

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on Behalf of the Parents: Attorney Lawrence Berliner
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Appearing on Behalf of the Board: Attorney Marsha Belman Moses
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Appearing Before: Attorney Justino Rosado, Hearing Officer

ISSUES:

1. Was the program and related services offered by the Westport Board of Education (“The Board”) for the 2006-2007 appropriate and provide the Student with a free and appropriate public education (“FAPE”) according to 20 USC 1401 et seq?
2. Was the program and related services offered by the Board for the 2007-2008 appropriate and provide the Student with FAPE according to 20 USC 1401 et seq?
3. Is the program and related services offered by the Board for the 2008-2009 appropriate and provide the Student with FAPE according to 20 USC 1401 et seq?
4. Should the Board reimburse the Parents for the private speech and aqua therapy services provided to the Student?
5. Should the Board reimburse the Parents for the evaluations obtained and the equipment purchased for the Student?
6. Did the Board commit procedural violations that caused a denial of FAPE to the Student?
7. Is the Student entitled to compensatory education for the denial of FAPE?

FINAL DECISION AND ORDER

SUMMARY:

The Student is a young child who was identified with a Primary Disability of Developmental Delay which was later changed to multiple disability and is entitled to receive FAPE as defined in the Individuals with Disabilities Education Improvement Act (IDEIA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. The Student has a congenital medical illness defined as arthrogyrosis that caused the Parents’ request from the Board for aqua therapy as a related service and additional services. The Board refused the Parents’ request and the Parents filed for due process.

PROCEDURAL HISTORY:

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186. This matter is before the Due Process Hearing Officer in accordance with the Student's and Parents' request for a Due Process hearing dated October 29, 2008.¹ A hearing officer was appointed on or about October 29, 2008. A prehearing conference was held on December 4, 2008 with the Hearing Officer, the Parents' Original Due Process Counsel, and Board Counsel. The hearing commenced on February 2, 2009, and continued on February 3, 9, March 5, April 1, 22, 23, 29, May 18, 26, June 29, 30, July 2, 14, August 4, 7, October 14, 20, 26, December 2, 4, 2009, January 21, 2010 and February 24, 2010 for a total of 23 days. The Board submitted 319 exhibits, and the Student/Parents submitted 28 exhibits. P -11, a video clip, was admitted into evidence only in part.

In a Motion dated January 30, 2009, the Board had requested the Hearing Officer to order an independent evaluation as follows: a neuro-psychological evaluation by Dr. Theis; a speech and language evaluation by Lisa Mule; a physical therapy evaluation by Mary Spolar; an occupational evaluation by Tara Glennon; and an assistive technology evaluation by Lauri Susi. The Parents submitted a Motion and Memorandum of Law in opposition to the Board's Motion on February 2, 2009. The Motion was denied in part because the hearing had been pending for over 4 months and all the evaluations would further delay the hearing. The additional evaluations would be expanding the scope of the hearing. An independent speech and language evaluation was granted.

The Hearing Officer directed the parties to submit their respective memoranda of law containing proposed findings of facts, proposed conclusions of law and a proposed remedy for each of the issues presented. At the request of the parties, in order to accommodate the mailing of an order and decision after the hearing dates, the date for the mailing of the Final Decision and Order was extended. Due to a power surge which caused the loss of the Hearing Officer's Final Decision and Order, the parties accommodated the Hearing Officer by requesting an additional week extension. The date for the mailing of the Final Decision and Order is July 6, 2010.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

FINDINGS OF FACT:

1. There was no dispute that the Student was eligible for special education and related services as defined in the Individuals with Disabilities Educational Improvement Act.

¹ The Complaint was originally filed by Attorney Jennifer Laviano ("Original Due Process Counsel"). The Parents on or about January 14, 2009 retained Attorney Lawrence Berliner as their counsel.

2. The Student has a congenital medical illness defined as arthrogryposis. The range of motion for the Student's arms and legs is extremely limited. The mainstay of treatment is physical therapy. This illness also has affected the Student's mobility, speech and breathing. The Student also has a weight control issue which impedes her ability to move. The Student's mobility affects her ability to have full participation in her education. The Student does not have a diagnosis of an eating disorder. The Student's endocrinologist ruled out thyroid issues and explained to mother that there was nothing physically causing the Student to be overweight. The mother was concerned that the Student's weight caused the Student to be fatigued and acted as a barrier between the Student and her peers. In 2005 the Student's endocrinologist provided the Parent with an evaluation and a dietary plan for the Student. The plan contained choices for a healthy meal plan. This was not shared with the District because the meals were prepared by the Parent. The District, in October 2005, requested the endocrinologist's evaluation of the Student with the meal plan; the Parent provided it. (Testimony of Dr. Janet Woodward, Testimony of Mother, B-247)
3. The Board conducted an assessment and observation of the Student and noted that the Student had limited mobility, did not walk, could stand with a prone stander, had significant delays in her receptive and expressive language skills, had delayed motor skills and poor visual perceptual skills. (Board's Exhibit²- 7).
4. On April 13, 2006, a planning and placement team (PPT) was convened for the purpose of planning a individualized education plan (IEP) for the 2006-2007 school year, the Student's kindergarten year. In preparation for this PPT meeting the Board, with Parent's consent, performed a re-evaluation of the Student. The evaluation showed that the Student had very low cognitive skills (S.S. 66=1%) on the D.A.S., average scores on the BASC-2 per a teacher rating, deficits in gross motor skills on the PEP-R, overall developmental skills on the PEP-R at the thirty three (33) to thirty-seven (37) month level, average language skills (S.S. 91=27%) on the PLS-4, first percentile (1%) scores on the Goldman-Fristoe Test of Articulation and average and delayed scores ranging from the fifth percentile (5%) to the sixty-third percentile (63%) on the Bracken Basic Concept Scale-R. During a classroom observation she was observed to have limited verbal output, diminished non-verbal skills with peers in contrast to adults, lack of spontaneous or sustained verbal communications with peers and, although familiar with classroom routines she required a significant amount of adult support to access the preschool environment. (B-62)
5. At the April PPT, draft goals were presented and were approved by the Parents. The Parents were advised that if the Student mastered her goals and objectives a PPT would be held to adjust the goals. The IEP recommendations for the Student for the 2006-2007 school year were:
 - a. 2.5 hours of special education instruction per week (one hour in the regular education classroom, one and a half hours in the resource room);
 - b. 2 hours per week of speech and language (.5 hours per week in the classroom and 1.5 hours of pull out);
 - c. 1 hour per week speech and language consultation with staff;
 - d. 2 hours per week of occupational therapy (1 hour in the therapy room co-treating with physical therapist and one hour in the classroom);
 - e. .5 hours per week occupational therapy consultation with staff;

² Hereafter Board's Exhibit shall be noted as "B" followed by the exhibit number.

- f. 2 hours of physical therapy (1 hour in the therapy room co-treating with the occupational therapist and 1 hour per week in the classroom);
 - g. 1 hour per week consultation with staff;
 - h. .5 hours per week of adaptive physical education, with the physical therapist as the responsible staff;
 - i. Full time para-professional;
 - j. Team meetings with the Parents for .5 hours per meeting, four times per year;
 - k. Physical therapist to train staff at the start of 2006-2007 school year regarding lifting; provide written transfer protocol, and review the need for adaptive furniture at the Board's School;
 - l. Parent training session with PT prior to the end of the school year, on a two person transfer of the Student from one seat to another or into a gait trainer /stroller;
 - m. Special transportation (van) with transportation plan;
 - n. AT plan;
 - o. 19.25 hours per week with non-disabled peers with accommodations;
 - p. The Student's identification was changed from developmentally delayed to multiple disabilities. The Parent accepted the draft goals and objectives and expressed concerns with the Student's weight problem. (B-64)
6. In the fall of 2006, the Student commenced kindergarten in the Board's school. The Student could walk independently 15 feet using the Pacer Gait Trainer. The Student was transported throughout the school environment in a Tiger 2000 Stroller. The Student needed assistance to transfer from the Tiger 2000 to the gait trainer. The Board's protocol required 2 people to transfer the Student from one unit to the other for safety reasons. The special education teacher did an informal assessment of the Student. The Student could count to twelve, identify all her letters, knew her colors and if asked a question, she would say "I don't know" but when motivated the Student would give an answer. The Student's expressive language was difficult to understand. (Testimony of Special Education Teacher (SET), B-64)
7. On September 14, 2006 a PPT was convened to address the Parent's concern with the Student's weight and request for aqua therapy for the Student. The parties were represented by counsel. The Parents discussed their concerns with the Student's weight and its impact upon her school performance, walking and mobility, and that the current IEP did not address those issues; thereafter also presented concerns with the Student's peer interactions.

The school nurse reported that she would work with the teacher on "good snacks" rather than provide the Student with individualized instruction as requested by the Parent because that would isolate her. That school nurse had consulted with the pediatrician on weight and nutrition; that the Student's weight issue was not the result of her disability but was the "result of diet and exercise." The Parent requested that the student's classroom be junk food free. The Board denied the Parent's request but encouraged the Parent to have a special treat for the Student in the freezer and alternative snacks for the Student. (Testimony of Mother, Preschool Nurse, B-79)

8. The Student from the age of four was provided with aqua therapy. This is a form of physical therapy, pursuant to a prescription provided by Dr. Ment, the Student's treating pediatric neurologist. The therapist testified that Dr. Ment's prescription was an order to evaluate and treat

the Student's Arthrogyrosis which had been previously diagnosed by her physician. The therapist testified that she had measurable goals and objectives for the aqua therapy that would improve the Student's independence, increase her range of motion and endurance and strengthen her trunk.

The therapist testified that in a typical forty-five minute session of aqua therapy, the Student received intense endurance and strengthening exercises, and this increased her functional skills that would carry over to independent walking, propelling herself independently in the pool, transferring on and off hard surfaces and promoting dynamic standing and balance.

The therapist's testimony explained the difference between land-based and water-based physical therapy as two different methodologies; she stated that with water-based physical therapy, the Student's treatment is enhanced by the water which effectively eliminates the effects of gravity because the Student was essentially weightless in water and that helped to increase her overall functioning. The therapist testified that water-based physical therapy was beneficial to the Student due to her severe physical limitations: she was able to move her joints more easily and independently in water without experiencing the joint pain that the Student experiences when walking and standing on land; it increases the Student's range of motion and overall functioning and endurance; it allows the Student to bend her knees and walk with the assistance of a floatation device; and it provided a means for physical exercise that would assist the student with controlling her weight since she was overweight. She was of the opinion that aqua therapy could "enhance those goals and objectives and help these goals get achieved faster." The purpose of aqua therapy is to translate to land therapy what is being done in the water. The therapist had not reviewed the Student's physical therapy reports from the District. (Testimony of Aileen Tisser, Parent's Exhibit³ - 6)

9. At the September 2006 PPT, the Board denied the Parent's request for aqua therapy as a related service. The team felt that the Student was making good progress and aqua therapy was not required as a related service or as an extra curriculum activity like soccer or baseball because kindergarteners do not participate in such school related activities. The Student's speech and language services were increased by .5 hours/week. The Student had a fulltime paraprofessional assigned to her. The para carried forward the strategies of the special education teacher throughout the school day. The Parent did not file a request for due process for the denial of aqua therapy services. (B-79, Testimony of Physical Therapist, Testimony of SET)
10. The Student received a health assessment in her preschool. The school nurse performed the assessment and noted the Student's issue with weight. The mother informed the school nurse that a nutritionist was monitoring the Student's weight. The Parent requested the Student be classified as obese but at that time children were not labeled obese. They are labeled as at risk overweight. An Individualized Health Care Plan (IHCP) was created for the Student. The IHCP provided a team effort to assist the Student in eating healthy foods and healthy eating habits. (Testimony of Preschool Nurse)
11. The Parents wrote the Board on January 29, 2007 and reported on the beneficial effects of the aqua therapy, three sessions per week, in controlling the Student's weight and increasing her joint

³ Hereafter Parent's Exhibit shall be noted as "P" followed by the exhibit number

flexibility. They presented an attached list of Parents' Concerns and Proposed Solutions for discussion at the next PPT meeting

- a. Revisions to the goals and objectives;
- b. Revisions to the IHCP;
- c. Weighing the Student at school;
- d. Specifying the adaptive equipment to be used at school;
- e. Use of the gait trainer for standing at least ninety (90) minutes per day;
- f. Restricting the use of food in the Student's classroom because the "healthy foods" consultation by the school nurse that had been discussed at the last PPT meeting was not followed since the Student had been permitted to consume a portion of the holiday Ginger Bread House.
- g. The Parent also expressed a concern with the class size because the Student becomes disoriented in a large group. (B-94, Testimony of Mother)

12. The Parent sent a letter to the district thanking them for their efforts with the Student's IHCP and presented changes /revisions to the plan. The Parent requested aqua therapy and PE to be included in the IHCP. The IHCP references PT and OT but these related services are addressed in the IEP. The Parent wanted measurable short term and annual goals to address the Student's weight problem. The Parent wanted the school nurse weigh the Student regularly, keep a weight chart and update it every three weeks. The goals were to be created by the school nurse in collaboration with the pediatrician and the Student's nutritionist. The Parent complained that the visits to the pediatrician to weigh the Student were charged as regular visits and most of the time was spent waiting. (B-82, Testimony of Preschool Nurse)
13. The Student's November 2006 progress report showed that she was making progress in most of her goals and objectives. Her reading goal showed emerging progress using language in her classroom setting as did the objective of maintaining conversation with a peer. She had difficulty participating in a large group because of her shyness; in a small group she did not have that problem. (B-85, Testimony of SET).
14. The Board convened a PPT meeting on February 1, 2007 to discuss the Parents' concerns. The Board disagreed with the Parents' contentions that weight reduction was a school issue and deemed it to be a "medical management goal, not an educational goal;" it disputed the Parents' contention that the aqua therapy should be part of the IHCP and should be included as part of an education plan since they were "...not educationally based"; it disputed the Parents' request that the Student should be weighed at school because it was not safe and denied that request; it explained that the classroom teacher had spoken to the other students' parents about the use of healthy snacks at school; and the Board denied weight reduction and aqua therapy. The Student at the beginning of school year was able to walk 15 feet in 10 minutes. In January 2007 she was able to perform this in 3 minutes. In the gait trainer, she is able to walk 50 feet with or without an external motivator. The Parents had consented to the Board's request for another evaluation of the Student. (B-96, B-194)
15. The Student's April 2007 progress report showed that she was taking the initiative when participating in large and small group activities by volunteering at least one comment or question. Even though she had mastered the goal to increase class participation, she still required adult encouragement. She was able to identify letter sounds and sounds of words, The Student had mastered her reading and math readiness goals. The Student mastered 7 of the 9 objectives in her

two speech and language goals. She still required more than 2 prompts to sustain a conversation with her peer when she was not understood. (B-96, B-107, B-108, Testimony of SET).

16. The School psychologist did an evaluation of the Student in preparation for her triennial review and based on the evaluation, the evaluator recommended:
 - a. Breaking down problems to small simple chunks with a repetition of verbal information ;
 - b. Pre warning when Student will be called on so she can be prepared to listen and extend “wait time” after being asked a question;
 - c. At home, activities of daily living should be a focus;
 - d. The Student should become more responsible and independent. Adults should reinforce her ability to do certain things independently;
 - e. Social skills that target initiation and maintaining conversations with peers are beneficial.(B-109)
17. The Student’s Developmental Reading Assessment (DRA) showed that she was reading at levels A, 1, 2. She tested at the independent level of 1 and the instructional level of 2. This was an improvement from her February 2007 rating when her DRA level was at A level. The minimum DRA goal for kindergarteners on June 2007 is an instructional level of 4. The Student is reading 1 level below her peers. The Student was observed to produce up to 11 utterances at a given time, but her spontaneous utterances within her mainstream classroom ranges between 3-4 words.(B-114, B-115)
18. A PPT meeting was held on June 1, 2007 to review the Student’s program and the evaluations that had been performed. The Parents were represented by an attorney at the PPT meeting. The Parent testified that she was looking for more speech and language therapy but the minutes of the PPT reflects “the parent had no questions of the speech and language evaluation” and agreed to the continuing use of the MT4. The Parent noted that the Student’s weight was going down. The Board noted and the Parent’s attorney agreed that the benefits of aqua therapy are addressed within the current program goals and objectives. The Parent requested that aqua therapy be provided in addition to the current physical therapy services. The Board denied the Parent’s request. An extended school year program (ESY) for 2007 was created so that the Student would not regress during the summer break. The ESY program was reduced from 6 weeks in the prior year to 4 weeks this year. There was no reason given for the reduction in length but there was also no objection noted at the PPT to this reduction. (B-116, Testimony of Mother)
19. During April and May 2007, the Physical Therapist conducted a triennial evaluation of the Student. The evaluator noted that the Student does not initiate with adults and peers without adult facilitation. The evaluator performed a Peabody Developmental Motor Scales (PDMS-2). The test showed that the results from the 2004 triennial were essentially unchanged. The Mother acknowledged to the Physical Therapist that it was an accurate representation of the Student. The Physical Therapist had seen an increased level of participation by the Student in both OT and PT sessions. She had increased her endurance and ability to stand and walk in the gait trainer. In the school environment, the Student had decreased the amount of time it took her to walk in the gait trainer, was standing and walking for longer periods of time, and had increased her level of performance of both functional mobility and gross motor skills in school. (B-112, Testimony of District Physical Therapist (DPT)).

20. The Parents retained a private Speech and Language Pathologist to work with the Student. The Pathologist began working with the Student in the summer 2007, 2 times a week for 45 minutes each session. The Pathologist's initial observation noted the Student to be hesitant to speak and frustrated by breakdowns in communication. The Pathologist was impressed with the Student's motivation by her accomplishments and her ability to use strategies learned in therapy. The Pathologist testified that based upon her assessment, she had determined that the Student had difficulty with sound or voice production due to weakness in her facial and oral musculature. The Pathologist's report showed that the Student was able to consistently produce 3-4 word utterances. This was consistent with the District's speech and language evaluation performed in June 2007. She formally diagnosed the Student with Dysarthria, Apraxia, and mixed receptive expressive language disorder with the foundation being in processing. (B-124, Testimony of Ms. Rhonda Caruso. B-115)
21. The Board convened a scheduled informal team meeting on September 26, 2007 to discuss the toileting issues at school and strategies that might work at school. Ms. Halstead suggested adding a goal to the IEP for toileting because the school nurse had learned that the Student's urology system was normal. The special education teacher drafted a proposed goal with objectives for independent toileting. Mother agreed and the team recommended a parent meeting to review the strategies being used. The special education teacher thereafter developed a toileting protocol. The Student felt shy about stating she had to go to the bathroom, so signals were provided to the Student as a strategy. (B-121, B-268).
22. On October 17, 2007 a PPT was convened to review the Student's IEP and the progress notes of the private Speech and Language Pathologist. This was the first time that the school was aware that the Student was being seen privately for speech and language. The Parents requested that the PPT implement the recommendations of the Pathologist. Specifically, she recommended that the Student receive:
 - a. Individual 45 minute sessions, five days a week, incorporating oral motor exercises, breath control exercises, drill of increasing length and difficulty, use of planning strategies and use of self-monitoring techniques.
 - b. Parenting education and home carry over.At the time of this recommendation, the Student was receiving three hours per week of speech services in school, although in a different service model than recommended by Ms. Caruso. The PPT agreed with Ms. Caruso's recommendation regarding "parent education and home carry over" and recommended parent training on articulation strategies four times per year, 45 minutes each session. (B-128, Testimony of Ms Rhonda Caruso)
23. In the 1st grade, the Student continued to make progress and all team members began to see a change in her attitude. Not only was she making good academic progress, but she became increasingly comfortable in the classroom. The Student's DRA level was now up to 10 in the middle of the 1st grade and with support, the Student grasped grade level mathematics. The Student's adaptive PE activities were changed because of the Student's strength and mobility in the gait trainer. (Testimony of SET).

24. During the Student's 2007-2008 school year the Parents were concerned about her cognitive ability and retained Dr. Robert Kruger, a clinical psychologist, to perform an evaluation. Dr. Kruger had the Parent remain during the evaluation because of the Student's limitation in mobility and found the Student's Performance IQ to be borderline range, her Verbal IQ to be average range and her Full Scale IQ in the low average range. Dr. Kruger found the Student's verbal cognitive skills to be average, nonverbal problem solving skills significantly impaired, and her information processing speed to be slow. Her academic skills were in the average range and her math skills were average as was her spelling. The Student was diagnosed with ADD and a language processing disorder. The Student was not observed in a school setting but the doctor was of the opinion that it did not affect the report or recommendations. The doctor found the Student overall to be in the average range. (B-136, Testimony of Dr. Kruger)
25. The evaluator made the following recommendations:
- Student should remain in special education.
 - Services should be increased because disassociation was great, Student had difficulty expressing herself and this could be addressed by more intensive therapy.
 - Speech and language therapy 5 hours per week should be delivered in .5 hour segments because the Student tires easily.
 - The outside therapists should be retained as consultants because they knew the Student well and this would avoid a duplication of efforts.
 - The Student's academic program should be broken-down to .5 hour segments because she tires easily. Student should be reevaluated annually to determine her progress and the degrees of difficulty that remain. (B-136, Testimony of Dr. Kruger)
26. Dr. Kruger did not know or speak with any of the Student's private providers. Dr. Kruger spoke with Ms Caruso for the 1st time and read her report the day he was going to testify. He was not aware of the credentials of the private occupational or physical therapist. Dr. Kruger had testified that the Student's IEP would not provide her FAPE unless her service time was increased for PT, OT and speech and language services as set out in his report. The doctor testified that he did not review the Student's records. (Testimony of Dr. Kruger)
27. In May 2008, the Student's pediatrician sent the Board a letter. The doctor recommended two 45 minute physical therapy sessions, each week, two 20 minute occupational therapy sessions each week and four 45 minute session each week for muscle strength, one hour of walking each day and 90 minutes each day of standing for the Student. At the time of the writing of the letter the doctor was not aware of the Student's walking protocol. (B-189, Testimony of Pediatrician⁴)
28. The Student's pediatrician testified that aqua therapy should be incorporated in the Student's IEP and that it also serves as a goal for weight loss. The Student's weight problem impeded her ability to move and participate in PE as the other students did. The doctor was not aware that the Student received adaptive PE as part of her IEP. The doctor recognized that the district was not responsible for the Student's weight gain and he did not require a goal for weight loss but could have a goal of cooperating with a nutrition plan. The Doctor spoke with the school nurse about weight related issues. (Testimony of Pediatrician)

⁴ The Doctor's letter called for the sessions to be on a daily basis, but in his testimony he corrected the letter by stating that the sessions should be on a weekly bases. The Findings of Facts reflect the corrected testimony.

29. The physical therapy triennial evaluation was reviewed by the physical therapist with the Parent prior to presenting it at the PPT. The Student was able to stand in the gait trainer and kick the ball in Physical Education (PE). This was meaningful progress. She had increased her endurance and ability to stand and walk in the gait trainer. The Student's physical therapy goals were created based by the PPT team with input from the Parent. The Student received the same amount of PE as her peers. An environmental assessment was done of the building and the Student's equipment in the environment to ensure that the Student had full access to her classes. Her desk was adjusted to better fit the Student. The physical therapist visited the Student's home to assist the Parent in the measuring of the Student for a wheelchair. The Parent asked the physical therapist to write a letter for the insurance company stating that the Student needed a wheelchair. The physical therapist explained to the Parent that the letter needed to come from a private physical therapist.(Testimony of DPT)
30. The Parents purchased a wheelchair for the Student. The Parent requested that the Board pay for the wheel chair. The District created a transportation plan to ensure the safe movement of the Student with the wheelchair. The Student utilized the wheelchair during the day except when she is walking in the gait trainer or sitting in a classroom chair. The Student is able to propel herself through the corridors with the wheelchair and is capable of locking the breaks. The Student mastered 3 of the 7 objectives in her 2 physical therapy goals. The Student had progressed using the gait trainer so that she began using the Posterior Kaye Walker which needs less support and requires the Student to bear more of her weight. In the posterior K. Walker the Student was slower but her posture was better. (Testimony of DPT, B-208, B-140)
31. An annual review PPT was conducted on May 12, 2008. The parties were represented by counsel. The school team first reviewed the Student's progress during the year. The classroom teacher reported that she was at a DRA level of 10, which was mid-first grade level, therefore having made a year's worth of reading growth in a year. The Special Education Teacher gave her report, and noted that the Student did have difficulty offering comments during whole class instruction. However, the Student was using grade level text. She was grasping grade level concepts in math. In addition to her resource room time with the Special Education Teacher, she was receiving reading in the classroom in a small group. The speech and language therapist reported the progress that the Student had shown interacting with peers during the social skills group and initiating interaction with a friend, although needing prompting to continue the conversation. Her speech intelligibility had greatly improved. PT and OT reports consistent with the annual review reports were provided as well. The Parent acknowledged the improvement the Student had made in OT and that the Student was very proud of herself. The Board had received a report that the Student was toilet trained both at home and in school. (B-141, Testimony of SET)
32. The private Speech and Language Pathologist had reviewed the Board's May 12, 2008 IEP and disagreed with the information on the present level of performance regarding the Student's communication with her peers, and disagreed that her receptive language was an area of strength. (Testimony of Ms Rhonda Caruso)
33. The Board's speech and language therapist worked on using oral motor strategies using voice practicing repetition for articulation. This was effective with the Student because the strategies were

followed up in the classroom. Based on the Pathologist report, she was working on articulation utilizing different strategies and doing things in a different manner. The Student was making progress in her goals and objectives, she was working on breathing strategies and in the spring of 2008 she was teaching the Student self monitoring techniques. The Student has made meaningful progress. The Student in a lunch bunch plays a game with her peers called "What time is it Mr. Fox?" The Student is wheeled around fast and if caught is asked the question. The Student did this independently. (Testimony of District Speech and Language Therapist (DSLTT))

34. The Student had mastered all of her occupational therapy goals and objectives. The Student's ability to print had greatly improved. (B-140)
35. At the May 12, 2008 PPT meeting the team proposed the following IEP goals and objectives for the 2008-2009 school year. The Parent did not object to the goals and objectives but wanted to share them with the Student's private therapists before accepting them. The PPT proposed the following program for the Student for the 2008-2009 school year:
 - a. 3.5 hours per week of special education (2.5 hours in resource; 1 hour in classroom);
 - b. 3 hours per week of speech and language (.5 hours in classroom; 2 hours pull out; ½ hour recess bunch);
 - c. 1.5 hours per week of PT (1/2 hour co-treat with OT and 1 hour pull out);
 - d. .5 hours per week consult by physical therapist for first 8 weeks of school and then 1 hour per month for the remainder of the year;
 - e. .5 hours per week of adaptive PE;
 - f. 1.5 hours per week of OT (.5 hour co-treat with PT and 1 hour pull out);
 - g. Team meetings with the Parent, each meeting .5 hours, 5 times a year in addition to regular conferences;
 - h. Full time paraprofessional;
 - i. Parent training for instruction on transfers to different standing or sitting positions;
 - j. Continued AT plan for Posterior Kay Walker (discontinued use of Pacer Gait trainer for walking);
 - k. Environmental assessment at start of year to be conducted by physical therapist;
 - l. Accommodations in all academic settings;
 - m. Time with non-disabled peers: 26.25 hours per week;
 - n. Special transportation.(B-141)
36. At the May 12, 2008 PPT, The parties were represented by counsel. The Parents had requested an increase in speech and language, occupational therapy, and physical therapy services, the provision of aquatherapy, increased small group instruction and the retention of consultants based upon the concerns they had presented to the PPT and requested the implementation of the recommendations from the letter and report of Drs. Marsh and Kruger. Parents did not agree that the Student had derived benefit from the placement with non-disabled peers in a regular classroom setting and requested instead small group instruction. The school team considered Dr. Kruger's recommendation for five hours per week of speech and language therapy, delivered twice daily in half hour segments, a doubling of her OT and PT; and the retention by the Board of Rhonda Caruso and Christina Reo. The Parent did not feel that the Student's needs were being met and felt that the goals and objectives were not appropriate. The Parents felt that the District did not see the Student's

potential and kept the bar low. The Parent wanted more than one year's growth in one year. The Parents did not request due process. (B-141)

37. The PPT team offered an extended school year (ESY) program for the Student for the summer of 2008. That program was a four week program, consisting of 1.5 hours of resource room services per week, 1 hour per week of speech and language services, and .5 hours per week of physical therapy. (This summer program was based on the progress that the Student had made in school during that year, the fact that the Student had done well in the prior summer program without regressing, and the Student's current needs.) In terms of physical therapy, the focus was on functional mobility. The Parents requested more intense speech and language and occupational therapy. The Board denied the Parents' request. (B-142, Testimony of Mother)
38. On June 27, 2008, the Director of Pupil Services sent a letter to the Parent offering more time in the resource room for the Student, additional speech and language services and making the Student's goals and objectives more specific and measurable in response to the issues raised at the PPT meeting held on May 12, 2008. The Board attempted to contact the Parent's private speech and language provider, Ms. Caruso, but received no response. Ms. Caruso acknowledged receiving messages from the school pathologist and not responding. (B-146, Testimony of Ms. Caruso)
39. On September 15, 2008, a PPT was held to try and resolve the outstanding issues and discuss the proposed changes to the Student's IEP. The Parent accepted the changes that were proposed at the PPT and was happy that a benchmark of one year's growth was included in the IEP. Service increase was a compromise that the Parent agreed to and wanted implemented as soon as a possible. The prior written notice page contained no comments for actions refused. (B-155)
40. During the 2008-2009 school year, the school team continued to collaborate on an ongoing basis. SET and second grade teacher met at least four times a week. SET modified the Student's second grade work in consultation with the second grade teacher. They also communicated by email. The team also met with the Mother during the year in team meetings, although the Parent failed to attend the first team meeting and thereafter insisted that it be rescheduled. The team met on October 20 without the Parent and reported on the Student's progress as of that date. She was enjoying her time in the classroom and was maintaining her friendships there; she was working on math skills in resource room; in OT she was working on drawing details in her drawings. She was also working on buttoning. They also discussed homework, which was being modified in terms of quantity. The Student's PT discussed the Student's progress in getting in and out of her walker and how she was motivating her, and her speech and language pathologist discussed the word production that they had been working on. (B-162, Testimony, SET; Testimony Second Grade Teacher (SGT)).
41. As an accommodation to the Parent, SET and the second grade teacher did reschedule and met with Parent on November 5, 2008. They reviewed the Student's progress and discussed homework. The Parent reported that it was sometimes difficult to get the Student to do homework "after her outside services"; second grade teacher and SET reported that the Student was reading at the lower end of the average range for her age according to her DRA level. They agreed to share with the Parent the copying model being used in OT as well as the curriculum words being used in speech. Second grade teacher continued to express her concern about the amount of classroom time that the Student

was missing due to her outside services. She believed that the Student benefitted from being in the classroom. The Mother agreed that the Student could receive services during Spanish rather than during classroom time. However, the Parent was not willing to agree to any other time in the regular classroom and in fact sought ultimately a fully self contained program for her. The Student has transitioned well from 1st grade to 2nd grade. The SGD wants the Student to attend more classes because she interacts well with her peers. (B-167; B-170; Testimony of SET, Testimony of SGT).

42. Then Parent requested to conduct an observation of the Student in the classroom. The Board denied the Parent this request based on school policy or being against their practice. The Parent wanted to observe the Student independently following the teacher's directions. The Board expressed their experience of this type of observation usually results with the Student tends to behave differently while being observed. The Board offered to tape the classroom session. The Parent accepted this alternative because it was the only alternative offered. The Parent was later allowed to observe the Student in the classroom. She observed her in December 2008, March 2009 and May 2009. In the observations the Parent felt that the Student was lost; in the December observation the Student did not actively work together with her peers, in the March observation the Student was slow in her responses and in the May observation the Parent reported that the Student seem dazed and was aware of the Parent (waived to the Mother). (B-161, B-163, Testimony Of Mother)
43. The Student at the beginning of her 2nd grade was reading at a 8 DRA level. She finished the 2007-2008 school year with a DRA of 10. During the summer break she had dropped one level. It is normal for students to show regression after the summer. The Student as of October 20, 2008 had recouped her DRA level of 10. (Testimony of SGT).
44. In a Motion dated January 30, 2009, the Board had requested the Hearing Officer to order an independent evaluation as follows: a neuro-psychological evaluation by Dr. Theis; a speech and language evaluation by Lisa Mule; a physical therapy evaluation by Mary Spolar; an occupational evaluation by Tara Glennon; and an assistive technology evaluation by Lauri Susi. The Parents submitted a Motion and memorandum of law in opposition to the Board's Motion on February 2, 2009. The Motion was denied in part but a speech and language evaluation was granted. The parties were to agree on an evaluator. Each party had their own evaluator they wanted to perform the evaluation and the Hearing Officer requested that they agree between the two evaluators. Both parties had an opportunity to fully investigate the speech and language pathologists, their background and expertise and experience. The Mother had two conversations with Deborah Witkowski, and expressed her concerns regarding the speech program the Student was receiving in the District. The parties conferred and agreed on an independent speech and language evaluation ("ISLE") by Deborah Witkowski. The Parent wanted to be included in the evaluation and the evaluator spoke with the parent as part of the evaluation. (Hearing Officer Exhibit⁵-3, H.O.- 4)
45. The ISLE was conducted over several sessions. The Student was cooperative during the evaluations and was able to attend to tests task for short periods of time. During the tests, the Student gave comments, asked questions and in most cases she used complete sentences. The Student is not a strong auditory learner. The Parent spoke with the evaluator regarding her concern about the amount of inclusion and the intensity of the speech and language in the Student's program. The

⁵ Hereafter Hearing Officer's Exhibit shall be noted as "H.O." followed by the exhibit number

Parent did not request that the evaluator speak with Ms. Caruso. The evaluator also spoke with the parties' attorneys. (B-302. Testimony of Ms. Wikowski)

46. The evaluator testified that the Student's receptive vocabulary score was average, the receptive language score was low average, and the expressive language scores were low average. The evaluator testified further that the results of the CELF-4 had indicated that the Student's receptive language scores were considered "disordered" with a standard score of 67 (1%); expressive language scores were borderline or below average with a standard score of 83 (13%); and the Language Context Score was "disordered" with a standard score of 74 (4%). The evaluator testified that the Student's expressive and receptive language skills were one standard deviation below the norm. (B-302. Testimony of Ms. Witkowski)
47. The ISLE recommended the following:
- a. Objectives addressing speech should be more specific in design.
 - b. An objective should be developed to address the fluency component of the Student's speech.
 - c. An objective should be developed to address voicing skills and this will increase Student's intelligible speech.
 - d. An objective should be included to address auditory comprehension skills.
 - e. Strategies should be provided to increase the Student's auditory memory skills.
 - f. Strategies should be provided to increase the Student's use of repair strategies when she experiences a communication breakdown.
48. The ISLE found that:
- a. The Student's speech and language times are sufficient and do not need to be increased.
 - b. Objectives addressing pragmatic and grammatical language are appropriate.
 - c. The Student's IEP for Speech and language was appropriate for the most part.

CONCLUSIONS OF LAW:

1. It is undisputed that the Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. Sec. 1401, et seq.
2. The Board 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 Board has met its burden.
3. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act.
4. The IDEIA's procedural requirements and safeguards are designed to assure that the parents of a child with a disability have a full and meaningful opportunity to participate along with LEA personnel in developing, reviewing and revising their child's IEP. Compliance with the IDEIA's

procedural requirements is the responsibility of the Board and not the Parents. Unified Sch. Dist. v. Dept. of Ed., 64 Conn. App. 273, 285 (2001). Procedural violations alone can be deemed a denial of FAPE. Student v. Newtown B.O.E., CT DOE Case No. 07-075 (8/23/07). In order to conclude that procedural violations resulted in a denial of a FAPE, the Parents must show that the procedural errors resulted in a loss of educational opportunity. Id. at 22; See, Burke County Bd. of Ed. v. Denton, 895 F.2d 973, 982 (4th Cir. 1999); Evans v. District No. 17, 841 F.2d 824, 830 (8th Cir. 1988); W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484-85 (9th Cir. 1992). When a procedural violation is alleged, a Hearing Officer may find that a Student did not receive FAPE if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Parents' child, or caused a deprivation of educational benefit. 34 CFR §300.513(a) (2) (i-iii); Id. at 22; See, Burke at 982; Evans at 830; W.G. at 1484-8. Procedural violations that interfere with Parents' participation in the IEP formulation process undermine the very essence of IDEIA. Amanda J. ex rel Annette J. v. Clark County Sch. Dist., 267 F.3d 877 (9th Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child's needs are not involved or fully informed. Id. Procedural safeguards are set forth in 20 U.S.C. §1415 and 34 CFR §§300.500-536 and include: the right for Parents to participate in all meetings (CFR §300.501(b)); the right for Parental involvement in placement decisions (CFR §300.501(c)); the right of Parents to examine all educational records (CFR §300.501(a)); the right for Parents to obtain an Independent Educational Evaluation (IEE) of their child (§300.502(b)); the requirement for Boards to consider evaluations provided by Parents at private expense in deciding FAPE (CRF §300.502(c)). IDEIA expects strong Parental input at PPT meetings, Warren G. v. Cumberland County Sch. Dist., 190 F. 3d 80, 86 (3d Cir. 1993). The IEP is to be collaboratively developed by the Parents of the Student, educators and other specialists and Congress repeatedly emphasized the "importance and indeed the necessity of Parental participation in both the development of the IEP and any subsequent assessments." Honig v. Doe 484 U.S. 305, 311 (1988). Failure by the Board to develop an IEP in accordance with procedures mandated by IDEIA, in and of itself, can be deemed a denial of FAPE. Amanda J. ex rel Annette J. v. Clark County Sch. Dist., 267 F.3d 877 (9th Cir.2001).

5. The Parent alleges that the Board committed a procedural violation when her right to be a meaningful participant in all meetings was infringed. The record is very clear regarding the Parent's participation in the meetings. The Parent's consent was sought to evaluate the Student (Findings of Fact #4), draft goals were given to Parent before PPT for her review (Findings of Fact # 5), PPT convened to address Mother's concerns (Findings of Fact #7, 15), the Parent's request for junk free classroom was listened to by the PPT (Findings of Fact # 7), meeting were scheduled to accommodate the Parent, share with Mother copying model used in OT (Findings of Fact #41), conducted an observation (Findings of Fact #42), Team meetings with Mother, Parent training, Parent's request for goals and objectives more specifically measurable was incorporated in PPT (Findings of Fact #38). The Parents were active participants in the development of her educational program and were provided numerous opportunities for meaningful input. The right to meaningful input is not a right to dictate educational methodology or the details of the educational program. Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir. 1997).; White v. Ascension Parish Sch. Bd. 343, F.3d 373 (5th Cir. 2003); Lachman v. Illinois State Bd. of Educ., 852 F.2d 290 (7th Cir.1988), cert. denied, 488 U.S. 925 (1988).

6. There are no procedural violations in this matter that denied the Student FAPE. The Parent was an active participant at the PPTs for the 2006-2007 school year, 2007-2008 school year and the 2008-2009 school year. The record clearly shows that the Parent was represented by counsel in the PPTs during the 3 school years in question and her attorney also participated and commented in some of the PPTs. Evaluations by Dr. Kruger, Ms. Caruso and the Student's treating physicians were all reviewed and considered at the PPTs. The Parent's attorney cites Ruiz v. Apfel, 98 F. Supp. 2000 (D. Conn. 1999) but the case cited is a disability claim where a treating physician's testimony should be binding upon the trier of fact unless contradicted by substantial and competent evidence to the contrary. The present case is about FAPE and as the 5th circuit, in Christopher M. v. Corpus Christi Indep. Sch. Dist., 17 IDELR 990 (5th Cir. 1991), declined to create a presumption in favor of testimony by the child's treating physician so does this hearing officer.
7. The second inquiry is a determination of whether the Individualized Education Program is "reasonably calculated to enable the child to receive educational benefits." Rowley, Id. at 206-207.
8. The Individuals with Disabilities Education Improvement Act (IDEIA) does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEIA requires states to "maximize the potential of handicapped children." Walczak v. Florida Union Free School District, 27 IDELR 1135 (2d Cir. 1998), citing Rowley, supra. An appropriate public education under IDEIA is one that is likely to produce progress, not regression. Id. The goal of IDEIA is not to maximize a special education child's potential, but rather to provide access to public education for such children. K.P. v. Juzwic, 891 F. Supp. 703, 718 (D.Conn. 1995). This access is considered a "basic floor of opportunity" for the students. Banks v. Danbury Board of Education, 238 F. Supp. 2d 428 [D. Conn. 2003] An IEP doesn't have to be perfect -- it only needs to ensure a child with a disability can receive a meaningful educational benefit under the IDEIA. So long as the IEP adequately describes the student's present levels of performance, includes appropriate and measurable goals and objectives, and provides for a specific educational program, it should satisfy the "basic floor of opportunity" standard set forth in Rowley.
9. A FAPE includes special education and related services designed to meet the student's unique needs, provided in conformity with a comprehensive written IEP (20 U.S.C. § 1401[9]; 34 C.F.R. § 300.17; see 20 U.S.C. § 1414[d]; 34 C.F.R. § 300.22). "The IEP is the central mechanism by which public schools ensure that their disabled students receive a free appropriate public education" (Polera v. Bd. of Educ., 288 F.3d. 478,482 [2d Cir. 2002]). A presumption exists in favor of the educational program proposed by the district. Tatro v. Texas, 703 F.2d 823, 830 (5th Cir.1983), aff'd in part, rev'd in part on other grounds 468 U.S. 883, (1984).
10. The Board is required to consider evaluations obtained by Parents at private expense in the determination of FAPE (C.F.R. §300.502(c)). The Parent alleges that the evaluations provided were not considered. While the District must review and consider all outside evaluations and data, it is not required to automatically adopt their recommendations. The District is entitled to rely on input from its own evaluators and staff, and to reach its own judgment regarding the provision of a FAPE, even when outside experts have different opinions. Declining to create a presumption in favor of the testimony of the child's treating physician, the court noted that the input of school staff was based

on “daily and continuing observation within the classroom.” *Christopher M., Id.* The Fifth Circuit again emphasized the importance of the opinions of school staff in *Cypress-Fairbanks, Id.*

11. The Parent alleges that the IEPs as written did not provide the Student with FAPE. The IDEIA does not require that children be performing at grade level, only that IEPs be reasonably calculated to provide educational benefit. See *Antignano v. Wantagh Union Free School District*, 2010 WL 55908 at 8 (E.D.N.Y. 2010) The record indicates that the Student made more than trivial progress in her 2006-2007, and 2007-2008 school year and that the Student in the 2008- 2009 school year was making progress. The IEP as written on September 15, 2008 will provide the Student with meaningful progress and FAPE. See (Findings of Fact #14, 15, 16, 18, 20, 23, 29, 30, 31, 33, 34, 37, 40 and 41)
12. In addition to the free appropriate public education requirement, the IDEIA’s preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra.* The IDEIA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms. In *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) the court set forth several non-exclusive factors to assist "in determining whether a child with disabilities can be educated satisfactorily in a regular class with supplemental aids and services These non-exclusive factors include: "(1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class." *Id.* at 1218. The Act’s least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the “maximum extent possible. *Oberti*, 995 F. 2d at 1217. Clearly the first prong of *Oberti* was met: the district conducted environmental assessments of the school to ensure the Student had access, her desk was adjusted to facilitate her use, the Student had a para-professional with her and team meetings were conducted on a regular basis to check the Student’s progress. The second prong was also met in that the Student received education benefits with appropriate aids and services. The Student played games with her peers, she had group learning sessions in her mainstream classroom, she participated in the classroom and asked questions. The Student had friends, attended parties and there was testimony that the Student seemed happy. She made progress in her social skills by being in her mainstream classroom. As to the third prong, the testimony received did not address negative effects the Student had or could have had on her peers. The testimony seemed to reflect that the Student was a part of her mainstream class and accepted by her peers.
13. The Student does not require a segregated school setting to obtain educational benefit, and the least restrictive environment requirement is met by the Board’s proposed IEPs for the 2006-2007, 2007-2008 and 2008-2009 school years. The Student will have appropriate mainstreaming opportunities in her home school with like aged peers. The Parents feel that the Student needs a more restrictive environment in order to make more progress in her educational goals, but "a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming”, *Burlington II*, 736 F.2d at 789 n. 19. Therefore, the Student will be educated in the regular classroom to the maximum extent possible.

14. The Parents claim that the Student's IEP was not appropriate in part because she was not receiving aqua therapy. There is no doubt that aqua therapy can be a related service that should be provided under the IDEA. "One of the physical therapy sessions for a student was designated to be aqua therapy," *Board of Education of the Shenendehowa Central School District*, 102 LRP 13288, physical therapy was to be provided to a student twice weekly and pool activities (aqua therapy) at least once weekly, or physical three times weekly if pool activities cannot be provided, *Mifflin County School District* , 102 LRP 14416. In *Corpus Christi Independent School District*, 103 LRP 17176 (TX SEA 2003), aqua therapy was allowed to continue for a 4-year-old with congenital myopathy and scoliosis after the Board had been providing it for 2 years. The goal of aqua therapy was the same as the goal of the land based therapy: to allow the student to walk without assistance, to take care of his needs, to hold a pencil, to open a carton of milk, and to generally participate in his educational. The aqua therapy was allowed to continue because the student had made substantial progress in both services and to reduce to one modality would be to a diminution of special education "related services".

The District considered aqua therapy as a related service (Findings of Fact #8) but denied it because the Student was making good progress,. The Student had increased her level of participation; she had increased her endurance and ability to stand (Findings of Fact # 23, 29, 40). The IDEA does not allow parents to challenge an IEP because it calls for a methodology that is not the best or most desirable program for their child. M.M. and B.M. ex rel. C.M. v. School Bd. of Miami-Dade County, Fla., (11th Cir. 2006). The alchemy of "reasonable calculation" necessarily involves choices among educational policies and theories. In deciding choices between different methodologies " deference is paid to the District, not a third party". Watson v. Kingston City School District, 325 F.Supp.2d 141 (N.D.N.Y. 2004) Even though the IEP calls for aqua therapy it is replaceable by physical therapy showing that they are just methodologies which can obtain the same results. *Mifflin County School District, Id.; Corpus Christi, Id.*

Physical therapy is the related service the Student shall receive. The Student has demonstrated meaningful progress with the physical therapy provided by the Board and at this time does not require aqua therapy as an additional related service in her IEP.

15. The Program the Board provided for the Student for the 2006-2007, 2007-2008 and 2008-2009 school years was appropriate and provided the Student with FAPE in the LRE.
16. Student required a wheel chair in order to be mobile at school. The Board should have worked cooperatively with the Parents regarding the acquisition of a wheel chair for use at school and at home. The Board shall reimburse the Parents the net costs of the wheelchair that they had purchased that was not covered by public or private insurance benefits.
17. The evaluation of Dr. Kruger was reviewed by the Board and not utilized to develop the Student's IEP. The Board does not have to reimburse the Parent for the expense of the evaluation.
18. To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

FINAL ORDER AND DECISION:

1. The program and related services offered by the Board for the 2006-2007 school year was appropriate and provided the Student with FAPE.
2. The program and related services offered by the Board for the 2007-2008 school year was appropriate and provided the Student with FAPE.
3. The program and related services offered by the Board for the 2008-2009 school year was appropriate and provided the Student with FAPE.
4. The Board does not have to reimburse the Parents for the private speech and aqua-therapy services provided to the Student.
5. The Board does not have to reimburse the Parents for the evaluations obtained for the Student.
6. The Board did not commit procedural violations that caused a denial of FAPE to the Student.
7. The Student is not entitled to compensatory education as there was no denial of FAPE.
8. The Board shall reimburse the Parents the net costs of the wheelchair that they had purchased that was not covered by public or private insurance benefits.