003-2004 school year to make them aware of the determination that the Student was eligible for Section 504 supports. In this memo to the teachers, the director characterized the Student's disability as a mild form of Asperger's disorder based on the information that was presented at the PPT and the Section 504 meeting. As autism is a spectrum disorder, and students can exhibit a wide variety of behaviors with the diagnosis, the director explained in this memo that the degree of educational impact due to the Student's Asperger's disorder was mild. [Testimony Director, Exhibit B-4]
4. The Student continued to receive Section 504 services through her graduation in June 2007. [Exhibits B-3, B-7, B-14, B-23, B-31]
5. In April 2004, the Student's treating psychiatrist confirmed the Student's diagnosis of Asperger's disorder, and noted that the Student was prescribed Lexapro daily. [Exhibit B-9]
6. In that April 2004 letter, Dr. McWilliam requested that the Student's teachers complete Teacher's Report Forms and Classroom Performance Surveys, which were completed and returned to the psychiatrist. [Exhibits B-9, B-10, B-11]
7. The Student continued to be eligible for Section 504 services during the 2005-2006 school year. [Exhibits B-14, B-23]

8. In March 2006, the District speech-language pathologist evaluated the Student. In that evaluation, the SLP noted that the Student presents as an intelligent, talented, charming and engaging individual. Formal language testing indicated many superior language abilities. It was noted that pragmatic language skills may appear as a relative weakness, but that she received the highest standard score possible and lost only one point out of 68. The evaluator noted that the Student demonstrated weaknesses in abstract language processing during dynamic social communication and impaired pragmatic language skills and difficulty processing nonverbal communication cues. [Exhibit B-16]
9. The speech-language pathologist [SLP] provided the Student speech-language services for 1 ½ years, from the midpoint of her junior year through her senior year, individually and in a group setting under her Section 504 plan. [Testimony District SLP]
10. The speech language pathologist described the Student as a well liked and enjoyable person to be with. The Student could appreciate humor, sarcasm, and irony, but in stressful situations she might not process the social information as rapidly as would allow her to feel comfortable. [Testimony District SLP, Exhibit B-16]
11. The speech language pathologist worked on pragmatic language skills with the Student. She also worked on toning down her language, as the Student would talk over the heads of her peer group, and worked on trying to soften her vocal delivery. The speech language pathologist provided services to the Student once per cycle (every 7 school days) for 48 minutes. This frequency increased to once per week, and then twice per week at the request of the mother due to absences and routine disruptions to the school schedule. [Testimony District SLP]
12. The Student's pragmatic language skills were not significantly deficient, according to the speech language pathologist. The SLP based her conclusions about the Student from feedback received from across the settings in the Student's senior year. The SLP interviewed each of the Student's teachers in the latter part of her senior year, and every comment was "completely glowing." The Student was seen as an active participant who contributes meaningfully to discussions and has no perseveration on special topics of interest. [Testimony District SLP]
13. The Student attended the social skills group facilitated by the school psychologist, a regular education program administered by the guidance department. Social skills group focuses on subjects such as peer interactions, teacher/adult interactions, conflicts and jobs. In her senior year, the school psychologist noted that the Student gave a freshman girl very good advice on how to handle a situation. The social skills group is a regular education intervention that takes place once per week during the school year. The Student didn't always attend the group. Rather, she participated in the group approximately 50 percent of the time. [Testimony School Psychologist]
14. The Student shared her concerns and feelings with the school psychologist. The Student mentioned to the school psychologist that she was going to prom, and that she was looking forward to it. The Student shared that she was nervous about what would happen after graduation, but the school psychologist noted that it didn't seem any different from the nervousness of her peers. [Testimony School Psychologist]

15. The Student was very appropriate in social skills group in turn taking and listening to others. [Testimony School Psychologist]
16. The School Psychologist noted that the Student was appropriately involved in school and extracurricular activities. The Student appeared engaged in anime` club, she was excited about fundraising, in the hallway she was smiling and animated, and she was looking forward to attending prom. While she was diagnosed with adjustment disorder, the school psychologist did not see any manifestations of depression that interfered with the Student's education. [Testimony School Psychologist]
17. In November 2006, the Student's psychiatrist authored a note indicating that the Student had a psychiatric diagnosis of Asperger's disorder, with various manifestations including motor coordination and clumsiness, and requested that the Student be exempt from ballroom dancing. [Exhibit B-19] At this time, the Student had sprained her ankle, and this kept her out of class for awhile. The sprain occurred when jogging out to catch the bus. [Testimony Student]
18. On her annual review for her Section 504 plan in December 2006, it was noted that the Student had a 4.045 GPA, that she was a member of the National Honor Society, that she earned a "commendable" on her junior portfolio and that she is a National Merit Scholar. [Exhibit B-23]
19. The Parent had the Student undergo an independent occupational therapy evaluation in January 2007. [Exhibit P-9] In the written evaluation the occupational therapist [OT] concluded that the Student demonstrates delays in foundational skills necessary for smooth and coordinated movements, and delays in fine motor skills. She recommended occupational therapy, including a home program. [Exhibit P-9] While the OT states in the evaluation report that she based her evaluation on the therapist's observations, those "observations" were merely on the date of her own testing. The OT never observed the Student at school. [Testimony Ms. Friebel, Exhibit P-9]
20. The OT's testimony did not support the Student's claims that her alleged fine motor skill deficits were such that the Student should receive services under the IDEA. The OT indicated that the Student had no adverse educational impact due to receiving no OT services. [Testimony Ms. Friebel] The OT testified that the art drawings and carving that the Student completed were good, and would take fine motor skills. [Testimony Ms. Friebel, Exhibits B-61, B-62, B-63] The OT testified that the Student demonstrated work of superior quality without receiving OT services during her four years at the District high school. [Testimony Ms. Friebel]
21. The Student's own actions in waiting many months after the OT evaluation to seek OT services further lends support that her OT deficits were insignificant. While the OT conducted the evaluation in January, the Student did not seek services from the OT until after her June 2007 graduation from high school. [Testimony Ms. Friebel]
22. On January 25, 2007, the Parent wrote to request that a PPT meeting be convened as she felt that the Section 504 accommodations were not sufficient to meet the Student's needs.

23. [Exhibit B-26] A notice for a PPT meeting was sent out on February 5 for the PPT meeting to be held on February 12. [Exhibit B-28]
23. On February 6, 2007, the Student's psychiatrist authored a letter "to whom it may concern" that he was adding adjustment disorder with mixed anxiety and depressed mood to the primary diagnosis of Asperger's disorder. [Exhibit B-30]
24. At the PPT meeting in February 2007, the team agreed that the District staff would conduct an evaluation of the Student including achievement testing – WJ and TOWL, behavioral scales – Vineland and BASC, WAIS and WJ III, WRAML and classroom observation. The Student signed the consent for this testing on February 12, the date of the PPT meeting. [Exhibit B-31]
25. Steven Phillips, M.D. wrote a note on February 13 that the Student was under his care for Lyme disease, and that she may require shorter school days for the next several months. [Exhibit B-32]
26. The Student and her Mother revoked their consent for the District staff to perform evaluations on a noted dated February 17, 2006 [sic] which was stamped received February 27, 2007. [Exhibit B-33]
27. The Student was referred by the Parents for a neuropsychological evaluation, which was conducted by Armin Paul Thies in March and April 2007. The evaluation report was dated April 28, 2007. Dr. Thies conducted the intake interview with the Mother, and included the Mother's conclusions about the Student in the background section of the report. Dr. Thies testified that he primarily received the background information from the Mother, which stated that the Student is "very much alone, having no friends." [Testimony Dr. Thies, Exhibit P-17]
28. At the time of his testimony, Dr. Thies was unaware that the Student started an anime club at school, that she was asked and went to prom in 11th grade and that she went to prom in 12th grade. Dr. Thies was unaware that the Student received the Michael Jeweler's award for students who have exhibited a strong commitment to academic excellence and service to school and community at the end of 2006-2007 school year. He was unaware that the Student won the National Honor Society award in recognition of scholarship, leadership and service. He was unaware that she graduated 14th in her class with a 4.084 G.P.A. and received a diploma with academic distinction. In explaining his lack of knowledge about the Student's background, the neuropsychologist stated that this was not a forensic evaluation. [Testimony Dr. Thies, Exhibit P-17]
29. In his report, the neuropsychologist found that the Student's "adaptive and social deficits will prove to be a major disability in her functioning as an adult," and recommended a significant and extensive amount of services for speech therapy, social skills training and transitional planning. [Exhibit P-17] Without accurate information about the Student's background and experience in high school, these recommendations can be given little weight. The Student did not demonstrate such significant adaptive and social deficits in her four years at the District high school.

30. On May 7, the PPT reconvened. The Parent submitted the neuropsychological report to the team [Testimony Mother], which the team considered. [Testimony Director, Exhibit B-42] The PPT also reviewed the Parent's OT evaluation of the Student. The Parent and Student requested that the Student be found eligible for special education, but based on the Student's educational performance the team determined that the student was not in need of specialized education during her last semester of her senior year. [Exhibit B-42]
31. The Student demonstrated appropriate social skills in many different situations while attending the District high school. [Testimony Student, District SLP, District English Teacher, School Psychologist]
32. While the Parent claims the Student had no friends, there was substantial credible testimony that the Student was well connected to her peers. While attending the District school, the Student went to prom her sophomore and junior year with the same person, and also went to prom her senior year. The Student also had appropriate and continuing peer relationships with a group of students while attending the District school. In mornings during high school, the Student was in a lobby with a group of other students. She would laugh and smile with the group. The Student joined this group of students who gathered on a daily basis, starting at the end of freshmen year, and continuing through senior year. The Student had lunch with some of these same students, and some of the students in the anime` club were also these same students. [Testimony Student, District English Teacher, District SLP]
33. District staff saw the Student engaged in social activity with this peer group. The speech language pathologist saw the Student in her prominent position in school, standing with a group of friends near where the SLP entered school. The Student would always be standing or sitting with a group of friends, chatting, laughing and smiling. [Testimony District SLP] The Student's Inquiry teacher also noticed the Student being actively involved socially in the hallway, laughing and joking. The Inquiry teacher noted that in the social group there was a sense of comradery and the Student was exchanging and engaged. [Testimony English Teacher]
34. Not only was the Student engaged in social activity with a peer group she also demonstrated leadership in an extracurricular group, and in this group she also demonstrated that she was comfortable in social situations in the school and the community during fundraising activities. The Student formed the anime` extracurricular club near the end of her freshmen year, and continued it in her sophomore, junior and senior year. The Student's anime` club was dedicated to Japanese animation, and the Student characterized the club as fairly popular. During the Student's senior year 10 to 12 individuals were in the club. While the Student testified that she was encouraged or pressured by a teacher to start the club near the end of her freshmen year, no one pressured her to continue it in her subsequent school years. [Testimony Student] As the president of the anime` club, the Student organized fundraisers in her junior and senior years to sell handmade bracelets, scarves and other crafts at lunch times at the school, as well as at the local library. [Exhibit B-64]
35. The speech language pathologist observed the Student in the anime` club, and saw that she was an effective leader of the club. The SLP also knew that the Student was involved in fundraising to collect money to build an anime` library and for a field trip. The

Student was often engaged in knitting projects, and the speech language pathologist first met the Student by chance when the Student was outside of the local public library selling scarves for a club fundraiser. [Testimony District SLP]

36. The Student also demonstrated appropriate social skills and leadership in a school band trip to Florida in her senior year. The Student went to Epcot in Florida with the school band. On the trip, the band was given an award, and the Student volunteered to accept the award on behalf of the band in a loud and large arena with hundreds present. When she accepted the award she raised her hand and exhorted her schoolmates to cheer louder. [Testimony School Psychologist]
37. The Student was able to demonstrate appropriate social skills in that she has been working at a local public library 4 to 6 hours per week since September 2006. [Testimony Student]
38. The Student also demonstrated appropriate social skills and speech and language skills in her interactions in the classroom and in her sophisticated exchange in defense of her English IV synthesis paper. [Testimony English Teacher]
39. At the end of the English IV course during their senior year, the District students are required to write a synthesis, which is then defended before a teacher who is not the students' instructor in the English IV class. [Testimony Student, English Teacher] The students are required to defend their paper and establish a relationship between a poem and the paper. When the Student presented her oral defense to her English IV paper, the evaluator commented that the Student provided a "very, very interesting exchange . . . on the edge of the dramatic!!" It was noted that she perceptively analyzed texts; evaluates texts in a skillful manner; recognized literary terms, literary devices and conventions of logical thought in further meaning; made sophisticated connections to self and to the lives of others and made subtle connections between and among texts. [Testimony English Teacher, Exhibit B-64a]
40. The Student enrolled in the Inquiry class in her last semester of her senior year. [Testimony English Teacher, Exhibit B-46] The Inquiry class was described in the District's curriculum book as an English course that offers students an opportunity to engage and discuss demanding ideas, to explore the emergence of great ideas, to examine noteworthy writings and to practice the skill of analysis and the art of expository writing. In the course, the students analyze, evaluate and make connections among a variety of texts and relate those texts to their lives and the lives of others; recognize literary and grammatical conventions and devices and understand their critical roles in the conveyance of meaning and make use of their writing to learn, to communicate ideas, to entertain and to reflect. Grading for the Inquiry course was based upon daily preparedness for class activities, active participation in class discussions and self evaluation – discovery journal, as well as quizzes/tests, essays, unit tests and mid semester and final exams. [Exhibit B-65]
41. The Inquiry class is taught in the form of a seminar, a methodology that students would see later in college and in early graduate school. This course is a way to introduce the students to a seminar, as an open exploration of ideas. Interaction among the students is the intent of the class. [Testimony English Teacher]

42. In this class, the Student was required to facilitate a class discussion. According to the Student, the purpose of this class was to engage in discussions. [Testimony Student] The Student conducted her own presentation for three class periods and was very successful, according to her teacher. When other students led in their presentations, the Student was able to participate in these discussions. She would speak when she needed to speak, and would appropriately listen to the other students. The Inquiry teacher remembered telling the Student that based on what he saw of her in Inquiry class, higher education was going to be a marvelous experience for her. [Testimony English Teacher] The Student received an A in the Inquiry class. [Exhibit B-46]
43. Shortly after the Student's three day presentation in Inquiry class, the speech language pathologist commented to the Inquiry teacher that the Student felt good about what she had done in the class, and was pleased with the experience. [Testimony English Teacher]
44. The Student asserts that she is also inhibited in her social interactions as she does not use a phone. Although the Student testified that she never used the phone, the Student did call a restaurant to make a dinner reservation for the school band at the request of the school staff. This is evidence of her successful ability to use the phone to appropriately communicate with others. [Testimony District SLP]
45. The Student also asserted that her lack of fine motor skills would be evidence of her need for special education. The Student, however, demonstrated remarkable fine motor skills in the artwork that she completed while at the District school. The Student completed art work, including a carving, in which she used a gauge to carve after planning and drawing the design. [Testimony Student; Exhibits B-61, B-62, B-63] The Student's own OT witness testified that these examples of artwork demonstrated superior quality without receiving OT services. [Testimony Ms. Friebe; Exhibits B-61, B-62, B-63] The Student also demonstrated appropriate fine motor skills in her playing the flute in the school band. [Testimony District SLP, Student]
46. While the Student testified that her clumsiness in her gross motor skills was further evidence of her need for special education, the evidence presented does not support her claims. The Student took physical education classes in her junior year, participating in rollerblading, tennis, low ropes, and she was fairly proficient in these activities. The Student was excused from participation in physical education class during ballroom dancing in her senior year due to her sprained ankle and alleged clumsiness related to her Asperger's diagnosis as requested by her psychiatrist. Nevertheless, during the time she was excused from participation, she would volunteer to show ballroom dance steps to the rest of the class. [Testimony P.E. Teacher, Director] The Student would appropriately demonstrate the steps in front of the class. The Student was described by the P.E. teacher as a remarkable student, a joy to have in class. [Testimony P.E. Teacher]
47. The Student claims that her transitional needs were not met; further evidence she claims would result in her eligibility for special education. The District, however, appropriately met the student's transitional needs as part of the regular education interventions for all District students. The career counselor in the District guidance department helped her complete and submit her application to Sacred Heart University. [Testimony Student] The speech language pathologist also worked with the Student on her college application

process, and would keep tabs on her to ensure that the process was moving forward. [Testimony District SLP]

48. The Student expressed interest in graphic design and art. In response to this interest, during the Student's senior year, the SLP introduced the Student to a freelance graphic designer, and the Student spoke with her for more than an hour. [Testimony Student]
49. The Student scored in the 97th percentile and the 98th percentile on the selection index in two administrations of the PSAT. [B-47] She was accepted to both colleges to which she applied, Fairfield University and Sacred Heart University. [B-48]
50. The Student had a diagnosis of Lyme disease in her senior year. [Exhibit P-20] While there was some testimony regarding this diagnosis, this diagnosis and the limited amount of school missed due to claimed fatigue did not have any educational impact. In her senior year, the Student's grades were: one A-, 10 As and 2 A+. [Exhibit B-46]
51. The Student met the criteria for receiving a Diploma with Academic Distinction. [Exhibit B-49, B-50]
52. In the Student's junior and senior years, she received a total of six awards at the District annual awards ceremonies. [Testimony Student, Exhibits B-51, B-60]
53. The Student graduated in June 2007 with a cumulative grade point average of 4.084. Her school transcript indicated that the Student achieved commendable, the top score, for her junior writing portfolio. She was a member of the National Honor Society. In 2005, she exceeded goal in mathematics, science, reading across disciplines and writing across disciplines, all portions of her Connecticut Academic Performance Test (CAPT). From the 2003-2004 school year when she entered the high school, until her graduation in June 2007, the Student received 51 grades of A+, A or A-; 3 B+ grades, and one B. [Exhibit B-46] The Student graduated 14th in her class, in the top decile. [Testimony Director]
54. In August 2007, the Student underwent a speech language evaluation at the request of her Parents. The only observation completed by the speech language pathologist was during the testing. The Parents' SLP did not speak with anyone at the District schools, and relied on the Mother's statements that the Student had difficulty with social interactions and that she didn't have any friends. She was unaware that the Student started her own extracurricular activity that had involved other students, and was surprised that the Student received an award for leadership. The Parents' SLP evaluation found that the Student was superior in everything but pragmatics. The pragmatics testing was based on a checklist that the evaluator and the Student filled out. The Parents' SLP did not observe her in any other environment, did not observe the Student in conversation with a peer, and never saw her interact with a teacher. The Parents' SLP testified that those who work with the Student at school would see her in different situations and have more knowledge. While the private evaluator claimed that the Student's difficulties with pragmatics affected the Student's ability to have social relationships, the Parents' SLP lacked any reliable factual basis upon which to make this assertion. Thus, this conclusion is given no weight. [Testimony Ms. Bentley, Exhibit P-25]

55. The Student testified that she is doing reasonably well academically at Sacred Heart University. At the time of the hearing, the Student was enrolled in seven courses: two music courses (band and chorus), two art classes (drawing and design), an English literature course, an English composition course and a math course. The Student is receiving As and Bs in her courses at Sacred Heart University, and was taking 18 credits as of the time of her testimony. [Testimony Student]
56. The Student's Asperger's Disorder did not have a negative impact on her education that would require any specialized instruction. The regular education modifications were appropriate to meet her needs. The student was eligible for 504 supports, and received appropriate accommodations. The purpose of education is to function as an independent adult, be a contributing member of society and a self-determined individual. The District has prepared the Student for this. Every component of her educational program was designed on those purposes, and she did well. Her ability to make informed choices, to act independently, to get a job in the community and access information were all appropriate. She made more than adequate progress year to year. The Student did not exhibit an inability to perform effectively most of the time. [Testimony Director]
57. None of the Student's independent evaluators, Dr. Thies, Ms. Bentley, and Ms. Friebe observed the Student at school. [Testimony Director]

DISCUSSION/CONCLUSIONS OF LAW:

The Student has brought this action in accordance with the Individuals with Disabilities Education Act which provides for special education and related services to children with disabilities, from birth through age 21. She is seeking a determination that she was eligible for special education and should have been provided FAPE while she attended the District schools during the 2005-2006 and 2006-2007 school years.

I. Burden of Proof

In Connecticut, the regulations expressly state that the District has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14 The District has met its burden in this case.

II. Eligibility for Special Education

The primary issue to be decided is whether the Student was eligible for special education while she was a student in the District high school.

The Student would be eligible for special education if she is found to be a “child with a disability” as defined by IDEA. The term “child with a disability” means a child having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and *who by reason thereof, needs special education and related services . . . [I]f it is determined . . . that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this section.* 34 C.F.R. Sec. 300.8(a) [Emphasis added]

Autism is further defined as “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, *that adversely affects a child’s educational performance.* 34 C.F.R. Sec. 300.8(c)(1)(i) [Emphasis added]

Therefore, the inquiry is twofold. To be found eligible under this section, the Student’s Asperger’s must significantly affect verbal and nonverbal communication and social interaction, and adversely affect her educational performance. If those two prerequisites are met, the Student must also be in need of special education, not just related services.² Thus, diagnosis by the psychiatrist alone does not result in a determination of eligibility for special education.

² Special education is defined as specialized instruction, at no cost to the parents, to meet the unique needs of the child with a disability. 34 CFR Sec. 300.39(a) Related services includes speech-language pathology, psychological services, counseling services and social work services, among other services. 34 C.F.R. 300.34

a. *Whether the Student's Asperger's disorder significantly affects communication and social interaction.*

The Student's Asperger's disorder was not significantly affecting her verbal and nonverbal communication and social interaction. She was able to communicate and interact with both peers and adults in diverse settings. In testimony numerous examples were provided of appropriate verbal and nonverbal communication and social interaction in the hallways, in the classroom, in the Student's one on one defense of her synthesis paper, as a leader in the anime` club, on the band trip to Epcot, with her social peer group and in fundraisers in the community and at the school. She went to the prom during the last three years at the District high school and was actively involved with a social peer group at school for more than three years. No evidence supports the Student's claims that her Asperger's disorder diagnosis significantly affected her verbal and nonverbal communication and social interaction.

b. *Whether the Student's Asperger's adversely affected her educational performance*

The next inquiry is whether the Student's Asperger's adversely affected her educational performance. The Student's academic record was impressive, but the inquiry does not end there. While grades are helpful in determining the affect on the Student's educational performance, they are not the sole indicator of educational performance. Graduation is also not conclusive of lack of adverse affect on the Student's educational performance.

Federal regulations do not define the phrase *adversely affects educational performance*. Instead, each state gives substance to these terms. *Mr. & Mrs. I v. Maine School Admin. District 55*, 416 F. Supp 2d 147, 45 IDELR 4 (D. Maine 2006) *citing J.D. ex rel J.D. Pawlet Sch. Dist.*, 224 F. 3d 60 (2d Cir. 2000).

While Connecticut does not expressly define educational performance, the State *Common Core of Learning, The Connecticut Framework* and the state *Guidelines for the Identification and Education of Children and Youth with Autism* reflect a broad definition of education and its purpose. Education is not merely for acquisition of academic knowledge, but also for the cultivation of skills and behaviors needed to succeed generally in life. Purely academic progress is not the only indicia relevant to IDEA claims. *Mr. & Mrs. I v. Maine School Admin. District 55, supra.*

In the absence of an express definition in statutes and regulations, the guidelines, therefore, can provide a definition of what is educational performance.

The state *Guidelines for the Identification and Education of Children and Youth with Autism* discusses that students

“ . . . with a clinical diagnosis of Asperger’s Disorder may demonstrate significant impairment as evidenced by their inability to form appropriate peer and adult relations not due to emotional disturbance. These students may attain scores within normal limits on standardized cognitive measures, but observation of their social skills across multiple settings may reveal significant deficits in social interaction and pragmatics, and a variety of atypical behavior that adversely affect their education.

The *Guidelines* discuss what constitutes an adverse affect on educational performance in identifying a Student on the autism spectrum as eligible for special education and defines the factors of educational performance.

“When an impairment exists and adversely affects educational performance, it is considered a disability. An adverse effect on educational performance is defined as performance that falls significantly below average in any of the following areas:

“(a) academic, (b) cognitive, (c) social, (d) behavioral, (e) communication, including pragmatics, (f) social skills, (g) fine and gross motor skills, and (h) self-help/adaptive skills. Skill deficits must be accompanied by ‘an inability to perform most of the time despite the provision of general education modifications and supports.’ ”

Guidelines for Identification and Education of Children and Youth with Autism, Working Draft, Connecticut State Department of Education, Division of Teaching and Learning Programs and Services, Bureau of Special Education, July 2005. [Exhibit P-6]

Therefore, the Student's educational performance can be analyzed under this framework. In this analysis, however, the Student performed effectively in each domain that is set forth in the *Guidelines*; she did not exhibit performance that fell significantly below average in any of the eight domains.

1. Academic

The Student's academic performance was exemplary. She graduated near the top of her class, with a 4.084 G.P.A. During her last semester she received a 4.208 G.P.A.³ In her complete high school transcript, the Student received only one B and three B+, the remaining grades were As. She was a National Honor Society member, received an "A" average through seven semesters, graduated 14th in her class and met the criteria for a Diploma with Academic Distinction.

2. Cognitive

When the Student was administered the Wechsler Adult Intelligence Scale – Third Edition, in the neuropsychological testing, she received a standard score of 135 verbal, 121 performance and 132 full scale. [Exhibit P-17] She also achieved well in academic assessments. She exceeded goal on all areas of her CAPT scores, and received scores that exceeded the 92nd percentile on all portions of the PSAT taken in grades 10 and 11.

3. Social, behavioral, communication/pragmatics and social skills

In each of these areas – social, behavioral, communication/pragmatics and social skills – the Student demonstrated appropriate social interaction and behavior. For example, she was connected with her peers, had a leadership role in her extracurricular club, attended prom for

³ Interestingly, the Student obtained her highest yearly GPA during the year when the psychiatrist added the adjustment disorder diagnosis, and the doctor added the Lyme disease diagnosis. Despite these additional diagnoses, the Student flourished academically during her senior year. Thus, even if asserted by the Student that she was eligible under a different disability category, she would not be eligible for special education under OHI and SED.

3 of 4 years, and received awards, including the National Honor Society Award for scholarship, leadership and character. [Exhibit B-60, Student Testimony]

The speech-language evaluation demonstrated that the Student's scores were largely in the superior range, she understood non-literal language in the form of figurative speech, sarcasm, irony and indirect/implied requests, and while her pragmatics were a relative weakness, she received the highest standard score possible and lost only one point out of 68. Observations also demonstrated that the Student could recognize nonverbal cues, and that the Student can be helpful to students who need academic assistance. [Exhibit B-16]

While the Student participated in social skills group, that was a regular education intervention. The Student was helpful to younger students who were in social skills groups, and her appropriate social skills were demonstrated in many settings in the school.

4. Fine and Gross Motor skills

As discussed, *supra*, the Student's fine and gross motor skills were not significantly deficient. She plays the flute and is an accomplished artist. The Student also knitted and made bracelets as a fundraiser for her extracurricular club. She performed appropriately in physical education class in many different skills, and when she was excused from participating in physical education, she still volunteered and effectively demonstrated ballroom dancing steps.

5. Self help/adaptive skills

The Student participated in class, as demonstrated by the testimony as well as the rating scales presented in the hearing. [Exhibit B-11] She successfully applied to two colleges, and was accepted by both. She maintains her part time job at the local library. She accepted the SLP's offer to meet a graphic designer to learn more about the career she intends to pursue. She participated in social skills group, and was helpful to other students. She demonstrated appropriate self help and adaptive skills.

In all domains set forth in the state guidelines, the Student has appropriately performed, and she was not significantly deficient most of the time. She also did not demonstrate that she required special education.

The Board does not have to provide everything that might be thought desirable by loving parents, nor everything that the Student believes she is entitled to. *See, e.g., Tucker v. Bay Shore Union Free School District*, 873 F. 2d 563, 567 (2nd Cir. 1989). The Student did not require special education to obtain educational benefit from regular education. She was a stellar student at the District school, who was not eligible for identification as a child with a disability, as she did not meet the definition of a “child with a disability.” The Student was not eligible for special education, and the District was not required to provide her FAPE in accordance with the IDEA during the 2005-2006 and 2006-2007. The Student is not entitled to compensatory education.⁴

FINAL DECISION AND ORDER

1. The Student was not eligible for special education during the 2005-2006 and 2006-2007 school years.
2. The District appropriately considered the request for referral to special education, and appropriately determined that the Student was not eligible for special education.
3. Therefore, the Student is not entitled to FAPE under the IDEA, and is not entitled to compensatory education.

⁴ While the Student was not eligible for special education, she was eligible for and did receive services under Section 504.