STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Appearing on behalf of the Parents:	The Parent appeared pro se
Appearing on behalf of the Board:	Attorney Linda Yoder Shipman & Goodwin LLP One Constitution Plaza Hartford, CT 06103
Appearing before:	Attorney Deborah R. Kearns, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

I. Whether the Student's IEP provides for an appropriate program in the least restrictive environment?

PROCEDURAL HISTORY/SUMMARY:

The Parent requested a Due Process hearing on November 24, 2008. The matter was assigned to the hearing officer on November 28, 2008. The Parent made two claims. The Student is denied an appropriate program in the least restrictive environment. The second claim was resolved in a previous settlement and is not an issue for the hearing. The hearing convened on January 16, 2009, January 29, 2009, and January 30, 2009. On March 24, 2009, the Parent stated she wanted to withdraw from the hearing. The Board objected. The hearing scheduled for February 27, 2009, was postponed, until March 6, 2009. On March 6, 2009, the parties requested a thirty day continuance to allow time to pursue resolution to the dispute. The request was granted. The Attorney for the Board reported the parties were unable to resolve the dispute and offered three dates to reconvene the hearing. The Parent did not respond to the Board's communication or offer dates she would be available for hearing. One week later, two dates, April 17, 2009 and May 18, 2009, were assigned for hearing. When the dates were assigned, the Parent did not communicate that she would not be available on the two assigned dates. The dates were selected to allow time between hearing days to avoid problems with the Parent's work schedule. The Parent later notified the hearing officer by phone message she would not be able to attend the hearing on April 17, 2009. The Parent's request to postpone the hearing was not granted. The Board objected to a continuance of the hearing. Prior to the hearing, the Board filed a Motion for Entry of Judgment in the matter, which they argued on April 17, 2009, in the Parent's absence. The Parent received copies of the motion and was provided an opportunity to respond to the Board's request. The Parent objected to Entry of Judgment. She was then given the opportunity to appear at the scheduled hearing on May 18,

2009. Prior to May 18, 2009, the Parent requested a postponement of the matter; no additional dates for hearing were offered. The Board agreed to postpone the hearing date. The Parent has made no further communication with the hearing officer. There is sufficient evidence and testimony in the record to confirm the Board offers the Student an appropriate program in the least restrictive environment. The date for mailing the final decision in the matter is June 22, 2009.

FINDINGS OF FACT:

1. There is no dispute the Student is identified as eligible for special education services under the IDEA. The Board made many, unsuccessful attempts to provide a program in the Board's school. The PPT then placed the Student in a therapeutic, clinical day program at a state approved, private, special education facility. The Parent agreed to the out-of-district placement. The Student achieved some success in this program.

2. The Parent filed the hearing request alleging that the PPT should create a program at the Board's school in the least restrictive environment in which the Student can achieve an educational benefit. After several days of hearing, the Parent asked to withdraw her hearing request. The record reflects the Parent did not intend to call additional witnesses.

3. The Parent would like the Board to design an educational program for the Student that would allow him to work on his interests whether or not he needs to be working on other assignments. The Parent believes the Student is talented in a narrow area, and that the School should provide support for his work in the area. According to the report of one expert, who did not testify at the hearing, some of the Student's work appears to have merit. The PPT records confirm the time spent on this work detracts from school performance. The Student is 17 years old, failing his courses, and unable to earn credits for graduation without behavioral support. (Testimony, Parent; P-4, B-121 p.4)

4. The Parent had a full opportunity to participate in educational planning for the Student. (B-4, B-10, B-11, B-12, B-15, B-16, B-26, B-31, B-79, B-88, B-95, B-101, B-104, B-107, B-121)

5. The Board has conducted evaluations and based PPT decisions on information from the Student's records, the Parent, the teachers, and independent evaluators. Several evaluators report the Student needs the structure of a clinical/therapeutic school, like the private educational placement, to make educational progress. The evaluations and the diagnostic placement make it clear the Student has behavioral problems that require intervention in a specialized program. The PPT team has planned a program for the Student that is demonstrated to provide the Student with an educational benefit. While attending the out-of-district placement, the Student made improvement in his behavior and was more focused on completing his academic work. The Board made provision for the Student to have tutoring in subject matter that is of high interest to him. The Board made adaptations to the program to allow a trial placement in the Board's school. (P-1, B-4, B-10, B-11, B-12, B-15, B-16, B-26, B-31, B-72, B-79, B-88, B-95, B-101, B-104, B-107, B-121)

6. The exhibits and testimony submitted at the hearing demonstrate that the Student did not achieve at the Board's school. The Student's attention to his own agenda prevents him from earning passing grades and credits. The evaluations and diagnostic placement conclude the narrow area of interest is part of the Student's emotional/behavioral disability. The Student requires therapeutic interventions that are not available at the Board's school. He requires substantial behavior supports until he is stable enough, behaviorally, to obtain an educational benefit from a program in the Board's school.

7. The Parent had a full opportunity to present her case in the due process hearing. She thwarted the efforts of the Board in presenting their case. She engaged in outbursts during cross examination of her testimony at the hearing. She refuses to appear at scheduled hearings. She has been given ample time to address issues of absence at work and illness. The Board has been agreeable in allowing continuances for settlement purposes, and to address the personal requests of the Parent. The hearing, scheduled for May 18, 2009, was postponed at the Parent's request. The Board agreed to postpone the case. The Parent made no effort to schedule additional hearing dates. The Board is satisfied the evidence and testimony presented at the hearing confirms that the Student's IEP is appropriate and provides an educational benefit.

CONLCUSINS OF LAW:

1. The Student is entitled to a free appropriate public education pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., ("IDEA"), and Connecticut General Statutes § 10-76a et seq.

2. The school district has the burden of proving the appropriateness of a program by a preponderance of the evidence. Conn. Agencies Regs. § 10-76h-14. The party requesting the hearing has the burden of production.

3. The IDEA guarantees that "all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(1)(A). An "appropriate" education is one that is reasonably calculated to confer an educational benefit. See Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982); Walczak v. Florida Union Free Sch.Dist., 142 F.3d 119, 130 (2d Cir. 1998).

4. The standard for determining whether the Board has provided a free and appropriate public education ("FAPE") begins with the two-part test set out in Rowley. 458 U.S. at 206-07 (1982). First, the Board must comply with the procedural requirements established under the IDEA. Second, the Board must propose an IEP that is "reasonably calculated to enable the child to receive educational benefits." There does not appear to be any basis for a determination that there are any procedural violations in planning the Student's IEP.

5. The second prong of Rowley requires the Board to offer an IEP reasonably calculated to provide the Student with an educational benefit. The IDEA and state law require an IEP include: 1) a statement of the present levels of academic and functional performance; 2) annual goals and short-term objectives; 3) the specific educational services to be provided; 4) an explanation of the extent to which the Student participates in the regular education program; 5) objective criteria and evaluation procedures for determining whether objectives are being met; and 6) the projected initiation date and duration of proposed services. 20 U.S.C. §1414; See Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (1998).

6. When evaluating the appropriateness of an IEP, the courts must also consider whether the program is "individualized on the basis of the student's assessment and performance." A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), aff'd, 47 Fed. Appx. 615 (2d Cir. 2002) (citing M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp. 2d 289, 292 n.6 (D. Conn. 2000).

7. The PPT team has fully considered the Parent's concerns and requests for programming for the Student as required by the IDEA. The Board has performed assessments, including independent evaluations of the Student's needs. The Board has used all of the relevant assessment and performance information to plan the IEP, including input from the Parent and the therapeutic clinical placement. The Board has developed an individualized program for the Student.

8. The IDEA itself does not clearly indicate any specific level of educational benefits that must be provided in order for a program to be "appropriate." The Supreme Court, however, has made clear that "appropriate" under the IDEA does not require that school districts "maximize the potential of handicapped children." Walczak, 142 F.3d at 130 (2d Cir. 1998), citing Rowley, supra. An appropriate education must provide opportunities for more than "mere trivial advancement." Mrs. B. v. Milford Bd. of Educ., 103 F.3d 114, 1121 (2d Cir. 1997).

9. In developing an IEP, the PPT must consider the strengths of the child; the concerns of the parent; the results of the most recent evaluations; the academic, developmental, and functional needs of the student; the communication needs of the student; and whether the student requires any assistive technology devices and services. See 34 C.F.R. § 300.324. Courts must also consider "whether the program is individualized on the basis of the student's assessment and performance" when determining the appropriateness of an IEP. See A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), aff'd, 47 Fed. Appx. 615 (2d Cir. 2002) (citing M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp. 2d 289, 292 n.6 (D. Conn. 2000).

10. The IEPs developed by the Board were individually tailored to meet the Student's needs. The Student and his Parent refuse to accept that the Student must comply with school rules regarding attendance and curriculum. The program the Parent proposes for the Student has not resulted in an educational benefit for the Student. He failed classes and was unable to earn course credits. A program that allows the Student to work in his limited area of talent and interests while ignoring other education courses is not appropriate. The information provided by assessments and the diagnostic placement help the team understand the nature of the Student's disability. When the Student attended the private placement designated in his IEP, he was able to make appropriate progress.

11. At the request of the Parent the Board modified the program to increase time spent in the least restrictive environment. The Board arranged tutoring for the Student in his area of interest. For the reasons documented in the PPT records, the modifications did not work.

12. Ensuring that a child with a disability is educated in the least restrictive environment ("LRE") is necessary to the provision of FAPE. Whether the recommended program is administered in the least restrictive environment is one of the factors courts will consider when determining whether an IEP is reasonably calculated to provide a meaningful educational benefit. See M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp. 2d 289, 292 n.6 (D.Conn. 2000).

13. The IDEA requires that school districts must make available a continuum of alternative placements for students who require special education and related services. 34 CFR § 300.115. This continuum includes "special classes, special schools, home instruction, and instruction in hospitals and institutions and other settings." 34 CFR § 300.39.

14. The record shows that despite evaluations, consultations with experts and numerous supports and modifications, the Student was disruptive and non- compliant in the Board's school environment. The PPT team recommended the Student attend the private, state approved

therapeutic placement. They offered him FAPE in the least restrictive environment in accordance with the IDEA's requirements. The Student's attendance is sporadic. The Parent testified she does not believe the program is appropriate. The Parent does not support the Student's success in the appropriate placement.

15. "[T]he purpose of the IDEA is to ensure that the local educational agency and the parents work collectively in finding an appropriate placement for their child. . . . If a parent's acts frustrate the decision making process, the parent may be estopped from relief under the IDEA." Joshua W. v. Board of Educ., 13 F. Supp. 2d 1199, 1204 (D. Kan. 1998)

16. The evidence provided by the Parent in this case confirms the IEP program for the Student is appropriate. The parent raising a due process challenge retains the burden of production. Brennan v. Reg. School District No 1, 531 F Supp 2d 245, 267-268(D. Conn 2007)

17. The testimony and evidence presented at the hearing are sufficient to confirm the Board followed appropriate procedures, including all of the necessary considerations, in planning a program for the Student. The IEP is designed to provide an educational benefit for the Student in the least restrictive environment.

FINAL DECISION AND ORDER

1. No further proceedings are necessary. The Board's IEP provides the Student with an appropriate program in the least restrictive environment.