

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Milford Board of Education

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Appearing on Behalf of the Board: Attorney Michelle C. Laubin  
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Appearing Before: Attorney Justino Rosado, Hearing Officer

**ISSUES:**

1. Is the program and related services offered by the Board for the 2008-2009 school year appropriate and did it provide the Student with FAPE according to 20 USC 1401 et seq?
2. Was the transition plan developed for the Student appropriate? If not;
3. Should the Student have been allowed to graduate after the 2008-2009 school year?
4. Should the Student be placed at the Thames Academy for the 2009-2010 school year at the Board's expense?
5. Should the Board reimburse the Parents for the Vista Independent Evaluation?

**FINAL ORDER AND DECISION**

**SUMMARY:**

The Student is a 20 year old student who has been identified with a Specific Learning Disability and is entitled to receive a free appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEIA) 20 U.S.C. §1401 et seq. and Connecticut General Statutes §10-76a et.seq. and the state regulations. At the May 28, 2009 IEP meeting, the Parents rejected the District's plan to graduate the Student. The Parents requested placement at The Thames Academy for a fifth year program. 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 as the Student and Parents' request for a Due Process hearing dated June 15, 2009. The parties attended a Resolution Meeting on June 25, 2009. The Department of Education assigned this matter to the Due Process Hearing Officer per a letter dated July 30, 2009. The parties participated in a Prehearing Conference with the Due Process Hearing Officer on August 11, 2009. On or about June 24, 2009, the District received notice of the Parents' request for due process. The parties agreed to the following hearing dates: October 5, 7, 13, 29, November 17, 23, 30, December 7, 2009 and January 4, 20, 25 and 26, 2010.

The Board submitted 319 exhibits, and the Student/Parents submitted 28 exhibits. 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 the Final Decision and Order after the hearing dates, the date for the mailing of the Final Order and Decision was extended. The date for the mailing of the Final Decision and Order is April 19, 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 be so 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. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993).

### **FINDINGS OF FACT:**

1. There was no dispute the Student was eligible for special education and related services for the 2008-09 school year.
2. On turning eighteen years of age, the Student signed a statement on November 21, 2008 authorizing her parent to be her "educational consultant" until she graduated from high school. The Student signed a Connecticut Short Form Power of Attorney authorizing her parent to be her attorney in fact related to the pursuit of the Due Process hearing. (Testimony of Father, Parent's Exhibit<sup>1</sup> # 23)
3. The Student's medical diagnosis is "medically refractory epilepsy". She experiences fatigue following seizures and is unaware of events occurring during the seizure; when in school, she would sometimes need to go to the nurse's office for rest, especially after a "cluster" of multiple seizures in close succession. The expectation was that the Student would grow out of the seizures but this did not happen. The Student underwent surgery to alleviate the seizures. The surgery was in an area of the brain that is important in processing information presented verbally and interpreting spatial information. Math would always be an area of weakness for the Student. The frequency of the seizures did not change but its severity and length did change to the better. (Testimony of Father, Board's Exhibit<sup>2</sup> # 6, B-7)
4. In a 2005 evaluation the Student expressed a sense of inadequacy. The Student struggled with various social and emotional issues and psychometric assessments showed low average working memory ability and significant slow processing speed. It was recommended that the Student's learning environment be structured so that distractions were less likely to disrupt her, to provide additional time for in-class assignments, and to improve organization and planning skills. (Testimony of Dr. Kulas, B-6, B-10, Testimony of Father)
5. In September 2005, the Student transitioned from a private school to the Board's High School for 9<sup>th</sup> grade, with a 504 Plan. In January 2006, the Student was referred for special education services. She was identified under the category of Other Health Impaired (OHI) due to her seizure disorder and concomitant learning needs, based upon her doctor's evaluation. (B-10, Testimony of Father, B-19; B-20).
6. In the fall of 2006, baseline transition assessments were conducted by the Board as a starting point to determine how the Student's strengths and interests could be used to identify potential job shadowing opportunities, and additional transition goals were added to the IEP. The instruments used for this purpose were the COPES (Career Orientation Placement and Evaluation Survey), COPS (Career Occupational

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<sup>1</sup> Hereafter Parent's Exhibits shall be noted as "P" followed by the exhibit number.

<sup>2</sup> Hereafter Board's Exhibits shall be noted as "B" followed by the exhibit number.

Preference System), and CAPS (Career Ability Preference System). According to these assessments, the Student expressed the strongest level of interest in jobs associated with working outdoors, in the service industry, and in the business sector. In reviewing the results with the Student, certain possibilities in each of these areas were identified as possibilities for work, including working at an animal shelter, working in the sales/retail industry, and working as a counselor in a park/recreational setting. (B-45, B-48, Testimony of Case Manager)

7. The Student completed an Individual Supports Assessment on December 15, 2006 and listed an FBI agent as one her vocational goals. The Board had utilized the results of the COPS, COPEs, and CAPS for the Student's interests and preferences section (Section 3(d)) on her transition plans developed for the 2006-07, 2007-08 and 2008-09 IEPs. The Board did not complete an updated COPEs, COPS, and CAPS since the 2006-07 school year because it believed that there was no need to update that assessment evaluation. The assessments give a jumping off point to where the Student was and could guide the team towards planning for her as well. The Student wanted to attend college and a high school diploma would have facilitated this goal. (Testimony of Father, Testimony of Director of Special Education (DSE))
8. In the January 2006 IEP meeting, goals were created for the Student. The Student had expressed an interest in attending college. One of the goals addressed the Student's employment and post secondary education. This was a basic goal that included 3 objectives that would develop the necessary work skills and behaviors to maintain competitive employment in a career that matched her interests. The Student's neurological evaluation was utilized in the Student's transition plan. Modifications were created to address the Student's needs. The Student's projected graduation date was June 2009. (Testimony of Student, B-20)
9. On or about April 5, 2007, the PPT met to plan the Student's 2007-2008 school year. The PPT continued 3 employment and post secondary education goals. The goals addressed the Student's transition in the community setting, transition in the post secondary education/employment setting and acquisition of independent living skills. The transition coordinator would attempt to find summer employment for the Student. The Parent expressed concern that the Student was struggling with math. The Parent suggested that plane geometry was not an appropriate math course for the Student and the team agreed. The team suggested personal finance and the Parent agreed to this change. (B-109, Testimony of Father)
10. During the summer of 2007, from July 10 to August 17, the Student was provided with a job through the Milford Summer Youth Employment program at the Milford Animal Shelter. This was a positive work experience for her and helped her to make a connection at the animal shelter. During the 2007-2008 school year, the Student's transition coordinator obtained a part-time paid employment position for her after school. The Student was provided with job coaching services for this position two hours per day, two days per week. The September 6, 2007 IEP maintained the same 3 employment and post secondary education goals but changed the objectives. The Student's transition plan included access to word processor and refresher training. The IEP stated a June 2009 graduation date. (B-129, Testimony of Transition Coordinator)
11. The Student did not request the Board to provide her with job placement or paid employment during high school; nevertheless the Board provided such placements because it felt that it would give her more experience. The Student was not receptive to part-time employment because she wanted to focus upon her studies at school. The Student volunteered at Snowflake Animal Hospital over the summer of 2007 and had worked at Camp Happiness as an assistant counselor as part of a Milford Summer Youth Employment grant during the summer of 2008. (Testimony of Student and School Psychologist)
12. At the September 2007 PPT meeting, the Parent gave the Board permission to contact the Bureau of Rehabilitative Services (BRS) about the Student's transition. The Parent was advised that he also needed to contact BRS. (B-129, Testimony of Parent)

13. The Board moved up the Student's Annual Review to April 2008 to plan the triennial evaluation due February 1, 2009, and a PPT meeting was held April 22, 2008. The PPT again discussed that the Student had earned 15.6 credits and continued to be on track for high school graduation in June 2009. The transition plan noted the Student's interest in criminal justice. A transition goal with 3 objectives was included in her IEP to address the Student acquiring skills to successfully transition to a two or four year college. The Student made limited progress in her math goals and objectives. The data showed that the Student continued to make progress in math concepts using Math Lab and the ALEKS program, improving to 42% concept mastery, as well as receiving supplemental support in the resource room from a special education teacher. The PPT agreed that the Student required math reinforcement during the summer and provided math instruction with a special education teacher, twice per week for five (5) weeks in July and August 2008. (Testimony of Case Manager, Testimony of Father, B-213)
14. The PPT planned to conduct a neuropsychological evaluation as the triennial reevaluation. The Board and Parents had agreed to utilize Dr. Joseph Kulas for the triennial evaluation after they had learned that the prior evaluator was no longer available for such an evaluation. The Board submitted a letter to Dr. Kulas with the concerns developed by the Board and Parents. (Testimony of Father, B-225)
15. The Parent was concerned that the Student would not be prepared to graduate if not prepared in English and math skills. A plan was established to help the Student with her writing skills. A goal and objectives were created for implementation to assist her with writing skills, The school team would report to the Parents so they could see her progress. When the plan was implemented more time would be added to Student's IEP to address writing skills. The Student had 2 periods added on to learning center to assist her with her writing. The additional periods would not be implemented until the following marking period in order not to disrupt the Student's current schedule. (Testimony of Case Manager, B-130, B-149)
16. At the April 22, 2008 IEP meeting, the team developed goals and objectives for written expression, math, study skills and organizational skills, social skills, and transition to post-secondary settings including community participation. (Testimony Case Manager, B-213)
17. The Parents requested tutoring preparation for the Scholastic Aptitude Test (SAT) and American College Testing (ACT). The Board offered after school academic tutoring which was declined by the Parents because the Student was frequently tired after school and it would not be good for the Student. The Parents obtained a tutor that came to their house. (Testimony of Case Manager, Testimony of Parent)
18. The Parents were concerned that their input was not considered at the 2008-2009 IEP meeting The Parents requested that summer tutoring be provided for the Student. A summer tutor was provided for a total of 7 ½ hours during the summer of 2008. (Testimony of Father)
19. At the 10/22/2008 PPT meeting the transition plan was reviewed. The team suggested that transition goals address development of pragmatic language for interviews and follow-up calls. The student was being offered a community awareness class during her 5<sup>th</sup> period. The Parents were happy with the Student's involvement with the Epilepsy Awareness Support group and as a counselor, the past summer, at Camp Happiness. The Guidance Counselor continued to work with the Student in searching careers and appropriate colleges. (B-251. Testimony of Guidance Counselor)
20. The Parent was concerned that the Student would not be ready to graduate. At the December 12, 2008 PPT meeting, the Parents asked the PPT to consider support at a community college or Thames Academy at Mitchell College. The team agreed to reconvene in January 2009. At the February 2009 PPT meeting, there was a discussion about a 5<sup>th</sup> year program at the Board's High School. The Board offered a 5<sup>th</sup> year at its High School, but the Parent was seeking a program somewhere where the Student could obtain readiness to attend college. The Board would reconsider a 5<sup>th</sup> year program in April 2009. The Parent did not object to this

recommendation. The Student's transition plan was modified to include individual and group counseling services to assist in reaching transition goals. (Testimony of Father, B-276)

21. The neuropsychological evaluation was done with Dr. Joseph Kulas in September 2008. The purpose of the evaluation was to assist the Parents and the Board in developing appropriate transition services for the Student for her last year of high school. On an adult test of cognitive ability, the WAIS-III, the Student achieved the following scores: Full scale IQ 79, verbal comprehension 89, perceptual organization 80, working memory 71, and processing speed 73. On a test of academic achievement, the WIAT-II, the Student achieved the following scores: word reading 116, reading comprehension 81, spelling 118, pseudo word decoding 107, numerical operations 77, math reasoning 64, written expression 88. (B-240, Testimony of Dr. Kulas)
22. Dr. Kulas had diagnosed the Student with a non-verbal learning disability. The Doctor noted that the Student did not exhibit seizures during the evaluation. The Student's special education category was changed to Specific Learning Disability by agreement with the Parent. The Student's difficulties with math, writing, social skills and organizational skills are neurologically based and can be expected to be a lifelong disability. (B-240, Testimony of Dr. Kulas, Testimony of Case Manager)
23. The Student will have memory difficulties throughout her life. Student was able to recall words but not to the level of her peers. In October 2008, the evaluator had a feedback session with the Parent and a member of the Board. There were no difficulties or conflicts from this session. The Student would struggle in a typical college curriculum. (B-240, Testimony of Dr. Kulas)
24. Dr. Kulas had testified that he did not have any formal training in the field of vocational assessments, assessment of independent living skills, or transition planning, except that he provided helpful suggestions to assist an individual to function more effectively. How a Student can function properly is what you look for in the evaluation. The evaluator did not administer any formal vocational assessments or aptitude tests. He made various recommendations for the Student's academic environment:
  - a. Additional programming in the area of social skills.
  - b. A Functional Behavior Assessment (FBA).
  - c. Academic coaching on a daily basis and set goals and review how the Student was progressing in these goals.
  - d. Difficult activities should be scheduled in the morning.
  - e. Decrease visual and auditory distractions.
  - f. Encourage the Student to have instructions repeated and clarified.
  - g. Teach the Student to break down large assignments into smaller more manageable parts.(Testimony of Dr. Kulas)
25. During the feedback session the evaluator talked about transition and how to really plan and keep the Student progressing in terms of her post-secondary goals for the remainder of the school year. The Doctor talked about how the Student can work toward a career in her chosen field even if it's not one particular career. He talked about the importance of when she does attend college that it would be important for her to start out slowly and maybe take one or two classes at a time. He thought college was realistic. She may want to start with a community college initially. When it came to math, since that was an area of struggle for her, he did suggest that perhaps she take that class in isolation so she didn't have any other stresses at that point. He also talked a lot about her nonverbal learning disability and how that might impact her educationally, the importance of her social skills and development and the importance of involving her within a group. (Testimony of DSE)
26. The Case Manager followed through with the suggestion of the FBA to see if there were motivating factors that were overlooked. Tasks that needed more focus and attention had to be addressed by giving the Student coping strategies. In the October 22, 2008 PPT meeting, the triennial evaluation of Dr. Kulas was reviewed and additional goals were written for recognition of social cues, use of non-verbal communication skills, and

positive relationships with peers. A 10 minute session was incorporated into the Student's homeroom class for executive functioning and coaching. The entire team was of the opinion that the IEP for the 2008-2009 school year was appropriate. (Testimony of Case Manager, Testimony of School Psychologist, B-251, B-258)

27. At the October 22, 2008 PPT meeting, the Guidance Counselor stated that 2 schools she had visited were good places for the Student because of their criminal justice curriculum with student support. The Student visited these schools and one, Thames Academy, was one the appealed to the Student. The Student wanted to attend this school as a fifth year. The Board's intent was a 5<sup>th</sup> year program at The Board's High School. (Testimony of Guidance Counselor)
28. On December 12, 2008 the PPT met, at the request of the Parents, to discuss a 5<sup>th</sup> year program and the Student's current IEP. The Student signed a statement authorizing her father to act as her educational consultant until she graduates from high school. The IEP showed that, in her first progress report, the Student had mastered her social awareness and self-concept goal and was making satisfactory progress in her other social, employment and post secondary education goals to transition to a two or four year college. (B-270)
29. The school team offered to consider a plan for a 5<sup>th</sup> year program at the Board's High School concentrating on social skills, vocational skills training, English and math. This program was predicated on a determination that transition to a post secondary setting would not be appropriate by June 2009. The IEP team still considered a June 2009 graduation for the Student. If the determination was that the Student should not graduate, the Board would hold her diploma until the Student finished her 5<sup>th</sup> year. The Parents and Student made no requests for any additional evaluations in the area of transition skills. (B-276, Testimony of DSE)
30. The Student was making progress in her 2008-2009 academic goals and objectives. The Student had Mastered one goal and was making satisfactory progress in her written language and math goals. In her social goals the Student had made significant progress. The Student had mastered her post secondary education goal and had made progress in her employment and community participation goals. Although the final progress report indicates that the social skills goals and objectives were not mastered, the school psychologist testified that upon further reflection, given the mastery criteria set for these goals, the goals should have been marked mastered as of June 2009. (B-300, Testimony of School Psychologist)
31. The Student took the SAT and ACT test. The Student's results from these tests were not that high. The Student was provided with accommodations for both tests. The accommodations provided to her were for extended time and a separate setting; the ACT was given to the Student over multiple days. (Testimony of Guidance Counselor)
32. Thames Academy (TA) at Mitchell College (MC) is a post secondary, post graduate residential school for students not ready for the rigor of college. There are currently 36 residential students. The school provides college level courses which can be taken for college credit. At the end of the first year, students can obtain up to 18 college credits; upon passing TA, students can be considered a 2<sup>nd</sup> semester freshman if they are accepted into MC. The school has 3 levels of support and tuition payment is predicated on the level of support the students receive. Learning and writing specialists meet with student teams to see how the students are progressing and discuss any issues the students are having in the classroom. The students need to pay for this service. There is no math specialist but there is an experienced tutor available. (Testimony of Director of TA, P-9)
33. Students at TA attend a thirty week program of study that is divided into two (2) twelve (12) week semesters and two three week "mini semesters". The Student is a member of the Law and Society Club at TA which is a club for students interested in criminal justice, pre-law, and homeland security. Some of the courses offered are only available to students at TA such as Developmental English and others are available to students who attend

either TA or MC such as Digital Photography or Fundamentals of Algebra, with a different pace of instruction at Thames Academy. (Testimony of Director of TA)

34. The Student attended college fairs. She also visited 4 year colleges and community colleges. The Student had applied to and was accepted at the TA transitional program located on the grounds of MC for the 2009-10 school year. At the Student's request, the Board provided recommendations to the school. The Student's ability determines what cohorts she will be assigned. The Student is currently in the 2<sup>nd</sup> cohort. The Student receives training from TA in doing her laundry, money management, life skills, study skills, and additional academic training from learning specialists in certain areas such as writing and math. The Student needs to learn self advocacy. (Testimony of Student, B-254, Testimony of Director of TA)
35. The Student had a "B+" average in all her classes. The Parents agreed with the reports of progress from Thames Academy and testified that the program was meeting the Student's needs in the areas of writing and learning, and that her social skills, functional skills, conflict resolution, money management skills, and independent living skills were all improving. The Student was scheduled to take math instruction during the spring semester to address that area of need. (Testimony of Father)
36. The Student and Parents, through counsel, had requested an independent educational evaluation (IEE) in a letter dated March 24, 2009, because they had disagreed with the Board's COPS, COPES, and CAPS assessments that had been relied upon since the 2006-07 school year for the Student's transition plan. The Board did not initiate a Due Process hearing in order to establish that its evaluation was appropriate or that the IEE that had been obtained from VISTA did not meet the Board's criteria. The Student applied and was accepted for an evaluation at the VISTA Program. (Testimony of Father, P-12)
37. The VISTA evaluation was a functional skills assessment. The evaluation is designed to provide information to VISTA staff to guide acceptance into their program. It is not designed as a general evaluation of student skills as compared to an age-appropriate peer group. The VISTA report identified concerns with the Student's vocational, social skills, coping skills, peer interactions, and anxiety as well as money management skills, transportation, safety in the community such as crossing a street or using a crosswalk, and interpreting a bus or train Schedule. The Student was provided with three work site evaluations: cleaning tasks at a church; clerical tasks at VISTA; and library assistant at the public library. VISTA staff reported that the Student was on time, personable, friendly, and required intermittent support to perform the tasks assigned to her. (Testimony of VISTA Admissions Coordinator, B-293)
38. The Board overall did not agree with the VISTA evaluation. The ratings of the Student's performance during the VISTA job site evaluations were not well-founded and were inconsistent with the observations of the staff working with the Student. They felt that the Student had overall more independent life skills. They did not agree with the assessments that Student had emerging skills in reading and gave the Student a higher score for comprehension. The Student's ability to read and decode was average and above her age, but she needed help with reading comprehension. The Student's computer literacy skill was good and age appropriate. The Student was observed in the cafeteria and resource room and she seemed appropriately dressed and well groomed. The Parents never raised issues of Student's dressing or hygiene. Student informed that she did laundry and helped dad with laundry. She participated in cooking class in regular education without assistance except for written tests. The Student was not comfortable during the five day evaluation. She was homesick and felt that she did not learn anything from the evaluation that she "did not already know." (Case Manager, Testimony of Student)
39. The Student participated in a Crime and Violence course through the general curriculum during the spring semester of her senior year, an area of interest for her as she continued to voice an interest in working as an FBI agent or a related field. She earned an "A+" in the class. At the May 28, 2009 PPT, the team considered whether the Student should graduate from high school with her class in June 2009, given her satisfactory progress or mastery of goals and objectives and her acquisition of all other requirements for a regular high

school diploma. The PPT, with the exception of the Parents and the Student, determined that it was appropriate for the Student to graduate. (B-296)

40. The Student cannot obtain a drivers license until she is seizure free for one year and has not met that qualification. (Testimony of Student)
41. The Student's 2008-09 IEP Goal No. 9 had required the Board to provide the Student with travel training in order to access the community since she did not drive. Travel training was subsequently arranged by the Board with the Kennedy Center and it commenced during the end of the Student's spring 2009 semester. The Student and Parents were provided with information concerning travel training available from the Kennedy Center free of charge. The Student began the travel training but was withdrawn by her Parents due to fears about her seizure disorder and inability to travel by herself. The Parents made arrangements with her doctors to provide documentation for individual transportation through Milford Transit. (Testimony of Case Manager, Testimony of Father)
42. The Board graduated Student in June 2009. The Parent was not in agreement with the graduation and returned the diploma to the Board. (Testimony of Father)

### **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 Act, 20 U.S.C. Sec. 1401, et seq.
2. The public agency 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.
3. A district has an affirmative obligation to offer an eligible student a FAPE (20 U.S.C. § 1400[d][1][A]; *Schaffer v. Weast*, 546 U.S. 49, 51 [2005]; *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 371 (2d Cir. 2006). A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (*Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 192 [2d Cir. 2005]). 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]).
4. 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. The second inquiry is a determination of whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
5. The IDEA'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 IDEA'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 (4<sup>th</sup> Cir. 1999); Evans v. District No. 17, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988); W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484-85 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (CFR §300.502(c)). IDEA 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 collaborative and developed by the Parents of the Student, educators and other specialists. Congress has 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 IDEA, 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 (9<sup>th</sup> Cir.2001)

6. The Parents allege that the Board committed a procedural violation when they failed to follow up with the Parents in any meaningful manner regarding their request for an IEE and failing to consider the results of the recent IEE from VISTA. 34 CFR § 300.502 and Conn. Reg. § 10-76d-9(c) provide that parents have a right to an independent educational evaluation if they disagree with the evaluations of the District. 34 C.F.R. § 300.502(b)(2) provides that if the parents request an independent evaluation at Board expense the Board must "without unnecessary delay" either file a due process complaint to prove that its evaluation is appropriate, or ensure that the independent evaluation is provided at public expense. As there is no time limit under Connecticut law for requesting such a hearing "[t]he issue of what amount of time a district can wait before acting upon a parent's request for an IEE ... must be viewed in a manner that preserves a parent's right to a publicly funded IEE." In re: Letter to Anonymous, 212 IDELR 185 (OSEP 1994).
7. In this matter, the failure to request a hearing for over 60 days could have been a procedural violation had not the Parent, along with their notice for an IEE, cancelled a PPT meeting scheduled for April 7, 2009 where this request might have been discussed. Also, the evaluations utilized in the Student's Transition plans were the Student's neurological evaluation provided by the Parents, (Findings of Facts # 8) the COPES, COPS, CAPS evaluations of 2006, (Findings of Facts # 7) Individual Support Assessment completed by the Student in 2006 (Findings of Facts # 7) and Dr. Kulas' evaluation in 2008 (Findings of Facts # 31). The Parents state they disagree with the vocational assessment which was the COPE, COPS, CAPS evaluations performed in 2006. This claim is clearly beyond the two-year statute of limitations. 20 U.S.C.S. § 1415(f)(3)(C); Conn. Gen. Stat. § 10-76h(4). The Parents clearly had prior opportunity within the statute of limitations to contest the vocational assessment of the Student and did not do so in a timely manner. The Board at the next scheduled PPT meeting discussed the VISTA evaluation and found it did not provide any new useful information for the development of the IEP. The Student in her testimony stated that the evaluation did not tell her anything she did not already know. The ratings were inconsistent with testimony of school personnel who observed the Student on a daily basis.(Findings of Facts # 38) Parent's Post Trial Brief Paragraph # 210 states that, 'The VISTA report identified concerns with the Student's vocational, social skills, coping skills, peer interactions, and anxiety which was consistent with Dr. Kulas' report, as well as money management skills, transportation,

safety in the community such as crossing a street or using a crosswalk, and interpreting a bus or train schedule as more fully outlined in that evaluation report.” As stated these issues were already in a report from Dr. Kulas and the other issues were included in the Student’s IEP goals and objectives. (Findings Of Facts # 8, 9, 16, 19, 26, 30 & 38). The Board is not required to reimburse the Parent for their IEE at Vista. The Board did not commit a procedural violation for their alleged failure to follow up with the Parents in any meaningful manner regarding their request for an IEE and failing to consider the results of the recent IEE from VISTA.

8. The Parents allege that the Transitional Plan was not appropriate. Transition is a bridge between the security and structure offered by the school and the opportunities and risks of adult life. Any bridge requires both a solid span and a secure foundation at either end. The transition from school to work and adult life experiences requires sound preparation in the secondary school, adequate support at the point of leaving, and secure opportunities and services, if needed, in adult situations. ... The definition of "transition services" from the 2004 Amendments to the IDEA is extensive and reads as follows:  
The term "transition services" means a coordinated set of activities for a child with a disability that –
  - (A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (included supported employment), continuing and adult education, adult services, independent living, or community participation;
  - (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
  - (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluations [20 U.S.C. § 1401 (34)].the plan "provide[d] a basic framework sufficient to ensure that [the student] would receive transition services that benefit[ed] her education
9. The Board complied with these requirements and provided the Student with a Transitional Plan that would allow her transition to the community, workforce or post secondary education. The Board did not ignore the Student’s interest in obtaining a career as an FBI agent, they assisted her in the process. The Student took a Crime and Violence course, went to court one day. The Board tried to see if an internship with the police was available but learned its only available to college students. The Board did not force the Student to follow a work plan when she objected because she needed to study. The Student was focused in her endeavor and received support not only from home but from the school staff. The school staff recommended the school that she is now attending and wrote recommendations for the Student. A staff member even offered to speak to a family member on the school staff of the post secondary school if the Student needed assistance in enrolling. The transition plan was appropriate and reviewed often to ensure it was written for the Student to receive a meaningful education. The transition plan does not need to be the best as long as it provides the student with the educational benefit to allow her to proceed to post secondary employment, education or community involvement. The transition plan developed for the Student was appropriate.
10. A school district complies with the IDEIA's substantive requirements if a student's IEP is reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 207. The IEP must be likely to produce progress, not regression. *See Weixel v. Bd. of Educ.*, 287 F.3d 138, 151 (2d Cir. 2002). A valid IEP must open the door of public education for a disabled child in a "meaningful way". *Walczak*, 142 F.3d at 130. However, the IEP need provide only a basic floor of opportunity, and a school district is not required to furnish "every special service necessary to maximize each handicapped child's potential." *Cerra*, 427 F.3d at 195. When a learning-disabled child is in a mainstream class, "the attainment of passing grades and regular advancement from grade to grade" is generally considered evidence of satisfactory progress. *Walczak*, 142 F.3d at 130.

11. The Student's transcript (B-301) demonstrates an improvement in her grades as she progressed through her high school experience. The Student's IEP demonstrated mastering and progress in her goals. The Student ranked 187 in a class of 265 students. The Student was accepted in a post secondary school and was attaining a B+ grade in all her classes at this school. (Findings of Facts # 35). The program provided by the Board for the 2008-2009 school year was appropriate. The Board's action of allowing the Student to graduate was appropriate as the Student had attained sufficient educational credits to graduate and had been provided with a program during the 2008-2009 school year to meet her unique needs and receive educational benefits. The Board shall return the Student's diploma to her.
12. 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 Board provided the Student with FAPE during the 2008-2009 school year.
2. The transition plan for the Student was appropriate.
3. The Board properly graduated the Student with a regular high school diploma at the conclusion of the 2008-2009 school year. The Board shall return the diploma to the Student.
4. The Board shall not reimburse the Parents' for the cost of their placement of the Student at Thames Academy.
5. The Board shall not reimburse the Parent for the VISTA Independent Evaluation.