

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Danbury Board of Education

Appearing on behalf of the Student:

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Appearing on behalf of the Board:

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Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board denied the Student a free appropriate public education ["FAPE"] for the 2011-12 and 2012-13 school years;
2. Whether the Board failed to offer the Student FAPE for the 2013-14 school year;
3. Whether the Student shall be placed in a therapeutic residential placement for the 2013-14 school year as requested by the Parents;
4. Whether the Student is entitled to compensatory education;
5. Whether the Student has been subjected to discrimination in violation of Section 504 of the Rehabilitation Act of 1973.

*A motion to dismiss was filed and the parties came to an agreement regarding the Motion to Dismiss with clarifications and changes to Issue No. 1 and Issue No. 5. Issue No. 5 was withdrawn by the Parents. Any claims made relate to July 24, 2011 and thereafter, according to the parties' agreement.*

*The remedy that is set forth as Issue No. 3 was revised on the record to state as follows: "Whether the Student shall be placed in a therapeutic placement for the 2013-14 school year as requested by the Parents."*

**SUMMARY:**

The 15 year old Student has been identified as eligible for special education under the category of Other Health Impaired. The Student has been placed at the Board middle school during the 2011-12 school year and the Board high school for the 2012-13 and 2013-14 school years. During the 2012-13 school year, the Student had many disciplinary referrals including 12 days of out of school suspension in spring 2013 for violation of personal boundaries. The social

worker failed to provide more than half of the services set forth in the IEP during the 2012-13 school year. The Student failed many of his classes at the conclusion of the 2012-13 school year. In May 2013, the PPT placed the Student in a program at the high school for the 2013-14 school year. The Parent brought this request for hearing to challenge this placement, seeking a private therapeutic placement.

### **PROCEDURAL HISTORY:**

The Board received this request for hearing on July 25, 2013 [Exhibit H.O.-1] and a prehearing conference convened on July 30, 2013. At the prehearing conference, the parties reported that they agreed to mediate this matter, and the first hearing date was scheduled for September 20, 2013. Subsequently, the Parents' attorney submitted a request to postpone the September 20, 2013 hearing date and extend the mailing date of the decision so that the parties had additional time to attempt to settle the case after review of a recently completed evaluation, which was granted.

The hearing convened on 11 hearing dates in October, November and December 2013. Requests for extensions of the mailing date of the decision were granted to allow the parties to schedule additional hearing dates and submit closing arguments. Written closing arguments were submitted on December 27, 2013. Reply briefs were submitted on December 31, 2013.

The Parents' witnesses were the Mother; Lisa Carriero, Board special education teacher and the Student's case manager ["Special Education Teacher"]; Carol Glintenkamp, the Board high school social worker ["Social Worker"]; Mary Best, neuropsychologist ["Dr. Best"]; Linda Katherine Valiante, Board special education autism consultant ["Autism Consultant"]; the Student and David Dunleavy, Admissions Director of The Devereux Glenholme School ["Admissions Director," "Glenholme"]. In addition to the Board's cross examination, the Board's attorney presented their direct examination of these witnesses during the presentation of the Parents' case.

The Board's witnesses were Christine Holmes, Board special education facilitator ["Facilitator"]; Kelly Truchsess, Board secondary supervisor of special education ["Secondary Supervisor"] and Deborah Mailloux-Petersen, Board Director of Special Services ["Director"].

The Parents submitted exhibits P-1 through P-74. The Board submitted exhibits B-1 through B-38. All exhibits were entered as full exhibits.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

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

**STATEMENT OF JURISDICTION:**

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 Administrative Procedures Act (“UAPA”), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

**FINDINGS OF FACTS:**

1. The Student is 15 years old and is currently attending the Board high school. It is undisputed that the Student is eligible for special education and related services under the category of other health impaired.
2. The Student has had behavioral problems which relate back to kindergarten. [Testimony Mother] In 2008, Diana Martinez, Ph.D., a neuropsychologist, diagnosed the Student with a Cognitive Disorder NOS; Attention Deficit Disorder, predominately Hyperactive Impulsive type and Generalized Anxiety Disorder which was set forth in a report shared with the Board school staff. [Testimony Mother, Exhibit P-10]
3. In May 2011, the Planning and Placement Team [PPT] convened to plan for the Student’s 8<sup>th</sup> grade year. The team agreed that the Student was to be in co-taught classes 11.25 hours per week, study skills for 1.5 hours per week, social skills for .5 hours per week and .5 hours per week of counseling. At this time, it was reported that the Student had good grades in all subjects except for physical education [“PE”], and that while there was a plan for the Student to change for PE in the nurse’s office, he was not taking advantage of this plan. It was also noted that the Student had to be “chased down” to hand in his written work. He was found to be more agitated and having difficulty in the afternoon. The school psychologist reported that when the Student makes a mistake he does not recognize his part in the problem and in maintaining appropriate personal space. At that time, the team reviewed and modified the Student’s current behavior plan. [Exhibit B-1]
4. In October 2011, a case conference was convened with the Parent at the Board middle school. At this time, it was noted that the Student was missing homework in math, had difficulty settling down after lunch, continues to struggle with organization, “shines” in class participation but did not always change for PE. The Parent was concerned about PE and homework. The action plan formulated at the case conference was to continue the behavior charts, change counseling to small group, have the student wear gym clothes to school to avoid the changing problem, and have the Mother work with the Student to help him write more neatly in his planner, bring his completed homework home to check and continue to check his backpack. [Testimony Facilitator, Exhibit B-2]
5. During the 2011-12 school year, the Student had some disciplinary referrals, including suspensions for stealing, theft [stet] and bringing an inappropriate item to school. [Testimony Mother, Exhibits P-18, P-20, B-3]

6. In January 2012, the Student's individualized education program ["IEP"] was amended to provide for minibus transportation at the request of the Mother. The Mother was concerned about the Student's safety and that he would come home agitated after the bus ride, so his transportation was changed to the minibus. [Testimony Mother, Exhibit B-4]
7. The PPT convened again on January 31, 2012 to plan for the Student's 9<sup>th</sup> grade program at the high school. At that time, it was reported that the Student continued to not complete his homework, and that organization and responsibility were lacking. It was noted that the Student is sometimes impulsive, seeks attention and displays immaturity, and that classwork is "greatly modified." [Exhibit B-6]
8. In September 2012, at the beginning of the Student's 9<sup>th</sup> grade year, the Mother asked that the Student be placed in a social skills group at the School, but the Social Worker told her that it was difficult to have a social skills group due to scheduling problems. [Testimony Mother]
9. As all freshmen at the Board high school, the Student was in the Freshmen Academy, which is a model similar to the middle school with a team of four academic teachers, and sometimes includes a special education teacher. The team is supposed to work collaboratively with same group of students. The teachers meet in the mornings to discuss students and their progress and to convene parent meetings. [Testimony Special Education Teacher]
10. At the beginning of the 2012-13 school year, the Parent came into the School for a Freshmen Academy Team Meeting. The team discussed how the Student was doing in classes and his problems with homework. Although the Student's IEP for this school year required that the Student be placed in co-taught classes for his academic classes, he was not in the co-taught classes for all of his academic classes at the beginning of the school year. He had also been placed in Algebra I, rather than Pre-algebra, which was not successful. He was not placed in co-taught algebra because there wasn't a co-taught algebra course on the team the Student was placed on, according to the Special Education Teacher. After this meeting, the Student was moved back into co-taught social studies and math beginning on October 1. When that change was made, he was also placed into a pre-algebra course as he had a lot of gaps and needed additional math support. [Testimony Special Education Teacher, Exhibit P-38]
11. The PPT convened on October 19, 2012. At that time, the team discussed the re-evaluation and the current status of the Student's program. [Exhibits P-41, B-7] The Board members of the PPT did not discuss any behavioral interventions at this PPT. [Testimony Mother; Exhibits P-41, B-7] As of the date of meeting, the Student was having difficulty getting from the school nurse to his next 5<sup>th</sup> period class. His trips to the nurse's office were scheduled during his resource class in 4<sup>th</sup> period. His resource class was held from 10 to 10:40 a.m., and it was adjusted so that he left about halfway through the resource room class to go to the nurse for his medication and not be late for 5<sup>th</sup> period. [Testimony Special Education Teacher; Exhibits P-41, B-7] With this plan, however, he would miss a substantial amount of time from his resource class. The Student used the time in resource

to organize work, and begin or complete classroom assignments or homework assignments. [Testimony Special Education Teacher] Despite the time provided in resource, and with the time lost for medication visits, the Student's homework completion problems continued throughout his 9<sup>th</sup> grade school year.

12. During the 9<sup>th</sup> grade school year the Student started with a typical school planner used by all students at the Board high school. That was not successful for the Student. The school staff did not provide another tool for the Student to use to achieve his IEP goal for use of his planner to improve in his organization and study skills. Instead the Special Education Teacher asked the Mother to provide a bigger planner with more room for writing, which the Mother did. [Testimony Special Education Teacher]
13. The Special Education Teacher was responsible for implementing many of the Student's goals during the 2012-13 school year. The goals set forth in the IEP of October 19, 2012, included goal one: Demonstrate an improvement in organization, study skills and learning strategies necessary to progress toward achieving the learning standards by achieving 3 out of 3 objectives. According to the Special Education Teacher, the goal would be met if the Student received a passing grade of 65, the lowest grade for a D, in his courses. So, if he didn't fail his courses, he would have been found to meet this goal. Objective one, which refers to coming to class prepared and with his materials, would be measured by achieving passing grades and coming to class with his binder. Objective two, demonstrating the ability to organize classroom materials, was not very successful. The Student was unable to do that very well, so according to the Special Education Teacher, they kept revisiting this area of concern. Progress was checked by the Special Education Teacher's observation, but she didn't keep any records of that. For objective three, to organize and record all assignments, the Special Education Teacher didn't document his progress on this, testifying that the documentation would be his grades in his classes. [Testimony Special Education Teacher, Exhibit P-41] The Student was unsuccessful at this goal because he continued to have issues with his homework assignments throughout his 9<sup>th</sup> grade year and he failed many of his classes.
14. Goal two in the Student's IEP for the 2012-13 school year was to demonstrate an improvement in attending skills necessary to learn effectively in the school environment and progress toward achieving learning standards. The evaluation procedure for goal two was achievement of objectives, with the performance criteria successful completion, mastering objectives 3 of 3 times. The objectives reference a goal of maintaining his attention 65 percent of the class time. No data was collected during the school year to determine whether the Student achieved this goal. [Testimony Special Education Teacher, Exhibit P-41] Attending to class 65 percent of the time was not an appropriate level for mastery of this goal and without any data taken before, during and at the conclusion of the school year it is merely a guess as to whether the Student achieved this goal, which was set at a insufficient level of performance of 65 percent of the time.
15. Goal three of the Student's IEP was to demonstrate organization and study skills in order to participate successfully in academic classes. [Exhibit P-41] The goal was for the Student to achieve a 65 percent in his grades, passing with a D or better. No data was collected for any

of the objectives in goal three. In objective one, which was to keep class work and notebooks orderly, the Special Education Teacher conducted a weekly check on the materials. The self-advocacy objective two was to request extra help, although no data was kept on whether the Student was doing so. Objective three references using resource periods effectively. Again, no data was collected to determine if the student was achieving this goal, although the performance criterion was frequency/trials. [Testimony Special Education Teacher, Exhibit P-41]

16. Goals four and five were drafted and implemented by the Social Worker. The Social Worker kept no records in her logs as to the topic of her support or the counseling that was being addressed in her sessions with the Student. Goal four was that the Student will use social work supports routinely and appropriately. Goal five was that the Student would identify and build on areas of personal strength. According to the Social Worker, the Student made only limited progress on these goals during the 2012-13 school year. [Testimony Social Worker; Exhibits P-30a, P-41, P-58]
17. Goal six was drafted and implemented by the Special Education Teacher. The post-secondary education training goal was not specially designed for the Student. Rather, completion of the goal was to participate in the student self-assessment which every 9<sup>th</sup> grade student at the school completes on the computer to understand their strengths and weaknesses and their career interests. The Special Education Teacher was present during the time a class of 27 to 30 students participated in the guidance counselor-led program on the computer. The Special Education helped the Student "a little bit" during this process. [Testimony Special Education Teacher, Exhibit P-41] This was not a goal aimed at the unique needs of the Student, but was a guidance program for all students.
18. During the 2012-13 school year, the Special Education Teacher would consult with the Student's teachers. When a quarter was concluding, they would discuss the Student's grades. If the grade came out to be 64 for the Student, they would give him a 65 after some discussion to allow for a passing grade. [Testimony Special Education Teacher] Therefore, even though 65 as a grade was a criteria for achieving some of the Student's goals, the 65 in some cases was not actually a 65.
19. During the 2012-13 school year, the Student went to the nurse's office every day for medication. The nurse's office was also used as the Student's safe place if he became agitated or upset. [Testimony Mother]
20. The Student did not have a successful time with other students at the Board school. On one occasion, two boys approached him in a threatening manner and took the Student's snacks away from him after he had just purchased them at the school store. The Special Education Teacher also reported to the Social Worker that the Student was experiencing a little bit of harassment by another student in resource room. While in testimony the Special Education Teacher attempted to minimize this harassment, it is found that the Student was treated poorly by the other student in resource room and the Special Education Teacher did not take appropriate steps to resolve the interpersonal difficulties in resource room. [Testimony Special Education Teacher, Exhibit P-68] The Social Worker told the Student he should

vary his route to avoid seeing the students who snatched his snacks, rather than addressing this incident in a more appropriate manner. [Testimony Social Worker]

21. The Special Education Teacher conducted an educational assessment of the Student in March and April 2013. His scores in the testing were:

<b>Reading</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>WJ-III Classification</b>
Letter-Word Ident.	99	47	Average
Passage Comprehen.	102	55	Average
Reading Fluency	89	24	Low Average
Broad Reading	94	34	Average

<b>Oral Language</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>WJ-III Classification</b>
Understanding			
Directions	79	11	Low
Story Recall	87	19	Average
Oral Language	78	7	Low

<b>Written Language</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>WJ-III Classification</b>
Spelling	107	68	Average
Written Expression	83	12	Low Average
Written Fluency	82	12	Low Average
Writing Samples	84	14	Low Average
Broad Written Language	93	31	Average

<b>Mathematics</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>WJ-III Classification</b>
Calculations	88	21	Low Average
Math Fluency	81	11	Low Average
Applied Problems	82	11	Low Average
Broad Math	82	11	Low Average

While the Special Education Teacher concluded that the Student was able to comprehend grade level materials, he was failing or nearly failing all of his classes in 9<sup>th</sup> grade. [Testimony Special Education Teacher, Exhibit B-8]

22. The Board school psychologist conducted a psycho-educational evaluation in May 2013. In the evaluation the school psychologist noted that as the Student walked down the hall, he gave a friendly hello to almost every student who passed by, most by name. It was noted that several of the students “reacted by making faces at [the Student] behind his back. Other students completely ignored him and some said hello back. [The Student] was completely unaware of how other students were reacting to him.” The Student’s results on the Wechsler Abbreviated Scale of Intelligence – second edition, included a verbal comprehension index of 100, a perceptual reasoning index of 90 and a full scale IQ of 94. The teacher’s scores on the Behavior Assessment for Children – 2 (BASC-2) found the Student to have clinically significant scores in hyperactivity, aggression, conduct problems,

externalization problems, atypically, withdrawal and attention problems. The teacher's scores also noted that the Student was at risk in the areas of learning problems, school problems, leadership, functional communication, study skills and adaptive skills. [Exhibits B-9, P-49] The Special Education Teacher testified that the report is inaccurate in its comment that she reported that the Student often threatens to hurt others. The Student wasn't threatening to hurt others in his freshmen year. [Testimony Special Education Teacher; Exhibits B-9, P-49]

23. At the end of April and the beginning of May, the Autism Consultant observed the Student on two occasions in a couple of classes. The Autism Consultant was asked to conduct an observation of the Student to see if there were any strategies and recommendations about the concerns of difficulty attending and completing tasks, rather than a comprehensive observation of the Student's behavior. [Testimony Autism Consultant] The Autism Consultant is seeking certification as a board certified behavioral analyst [BCBA], but has not yet been certified. [Testimony Autism Consultant, Exhibit B-34] While the Autism Consultant noted that the Student had consistent focus on the instruction in one of the classes, he left the classroom twice and had to be retrieved by staff the second time he left the classroom. The Autism Consultant never confirmed with the staff in the classroom as to whether it was appropriate for the Student to leave the classroom twice during instruction. The Mother was not provided a copy of the observation report prior to the May PPT meeting. [Testimony Mother, Exhibit P-50] The Autism Consultant noticed that the tutor seemed to be distracting the Student while he was trying to complete an assignment. The additional concerns of personal boundary violations and other serious behavioral concerns were not a part of this limited observation. [Testimony Autism Consultant]
24. During the 2012-13 school year, no staff conducted a functional behavioral assessment of the Student, and never contacted the Parent to try to determine triggers to his behavior issues, despite the Student's frequent behavioral problems. [Testimony Mother]
25. During the Student's 9<sup>th</sup> grade year, his homework issues were persistent. He wouldn't complete homework, failed to hand it in, lost it and couldn't find it. The Parent would get phone calls and emails on an almost daily basis from the Special Education Teacher about homework problems throughout 9<sup>th</sup> grade. Although the Mother was questioned throughout the school year by School staff as to how to resolve the ongoing homework issues, the Mother simply didn't know how to fix the problem. [Testimony Mother]
26. During the Student's 9<sup>th</sup> grade year, the Special Education Teacher was aware that the Student wasn't comfortable changing in the locker room for PE, so they offered the Social Worker's restroom as a place where he could change. The Special Education Teacher never discussed why the Student was uncomfortable changing in the locker room and the Student did not explain why he was not comfortable changing in the locker room. [Testimony Special Education Teacher] The Student continued to have disciplinary problems throughout the 9<sup>th</sup> grade school year relating to skipping his PE class. [Testimony Special Education Teacher, Exhibit P-25] The Student failed to participate in PE class so frequently that it lowered his PE grade to a failing grade. [Testimony Special Education Teacher] Although the Student's avoidance of changing in the locker room related back to his middle



school years and impacted his ability to earn credits in high school, no Board staff ever took any further steps to assess the Student's PE and locker room avoidance.

27. The Student exhibited immature behavior during the 9<sup>th</sup> grade school year. He would bring toys to school at times. He also came to school one day with a container of ice cream in his backpack which he wanted to eat during the day. That container melted all over the place, according to the Special Education Teacher. [Testimony Special Education Teacher]
28. During the 2012-13 school year, the Student was unable to consistently do homework, prepare for exams or keep school materials organized. He wasn't consistently studying for quizzes or exams. The Special Education Teacher attempted to use strategies to assist the Student, but even at the end of the school year the Student was not performing consistently in the resource classroom. Prompting was not working as an effective method for addressing the Student's issues in the resource class. The Special Education Teacher would routinely contact the Mother to report things such as that the Student was getting nothing accomplished in the resource room. The Special Education Teacher tried strategies which included talking to the Student to get him to take out the work he was supposed to do and suggesting that perhaps he could work for 20 minutes and then have time for computer or to get a snack during the resource class. [Testimony Special Education Teacher, Exhibit B-18]
29. The Mother was not aware that the Student had ongoing behavioral issues in aerospace class/ROTC, until the instructor contacted the Social Worker in March 2013 about ongoing problems that the Student had with inappropriate touching of males and females in his class. Neither the Social Worker nor any other School staff member provided the Mother and the Student with any suggestions on how to address this ongoing problem that the Student was experiencing in respecting personal boundaries and they did not suggest any additional services to address this ongoing issue. [Testimony Mother, Exhibit P-69]
30. The PPT convened on May 20, 2013 to conduct an annual review, review the evaluations and develop an IEP for the Student. The Facilitator; the Special Education Teacher; Carol Nielsen, school psychologist; the Social Worker; Jackie Rodriguez, school guidance counselor; the Autism Consultant; Donald Tonic, Board self-contained program special education teacher; Heather Salamone, a regular education teacher and the Mother were present at the meeting. While the Board members of the PPT discussed the self-contained program at the Board high school, the Mother did not want to pursue that program and the program was not recommended at this PPT meeting. The PPT agreed that the Student continues to qualify for special education under OHI. The PPT approved a program for the Student which consisted of 15 hours per week of co-taught classes, 3.75 hours per week of study skills, .5 hours per week of social work services, a 3:1 tutor support for academic classes only and access to an Alpha Smart. The Parent requested that additional testing be completed. The School agreed to conduct some of the requested testing, but indicated that they would be completed by October 31, 2013. [Exhibit B-10] When the Parent had requested the neuropsychological testing, the Board members of the PPT informed her at the meeting that they would look into it and get back to her, but that the team agreed to conduct additional evaluations on written language, auditory processing, pragmatic language and visual motor processing. The Board members of the PPT did not provide any explanation as

to why there was such a long delay between the request for evaluations and the completion of them. [Testimony Mother]

31. At the PPT meeting, the Board members of the PPT discussed adding a tutor to take the place of the role the Special Education Teacher had for the Student during the 9<sup>th</sup> grade year. The tutor would be available to cue expected behavior in class, support the Student in organization, continue to ensure that homework was written down, and ensure that the teachers were aware that the Student was a special education student, which the Special Education Teacher testified were things she did as the Student's case manager in 9<sup>th</sup> grade. The team also discussed the self-contained program at the high school, where there is a smaller group of students and three teachers who work intensively with the students. In that program there is a behavior intervention piece and the classrooms are close together, according to the Special Education Teacher. A teacher from the self-contained program discussed the program at the PPT meeting. The Mother was not interested in the program at the time, and the Board did not offer this program in an IEP for the Student's 10<sup>th</sup> grade year at this PPT meeting. [Testimony Special Education Teacher, Mother; Exhibit B-10]
32. At the time of the PPT meeting, the teachers were reporting that the Student continued to exhibit the same weaknesses as reported in October 2012. Homework completion and organization continued to be an area of concern. The Student continued to lack focus, asking some relevant questions but often also asking many irrelevant questions in class. In most cases the Student would not follow along with reviewing assignments in class and he was not advocating for himself. The Student continued to require constant monitoring and focusing, and he could antagonize his peers. He required much support in his classes. His class behavior and work production were areas of weakness, and he needed maintenance and redirection to avoid distracting others. It was also noted that the Student continued to experience social issues when interacting with his peers. [Testimony Special Education Teacher, Exhibit P-54]
33. While the Student had a remarkable history of behavioral issues, the May 20, 2013 IEP indicated *not applicable* on the portion of the IEP form "[f]or students whose behavior impedes his/her learning or that of others, the PPT has considered strategies, including positive behavior interventions and supports to address that behavior." [Exhibit B-10] Based on the records reviewed, as well as her evaluation, Dr. Best concluded that the Student's behavior impedes his learning and she would have recommended that the Student have a behavior intervention plan based on the disciplinary reports that she had reviewed. [Testimony Dr. Best]
34. During the PPT meeting, the discussion of the program for the 10<sup>th</sup> grade year concerned what other options there were to try at the high school for 10<sup>th</sup> grade, as the Board High School did not have a team model after 9<sup>th</sup> grade. [Testimony Special Education Teacher] The Board staff continued to try to fit the Student into existing programs, rather than programming for his unique needs.

35. The Autism Consultant who conducted the limited behavioral observation did not suggest collecting additional data on behaviors at the PPT meeting or in the report of her observation. [Testimony Mother; Exhibits P-50, B-10]
36. During the 2012-13 school year, the Social Worker failed to provide more than half of her services in accordance with the Student's IEP. This failure to implement the required hours of services, in accordance with the IEP and necessary for the Student's progress were outlined in the social worker log. The log indicates many dates that were missed and not made up. For example, in January, only two sessions were conducted the entire month. In February, March and April, the Student was seen by the Social Worker only three times each month, although at that time he was on a twice weekly schedule for social work services. While the Student's social worker services were supposed to increase to .5 hours per week, he was not provided these services, even though the Social Worker thought that the increase in the services would be beneficial to the Student to have enough time to focus on the goals in the IEP. The Social Worker kept no data on the Student's progress, with the exception of her log which indicates the many sessions which were missed. The Social Worker failed to suggest a revision to the Student's program to ensure that he attended all of his social work sessions, just leaving it up to the Student to refer to his planner and show up, or not show up, for his sessions. [Testimony Social Worker; Exhibits P-30a, B-11]
37. The Student's progress during the 2012-13 was inappropriate, and admittedly described by Board staff as unsuccessful. The Student failed one semester of English, one semester of biology, world studies, PE and health, ending the year with a GPA of 0.9273. Of his barely passing grades, at least some of them were bumped up to a D by the teachers, although he had earned failing grades. For example, in English his third quarter grade was 68, his fourth quarter grade was 67 and his final exam was a 43. The Special Education Teacher didn't recall if this was one of the grades that were bumped up so that the Student would pass the second semester of English. The Special Education Teacher wanted to reward the Student with passing grades and testified that "A 64 to me is a 65 which is passing." [Testimony Special Education Teacher, Exhibit B-36] The Student's GPA declined over the course of the 2012-13 school year. [Exhibits B-12, B-36]
38. The Student's final grades for the 2012-13 school year were:
- Aerospace Sem. 1: 80
  - Aerospace Sem. 2: 80
  - English Sem. 1: 60
  - English Sem. 2: 65
  - Biology Sem. 1: 62
  - Biology Sem. 2: 66
  - Resource Sem. 1: 78
  - Resource Sem. 2: 71
  - World Studies Sem. 1: 56
  - World Studies Sem. 2: 47
  - Pre Algebra Sem. 1: 71
  - Pre Algebra Sem. 2: 67
  - Phys. Ed: 60

Health: 63  
[Exhibit B-36]

39. The final grade that the Special Education Teacher gave the Student was imprecise and confusing, even to the Special Education Teacher. The Student's grades in resource for the second semester were a 68 for the third quarter and a 70 for the fourth quarter. Although the Student took no final exam, he was listed as being awarded an 80 for a final exam. The Special Education Teacher testified that no final exam was completed, but that this final exam grade was based on the Student's work completed during the semester, although his work average was a 69 for the semester. Therefore, the Student's final grade of 71 for resource was not indicative of his work in the resource class and merely a contrived and inaccurate grade. [Testimony Special Education Teacher, Exhibit B-36]
40. During the 2012-13 school year, the Student was subjected to discipline in a number of incidents which were related to behavior which was a manifestation of his disability, but these disciplinary incidents were never subject to a manifestation determination, nor did it result in the Board convening a PPT to address these issues. His disciplinary history during this school year included:
- a. A detention for failure to serve detentions from the gym teacher. 10/15/12
  - b. A detention for skipping activity in gym classes. 10/12, 10/15, 10/16
  - c. A one day in school suspension for inappropriate touching of a female student. 10/26
  - d. A one day in school suspension for being AWOL from gym class. 11/29, 11/30
  - e. A one day in school suspension for being AWOL from gym class. 12/15, 12/16
  - f. A one day in school suspension for being AWOL from gym class. 12/12
  - g. A detention for using inappropriate language in class. 2/26
  - h. A 2 day in school suspension for coming late from the nurse's office and ongoing defiant behavior. 3/5
  - i. A 2 day in school suspension for misuse of computer in resource room, 3/25; disruptive and distracting behavior in science class, 3/22 and using personal computer inappropriate in class, 3/28.
  - j. A one day in school suspension for refusing to correct a test with support from the special education teacher and swearing at a female student, 5/9.
  - k. A 3 day out of school suspension for inappropriate contact and violation of personal space with a female student, 5/16.
  - l. A 9 day out of school suspension for inappropriate touching and insubordination. 5/23. [Exhibits B-13, B-14]
41. Some of the referrals, including the March 5 referral for returning late from the nurse's office resulting in an in school suspension, based upon a written referral from the Student's Special Education Teacher, despite her knowledge of his disability which resulted in this behavior. [Testimony Special Education Teacher] The Student was punished for the behavior that resulted from his disability.
42. The Special Education Teacher testified that during the 9<sup>th</sup> grade school year the Student wasn't using the resource room productively. The Special Education Teacher referred the

Student for discipline for failing to use the resource room productively, which resulted in a 2 day in-school suspension. [Testimony Special Education Teacher, Exhibit P-25] This is a wholly inappropriate manner to respond to the Student's behavioral issues. These issues were reportedly so serious that the Student was being suspended, but the Board staff failed to convene a PPT meeting, did not have a behavior intervention plan and failed to assess the Student through a functional behavioral assessment.

43. The last nine day out of school suspension during the 2012-13 resulted from an incident that occurred when the Student was with a group of other students at lunch. During some laughing and "goofing around" the Student said that if they think what they were discussing was funny, this is really funny, and he impulsively touched a girl's breast. The disciplinary incident prior to this one was similar, when the Student was suspended three days for rubbing his leg against a girl's leg. [Testimony Mother]
44. Despite the prevalent behavior issues, which culminated in a nine day out of school suspension from May 28 to June 7, the staff failed to appropriately address the Student's serious behavioral issues. The Social Worker did not come to any of the Student's classes to work on behavior, the school psychologist was not working with the student at all, and after the last out of school suspension, no manifestation determination meeting was convened. [Testimony Special Education Teacher, Social Worker; Exhibits B-13, B-14]
45. When the Student began on the 9<sup>th</sup> grade Special Education Teacher's caseload, she did not receive a behavior plan for the Student, although it was well documented that the Student had behavioral problems in not recognizing that he made mistakes and maintaining appropriate personal space. The Special Education Teacher and the Social Worker created a short-lived behavioral plan, which identified two behaviors relating to attention, and required the Student to get teachers' signatures in each class. He would get a reward at the end of the week if he achieved the goal. [Testimony Special Education Teacher, Exhibit P-45] The short-lived classroom plan which lasted for approximately three weeks in late April and early May was aimed at providing the Student with rewards for responding to teacher directives to continue classwork and refraining from distracting behaviors. This plan didn't change the Student's behavior so the Special Education Teacher terminated using the plan. [Testimony Mother, Special Education Teacher; Exhibits P-45, B-15]
46. During the 2012-13 school year, the Mother and School staff had extensive email communications, numbering in the many hundreds. Often the emails indicated frustration on both sides. Often the School staff attempted to elicit suggestions from the Mother on how to handle things, noting that the Student was getting nothing accomplished at school, just sitting there, or asking the Mother to assist in follow up with homework. Many of the email communications were initiated by the Board, seeking the Mother's input into how to solve ongoing problems at school. [Testimony Mother, Exhibit B-18] Lack of homework completion was an ongoing, continuous issue during 9<sup>th</sup> grade. [Testimony Mother] The Special Education Teacher reported that she had frequent communication with the Mother about assignments and homework, employing the emails to the Mother as a strategy to help the Student in achieving his goal. [Testimony Special Education Teacher] Teaching study skills by having the Mother remind and monitor the Student was not an appropriate strategy

to use for a high school Student to complete homework, and was not working towards self-reliance or independence in this important task of homework completion.

47. After the Student was suspended for nine days in May 2013, the sergeant/teacher of the aerospace class/ROTC told the Student to return his uniform at end of school year and told the Student he was not to come back. The ten day suspension occurred two weeks before final exams. [Testimony Mother]
48. The Student's current GPA at the end of the 2012-13 school year was a 0.9273. He failed biology, world studies, English, PE and health according to the grades after the final fourth quarter marking period. He is repeating the courses during this 2013-14 school year. [Testimony Mother, Exhibit B-36]
49. The Special Education Teacher provided a report of the Student's progress on the IEP goals to the parents on June 15, 2013. She reported that the Student had made limited progress on Goal one, the organization, study skills and learning strategies goal. Despite the continued and pervasive problems with attention and focus, the Special Education Teacher reported that the Student had mastered the goal two of demonstrating an improvement in attending skills necessary to learn effectively in the school environment and progress toward achieving the learning standards. The Student made "limited progress" in goal three, demonstrating organization and study skills in order to participate successfully in academic classes, with no progress in the objective made on demonstrating self-advocacy skills by planning with classroom teachers for academic and behavior needs. In the social/behavior goal four of demonstrating age appropriate behavior in the school setting, the Student made limited progress, also making limited progress in the goal of identifying and building on areas of personal strength. It was noted that in goal six, the Student made satisfactory progress in his exploration of careers and vocations in the class with the guidance counselor leading the group of 9<sup>th</sup> graders. These reported goals were the goals which were drafted at the May 20, 2013 PPT meeting and implemented on May 27, 2013, so the Student was being evaluated on about one week of school attendance after serving his out of school suspension. In her testimony the Special Education Teacher indicated that after further consideration, the progress, such as mastering attention and focus, might not have been appropriately reported. [Testimony Special Education Teacher, Exhibit P-58]
50. The Student concluded the year with a grade point average of less than 1, based on some grades that had been modified, and he had serious and prevalent behavioral issues and difficulty in applying the study skills that the Special Education Teacher was attempting to teach him. *The Special Education Teacher testified that the 2012-13 school year was not a successful year for the Student.* [Testimony Special Education Teacher]
51. In July 2013, the Parents requested this Due Process Hearing.
52. In September 2013, the Board's Test of Written Language, Fourth Edition (TOWL-4) was completed. [Exhibit B-16]

53. In September 2013, Mary Best, pediatric neuropsychologist completed an assessment of the Student. In the background of the evaluation, the neuropsychologist noted that the Student was adopted as an infant and that his birth mother had a long history of struggling with drugs and alcohol. The Student's General Ability Index Score (GAI) on the Wechsler Intelligence Scale for Children-IV (WISC-IV) was an 82, which is in the low average range. It was noted that his processing speed was 70, in the borderline range, which was a significant weakness in his profile. The Student's scores on academic tests indicated delays in reading comprehension and math problem solving, which was consistent with his CMT scores and prior testing. This indicated to the evaluator that the Student meets criteria for a Learning Disorder NOS. It was also noted that the Student had a very significant weakness on tests of attention and executive function, and continues to meet criteria for ADHD, combined type. Despite taking medication as prescribed during the evaluation, the Student continued to show significant difficulty with sustaining and directing his attention when engaged in cognitive tasks, which makes his performance across cognitive and academic tasks inconsistent. It was further noted that in terms of executive functioning the Student has several challenges. He has difficulty taking big problems and breaking them down into a logical sequence. He also has significant problems with organizing his thoughts and materials even with significant external cues and assistance. [Exhibit B-17]
54. Dr. Best observed the Student in the waiting room at the beginning of the evaluation. At that time he was playing with the toys which were in the waiting room for much younger children under the age of 5, geared towards toddlers and young children. The Neuropsychologist also noted that the Student was very physical, hugging and kissing the Mother every time he separated from his Mother in a manner that was exaggerated for a 15 year old boy, but more consistent with a 2 to 4 year old child. [Testimony Dr. Best]
55. In the neuropsychological evaluation it was noted that the Student's biggest challenge was managing his impulses. Noting that he has significant trouble correctly judging appropriate behavior, boundaries and the effect of his actions on others, the evaluator also found that the Student is able to empathize but not able to use the information prior to acting and is unable to predict the outcome until it is too late. He lacks the ability to recognize common themes and therefore cannot apply the lesson he has been taught in the moment. [Exhibit B-17]
56. The neuropsychologist noted that the Student's significant impulsivity, poor social judgment, learning problems and mild but persistent cognitive deficits closely matches the profile of other children who have been exposed to alcohol in utero. Students with this profile, the neuropsychologist explained, are at a high risk for making poor judgments in relation to other students which may cause them to get into significant trouble. While she noted that a definitive diagnosis of Fetal Alcohol Effects may be difficult, it could be pursued at a Fetal Alcohol Clinic. [Testimony Dr. Best, Exhibit B-17] The Board did not agree to provide a fetal alcohol assessment at the PPT meeting because it was a medical assessment. [Testimony Facilitator]
57. Dr. Best recommended a school program that has a "highly integrative and collaborative approach," which would provide the Student with support for his "significant behavioral and social challenges" as well as academic support and remediation. He also needs a

comprehensive behavior modification plan, which is most easily done in a small group setting. [Exhibit B-17] Dr. Best noted that his social and behavioral problems are highly related to his learning, and that the Student requires behavioral intervention and social support in a small group setting. He requires positive modeling, reinforcement and feedback, as well as academic support in reading comprehension and math, assistive technology for his problems with fine motor skills and visual motor integration and social skills training. He needs reinforcement and feedback, rather than a punishment model. He requires a comprehensive behavior modification plan, which was not in place for the Student at the time of his evaluation. Dr. Best recommended that a functional behavioral assessment [FBA] be conducted to fully understand what incidents are triggering and what reactions are reinforcing the pattern. He would require a comprehensive assessment, to provide a plan that would be consistent across all of the classrooms, with continuing monitoring to assess behavior. This assessment would look at the specific behaviors and determine an antecedent, a description of behavior and the consequences of behavior. With that information the three elements could be analyzed to prevent the triggering of target behavior and ways to circumvent reinforcement of negative behaviors. [Testimony Dr. Best]

58. The neuropsychologist is an experienced practitioner, who has substantial experience in neuropsychology including neuropsychological evaluations of children in educational settings, as well as in hospital settings. She is currently an Assistant Clinical Professor at the Yale Child Study Center, Pediatric Neuropsychology Clinic at Yale. Her testimony and evaluation were persuasive and useful in understanding the Student's educational needs. [Exhibits B-17, B-23]
59. On September 20, 2013, several months after this Due Process Hearing was requested, the PPT convened to review/revise the IEP and for a "program review." After review of Dr. Best's evaluation, the Board offered the high school self-contained program to the Student. The Parent declined this offer and requested placement at Glenholme. [Exhibit B-24]
60. The Board Secondary Supervisor recommended the self-contained program for the Student as it was the "next logical program for us to try." [Testimony Secondary Supervisor]
61. The program offered to the Student in September 2013 after this hearing was requested was not appropriate, according to Dr. Best. The program would need more social skills support, more comprehensive social skills goals and behavioral interventions and additional academic support and goals in math problem solving and reading comprehension skills. Dr. Best opined that the Student required an all day self-contained program. [Testimony Dr. Best]
62. Although the Parents invoked stay put, the Student's current program at the Board high school is a combination of the May 2013 and September 2013 IEPs. If a new teacher came on board neither document would reference his current program being provided to him by the Board as neither one describes his program. [Testimony Secondary Supervisor] The Student is currently in his second year at the Board high school, but the Parent doesn't know



whether he is considered a freshmen or a sophomore since he did not earn many of his credits his first year at school due to failing many of his classes. [Testimony Mother]

63. The Parent is seeking placement of the Student at Devereux Glenholme in Washington, Connecticut. Glenholme is a therapeutic boarding school for students age 10 to 21 years old. The mission of Glenholme is to develop and foster the care of the students and to foster their academic, social and emotional well-being to a life of self-dependence. Many of the students need social skills training at Glenholme as they are socially awkward. They experienced teasing and bullying in the past, some have some school refusal, many misread social cues and are immature. Glenholme is a state-approved program. The program at Glenholme uses an in vivo approach to treatment, providing constant reinforcement throughout the student's day, a treatment approach supported and based on research. [Testimony Glenholme Admissions Director]
64. Dr. Best discussed the residential placement with the Admissions Director at Glenholme. The staff at Glenholme had said that they felt that the Student's needs were more comprehensive and substantial than they would be able to address in day program. The Glenholme admission director said that Glenholme therapeutic staff discussed that the residential program would be the only program that they could offer as the day program was not comprehensive enough. [Testimony Dr. Best]
65. The admission team at Glenholme discussed the Student's past behaviors and noted that he needed a great deal of social skills assistance and cuing. His personal boundary issues were found to be disconcerting, and Glenholme couldn't provide what the Student needed just as a day student. The Glenholme clinical team's opinion was that the Student would benefit from the positive-based, 24 hour structured therapeutic environment in a program that they would individualize to meet his needs. [Testimony Admissions Director, Exhibit P-74]

#### **DISCUSSION/CONCLUSIONS OF LAW:**

The Parents brought this action in accordance with the Individuals with Disabilities Education Improvement Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. It is undisputed that the Student is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the disability category of Other Health Impaired.

The Supreme Court 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 Education Program [IEP] is “reasonably calculated to enable the child to receive educational benefits.” 458 U.S. at 206-207.

With respect to the first prong of *Rowley*, procedural flaws do not automatically require a finding of a denial of a free appropriate public education. Procedural inadequacies resulting in the loss of education opportunity or seriously infringing on the parent’s opportunity to participate in formulating the individual education program, clearly result in a denial of FAPE. *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F. 3d 1072, 38 IDELR 91 (9<sup>th</sup> Cir. 2003), citing *W.G. Board of Trustees of Target Range School District No. 23*, 960 F. 2d 1479 (9<sup>th</sup> Cir. 1999), accord, *W.A. v. Pascarella*, 153 F. Supp. 2d 144 (D. Conn. 2001) The procedural flaws resulted in a loss of educational opportunity to the Student. Despite the Student’s pervasive behavioral difficulties which resulted in many disciplinary actions, the Board failed to convene a PPT to revise the Student’s IEP and failed to convene a PPT to conduct a manifestation determination, although the Student’s multiple disciplinary removals constituted a change in placement which would trigger a manifestation review. The Board’s responsibility to convene a manifestation determination was triggered as the Student’s behavior was substantially similar to behavior in the previous incidents that resulted in the series of removals (out of school suspensions) which exceeded 10 days and were in close proximity to each other. 34 CFR §300.536 This failure to convene a manifestation determination denied the Student FAPE. An appropriate manifestation review would have concluded that the conduct was a manifestation of the Student’s disability. As a result of this conclusion, the PPT would have had to conduct an FBA and implement a behavioral intervention plan for the Student and return the Student to the

placement unless the Parent and the Board agreed to a change of placement as part of the behavioral intervention plan. 34 CFR §300.530

The Board also failed to appropriately implement his program in the 2012-13 school year, depriving the Student of necessary social work services which were omitted on many occasions. The Board agreed to conduct evaluations in May 2013, but delayed the evaluations unnecessarily and inappropriately.

With respect to the second prong of *Rowley*, an IEP must provide for a special education program that opens the door of education for a student with a disability in a “meaningful” way. *Rowley*, 458 U.S. at 192; *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (1998) This is not done if an IEP affords the opportunity for only “trivial advancement.” *D.F. v Ramapo Central Sch. Dist.*, 430 F.3d 595 (2<sup>nd</sup> Cir. 2995); *Walczak*, 142 F.3d at 130. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997). Based on the testimony presented and the evidence submitted, it cannot be found that the Student’s program during the 2011-12 school year was inappropriate. The Student’s concerns and needs in that school year were similar to the ones he would experience during his 9th grade year, but his behavioral incidents were not as frequent, his homework completion was not as deficient and his grades were not failing. The Board wholly failed to meet this second prong of *Rowley* during the 2012-13 school year and in the program offered for the 2013-14 school year. The Student had a completely unsuccessful year in the 2012-13 school year, failing to progress in his goals, with goals that were poorly drafted and implemented, experiencing frequent behavioral difficulties and failing many of his classes even when some of the grades were bumped up to a passing grade. The Student experienced less than trivial advancement in his IEP and the manner in which it was implemented. His social work services were poorly conceived and not

appropriately implemented. He was supposed to be placed in co-taught classes for 9<sup>th</sup> grade, but was not placed in the all co-taught academic classes at the beginning of the year because some of those classes weren't offered on his Freshmen Academy team. The offered program for the 2013-14 was not appropriate, not directed at the Student's needs, not aimed at providing the Student meaningful educational benefit, and was directed at trying unsuccessfully to fit the Student with his unique needs into the Board's existing programs.

Too often the Board tried to fit the Student into one of their programs rather than addressing the Student's unique needs. The Board witnesses also continued to parrot the same phrase that LRE is a continuum, but their understanding of this was flawed. If a student's placement does not confer a meaningful benefit to the student and a more restrictive program is likely to provide such a benefit, the student is entitled to be placed in that more restrictive program. *P. v. Newington Board of Education*, 51 IDELR 2 (2<sup>nd</sup> Cir. 2008) The LRE continuum is not a progressive step by step process, wherein you must await failure to move into a more restrictive setting. It is a continuum, not a step ladder. If the Student cannot receive educational benefit from a particular placement, a more restrictive placement should be considered. *Pachl v. Seagren*, 46 IDELR 1 (8<sup>th</sup> Cir 2006), *Greenwood v. Wissahick School District*, 50 IDELR 280 (E.D. Pa. 2008)

The IEP offered in May 2013 was inappropriate. The program offered prior to the Parents' filing of the Due Process Hearing Request is the IEP that was challenged in this case. The adequacy of the IEP must be evaluated prospectively at the time of the placement was offered and may not consider retrospective testimony regarding services not listed in the challenged IEP. *R.E. v. New York City Board of Education*, 694 F.3d 167, 59 IDELR 241 (2<sup>nd</sup> Cir. 2013) By requiring school districts to put their efforts into creating adequate IEPs at the

outset, [the IDEA] prevents a school district from effecting this type of 'bait and switch,' even if the baiting is done unintentionally. *Id.* The request for hearing was submitted in July 2013. At the time of the request for hearing, the IEP offered by the Board was the one proposed in May 2013.

Nevertheless, even considering the proposed IEP of September 2013, the IEP for the Student for the 2013-14 school year was inappropriate. The Board has demonstrated that it is unable to provide appropriate and effective social work services to the Student. The neuropsychologist noted several deficits in the proposed program that make it an inappropriate program for the Student. The proposed IEP once again would set the Student up for continued failure.

The Parents were unable to place the Student at the requested placement at the beginning of the 2013-14 school year, but was seeking Board funding of the placement of the Student at Glenholme. Compensatory education can be awarded to a child who has not aged out of or otherwise been exited from eligibility under the IDEA without a finding that there had been a gross violation of the IDEA. *P. v. Newington*, 512 F.Supp. 2d 89, 112 n. 13 (D.Conn. 2007) Here, as the Student remains eligible for special education, compensatory education can be ordered without a finding of a gross violation of his rights.

Under the standards set out in *P. v. Newington Board of Education*, procedural violations that deprive the parents of a meaningful opportunity to participate in developing an IEP and/or failure to provide a special education program that provides FAPE or fails to comply with 20 U.S.C. § 1412(a)(5)(A) requires an award of compensatory education. Here, as the violations of the Student's procedural rights and substantive rights are clear, a remedial order must enter.

The appropriate compensatory education is such relief that focuses on restoring the disabled child to the same position he would have been in but for the school district's IDEA violations. *Reid v. District of Columbia*, 401 F. 3d 516 (D.C.Cir. 2005); *Burr v. Ambach*, 863 F.2d 1071, 1078 (2d Cir. 1988), *vacated and remanded sub. nom. Sobol v. Burr*, 492 U.S. 902, *reaff'd after remand*, 888 F. 2d 258 (2d Cir. 1989); *Brennan v. Regional Sch. Dist.*, 2008 WL 220751 (D. Conn. 2008) The Student has been deprived of FAPE for the 2012-13 school year. The Board failed to propose an appropriate program for the 2013-14 school year, therefore resulting in a denial of FAPE.

The Parents seek a residential placement at the Glenholme School for the remainder of the 2013-14 school year as the order for compensatory education in this case. Such an order is an appropriate remedy for the Board's failure to offer and provide an appropriate program for the Student for the 2012-13 school year and for the Board's failure to offer an appropriate program for the 2013-14 school year. The Student shall be placed in the residential program at Devereux Glenholme School, a state approved special education school, for the remainder of the 2013-14 school year, including the extended school year 2014.

In addition, in accordance with IDEA, the Board shall pay for the cost of an assessment of the Student at a fetal alcohol clinic to determine if the Student has the diagnosis of fetal alcohol effects. The Board was incorrect in denying the payment of this evaluation because it was "medical." The IDEA provides that the students shall be assessed "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 CFR Sec. 300.304(c)(4) In evaluating the students under this section, there is a requirement that "the evaluation is sufficiently comprehensive to identify all of the child's special education and

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related service needs, whether or not commonly linked to the disability category in which the child has been classified." 34 CFR Sec. 300.304(c)(6) The hearing officer has the authority to order evaluations as part of a hearing order. Regs. Conn. Agencies Sec. 10-76h-13 The Board shall provide funding for the evaluation of the Student for fetal alcohol effects to better understand the Student's educational needs and his disability by a physician located within 75 miles of Danbury and recommended by Dr. Best.

### **FINAL DECISION AND ORDER**

1. The Board did not deny the Student FAPE for the 2011-12 school year.
2. The Board denied the Student FAPE for the 2012-13 school year.
3. The Board failed to offer the Student FAPE for the 2013-14 school year.
4. The Student shall be placed at Devereux Glenholme School as a residential student for the remainder of the 2013-14 school year, including the extended school year 2014.
5. The Board shall be fund the placement at Devereux Glenholme School, including the residential portion of the placement, for the remainder of the 2013-14 school year including the extended school year 2014. The Student shall be placed at Devereux Glenholme as a residential student within 10 days of this decision.
6. The Board shall fund an assessment of the Student at a fetal alcohol clinic within 75 miles of Danbury by a provider recommended and selected by Dr. Best.