

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Student: Atty. David C. Shaw, Law Office of David C. Shaw, 34 Jerome Avenue, Bloomfield, CT

Appearing on behalf of the Greenwich Board of Education: Atty. Abby R. Wadler, Asst. Town Attorney, Town of Greenwich, 101 Field Point Road, Greenwich, CT 06830

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide a free appropriate public education (FAPE) to the Student for the 2006-2007 school year?
2. Did the Board provide a FAPE to the Student for the 2007-2008 school year?
3. Should the Student's primary disability be changed to Specific Learning Disability instead of speech language impairment?
4. Should the Board be required to reimburse the Student for the costs of the independent evaluations of Dr. Cherkes-Julkowski and Mr. Aronin?
6. If the Board did not provide a FAPE, should the Hearing Officer order the Board to take the following remedial actions?
 - a. to retain an independent consultant acceptable to the Student to develop and implement an appropriate Individualized Education Program ("IEP") through the Planning and Placement Team ("PPT") process?
 - b. to develop and implement an appropriate transition program with the advice and oversight of the independent consultant?
 - c. to retain a private agency acceptable to the Student to develop and implement an appropriate of instruction, including one on one instruction as described in the Report of Miriam Cherkes-Julkowski, Ph.D.?

- d. to retain a speech and language professional acceptable to the Student to conduct a thorough evaluation?
- e. to retain a speech and language professional acceptable to the Student to implement the recommendation of the independent speech and language evaluator?
- f. to retain an independent expert acceptable to the Student to develop and implement an appropriate program of assistive technology?
- g. to provide extended year and extended day programming?
- h. to provide an appropriate program of compensatory education to provide the skills the Student would have if an appropriate program had been provided?

SUMMARY:

The Student (also referred to as W.) is a 20 year-old student who has been enrolled in the Board's high school since he moved to Greenwich from Jamaica in January 2003. He was evaluated by the PPT in January and in April 2003 the PPT found W. eligible with a primary disability of speech and language impaired and a secondary disability of specific learning disability. He was found eligible for extended school year ("ESY") services as well. In June 2004, the PPT determined that academic areas were not a priority. For the next two school years, W. participated in community work experience and "individual support." He "walked through" graduation in June 2006. He was ineligible for ESY in 2006. In 2006-07 school year, he was placed at J.M. Wright Technical School (Wright Tech) full time in the auto body program. In April 2007, the Student and his advocate requested a PPT meeting to ask for reading instruction for part of the day. In May 2007 the PPT met and recommended half days at Wright Tech and reading instruction at GHS. W. did not agree to reading instruction at GHS because he had already graduated and was embarrassed to return there. The PPT met in June 2007 and proposed an IEP with ESY instruction at GHS in reading, one hour daily reading instruction at ACE, off the grounds of GHS and Wright Tech half days. W. did not attend the PPT meeting, nor did his mother, advocate or friend, Ms. Wilson. He did attend Wright Tech half days in 2007-08, but did not take advantage of the ESY or ACE reading programs. The Student claims he was unaware of the reading programs offered.

The Student claims that his IEPs have been woefully inadequate and that he is still unable to read. The Board claims that W.'s IEPs were appropriate, that he made progress and mastered his goals. The Board also claims that the Student's poor attendance and refusal to consider accommodations made for him hampered his progress.

PROCEDURAL HISTORY:

The Student's attorney mailed and faxed a letter to the State Department of Education ("SDE") on January 8, 2008 requesting a due process hearing. The Board received a copy of the letter on January 9. This Hearing Officer was assigned to the case on January 10. On January 18, Atty. Wadler filed an appearance for the Board. A prehearing conference was held on January 22, 2008. Hearing dates were agreed on for March 14, 18 and 25. The mailing date for the final decision was set at March 25, 2008. The Student's attorney requested an extension of the mailing date to April 18, 2008, which was granted.

On February 15, the Student's attorney requested that the first hearing date be cancelled because of a schedule conflict and that the hearing commence on March 18. The request was granted. On February 20, the Student's attorney requested that a hearing be scheduled on April 10, as that was the only date that Dr. Cherkes-Julkowski was available. Because there was no response from the Board, the request was granted on February 26 and April 10 was added as a hearing date. On February 29, the Board's attorney requested that a different date be scheduled because her client was not available. The Student's attorney objected to changing the date. The Hearing Officer advised the attorneys that if they could not agree on a resolution, the issue would be addressed on the first hearing date.

On March 17, the Student's attorney filed a Motion to Join J.M. Wright Vocational and Technical School as a necessary party. He provided a copy to the Board's attorney at the hearing on March 18. The hearing convened on March 18. This motion was considered first. The Student's attorney had not notified Wright Tech about the motion. The motion was denied because it was too late to add a party to the current hearing. The Student requested that his friend, Louise Wilson, be permitted to attend the hearing. The Board objected unless the Student agreed to open the hearing to the public. He refused. The Board raised the additional objection that Ms. Wilson was a former Board employee and a fact witness for the Student. The Hearing Officer ruled that Ms. Wilson could not attend the hearing unless it was opened to the public. The attorneys were heard on the issue of the April 10 hearing date. During the course of the day, the attorneys agreed that Dr. Cherkes-Julkowski would observe the reading program at Greenwich High School ("GHS") on April 10 and that the April 10 hearing date would be rescheduled to May 6. Additional hearing dates were agreed on for May 8, 14, 21 and 29 and the mailing date for the final decision was extended to June 23, 2008. All exhibits filed by the parties were entered as full exhibits—Exhibits P-1 through P-55 and B-1 through B-36. The hearing request was entered as Hearing Officer (HO) Exhibit 1. The Board's attorney presented an opening statement. The Student's attorney waived his opening statement. The Student testified, followed by Ms. Wilson's direct testimony.

The hearing continued on March 25 with testimony from Meryl Aronin, a speech language pathologist from Stamford. Exhibit P-56, Mr. Aronin's vitae, was admitted as a full exhibit. Following Mr. Aronin, Ms. Wilson completed her testimony. On March 28, the Student's attorney requested a status conference because the hearing dates previously agreed on needed to be rescheduled. A telephone conference was held on April 3 and hearing dates were agreed on for May 15, 21 and 29 and June 16 and 18. The May 6, 8 and 14 hearing dates were cancelled and the mailing date for the final decision was extended to July 14.

On April 7, the Student's attorney requested an order that the Board be required to advise Dr. Cherkes-Julkowski of the time and place she was to appear for her April 10 evaluation of the reading program, to show her the reading program proposed at the PPT meetings on May 10 and June 6, 2007 and to have the staff responsible for the Student's program available to her. The request was granted on April 8. The hearing continued on May 15 with testimony from Dr. Cherkes-Julkowski. Exhibits P-57 through P-59 were entered as full exhibits without objection. The Student rested his case.

The hearing continued on May 21. The Board offered additional exhibits B-37 through B-41. Exhibits B-40 and B-41 were admitted without objection. The Student objected to the others, which were marked for identification. The Board began its case with testimony from Karen Passamano, speech language pathologist at GHS. Her testimony was interrupted for testimony from Mary Forde, Pupil Personnel Services Director for the Board. She explained the background of Exhibits B-37 through B-39, which were admitted over the Student's objection. Following the lunch break, the Board's attorney offered additional exhibits B-42 through B-44. They were admitted subject to the five-day rule. Ms. Passamano then completed her testimony. This was followed by direct testimony from Marsha Fox, reading teacher at GHS.

The hearing continued on May 29 with the completion of Ms. Fox' testimony. The Board offered Exhibit B-45, which was admitted without objection. The Student offered Exhibits P-60 and P-61, which were admitted over the Board's objection. The Board then presented testimony from Lorraine Termini, formerly a special education teacher and currently a housemaster at GHS. The Board completed its case at the June 16 hearing with testimony from Jeffrey DeTeso, school psychologist at GHS, and Christopher Lovermi, transition coordinator at GHS. The Board's attorney thought she had filed Exhibit B-46, Mr. Lovermi's resume, but it had not been received prior to the June 16 hearing. The Board then rested its case. The Student offered Exhibits P-62a and P-62 and presented rebuttal testimony from Ms. Wilson and the Student. Both parties rested.

The parties requested time to file briefs. The attorneys were asked to present the briefs in a format of proposed of fact, conclusions of law and order, along with any separate legal argument they wished to make. The Student's brief was due on July 28. The Board's brief was due on August 11. The Student's reply brief was due on August 18. The decision deadline was extended to September 12, 2008 by agreement of the parties. The July 18 hearing date was cancelled as unnecessary. The Hearing Officer sent the attorneys a letter on June 18 confirming these dates. The briefs were timely filed.

The Findings of Fact incorporate various portions of the Parties' Proposed Findings of Fact. 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). 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. Id.

FINDINGS OF FACT:

1. The Student has a birth date of August 11, 1988, is 20 years of age and is a resident of Greenwich, Connecticut. Exhibit P-48 at 1.
2. After his father died, W. came to live with his mother and older brother in Greenwich and enrolled at GHS in January 2003. At that time he was 14 years of age. Prior to that he lived in Jamaica with his sister and went to school there. Testimony of Student.
3. It quickly became apparent to GHS staff that W. was not able to read. A PPT was held on January 17, 2003, after his mother waived the five-day notice. Exhibits P-1 and P-2.
4. The PPT recommended evaluations in educational/developmental, psychological and speech/language. His mother signed the consent form at the PPT meeting. Exhibit P-2. Only the psychological evaluation is in the record. Greenwich Public Schools received no records on the Student's education in Jamaica. Testimony of Ms. Termini. The Student's mother reported that he had good attendance and was passed from year to year there. Exhibits P-3 and B-1 at 1.
5. Helen Blackburn, school psychologist, conducted the psychological testing on January 24 and 30, 2003. Id. She administered the WISC III, TONI-3 (Test of Nonverbal Intelligence) and ABAS (Adaptive Behavior Assessment System) – Parent Form. The TONI-3 was selected to assess the Student's IQ as the evaluator determined that his IQ should be assessed independent of language demands. The evaluator noted that the Student was referred for testing because "teachers raised concerns about his ability to comprehend what was going on in their classes" and interactions with other students were limited. Exhibits P-3 at 1 and B-1 at 1. She noted that the Student did not have "any basic reading skills" and that "[h]is expressive language is fragmented." Id. at 3. The TONI-3 results showed that he had an IQ of 77 (6th percentile). His Adaptive behavior score, however, was a 91 (27th percentile). Id. at 2. The school psychologist noted that the Student had moved from Jamaica to Greenwich shortly before the evaluation. Given this fact, the failure of professionals to identify and address his educational needs in the past, and, apparently, the Student's significant communication deficits, Ms. Blackburn indicated that the results of the WISC III (full scale IQ of 46) should be viewed with caution. Id.
6. Preliminarily, the Student was assigned to a diagnostic placement in the special education inclusion program in March and April to determine his handicapping condition and level of service needs. Exhibits P-5 and P-7.
7. On April 23, 2003, the PPT convened to determine eligibility and to develop an IEP. Exhibits P-10 and B-31. The PPT determined that the Student's primary disability was speech/language impairment and his secondary disability was specific learning disability. Id. In its assessment of his present level of educational performance, the PPT

noted that the Student was “well below grade level” in the areas of reading, language, written expression, math and “below grade level” in other academic and nonacademic areas. Id. at 3. He needed work on his decoding skills and learning to answer “wh” questions. Id. He had difficulty writing and was “just beginning to understand the process.” He needed to learn to tell time and the concept of money. Id. The Student had “significant language limitations” that would negatively impact on his academic functioning. Id. at 4. He had weaknesses in expressive and receptive language and vocabulary skills. Id.

8. The PPT developed an individualized education program (“IEP”) with 10 goals and numerous objectives for the year beginning on April 30, 2003 and ending on April 30, 2004. Included in the goals for that IEP were “Annual Goal #1: To read CVC [consonant vowel consonant] words as measured by mastery of [five] objectives.” Id. at 8. “Annual Goal #2: [student] will define by labeling pictures and produce sentences for 10 units of vocabulary as measured by mastery of [two] objectives.” Id. at 9. “Annual Goal # 4: To answer wh questions as measured by mastery of [five objectives].” Each objective was based on 1st grade material. Id. at 11. “Goal #5: to write a simple paragraph” with three objectives. Id. at 10. “Goal #6: To tell time” when given a clock, to the hour, to the half hour and to 5 minute intervals. Id. at 11. “Goal #7: To understand money” when given coins, first to name the coin and tell its value and second, given various coins up to \$1.00, to add the coin when asked for a specific amount. Id. at 12.

9. His IEP provided assistive technology (“AT”), consisting of a calculator and access to a word processor. Id. at 16; and Exhibit P-11 at 1. The Board uses a system of “blocks per cycle,” with a cycle equaling eight school days. Testimony of Ms. Fox. The services are expressed in the number of blocks per cycle and the amount of minutes in the block. Ms. Fox estimated that six blocks per cycle of 58 minutes per block would be the equivalent of three to four hours per week. Id. That was the average amount of time she spent with W. in the 2003-04 school year. Her work with W. does not appear on his transcript because it was not graded. Id. The blocks of special education and related services are converted to hours and minutes per week on the lower portion of the services page. Exhibit B-31 at 19 and P-10 at 17. The April 23, 2003 IEP provided 12 hours 14 minutes of special education and 36 minutes per week of related services comprised of individual and group speech therapy. The total time for general education is reported as 29 hours 58 minutes. The total hours for the instructional week are 33 hours 45 minutes. It is not clear how the PPT reached this number of general education hours since the total of special education, related services and general education should equal the hours in the instruction week, which it clearly does not. The Student attended ESY for reading, math and speech therapy. The IEP services continued through his sophomore year (2003-04) until the next annual review. Id. at 2 and 17.

10. On June 7, 2004, the PPT met for an annual review and to develop an IEP for the year beginning on June 14, 2004 and ending on June 7, 2005. Exhibit P-24. Notably, this IEP did not mention the Student’s secondary disability of specific learning disability. Id. The Student attended along with seven staff members from GHS. Id. W.’s mother gave the PPT permission by telephone to conduct the meeting without her. Id. at 2. The

PPT determined that reading, language, written expression and math were “not a priority for this year.” Id. at 3. This IEP contained five goals, two of which addressed academic goals. Goal #2 provided that W. “will identify and define 10 unfamiliar words and answer content questions from curricular and/or therapeutic material as measured by [five] objectives.” Id. at 7. This goal provided approximately six blocks of 58 minutes per cycle of instruction in the special education classroom. Id. at 13. Goal #3 states that: “Given modifications of the 11th grade curriculum, W[.] will complete work as stated on modification . . . with 80% accuracy as measured by mastery of [two] objectives.” Id. at 8. This goal provided one 15 minute block per cycle of instruction in the special education classroom. Id. at 13. The remainder of the special education instruction (16 blocks of 58 minutes per cycle) was allocated to transition/employment at a work site. Id. Goal #5 provided that: “With adult support, W[.] will work successfully a job.” Id. at 10. His related services consisted of individual/group speech therapy with the speech therapist for one block of 58 minutes per cycle and one block of 30 minutes per cycle of individual/group counseling with the school social worker relating to developing social skills. Id. at 6, 7 and 13.

11. The Student’s work site was in one of the elementary schools where he worked as an assistant janitor. He left GHS at 9:00 or 9:30 a.m. and worked from 10:00 a.m. until 2:15 or 2:30 p.m. in the cafeteria cleaning tables and cleaning and mopping floors. He was supervised by the head custodian. He also worked in this program during the summer of 2004. Testimony of Student. The only class he attended at GHS was Everyday Math. Id.; and Exhibit P-36 at 1 and 4. In 2004-05 school year (11th grade), he received one credit for the math class. Exhibit P-36. W. also had speech/language therapy and reading class with Ms. Fox in the morning before he went to the job site for the remainder of the school day. Testimony of Ms. Fox. The time spent with Ms. Fox was not listed on his IEP. There was no reading goal on the IEP because as a general education teacher, she does not put a goal in the IEP. Id.

12. A PPT meeting was held on May 18, 2005 to develop an IEP for the 2005-2006 school year, the Student’s 12th grade year, and to plan for the Student’s triennial evaluation, which was due by April 1, 2006. The Student and his mother attended. Exhibit P-26 at 1. On current functioning/present levels of educational performance, the PPT noted in the area of reading/language/written expression as strengths that the Student was “a very diligent worker. He is very excited to learn how to read. He is at the end of a 1st grade reading level.” Id. at 3. The PPT noted as concerns/challenges/needs that the Student needed to “work on 3 letter blends and up to six sounds in a closed syllable. He also needs to begin working on 2 syllable words with closed syllables including blends, suffixes and ct blend endings. These skills will assist in decoding words.” The PPT noted that the Student “requires specialized reading supports outside of the general education classroom.” Id.

13. In the area of math, the Student’s strength was that he “can solve addition and subtraction with a calculator and adult assistance.” His area of need was to “work independently on telling time and solving addition and subtraction questions.” He “requires math supports outside the general education classroom.” Id. In the

social/emotional area, the PPT noted that W. can be very frustrated and sad about his relationship with his family. When he becomes overwhelmed by this, he becomes silent, refuses to work and/or come to school. Id. at 4. The Student's overall receptive and expressive language skills are below the average range. His significant language limitations negatively impact his ability to access the curriculum. Id. In spite of these deficits, his special education instruction hours were reduced to six blocks of 58 minutes per cycle, which equaled three hours 29 minutes out of a weekly total of 33 hours and 45 minutes of school. Id. at 8. The PPT determined that AT was not necessary. Id. at 2; and Exhibit P-27. There was no reason given on the IEP. Mr. Lovermi, a member of the PPT who made that determination, did not know how the PPT reached that conclusion. Testimony of Mr. Lovermi. The Student's placement in a work-study program as an assistant janitor in the North Street Elementary School was continued. Testimony of Student. He worked in this program during the summer of 2005, as well as during the 2005-2006 school year until June 2006. Id.; and Exhibits P-62 and P-62A. His work was the same as the previous year, cleaning tables, cleaning the floor, and mopping the floor. Testimony of Student. He was supervised by the head custodian and had the same hours as well. Id. During the 2005-2006 school year the Student was paid approximately \$3.80 per hour for between 10 and 29 hours per week of work as an assistant janitor. Exhibits P-62 and P-62A. The Board's records show that the Student worked approximately 1300 hours from June 2004 through June 2006 as an assistant janitor. Except for summers, he worked during school hours. Id. In the summers he helped with annual maintenance, including windows, stripping and polishing floors and moving furniture. Exhibit P-61.

14. At the May 18, 2005 PPT meeting, the team agreed to conduct vocational, psychological and educational testing to check for further disability. The team found that W. did not require AT and that he was eligible for an ESY program. Exhibit P-26 at 2. The Student's mother signed a consent form for the evaluations on May 17, 2005. The stated purpose on the form is "to see if labeling condition is appropriate." Exhibit P-25. There is no written vocational evaluation or testing in the record.

15. Ms. Termini completed the educational evaluation on December 14, 2005. Exhibit P-29. She administered the Woodcock-Johnson III Tests of Achievement. At the time of the testing, W. was 17 years, 4 months of age. On the three cluster areas of basic reading skills, math reasoning and academic knowledge, W.'s scores were less than 0.1 percentile. Id. at 3. On the letter-word identification test, W. could not identify the lower case "b" or "t." He was able to read the words: "to, dog, in, can, they, about." He could not read the other test words correctly. In the calculation subtest, W. was able to do basic addition and subtraction, but not multiplication or division problems. Id. at 1. On the applied problems test, W. was able to tell time for 7:00 and 2:00. Ms. Termini concluded that the Student's reading, math and academic knowledge were "very low", and that he scored significantly lower than his same age peers. Id. at 2.

16. Jeffrey DeTeso, school psychologist, conducted the psychological evaluation of the Student on March 24, 2006. Exhibit P-31. Mr. DeTeso reviewed the Student's records, did a classroom observation, administered the Wechsler Adult Intelligence Scale—Third Edition (WAIS-III), the Comprehensive Test of Nonverbal Intelligence

(CTONI), Adaptive Behavior Assessment System, Second Edition (ABAS-II) –Teacher Form and the ABAS-II—Parent Form. The Student’s mother did not complete the parent form. Ms. Termini completed the teacher form. The testing results on the WAIS-III were a Full Scale IQ of 62 and on the CTONI a score of 55. These scores indicated that the Student’s IQ was in the Intellectually Deficient range. Id. at 3. On the ABAS-II, the score of 85 (16th percentile) indicated overall Low Average adaptive behaviors. Average range abilities were found in the Social Composite and Practical Composite. Extremely Low abilities were found in his Conceptual Composite (0.2 percentile). Id.

17. “A transition plan is required for any student who receives special education services or coordination of transition services.” Testimony of Mr. Lovermi. In the spring of 2006, Ms. Termini spoke with the Student and his mother about viable options for the student. Both the Student and his mother agreed to consider programs outside of GHS. Testimony of Ms. Termini and the Student. The Student “walked through graduation” at GHS in June 2006. Testimony of Student. The GHS transcript shows that the Student received 10.25 credits for his three and one-half years at GHS. Exhibit P-36.

18. Ms. Termini, Mr. Lovermi, the Student and his mother, along with other GHS students, visited VISTA, a program in Westbrook, Connecticut. Testimony of Ms. Termini. The Student was accepted, but did not attend. Testimony of Mr. Lovermi; and Exhibit B-24 at 2. The Student rejected the placement at VISTA because it was for more disabled students than he and it would not assist him with learning to read. Testimony of Student.

19. Wright Tech was offered as a consideration for the Student because “it would benefit him to have a specific job training, skill training, occupational skill training, to have a skill upon his exit from Greenwich Public Schools.” Testimony of Mr. Lovermi. The Student visited Wright Tech with Mr. Lovermi, and indicated an interest in the auto body or collision tech program. Id. On the tour of Wright Tech, Mr. Lovermi learned that the auto body program required the least amount of academic work and reading. Id. Upon completion of the program, the Student would receive a certificate in collision technology. Id.

20. An annual review PPT meeting was held on June 12, 2006 to develop an IEP for the 2006-2007 school year. Exhibits B-28 and P-33. The Student’s mother, but not the Student, attended. The PPT reviewed the psychological and evaluations, discussed transitional goals, including visits to VISTA and Job Corps, and placed the Student at Wright Tech for the 2006-2007 school year. Id. at 2. The PPT determined that reading, language, written expression, math and other academics were not a priority at that time. Id. at 3. The deficiencies in the area of speech and language noted on prior IEPs were not mentioned. All academic instruction was terminated. Id. at 6, 7 and 10. Direct speech and language services were eliminated, although there was no speech and language evaluation and no speech and language professional was present at the PPT meeting. Id. at 4 and 10; and Testimony of Ms. Passamano. The PPT determined that AT was not necessary and that the Student was ineligible for ESY services. Id. at 2; and Exhibits P-34 and P-35.

21. The Student's mother told the PPT that she wanted W. to learn a trade so that he can be gainfully employed. He was currently working at a supermarket and enjoyed his job. Id. at 4. W. was accepted at Wright Tech on August 4, 2006. Exhibit B-37.

22. After starting the program, the Student had difficulty with the textbooks and taking tests at Wright Tech because he could not read. Testimony of Student. The Student received no academic instruction during the 2006-2007 school year at GHS. The instruction time at Wright Tech was related to painting cars and fixing dents. Id. Although Mr. Lovermi was told by the guidance counselor at Wright Tech that the Student has been able to maintain a B or better average in his program, there were no report cards, written reports or transcripts from Wright Tech in the record. Testimony of Mr. Lovermi.

23. During the time that W. was working at the grocery store, he was befriended by Louise Wilson, who became surprised and angry that the Student was not being offered reading instruction when he had a sincere desire to learn. Ms. Wilson helped W. contact Ms. Termini by e-mail. She went with W. to meet with Ms. Termini and Ms. Fox in February or March 2007. Testimony of Ms. Wilson. Because the school was unwilling to help, Ms. Wilson contacted Literacy Volunteers, which was very helpful. They gave her flashcards and books to use. Very little to no progress was made, however, with those materials. Id.

24. Ms. Wilson spent a great deal of time tutoring W. on preparing for his drivers' licensing test. He was able to memorize the answers to questions and, with the help of a touch screen test, which she requested, W. was able to pass the test with 100% correct answers. Id.

25. Some of Ms. Wilson's friends suggested that W. get an education advocate. They referred her to Carol LaBruno. Ms. Wilson hired Ms. LaBruno shortly after the meeting at GHS with Ms. Termini and Ms. Fox. Id. Ms. LaBruno requested W.'s educational records, reviewed them and requested a PPT meeting. Id.

26. A PPT meeting was held on April 12, 2007. Exhibits B-24 and P-43. The Student attended, accompanied by Ms. LaBruno and Ms. Wilson. Id. The Student requested individual reading instruction by a Wilson Reading program trained teacher. Id. at 2. The PPT asked Mr. Lovermi to look into whether the Student could attend Wright Tech on a half-day basis, so that he could receive a reading program from GHS. Id. The Student also requested an AT assessment. Id. The team decided on a consultation by the district's AT coordinator with subsequent follow-up recommendations. Id.

27. A follow up PPT meeting was held on May 10, 2007. Exhibits P-45 and B-25. The Student, Ms. Wilson, and the Student's advocate, Ms. LaBruno, were present. Since it was determined that the Student could attend Wright Tech on a half-time basis, the PPT recommended reading instruction six times per cycle at GHS. This was rejected by the

Student because the school refused to provide one-on-one instruction and he did not want the instruction to take place at GHS. Id. The Student's main objection to instruction at GHS was that they were not offering one-on-one instruction to him. Testimony of Student. Although he would have been embarrassed to return to GHS because he had already walked through graduation, he would have accepted instruction at the GHS if they had offered the one-on-one instruction in reading he had requested for two to three hours per day. Id.

28. Ms. Wilson paid for an evaluation by a Wilson trained teacher, Mrs. N. Sirmons. Exhibit P-46. Ms. Wilson says she provided this evaluation to the school at the PPT meeting on May 10, however Ms. Sirmons' report indicates that the testing was done May 30, 2007. Id.; and Testimony of Ms. Wilson. In her evaluation, Ms. Sirmons found that the Student had not mastered the closed syllables – the first level in Wilson. Exhibit P-46 at 3. The Student's "decoding is very limited, as is his spelling and sight word reading." Id. "For the present, his performance would be negligible on tasks requiring reading decoding and the ability to identify words." Id.

29. Mr. Russo, principal at GHS, said the team needed a letter from a doctor stating W.'s needs. Ms. Wilson had W. evaluated by Ronald C. Naso, Ph.D., paid for it and gave the letter to Ms. LaBruno. Testimony of Ms. Wilson. Ms. LaBruno recommended mediation with the District. Id. Dr. Neso's letter dated July 26, 2007, was addressed to Mr. Russo and was received at the District on August 3. Exhibit P-51. Dr. Neso supported the Student's request for reading instruction at a site other than GHS. Id.

30. The PPT convened on June 6, 2007. Present were J. Russo, M. Fox, L. Termini, A. DiNicola. E. Dubin and C. Lovermi. Exhibits B-26 and P-48. The Student, Ms. Wilson and the Student's advocate, Carol LaBruno did not attend the PPT meeting. Id. At that meeting, the PPT proposed that: "[The Student] is eligible for Extended School Year at GHS for summer 2007. Reading will be the focus. Services for the 2007-8 school year: Wright Tech for half day and reading instruction at ACE Program off of GHS grounds, 1 hour per day." Id. at 2. The proposed actions state that an AT consult was completed by Diane Rasweiler, Ms. Termini and Ms. Fox, who recommended that the LTK Tool Kit was appropriate to support reading. Id. at 2 and 13; and Exhibit P-49 at 2. The PPT proposed that: "Draft IEP presented at the May 10, 2007 is the 2007-08 IEP." Exhibits B-26 and P-48 at 2. In its assessment of the Student's present levels of educational performance, the PPT indicated that the Student had mastered a variety of closed syllables, exceptions to several closed syllables, 5 sounds in a closed syllable and suffix, 3-letter blends and up to 6 sounds in a closed syllable. Id. at 3. He needed to work on closed multisyllabic words and comprehension through "wh" questions. Id. The first goal in the proposed IEP provided that the Student would learn to decode multisyllabic words. Id. at 6; and Testimony of Ms. Fox. This goal would have required instruction at level three of the Wilson program. Testimony of Ms. Fox. Ms. Fox supplied the information about the Student's present levels of performance in reading and the appropriate levels of instruction in reading. Id. The minutes also state that the Student had cancelled a PPT meeting on May 22, 2007. Id. at 2. The Student recalled telling the school that Ms. LaBruno was not available on that date. Testimony of Student.

31. The notice of the June 6 PPT meeting is dated May 29, 2007 and is addressed to the Student. Exhibit P-47. The June 6 PPT proposed actions simply state that “W[.] did not show up for the PPT.” Exhibit P-48 at 2. The PPT documents do not indicate whether any attempt was made to involve the Student in the PPT decision making through a telephone call or other means. The Student, with the help of Ms. Wilson, and at Ms. LaBruno’s direction, sent a letter to GHS dated June 10, 2007, stating that he did not receive the 5-day notice for the June 6, 2007 PPT until June 4. Exhibit P-50. He also stated that the envelope with the PPT notice was postmarked June 1. Id. His advocate, Ms. LaBruno, was not available. Id. Ms. LaBruno could not attend because she was out of the country. Testimony of Ms. Wilson. Ms. Wilson did not think that the PPT could proceed without the Student. Id. The Student’s June 10 note asked that Ms. LaBruno be contacted to schedule a meeting to “mediate my reading situation.” Exhibit P-50. Mediation took place shortly after the June 6, 2007 PPT meeting, however, the Student was not informed that an IEP was adopted on June 6. Testimony of Ms. Wilson. The Student did not receive an IEP, nor did he receive any response to his June 10 note. He always shows his mail to Ms. Wilson and she reads it to him. Testimony of Student. He was not aware that a daily reading program was available to him at ACE and that his program at Wright Tech was reduced to half days. Id. He was also unaware that an ESY reading program was available to him. Id. He continued to attend Wright Tech all day. Id. Ms. Wilson was not aware that the PPT had adopted the May 10th draft IEP on June 6, or that a summer program had been offered until November 2007 when the Board provided the Student’s school records to her. Testimony of Ms. Wilson; and Exhibit P-57.

32. There were no PPT meetings scheduled after June 6, 2007. Testimony of Ms. Wilson. Ms. LaBruno’s involvement as educational advocate ended after the mediation. Id. The Student needs an advocate because he cannot read and cannot understand or protect his rights under the IDEA without the assistance of an advocate. Id.; and Testimony of Mr. Aronin. The Board was well aware of the Student’s limitations.

33. Ms. Wilson continued to assist the Student by hiring outside agencies and consultants to further evaluate the Student’s reading needs. Testimony of Ms. Wilson. Testing was completed by Lindamood-Bell Learning Processes on September 4, 2007. Exhibit P-52. The Student performed below the first percentile on most areas tested, which included reading, spelling, writing and math computation. Id. The testing by Lindamood-Bell is consistent with the evaluation results by Ms. Termini in December 2005. Exhibit P-29. Lindamood-Bell recommended an intensive sensory-cognitive program, four hours daily, five days per week for 24 weeks, for an estimated 480 hours of instruction. Exhibit P-52 at 3.

34. Dr. Cherkes-Julkowski conducted an educational evaluation of the Student on October 29, 2007. Exhibit P-53. A supplemental evaluation was made on April 10, 2008 after Dr. Cherkes-Julkowski visited GHS, reviewed the program the school intended to offer the Student and interviewed Ms. Fox. Exhibit P-58. The testing that led the Board to determine that the Student was speech and language impaired in 2003 was not in the

educational record. Exhibit P-53 at 1. Dr. Cherkes-Julkowski administered the following tests: Woodcock-Johnson III, Rime-Onset Instruction, Dictation, Raven Test of Progressive Matrices, Rey Osterrieth Complex Figure (ROCF), California Verbal Learning Test – Children (CVLT-C), Comprehensive Test of Phonological Processing (CTOPP), Phonological Awareness Test (PAT), Gallistel Ellis Test of Coding Skills (GE), Lindamood Auditory Conceptual Test (LAC, LAC-III), and Qualitative Reading Inventory (QRI-IV). Id. at 2.

35. Testing established that the Student does not hear and repeat words correctly. He does not hear individual phoneme level sounds within a syllable. He does not access words phonologically. Testimony of Dr. Cherkes-Julkowski. His reading scores are “desperately below average,” and his vocabulary is very poor. Id. The results of the CTOPP show that the Student is severely phonologically impaired in the major areas of “1) phoneme awareness (elision), 2) phonological support for working memory (memory for digits) and 3) speech perception (nonword repetition).” Exhibit P-53 at 8. There is nothing in his educational records indicating that the school recognized the extent of his deficit in this area or made any attempt to address these deficits. Testimony of Dr. Cherkes-Julkowski.

36. “The LAC scores indicate that W[.] would not be able to benefit from even first grade instruction in reading skills without substantial phonological support.” Exhibit P-53 at 9. The Student cannot go further with reading instruction until he gets proper phonological support which includes long periods of instruction and practice. Testimony of Dr. Cherkes-Julkowski. If he is taught the way other students with phonologically-based serious reading disabilities are taught, the Student would learn to read, particularly with the motivation and mature attitude he has about learning. Id. With the Student, you need to work it through how the sound gets made in your vocal tract; otherwise, he won’t get it. Id. This is a well-founded kind of instruction that is used by Lindamood-Bell. Id. On the QRI, where passages were read to him, W. understood “expository text at the 4th grade level and had some ability to extract information at the 5th grade level as well.” Exhibit P-53 at 9. She concluded that in the area of reading/writing W. has “a profound and apparently completely untreated phonological deficit.” Id. at 13.

37. The Student is missing skills in math but has a lot of potential. He cannot calculate by adding and subtracting, but he can use his knowledge to get close. Id. W. could “demonstrate math concepts and reasoning at the 5.1 grade level (with prompting in the form of reading the problems to him and prompting to draw a graphic representation of the problem).” Exhibit P-53 at 5. His mastery of calculation skill is only at the 2.9 grade level. Id. at 15. The 2006-07 IEP did not have any goals and objectives in the area of math. Id. at 2.

38. “W[.] is already identified as a student with language impairment. This testing confirms auditory and phonologically processing deficits, accrued vocabulary deficits as well as related processing disorders. . . . The data here also identify a learning disability with serious deficits in reading and math skill and more moderate deficits in math reasoning and reading comprehension. There are most probably additional language issues related to speech. There remains the need to identify those language issues which

underlie the original diagnosis.” Id. at 17. Dr. Cherkes-Julkowski recommended, among other things, a reading skills program with one-to-one instruction for two hours per day. Id.

39. On February 19, 2008, Meryl Aronin, M.A., CCC-SLP, Speech-Language Pathologist, who is certified by the ASHA conducted an evaluation of the Student. Exhibit P-55. He administered the following tests: the Comprehensive Assessment of Spoken Language (CASL), the Goldman-Fristoe Test of Sound Symbol Association, the Test of Auditory Perceptual Skills, the Clinical Evaluation of Language Fundamentals (CELF), the McGrath Test of Reading Skills, and the Phonic Based Reading Test. Id. at 8-9. Mr. Aronin found that the Student’s “goal of learning how to read is compromised by the weaknesses he presents in areas of language that are necessary in reading acquisition.” Id. at 6. Specifically, the Student does not have the necessary skills in syllable segmentation and phoneme blending or sufficient development in his oral language skills. Weaknesses were “found in the areas of rapid automatic naming and in working memory, which are both high predictors of reading success.” Id. W.’s pragmatic language skills were considered a relative strength, especially vocationally. The Student “demonstrated the desire and motivation to learn to read, as he conveyed his awareness of the connection between his vocational plans and the need for reading in order to perform successfully in any vocation he may choose.” Id. Among his recommendations was a systematic, step by step organized reading skills program with one-to-one instruction. Id. The Student has a reading disorder regardless of his native language and cultural background. Testimony of Mr. Aronin. The testing by Ms. Sirmons and Lindamood Bell are consistent with his testing. Id. Dr. Cherkes-Julkowski’s evaluation is also consistent with Mr. Aronin’s findings. Testimony of Dr. Cherkes-Julkowski.

40. Ms. Passamano agreed that the Student’s language skills were severely impaired, but she did not provide speech and language services to him during the 2006-2007 or 2007-2008 school years. Testimony of Ms. Passamano. Neither she nor any other speech and language professional attended the PPT meetings held for the Student for those school years. Id.; and Exhibits P-33, P-45 and P-48. Moreover, there were no speech and language goals and objectives in the IEPs for the 2006-2007 and 2007-2008 school years even though the Student’s significant language limitations have negatively impacted his academic performance. Exhibits P-33, P-45, P-48; and Testimony of Ms. Passamano. The last direct speech and language services were provided to the Student was in June 2005. At that time he had mastered his IEP goals. Testimony of Ms. Passamano.

41. Ms. Fox works with students in reading at GHS. After W.’s 10th grade year, she saw him during her prep time (2 times/cycle) and exam periods, whenever they could get together. His Jamaican dialect did not impede his reading. Testimony of Ms. Fox. She began with Level 1 of the Wilson program in January 2003. W. began Level 2. In 10th grade, W. finished Level 2 and began Level 3 (multi-syllable words). Id. In 11th grade, W. worked at the grocery store bagging groceries and was concerned that people would know he couldn’t read. Id. Ms. Fox stopped using the Wilson program and began

working on functional skills, for example cutting up the grocery circulars and matching words with pictures. Id. In 12th grade, Ms. Fox saw W. sporadically. He was very self-conscious about his problem. Id. She was part of the team that recommended Wright Tech. W. would have been offered reading after school if he asked, but he didn't. Id. She agreed with the IEP for 2007-08, but she would have reevaluated him to see if he lost reading skills. If not, she would work on multi-syllable words. Id. Ms. Fox did not test the Student prior to the June 2007 PPT meeting. She did not see Ms. Sirmons' May 30, 2007 testing prior to her testimony. If it was correct that the Student had not mastered two and three syllable words, the PPT might have to rethink the goals and objectives proposed in that IEP. Id.

42. In 12th grade, W.'s attendance was an issue. Ms. Termini and the school social worker visited his home twice. Testimony of Ms. Termini. School was overwhelming for W. and he wasn't learning as quickly as he would like. He also needed money. Id. She thought that at his age, his priority was to get into the real world and get a job, not academic skills. Id. In the 2006-07 school year, Ms. Termini monitored W.'s IEP by keeping in contact with Mr. Lovermi and the guidance counselor at Wright Tech. Id. She did not discuss the 2007-08 IEP with W. even though she was aware he did not attend the PPT meeting in June, attend the ESY program at GHS or the reading offered at ACE. Id. None of the witnesses explained what ACE was or who would be providing the reading services. Ms. Termini wrote the IEP, but no testing was done at that time. Id. She relied on Ms. Fox for the information on the reading goal. Id.

43. Mr. Lovermi is responsible as the liaison between the Board and Wright Tech. He visits there twice a year, updates the Board's staff and coordinates transportation from GHS to Wright Tech. Testimony of Mr. Lovermi. As of the last day of the hearing (June 16), Mr. Lovermi expected that the Student would be completing the program at Wright Tech and receive his certificate in collision tech. Id. According to the 2007-08 IEP, the Student would be exited from special education in June 2008 upon completion of vocational training. Exhibit P-48 at 10. The Board had not called a PPT meeting since June 6, 2007.

CONCLUSIONS OF LAW:

1. The purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs" and prepare them for further education, employment and independent living, and to "ensure that the rights of children with disabilities and parents of such children are protected. . . ." 20 U.S.C. Section 1400(d)(1).

2. The parties agree that the Student qualifies for and is entitled to receive a FAPE with special education and related services pursuant to IDEA, and its state statutory counterpart, Connecticut General Statutes, Section 10-76a et seq.

3. The standards for determining whether a FAPE has been provided are set out in 20 U.S.C. Section 1414 and Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034

(1982). The two-pronged inquiry under Rowley is first, whether the procedural requirements of the IDEA have been met, and second, whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207.

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 performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of “measurable annual goals, including benchmarks or short term objectives related to ...(1) meeting the child’s individual needs.” 20 U.S.C. Section 1414(d)(1)(A)(ii).

4. With respect to the first prong of Rowley, procedural flaws do not automatically require a finding of a denial of a FAPE. Procedural inadequacies resulting in the loss of education opportunity or seriously infringing on the parent’s opportunity to participate in formulating the individual education program, clearly result in a denial of FAPE. Shapiro v. Paradise Valley Unified School District No. 69, 317 F. 3d 1072, 38 IDELR 91 (9th Cir. 2003), citing W.G. v. Board of Trustees of Target Range School District No. 23, 960 F. 2d 1479 (9th Cir. 1999), accord, W.A. v. Pascarella, 153 F. Supp. 2d 144 (D. Conn. 2001).

5. With respect to the second prong of Rowley, an IEP must provide for a special education program that opens the door of education for a disabled child in a “meaningful” way. Rowley, supra at 192; Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 (1998). This is not done if an IEP affords the opportunity for only “trivial advancement.” D.F. v. Ramapo Central Sch. Dist., 430 F.3d 595 (2nd Cir. 1995); Walczak, supra at 130. An appropriate public education under IDEA is one that is “likely to produce progress, not regression.” Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir. 1997).

6. The IDEA also makes clear that the PPT must consider certain special factors when writing an IEP including, in relevant part, a child’s assistive technology needs, 20 U.S.C. Section 1414(d)(3)(B)(V), a child’s communication needs, 34 C.F.R. Section 300.324(a)(2)(iv) and a child’s need for positive behavioral supports. 34 C.F.R. Section 300.324(a)(2)(i).

7. In addition, for children over the age of 16, an IEP must include:

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 C.F.R. Section 300.320(b)

8. The Student argues that employees of the Board violated his procedural rights under IDEA because the Board failed to properly evaluate and determine that he was a child with “specific learning disabilities” pursuant to 20 U.S.C. § 1401(30), and because the Board failed to provide a FAPE to him during the 2006-2007 and 2007-2008 school years. The Supreme Court has observed that “Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage ... as it did upon the measurement of the resulting IEP against a substantive standard.” Bd. of Educ. v. Rowley, supra, at 205. Consistent with this emphasis, the Second Circuit has described the inquiry into whether a school district fulfilled its procedural obligations under the IDEA as “focus[ing] on whether the [parents] had an adequate opportunity to participate in the development of [the child's] IEP.” Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 (2nd Cir. 2005).

9. With the reauthorization of the IDEA in 2004, Congress made clear that a procedural violation under IDEA, in itself, cannot equal the denial of FAPE. Specifically, the IDEA now reads as follows:

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if procedural inadequacies –

- (I) impeded the child’s right to a free appropriate education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.

20 U.S.C. Section 1415(f)(3)(E). As courts within this circuit have held since the 2004 amendments, “[p]rocedural flaws do not automatically require a finding of a denial of FAPE.” Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp.2d 415, 419 (S.D.N.Y. 2007).

10. The first procedural violation claimed is that the Board failed to prove that its evaluation of the Student assessed him “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.” 20 U.S.C. Section 1414(b)(3)(B). The Board has not responded to this specific argument in its brief. The Board must use a variety of assessment tools and strategies to gather relevant functional and developmental information about the child. 34 C.F.R. Section 300.304(b)(1). The evaluations administered must be sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category. 34 C.F.R. Section 300.304(c)(6). The evaluation study shall include reports concerning the child’s educational progress, structured observations, and such psychological, medical, developmental and social evaluations as may be appropriate to determine the nature and scope of the child’s exceptionality. Regs. of Conn. State Agencies Section 10-76d-9(a). The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent. 34 C.F.R. Section 300.306(a)(2). The PPT apparently determined in 2003 through the initial evaluation process that the Student has a speech/language disability as a primary

disability and specific learning disability as a secondary disability. The PPT forms from 2004 through 2007 do not have a section for a secondary disability to be listed. Based on testing conducted by Dr. Cherkes-Julkowski, he meets the requirements in 34 C.F.R. Section 300.309 for having a specific learning disability as well as a speech/language disability. Her report did not specify which should be the primary disability and the Student has not articulated what additional services would be required in his IEP if he had the learning disability label. The designation of the PPT in 2003, therefore, is appropriate.

11. The second procedural violation claimed by the Student is that, on June 6, 2007 the PPT developed and adopted the IEP for the 2007-2008 school year even though neither the Student, nor anyone acting on his behalf, was present. The IDEA regulations permit conducting an IEP meeting without a parent present only under prescribed circumstances. 34 C.F.R. Section 300.322(d) provides:

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

In M. v. Ridgefield Bd. of Educ., 47 IDELR 258, 107 LRP 18129 (D. Conn. 2007), Judge Chatigny held that the Ridgefield Board of Education's decision to hold a PPT meeting without the parents denied a FAPE. Conducting the PPT without the parents denied them "an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." Id. (quoting Bd. of Educ. v. Schutz, 290 F.3d 476, 481 (2d Cir. 2002)). The Court also held that the inquiry must focus on whether the parents had an adequate opportunity to participate in the development of the child's IEP. Id. (quoting Cerra v. Pawling Cent. Sch. Dist., supra). Here, the Board simply mailed a notice of the PPT meeting to the Student. Presumably, the parent participation requirement would also apply to participation by a student where, as here, the student is an adult. The Board produced no evidence of any attempt to secure the Student's participation at the PPT meeting. They simply held the meeting and adopted an IEP without him. The Board was well aware of the fact that the Student could not read and the Board was aware of his difficulties with his parent. Moreover, when the Student wrote the Board a note explaining why he did not attend the PPT meeting, the Board did not call another PPT meeting or reply to the note. Although the Board claims that the Student was sent the IEP following the PPT meeting, they had no evidence to support that claim. The Student's claim is credible that he was not aware that an IEP was adopted until his educational record was provided to Ms. Wilson in November 2007. This was long after the ESY opportunity was past, as well as several months of the opportunity to have reading instruction at ACE. In these circumstances, adopting an IEP without the Student in attendance at the PPT

meeting significantly impeded the opportunity to participate in decision-making relating to the IEP and also deprived him of an educational benefit in violation of IDEA.

12. The first substantive violation claimed is that the IEP for the 2006-2007 school year was not appropriate because the Student received no academic instruction during that school year and the PPT determined that AT was not necessary. The Student could not read the textbooks or take tests at Wright Tech, yet was given no AT assistance. The IEP “communication” goal that W. would ask for clarification when needed was inadequate. The IEP also did not address the Student’s significant disabilities in the area of reading. While the placement at Wright Tech for vocational training was beneficial and appropriate for the Student, he should have been provided with an AT device to read text to him and with reading instruction to work on his severe deficits in that area. The 2006-07 IEP, therefore, denied the Student a FAPE.

13. The second substantive violation claimed is that the IEP developed for the 2007-2008 school year was not appropriate because the reading goal of decoding multi-syllable words is beyond the Student’s current ability and would only lead to further frustration for many of the reasons given by Dr. Cherkes-Julkowski. Although this IEP has already been found procedurally defective, there is also merit to this substantive claim. He doesn’t have the capacity to read CVC words with sufficient accuracy, and therefore, is not ready to learn multi-syllable words. All of the feedback from the L.T.K. computer software is auditory, and it is the auditory information that the Student has a hard time understanding. The program does not provide phonological support if he gets something wrong. The 2007-2008 IEP does not appropriately address the Student’s needs for AT and the one-on-one reading instruction that is necessary for the Student to make progress. The IEP does not provide for direct involvement by a speech and language professional, no speech and language professional was involved in preparing the IEP and no speech and language professional attended the PPT meetings on April 12, 2007, May 10, 2007 or June 6, 2007. The IEP has no speech and language services even on a consulting basis to the team even though the Student has severe language deficits, and there were no evaluations in the Student’s file that indicated he no longer needed speech and language services.

14. IDEA clearly indicates that academic instruction and related services are an integral part of transition services. Under 34 C.F.R. Section 300.43, transition services must be focused on improving academic and functional achievement. Moreover, transition services must be based on the child’s needs and includes:

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

34 C.F.R. Section 300.43(b). Providing speech and language services and appropriate instruction in reading and math is not inconsistent with the provision of transition services.

15. The Board argues that the “Board’s program was custom-made to meet the student’s unique needs. The individualized nature of the Board’s program is evident in that it incorporated reading goals and objectives which were highly unusual for a high school student; that is, it was tailored for a teen-aged beginning reader.” Conclusion of Law para.16. This speaks only to the 2007-08 IEP since, as noted above, the 2006-07 did not provide any reading goals and objectives. Providing the Student with a vocational skill training program at Wright Tech for two years was certainly beneficial to his future employment opportunities. Although the Board contends that the Student maintained a B average there, it is difficult to imagine how that could be possible since he is unable to read. The Student did present a unique situation when he entered GHS as a non-reader. It is disturbing that the Board placed him in a “work-study” program for his last two years of high school where he spent the majority of school hours working as an assistant janitor in an elementary school and provided very little academic instruction. By the time he walked through graduation in June 2006, he had made little, if any, progress in reading. It is not known what progress the Student could have made if he had been provided with an appropriate reading program throughout his high school and vocational training years, but the Student is still reading at a 1st grade level after five years. There is ample support in the record that the Student is very motivated to learn and that he can learn to read.

16. The Board did not provide a FAPE to the Student for the 2006-2007 school year because the IEP did not offer any academic instruction. The Board did not offer the Student a FAPE for the 2007-2008 school year because the PPT developed an IEP without his participation and failed to provide him with notice of the services available to him for the 2007 ESY and the one-to-one reading instruction at ACE during the school year. The Student has outlined detailed requests for relief at pages 15-18 of his Conclusions of Law. The Board, however, did not address whether any of those specific requests would be appropriate if the Hearing Officer found that the IEPs did not provide the Student with a FAPE. “It is well established that ‘equitable considerations are relevant in fashioning relief’ under the IDEA.” M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ., 226 F.3d 60, 68 (2d Cir. 2000) (quoting Burlington v. Dep’t of Educ., 471 U.S. 359, 374 (1985)). “Some circuit courts have held that appropriate relief may also include ‘compensatory education,’ or replacement of educational services that should have been provided to a child before. Reid v. District of Columbia, 365 U.S. App. D.C. 234, 401 F.3d 516, 518, 522 (D.C. Cir. 2005) (citing cases).” P. v. Newington Bd. of Educ., 512 F.Supp.2d 89 (D. Conn. 2007). In Bruno v. Greenwich Bd. of Educ., 45 IDELR, 106 LRP 4075 (D.Conn. 2006), the Court stated that once procedural or substantive violations of the IDEA are found, the decision maker must consider whether the plaintiff is entitled to compensatory education and reimbursement for an independent evaluation.

17. Compensatory education for an additional two years of eligibility including ESY programming for special education and related services is appropriate relief to remedy the denial of FAPE for two years. In order to address his need for intensive one-to-one instruction at a minimum of two hours daily, the program should include reading instruction at a private agency acceptable to the Student. In addition, appropriate relief should include reimbursement for the evaluation by Dr. Cherkes-Julkowski because the Board never tested the Student for phoneme awareness or phonological processing deficits and didn’t evaluate him for learning disabilities. Reimbursement is also appropriate for the evaluation by Mr. Aronin because he identified the speech and language deficits and ruled out limits in the Student’s education, a native language

different from standard English and cultural differences as the cause of his reading disorder. The Board did not do a comprehensive evaluation of the Student, although they acknowledged that he has severe language disorders. The Board should convene a PPT meeting to review these evaluations and develop an IEP for the Student.

FINAL DECISION AND ORDER:

1. The Board did not provide a FAPE to the Student for the 2006-2007 school year.
2. The Board did not provide a FAPE to the Student for the 2007-2008 school year.
3. The Student's primary disability is speech/language impairment with specific learning disability as a secondary disability.
4. The Board is ordered to reimburse the Student for the costs of the independent evaluations of Dr. Cherkes-Julkowski and Mr. Aronin.
5. The Board is ordered to provide two additional years of eligibility for special education and related services, including ESY programming, as compensatory education for the deprivation of FAPE.
6. The compensatory education program shall include one-to-one reading instruction for two hours per day, five times per week to be provided by a private agency acceptable to the Student.
7. The Board is ordered to convene a PPT meeting within 15 days to develop an IEP for the Student.