

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk 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:

Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide appropriate programs for the 2015-2016 and 2016-2017 school years and extended school years?
2. If not, do the circumstances warrant an award of compensatory education?

PROCEDURAL HISTORY/SUMMARY:

The Parents filed the Due Process Complaint/Hearing Request on July 31, 2017. The Hearing Officer was appointed on August 2, 2017.

At the Prehearing Conference conducted on August 25, 2017, the identification of the issues was discussed. The Parents disagreed that that the issues in the hearing concerned FAPE beyond the two years. The Hearing Officer provided an opportunity to amend the Complaint. The Parents did not amend the Complaint to specify District failures in IEPs prior to the 2015-2016 school year. However, the Parents continued to assert that the hearing concerned the Board's failure to provide FAPE for many years. To narrow the hearings for hearing, the Hearing Officer included the words "and prior years" in the identification of the issues and asked the Board to place it procedurally before the hearing in a Motion to Dismiss. The Board complied and filed the Motion to Dismiss on October 5, 2017, the first day of the hearing. The Parents filed an opposition brief on October 17, 2017.

The Hearing Officer bifurcated the hearing to take testimony to determine the applicable Statute of Limitations before taking evidence in the case in chief. On October 19 and 30 and November 6, 2017, the Hearing Officer received evidence on the issue of when the parents knew or should have known of the alleged violations that gave rise to the Due Process Complaint and the nature of those violations. See 34 C.F.R. §300.507(a)(2).

The Hearing Officer heard testimony from the Mother. The Ruling on the Statute of Limitations, which contained Findings of Fact, was issued on November 7, 2017. A second copy of the Ruling was issued on November 8, 2017 correcting typographical errors in the November 7, 2017 document. The issues were identified as stated above.

In addition to October 5, 19, 30, November 6, 2017, hearings were conducted on November 8, 9, 13, 30, December 1, 6, 12, 14, 19 and 21, 2017. Hearings scheduled for November 17, 2017 and January 3, 2018 were cancelled. The Hearing Officer granted requests for extension of the mailing dates of the Final Decision in order to add dates for hearing to November 22, 2017; December 19, 2017 and January 9, 2018. The mailing date was extended to January 16, 2017 in order to allow the parties to submit post-hearing briefs.

The Parents presented five witnesses. They were: Mother, Doug DeMassa, Chiropractor and family friend; Colin Jenkins, Lindamood Bell Centers instructor; Audrey Schmalte, Occupational Therapist and Sheryl Knapp, Literacy Specialist. The Board presented four witnesses. They were Jessica Dellon, Special Education Teacher; Michael Gasper, Special Education Teacher; Christopher Velez, School Psychologist and Jessica Ireland, Transition Coordinator.

For reasons discussed below, the Hearing Officer summoned a Board expert witness to testify about qualifications for administering and interpretation of assessments to interpret the results of Parents Exhibit P-43 and scoring of assessments by a Lindamood-Bell witness. This witness was Maureen Sullivan, Assessment Coordinator for the District. The Hearing Officer further summoned a Board witness to testify regarding the cognitive and achievement testing of the Student. The Board produced Christopher Velez, School Psychologist. See R.C.S.A. §10-76h-15(e)

The Board's exhibits B-1 to B-68 were admitted as full exhibits. The Parent's exhibits P-1 to P-44 and P-46 to P-49 were admitted into evidence. The Hearing Officer ordered the Parents to mark a document that supported the Mother's testimony as Exhibit P-45. The testimony involved certain information that the Mother reviewed in understanding her right to file a Hearing Request. Since Parents' counsel refused to comply with the order, the space behind the tab is empty.

The Due Process Complaint/Hearing Request was admitted as Hearing Officer Exhibit H.O.-1.

After the evidence was closed, the Hearing Officer received a letter and affidavit from one Erin Bell who identified herself as being Director of Communications of Lindamood Bell Learning Processes. The Board moved to strike this affidavit and the Parents opposed. The Bell affidavit and accompanying letter are marked as Hearing Officer Exhibit H.O.-2. For reasons stated below, the Board's Motion to Strike is sustained in part and denied in part.

There were a number of motions. A summary of rulings on the motions is as follows:

- a. Board Motion to Dismiss: Granted for reasons stated in the Ruling.
- b. Parents' Motion for Orders requesting that the Hearing Officer subpoena Parent witnesses: Denied as stated at the hearing. Parents' counsel, as a licensed Connecticut attorney and Commissioner of the Superior Court, is able to subpoena any witness that the Parents require.
- c. Parents' Motion for Orders requesting that the Board produce certain contracts for independent educational evaluators. The purported reason was that the Board's contracts prevented witnesses from speaking freely: Initially, the Hearing Officer did not rule on this motion and suggested that Parents counsel ask witnesses if there was a contract limiting their ability to testify fully and truthfully. Only one witness was asked this question. She was Sheryl Knapp. She testified that she was not a lawyer but to her best knowledge she was not prevented from testifying fully and truthfully. There was no evidence that supported this request and therefore it was denied. Parents' counsel took issue with the denial of the motion and argued at the hearing that the Parents' rights under the IDEA were being violated because the Parents were being forced to subpoena their own witnesses. The Hearing Officer considered the argument. Parents did not present legal authority for this argument. The Motion for Orders regarding contracts was denied after reconsideration.
- d. Parents' Motion for Orders regarding Extension of Mailing Date. This motion was filed after the Parents concluded presenting seven and a half days of evidence. The Board had presented just one half day of testimony. The Motion urged the Hearing Officer to conclude the hearing as soon as possible. According to the Board counsel, the Parents filed this motion after Board counsel contacted Parents' counsel to determine as to whether the Parents would object to the Board's Request for Extension of the Mailing Date to add hearing dates so that the Board could present their case. The Parents objected to the Board's request. The Board's request to add hearing dates was granted.
- e. Board's Motion to Strike Erin Bell affidavit: The motion was denied as to the evidence involving Lindamood Bell services as referenced below. The motion was granted as to the remainder of the affidavit because the information therein is not subject to cross-examination.

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

SUMMARY:

The issues in this Due Process hearing involve whether the school district failed to offer a free and appropriate public education ("FAPE") for a student who was over twenty-one

years old and whom had been receiving Transition-only services. After an initial period when the Board provided a transition program that aligned with Connecticut CORE Transition skills, the IEP was changed at the Parents' request. The revised IEP provided academic tutoring and the Lindamood Bell Visualizing and Verbalizing program as well as Occupational Therapy services and Speech and Language services. Later the IEP was revised to add a program recommended by an audiologist called the CAPDOTs program. The Parents requested an additional year of services after the Student turned twenty-one and their request was denied.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following relevant facts:

1. The Student (DOB: 4/1/1996) is a resident of the School District and was eligible for special education and related services under the category of Other Health Impairment due to impairments resulting from Fetal Alcohol Syndrome, Pervasive Developmental Disorder (PDD) and ADHD. Student had received Special Education and related services throughout his time at Norwalk School District throughout his educational career.
2. On April 29, 2014, when the Student was 18 years of age, the Probate Court in the Norwalk-Wilton District (Anthony J. DePanifilis, J.) conducted a hearing and examined the report of the Department of Developmental Services and the 2013 psychoeducational evaluation of the Norwalk Public Schools (P-10). The Probate Court found by clear and convincing evidence that the Student was "by reason of the severity of his or her intellectual disability, totally unable to meet the essential requirements for his or her physical health and totally unable to make informed decisions about matters related to his or her care." The Court appointed the Parents as Plenary Guardians of the Person under C.G.S. §45a-677(e). (P-46)
3. At the time of the hearing, the Student was 21 years of age and not receiving Special Education services. He had graduated from Norwalk High School in June of 2015 after earning high school credits in accordance with state educational requirements. His class rank at graduation was 136 out of 354 seniors. (Testimony, Mother, B-68)
4. He is kind, respectful, hardworking, cooperative, social and engaging and tries his best. He was observed to be well liked by his peers. During high school, he had a girlfriend. He describes himself to others as hardworking. He is interested in jet skis, any types water vehicles, Tae Kwon Do and his lawn business. He is patient and elaborates in his conversation. He is socially appropriate and a good salesman. Prior to taking his assessments in 2016, Student offered his business card and pitched his lawn care services to the test administrator. He is supported by loving and devoted parents. (Testimony, Velez; Testimony, DeMassa; Testimony, Mother)

5. Sometime during high school he obtained a learners permit to drive from the Connecticut Department of Motor Vehicles (DMV). He studied on his own by using the 4 practice tests on the Motor Vehicle website. He took the learner's permit test without modification. He used noise cancellation headphones when he took the test at DMV. He was able to obtain a score of at least 20 correct answers (80%) of the 25 posed questions in order to pass. (Testimony, Mother, B-68)
6. Since graduating from high school, Student began a lawn-mowing business. According to his mother, his business was growing through customer referrals and his services were in high demand. He drove from place to place to service customers in his lawn business. During the course of the hearing he applied for and became employed to be an assistant mechanic in a local marina and assisted his father who was employed as a mechanic. His mother reported that he was enjoying his work and doing well. (Testimony, Mother).
7. With his apparent success after graduating high school in being able to work in his landscaping business and being employed, the Mother was asked by the Hearing Officer as to her opinion of the skills that the Student had not attained through the Norwalk Public Schools that the Norwalk Public Schools should be required to provide. The Mother was given a period of reflection over several hearing days. The Mother testified that she wants her son to be able to do what others "took for granted". This involved the ability to accomplish tasks that required judgment in decision-making. She stated that the Student could only understand concrete ideas and needed to understand abstract ideas. She wants her son to be functionally independent. She gave an example of this such as being able to read and understand a lease, which is a legal document, and being able to obtain medication and measure the proper amount to administer to his child if he were married and have a child in the future.
8. The Mother felt that she had developed a "team" to deliver these services. This consisted of the instructor at Lindamood-Bell Educational Center, a literacy instructor, Sheryl Knapp and an Occupational Therapist. She had formed her own team to further educate the Student and wanted an award of compensatory education for her team to continue to provide services. She stated that with the Lindamood-Bell Visualizing and Verbalizing reading program, Student was just beginning to be able to visualize and understand concepts. She did not know how far he might progress but she did not want to limit him. She believed that the Student gained a lot of ground in abstract reasoning using the Lindamood Bell program in nine months time. (Testimony, Mother)
9. The Mother's stated that this view was supported by conversations she had with Lindamood Bell employees. She had also personally observed that the Student seemed to enjoy the tutoring and showed interest in downloading books to read. Whereas the Student was unable to gauge distances, volumes and size, the Mother testified that the Student could now do this after a year of Lindamood Bell Visualizing and Verbalizing instruction. The Mother would like the Hearing Officer to order the Norwalk Public Schools to continue to pay to educate her son until he is able to understand abstract concepts. (Testimony, Mother)
10. The Due Process Complaint seeks the following proposed resolutions:

- a. Speech and language services not provided in the Student's IEP of unspecified date.
 - b. Occupational therapy services for an unspecified number of years.
 - c. Diochotic Listening Program for an unspecified number of years, which program was added to the Student's IEP in 2017.
 - d. Math instruction because the Student allegedly did not receive math instruction until late in his academic career in 2017.
 - e. Reading instruction because the Student allegedly did not receive reading instruction in accordance with an IEP of unspecified date late in the Student's academic career.
 - f. Independent living instruction.
 - g. An independent literacy evaluation and independent psychoeducational evaluation that was denied at a May 17, 2017 PPT meeting.
 - h. "Additional [unspecified] post-secondary services to place [Student] where he would be absent the District's malfeasance...this will require the District to provide [Student] with a program of services for several academic years based on the services he has been provided recently, adjusted to emphasize the services which [Student's] progress indicates are most useful to rectify the denial of FAPE to him. In addition, [Student] has spent an enormous amount of time receiving instruction required by the prior malfeasance by the District. This has reduced [Student's] social skills. Thus, the District must provide [Student] with some services needed to increase social skills."
 - i. "Transportation to and from required services and compensatory education described in this letter."
 - j. Reimbursement for certain evaluations of a behavioral optometrist of an unspecified date and a "Learning Ability Evaluation" by Lindamood-Bell in 2015.
 - k. Legal fees and costs.¹
 - l. Exhibit A lists a summary of services that the Complaint alleges that the Student "will need to be provided for at least two years, and perhaps longer."
11. The Mother testified extensively over a period of many days about her disagreement with the school team. In summary, the Parents disagreed with the Transition Services in post high school graduation IEPs. These Transition Services included Functional

¹ The issue of attorneys' fees arose at the hearing. Shortly after the hearing began and before the evidence was presented, the Board sent a letter (Exhibit B-59) offering to provide a number of hours of speech and language services as well as the online Diochotic Listening Program referenced in the Complaint. The Parents rejected the Board's offer. On cross-examination, the Mother was asked why and she responded that the offer did not include attorneys' fees. The Hearing Officer does not have authority to grant attorneys fees as compensatory remedy. See *Connecticut General Statutes 10-76(d)*.

Academics and Speech and Language consultation services being provided in various workplace environments. The PPT invited other agencies to participate at the PPT meeting and made referrals to the Bureau of Rehabilitation Services (BRS) for transition to adult services. The Mother testified that the Parents were not interested in pursuing services through the agencies “at this time.” The Parents believed that the Student could go to college. The school’s Transition Coordinator provided information about options and services to higher education. The Parents declined all of these services because they wanted the Norwalk school system to continue to pay for academic instruction for their son. (Testimony, Mother; Testimony, Ireland)

Educational Record; Cognitive Profile and Achievement Testing Results; Self Report

12. Student attended Norwalk High School after attending West Rocks Middle School. The Parents were active participants in the development of the Student’s IEP, throughout his high school career. The Parents received copies of IEPs with prior written notice during the time Student was attending Norwalk Public School. (Testimony, Mother.)

Cognitive Profile, strengths and weaknesses and Achievement Testing Results

13. The school district conducted psychoeducational evaluations as part of Triennial Review in 2011 (8th grade, age 14 years 10 months); 2013 (10th grade, age 17 years) and after graduation in 2016 (13th year - age 20 years). The use of standard scores is common because they are most accurate and meaningful in interpreting the results obtained in cognitive and achievement testing. (Testimony, Sullivan; Testimony, Velez) School psychologists qualified to administer and interpret results administered cognitive testing. A special education teacher who was qualified to administer and interpret results administered achievement testing. Assessments reported below are widely accepted measures of cognitive ability and achievement. The record review shows that the results obtained are stable and consistent and properly administered by qualified professionals. (Testimony, Velez) The Parents do not disagree with the results. (Testimony, Mother). The results reported below are standard scores:
14. In 2011, the School Psychologist administered the Weschler Intelligence Scale, Scale for Children Fourth Edition (WISC-IV), a diagnostic assessment of cognitive ability for same aged peers. The results obtained with reference of the mean being 100 were as follows: Verbal Comprehension: 73; Perceptual Reasoning: 53; Working Memory: 59; Processing Speed: 50; Full Scale Intelligence (FSIQ): 51. Bender Gestalt Visual Motor Test Index 2d Edition: 55 Significantly Impaired. (B-2)
15. In 2013, Dr. Seth Stevens, PhD, a School Psychologist administered the Weschler Adult Intelligence Scale, Fourth Edition (WAISC-IV), a diagnostic assessment of cognitive ability for same aged peers. The results were as follows: Verbal comprehension: 74; Perceptual Reasoning 50; Working Memory: 60; Processing Speed: 53. FSIQ (a composite score) of 53. (B-11)
16. The General Intellectual Ability (GIA) classifies overall cognitive abilities and is the best single score predictor of various global criteria of overall school achievement and other life outcomes that have relationship to cognitive ability. (Testimony, Velez; B-11; B-37)

17. In 2013, the Student obtained a score in General Ability Index was 57, which is in the extremely low range. (B-11)
18. In 2016, School Psychologist, Christopher Velez, conducted a psychoeducational evaluation as part of the Student's Triennial The diagnostic cognitive assessment administered was the Woodcock Johnson Test of Cognitive Abilities 4th Edition. (Woodcock-Johnson IV) (Testimony, Velez; B-37) Again as in 2013, the Student's General Ability Index score was in the very low range of intellectual functioning at <1st percentile. (Testimony, Velez. B-37)
19. Perceptual Reasoning subscores on the WISC-IV and Fluid Reasoning subscores on the Woodcock-Johnson IV measure the capacity to reason and problem solve using unfamiliar information. On these measures, the Student consistently obtained scores in the extremely low range at < 1% of same aged peers, meaning that 99% of same aged peers are more able to reason and comprehend concepts better than the Student. (Testimony Velez, B-11; B-37)
20. Christopher Velez is school psychologist currently finishing his PhD in School Psychology. He is a Nationally Certified School Psychologist. School Psychology differs from other psychological practices in that it is a specialty that focuses on education and measurements to inform the educational needs of students. School Psychologists hold advanced masters level degrees as well as licenses to administer and interpret psychological and educational testing measures. As a nationally certified school psychologist, Mr. Velez must meet a high level of qualification and ethics and receive continuous education on psychometrics to stay current on cognitive and educational achievement testing measures. (Testimony, Velez; Testimony, Sullivan.)
21. The Student is significantly impaired in fluid and perceptual reasoning and abstract conceptualization and problem solving. To illustrate the Student's cognitive impairments, Mr. Velez gave detailed examples of tasks that the Student was asked to perform and how the Student performed each tasks on the assessments he was administered. The examples are helpful because they show the Student's ability to think and analyze without requiring reading and suggest why the Student can read but fail to understand what he is reading. In addition, since the idea of the Visualizing and Verbalizing program is for Student to first visualize the text and then understand what it means, these examples are helpful because it does not require the Student to read. (Testimony, Velez; Testimony, Jenkins)
22. For example, in one task, the Student was presented with a series of pictures of balls, dogs and cups in different groupings. Some pictures had a dog followed by a ball and others had a dog following a ball. The Student was asked to point out the pictures where the dog was following the ball. The Student performed at the extremely low range. He was unable to consistently point to pictures of a dog following the ball. (Testimony, Velez). The Student's performance on this task shows that the Student would not be able to comprehend simple concepts even if he were able to visualize the text he was presented. (Testimony, Velez)
23. Another illustration provided by Mr. Velez was the Student's performance on a subtest in which the Student was presented with groupings. The Student was asked to say what the pictures had in common. The Student could identify the specific animals but was

not able to say that that they were all animals. (Testimony, Velez). This illustration is an example of the extent of the impairment in understanding basic concepts. The impairment is significant. (Testimony, Velez)

24. Another task that measured thinking ability and problem solving involve a task where Mr. Velez asked the Student to sort and order cards in as many ways as he could. The Student could have sorted cards by color, or by category or a number of other ways. Mr. Velez testified that the Student repeatedly sorted and ordered the cards presented the same way. He could not find more than one solution. (Testimony, Velez, B-37) These results suggest that while the Student might be able to understand at a very basic level, he is unable to analyze more complex information. These areas of functioning most impact the ability to understand mathematic concepts and reading comprehension. (Testimony, Velez)
25. The Student's cognitive profile is complex. Although the Student's ability to understand concepts or solve problems is significantly impaired, Student has areas of relative strengths. For instance, Student's verbal comprehension is at the borderline range. This means that he is able comprehended basic information being presented to him at a borderline level, which is significantly below average but above the level of significant cognitive impairment in his conceptual thinking ability. (Testimony, Velez)
26. The Student has other relative strengths although all are below average. Some areas of relative strengths are ability to retain information, rote memory, passage reading comprehension and letter-word identification compared to his ability to understand mathematical concepts. In 2014, when Student was 17 years, 9 months, Erica Dellon, the Student's Special Education Teacher administered the Woodcock Johnson Test of Achievement, 3d edition (Form A) to measure Student's reading and math skills. While Student performed significantly lower than same age peers, Student's verbal ability far exceeded his math ability. Though below average, Student obtained better scores in passage comprehension and letter word identification where he performed in the low average range. For instance, while he was not able to understand more than simple concepts, he could read and sound out relatively difficult words such as bouquet. (B-13, Testimony Dellon)

Educational Record

27. The PPT met on May 20, 2011, when Student was in the 8th grade to plan the transition to Student's 9th grade IEP at Norwalk High School. While in the 8th grade, the Student participated in the regular education curriculum at West Rocks Middle School. Achievement testing on the WIAT-II revealed that verbal comprehension and fluency were in the low average range and basic reading was in the average range. He had participated in regular reading and literacy classes in the 8th grade. He liked reading novels and writing about his personal experiences. His math scores were in the extremely low range. He received math instruction in an extended resource room and was learning pre-vocational math. He had a 1:1 aide. His rate of progress in academic and non-academic areas was inconsistent. While he could be friendly and engaging with others in conversations, he had significant externalizing problems such as aggression and hyperactivity. His behavioral issues were detrimental to his academic and social functioning in school. Attentional issues impeded his academic

performance. Tics were noted in the classroom. His IEP included services addressing adaptive behavior, including social work counseling and group instruction in learning to interact with peers. The PPT developed reading comprehension goals as help well as functional math goals, such as telling time with a clock, identifying coins and their values. (B-2)

28. In the 9th grade, Student was receiving direct instruction in English language skills from a Special Education teacher in a co-taught General Education classroom. A co-taught classroom is a classroom containing a mix of disabled and non-disabled students. The Special Education teacher provides specialized instruction in the classroom to special education students. (B- 2)
29. In the 9th grade, the Student had the assistance of a one to one paraprofessional throughout the school day. The Special Education Teacher, Jessica Ireland, stated that the ultimate goal was to help Student to be as independent as possible. Student made gains in acquiring a basic sight word vocabulary and was able to improve his communication skills such that the Student was able to discuss his personal experiences. He had learned basic calculator skills and was able to do basic addition. He was able to communicate using a general fund of knowledge. He retained word knowledge had strengths in auditory rote memory. However, the Student lacked basic money skills, needed to learn numerical operations, needed to maintain attention to tasks. He had challenges with social judgment, abstract reasoning, visual motor integration and perceptual reasoning. The PPT agreed to add Functional Academics, which apply reading and math into real world situations, into the Student's program. (B-2; B-4)
30. The IEP also address the Student's challenges in adaptive behaviors. The skills being worked on included learning to read social cues in social situations; acting in a socially acceptable manner and self-awareness goals. Academic goals included for reading comprehension skills and writing skills. Math goals continued to focus on telling time, counting coins accurately, and numerical operations. A special education teacher delivered instructional services in the Extended Resource Room. The one to one paraprofessional attended class with Student and assisted in helping him practice the skills he had learned. He learned computer-keyboarding skills and was working on the determining his vocational interest through the Naviance, a computer software program that help to sort the Student's post high school career and post secondary educational interests. (B-4)
31. In the 10th grade, Student's educational programming included a continuation of academic instruction in the regular education curriculum with special education instruction delivered in a co-taught English Language Arts classroom and delivery of special education instruction in Math in an Extended Resource Classroom. (B- 4) Progress was difficult and slow in the area of identifying coins and numerical operations. Student had difficulty answer higher order thinking questions when working with reading comprehension. In the 10th grade, the PPT set goals for reading functionally. Functional Academics is focused on teaching academics in the context of real life situations. Student's IEP goals included instruction for reading comprehension using a variety of text in every day environments, such as newspaper articles, flyers, menus or transportation schedules. (B-14). Student was directly instructed on reading

comprehension techniques, including clues to draw inference from reading passages. Banks of vocabulary were presented to help Student with inference and prediction skills. It was reported that Student made satisfactory progress in this area. In Math, Student continued to struggle with telling time with an analog clock. The staff tried multiple ways to help the Student read an analog clock. These included incorporating objectives that required the the Student to use his body standing erect and hands to represent the time and having the Student state what time is was (B-14). At some time, the Special Education teachers provided the Student with alternative ways to access the same information with a digital clock since telling time was a particular area of struggle. The Special Education Teachers worked on Student's calculator skills. (B-14)

32. In the 11th grade, the Student began going out on trips to the community to practice and generalize his functional and academic skills in a community setting. The Student went one day a week to Walgreens with a job coach. A Special Education teacher supervised the work site. A Speech and Language Pathologist visited the work site to help the Students with communication skills with co-workers and with others. He continued to receive the support of an aide to help practice various skills. (B-14; Testimony, Gasper)
33. In planning the 12th grade IEP, the PPT noted nice progress and Student's preferences for elective classes, including classes in the culinary arts and transportation. The PPT continued to recommend Functional Academic classes and provided information on Travel Training and contacted information to the Bureau of Rehabilitative Services (BRS) to obtain services after high school. The Student completed Travel Training with the Kennedy Center. The final examination required the Student to independently make decisions to navigate travel from one location to another using public transportation on a three occasions. The Student was complete these tasks and completed the Travel Training curriculum successfully. (B-14; Testimony, Gasper)
34. The Student took career interest inventories to plan his post high school career. He had a post high school career goal of working as a landscaper. The PPT planned to include more worksite and realistic experiences in the 12th grade school year directly instructing the use of technology, such as calculators, debit cards in receiving payments from customers, customer service interactions and communication skills in the work environment. (B-4; Testimony, Gasper)
35. The Student continued to struggle with telling time. IEP objectives were added to move the hands of an analog clock to match the time on a digital clock. In addition, an objective was added wherein the Student would be able to tell time on an analog before eating lunch and afterwards and prepare to exit the lunch room. This was to be practiced with the assistance of a paraprofessional. (B-14)
36. In April of the 12th grade, the PPT met to review the progress of Student's IEP. The Student was on course to graduate at the end of the year based upon district course distribution credits. On June 12, 2015, the PPT revised the IEP to provide special education services in the 2015-2016 school year. The Student would be provided special education services on an audit basis. Students would receive 2 periods of Functional Math, one period of Functional Academics, 1 period of Vocational Skills

and 4 periods of a school based worksite called the Coffee shop. Although the Student had fulfilled the required number of credits, the teachers were in agreement to provide an additional year of transition services to so that the skills would have more time to be generalized and to avoid regression. (B-19, B-19A, B-20, Testimony, Gasper)

37. Michael Gasper was the Student's Special Education Teacher in the Transition Program in the 12th grade and the year after graduation. He is a highly experienced and qualified Special Education teacher with Masters degrees and leadership certification in the area of Special Education. In 2006, he was voted Teacher of the Year at John F. Kennedy High School in New York City where he conceived of and successfully implemented a multidisciplinary team teaching program. Using the *Connecticut State Department of Education's Connecticut Transition Training Manual and Resource Directory* as a guide, he and Student's Functional Academics teacher, Jessica Dellon, created a transition program that aligned with Connecticut CORE standards. After extensive questioning from the Hearing Officer, it is the Hearing Officer's finding that the Student's transition program as provided by the Board complied with State standards. (Testimony, Dellon, Testimony, Gasper; B-64)
38. It is particularly noteworthy that Mr. Gasper constructed the coffee shop on his own time. The coffee shop is a classroom for students to practice the Functional Academic skills they had learned and to generalize them in a real life vocational setting in the high school building with the supervision of school staff. The Student practiced the adaptive and academic skills contained in his IEP such as math, telling time, communication skills working at the coffee shop under the watchful eye of a paraprofessional. In addition, Ms. Dellon created a social program that paired non-disabled students with Special Education students. Student was able to practice adaptive and social skills in this program. (Testimony, Gasper, Testimony, Dellon, B-67, B-64).
39. The teachers testified about their relationships with the Student. Mr. Gasper took a personal interest in the Student. When the Student showed an interest in playing the guitar, Mr. Gasper stayed after school and gave the Student guitar lessons without charge.
40. In June of Student's senior year, the PPT met to review and revised the IEP. Prior to this PPT, the PPT was in agreement that exit from Special Education would be at graduation in June 2015. By June of 2015, Student had fulfilled all credits necessary for graduation for high school and fulfilled exit criteria from Special Education and related services. The PPT revised the Student's IEP to provide an additional year of Special Education services to provide an opportunity for the Student to practice and generalize skills he had previously learned in work based settings. (Testimony, Gasper, Testimony, Dellon, Testimony, Ireland).
41. In the first post high school graduation year (one of the two years at issue in this hearing), the Student received most of his Special Education instruction and services, including speech and language services, in the community and at worksites. Mr. Gaspar testified that the worksites provided opportunities for the Student to practice many skills on the Student's IEP. (Testimony, Mother)

42. The Parents believed that the Student was going to worksites and stacking boxes and playing video games instead of learning. The Board planned lessons and implemented IEP goals in the work sites, which were opportunities for the Student and other Special Education students to practice their skills in a naturalistic environment. (Testimony, Mother; Testimony, Gasper)
43. The Mother testified that prior to this post graduation year, the Parents did not disagree with the Student's educational program. (Testimony, Mother) During the Student's high school career, the Parents believed that the Student made "nominal" progress. (Testimony, Mother)
44. The Parents first disagreed with the school team in the post-graduation year, when the Student was receiving Functional Academics on job sites instead of further Academic instruction. In their view, the Student required more academic classroom instruction because, in their view, the Student could make more progress. (Testimony, Mother)
45. The Mother testified that a friend suggested that she look into Lindamood Bell Learning Centers. The friend's child had received reading instruction and the friend felt that her child had improved. The Mother consulted with employees of Lindamood-Bell Learning Centers. She took the Student to the Lindamood Bell Center for an evaluation. The Lindamood Bell Center's director stated that Lindamood Bell could help the Student improve his reading skills. In doing so, no one at Lindamood Bell reviewed the Student's educational records nor consulted with anyone in the school district. (Testimony, Mother; Testimony Colin Jenkins.)
46. Lindamood-Bell Learning Process is a private company. The Director of Communications provided an affidavit and states that a purpose of the affidavit is to protect Lindamood Bell's reputation. According to her affidavit a speech and language pathologist and reading specialist founded the company and their programs provide reading instruction to students with diagnosed learning disabilities. (HO-2)
47. Learning disabilities are a distinct disability eligibility category (Specific Learning Disability) under the Individuals with Disabilities in Education Act (IDEA). Under Connecticut and Federal guidelines, the category of learning disabilities addresses *underachievement* that is due to lack of appropriate general education instruction. See 34 CFR §300.309(b).
48. The determination that a student has a learning disability requires a team to find that the lack of progress of the student being identified is NOT due to an intellectual disability, motor, visual or other disability. 34 CFR § 300.309[a][3]. The profile of a learning disabled learner does not fit with the Student's cognitive profile in this case. Here, the Student's FSIQ score is 53. Though the primary category of disability is Other Health Impairment, Student's intellectual functioning is most appropriately characterized as an Intellectual Disability rather than Specific Learning Disability. 34 CFR § 300.8.
49. Intellectual Disability and Specific Learning Disability differ in several ways. Federal regulations (34 CFR § 300.8(6)), define ID as "significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance." Connecticut state standards qualifies Students as being eligible for

services under the IDEA when the composite score in a FSIQ below is two standard deviations below the norm. (FSIQ=70) Here, the Student's FSIQ is more than three standard deviations below the norm. See *Guidelines for Identifying Students with Intellectual Disability*, Connecticut State Department of Education (2007)

50. Specialized instruction for Students with Intellectual Disability differs from that for students with Learning Disabilities. One method of teaching students is by "Explicit Instruction". "Explicit means students are not expected to infer knowledge and care is taken to direct the student's attention to what is being taught. (*Connecticut Blueprint for Achievement*)". Another method is systematic instruction which includes "[m]ultiple practice activities [that] are scheduled purposely to help students master and retain new skills". The coffee shop and outside vocational experiences are examples of the use of this educational methodology. See *Guidelines for Identifying Students with Intellectual Disability*, Connecticut State Department of Education (2007)
51. Lindamood-Bell provides services to students with learning disabilities. "Specific learning disability is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia" (34 CFR § 300.8(10)).
52. "Learning disability describes a group of disorders that affect a child's ability to learn certain subject matter as demonstrated in skill domains, as listed in the definition. Samuel Kirk is cited as coining the term "learning disability" as a "catch-all phrase to describe a number of different problems affecting the ability of certain children to learn. He noted that these problems manifested themselves in children who were otherwise capable, but were underachieving." (Donovan and Cross 2002, 244). Intellectual disability, on the other hand, is described as a global deficiency in intellectual functioning and, therefore, learning in general is affected. Besides globally low intellectual functioning, the construct of social competence is also implicated in the profile of a child or person with intellectual disability. The issues of social competence relative to adaptation have been argued to be a direct consequence of the level of intellectual functioning, manifested in "difficulty in processing social situations" (Greenspan 2006)." See Guidelines for the Identification of Students with Learning Disability, Connecticut State Department of Education (2010)
53. Educational methodologies used for students with Learning Disabilities include focusing direct instruction in key academic domains, such as word decoding, fluency, vocabulary and comprehension. Literacy specialists, such as Ms. Knapp, work with learning disabled students in early grades to achieve fluency and decoding skills so that automaticity is developed freeing the students use their cognitive skills to comprehend passages and analyze and problem solve. To teach basic writing skills to learning disabled students, Special Education teachers teach organization of essaying writing. Math concepts and problem solving; written expression and revision and edit are areas

of key domains addressed on IEPs. These goals and objectives help the learning disabled students are able to work to reach grade level expectations. Some learning disabled students are visual learners and others are auditory learners, so that it is apparent in the evaluation to identify the disability that language processing is the barrier to learning. Within the domain of math, a common difficulty for the learning disabled learner is the knowledge of algorithms and difficulty with multidigit calculations. Although a learning disabled students may understand math concepts, they suffer from poor automatic recall of basic facts, such as addition and multiplication so that fluency, as with reading fluency, has to be practiced. See Guidelines for the Identification of Students with Learning Disability, Connecticut State Department of Education (2010)

54. If Lindamood Bell had inquired into school records or reviewed the Student's evaluations, it would have been abundantly clear that Student was not a candidate for Lindamood Bell. Lindamood Bell *might not have* made their recommendations. This may not have been so since their staff is untrained in special education or any educational methodologies other than using the Lindamood Bell program. (Testimony, Jenkins; P-43)
55. The Student's disability is not as a result of a learning disability. It is because global intellectual functioning is significantly impaired. This means that Student would be tested as having deficits compared to the peers in all intellectual and processing domains, including auditory processing, which is a relative strength in Student's cognitive profile. (B-2; B-11; B-37; Testimony, Velez)
56. The Mother testified that Lindamood Bell employees told her that they could help her child "learn". She testified that Lindamood Bell gave her "hope". Thereafter, the Parents brought the Lindamood Bell evaluation to the school and requested Lindamood Bell services. The school team initially refused. Thereafter, the Parents filed a Due Process Complaint. To resolve the dispute, the school team offered to provide instruction by a Lindamood Bell trained teacher. The resumes of a few qualified teachers were provided to the Parents. The Parents found the teachers unacceptable. The Mother testified that she refused to have one certified teacher provide tutoring because her resume referred to the words "mental retardation." Before the implementation of "Rosa's Law" in 2010, the terminology used to describe Intellectual Disability was "Mental Retardation" See 111th Congress Public Law 256 (U.S. Government Printing Office 2010). The Parents insisted on instruction through the Lindamood Bell Center. The PPT agreed to pay for services at the Lindamood Bell Center. Student received intensive Lindamood Bell reading instruction in the Visualization and Verbalization Program for 4 hours a day over the period from September 2016 to June of 2017.(Testimony, Mother)
57. Colin Jenkins is a Lindamood Bell employee who was responsible for the instructional program for the Student. Mr. Jenkins is a recent college graduate with a degree in Engineering. He testified that he is responsible for educational plans, instruction of students and sales. He began working at Lindamood Bell during summers in college. Lindamood Bell gave Mr. Jenkins the title of "Clinician" while he was working as a college student. The title "Clinician" conveys a certain level of expertise and training.

Normally, the word is associated with doctors, and those with advanced degrees who are able to evaluate conditions at a level that is beyond those with less experience. Merriam Webster Dictionary defines “Clinician” as “a person qualified in the clinical practice of medicine, psychiatry or psychology” To qualify for the title of “Clinician” at Lindamood Bell, Mr. Jenkins received 80 hours of distance training. He testified that his responsibilities included creating lesson plans and he supervised other “clinicians”. He testified that he did not have degree in education or teaching. He never took an education course in college. In terms of comparison to Connecticut state standards, Mr. Jenkins would not qualify to be a para-educator, otherwise known as a paraprofessional or aide, in any school system. Connecticut para-educators work under the direction of Special Education Teachers who are certified and hold advanced degrees. They are required to pass a Para Pro Assessment, which evaluates whether the test taker can demonstrate a proficiency in assisting Special Education Teachers in the instruction of Reading, Writing and Math. (See *State of Connecticut Department of Education Paraprofessional guidelines at State Department of Education website*). Under Connecticut state standards, only Special Education teachers should determine the type of reading instruction and methodology provided to students. Paraprofessionals assist practice of the instruction provided by the Special Education teacher. This ensures the quality of instruction and that the person who makes educational instructional decisions is competent to do so because teaching students with disabilities requires a high level of understanding of educational methodologies as they apply to different disabilities. (See *Connecticut State Department of Education Paraprofessional guidelines*.) (Testimony, Jenkins, HO-2).

58. Mr. Jenkins testified that he administered reading assessments to the Student. On direct examination as to whether the Student made progress at Lindamood Bell, he answered in the affirmative. However, his demeanor was quite suspicious. His answers were accompanied by staring at the ceiling and a smirk. His legs shook. He waited to answer every question in the affirmative without taking time to pause. He did not elaborate. (Testimony, Jenkins)
59. Moreover, the results of the assessments on Parent Exhibit P-43 did not show progress and did not support the testimony. Although Mr. Jenkins testified that the Student made progress, the results on P-43 contradict the testimony. For example, the results were variable. The Student did not improve over a period of instruction as would be expected and in some instances regressed. Particularly, the Gray Oral Reading Test, Form A, the Student was administered a college level text and adult level text when his reading level was far below. The Student did not get correct answers at a lower level but was given passages to read at a higher level. This did not appear to be a valid and reliable administration and the reliability of results was questionable. (P-43)
60. The Hearing Officer confronted the witness with this statement and he did not appear to agree or disagree. Some of the reading assessments that were administered were reading assessments that were administered by literacy specialists. Literacy specialists are specialized teachers with Masters level degrees and qualifications. Mr. Jenkins had not taken a single course in education while at college. His qualifications in instruction were given to him by remote training for the equivalent of two weeks. The witness’ demeanor, lack of qualification, suspicious test results led the Hearing Officer to

summon a witness pursuant to Connecticut regulations. The Hearing Officer asked the Board to provide an expert witness in assessments as well as providing literature on the minimum qualifications required by the test producers. (Testimony, Jenkins; B-63)

61. Maureen Sullivan is the Board's Assessment Coordinator. Ms. Sullivan testified extensively and confirmed that the results on P-43 are unreliable and that Mr. Jenkins did not possess the ability to administer or interpret the results. Most, if not all of the tests administered in accordance with the test producers' published criteria. According to the test producers, the minimum qualifications were at a Masters level in the field of Education or Psychology. (Testimony, Sullivan, B-64)
62. The Student received 536 hours of intensive instruction at Lindamood Bell. The Student did not make any progress according to the results on Parent Exhibit P-43, Lindamood Bell's Auditory Conceptualization Test-3. Lindamood Bell, the test producer states that the test measures "an individual's ability to perceive and conceptualize visual medium." The Student received a standard score of 55 in September 2016 and the same score in June 21, 2017. (P-43; B-63; B-64, Testimony, Sullivan)
63. After 240 hours of reading instruction, Mr. Jenkins reported to the PPT that the Student was reading at a 5th - 6th grade level and then at a later PPT reported that the Student made progress and was now at the 4th grade level. (P-43; B-56).
64. The Parent testified that she was excited by the progress that the Student made at Lindamood Bell. She based this on subjective observations that her son appeared happy and seemed to enjoy his day at the Lindamood Bell Center. She stated that she now had "hope" that her son "could learn". Mr. Jenkins told her that in order for her son to succeed, the Student had to "unlearn" what he was taught by the Norwalk school district. Later, the Parent retained a Parent Advocate to attend PPTs where the Parents advocated reading and math tutoring. Although the educators disagreed to the Parents' requests and the PPT agreed to every evaluation and service the Parents requested. Educators testified that although they personally disagreed with the need for the services but did not openly disagree. The reasons range from a thought process of "how could it hurt?" to finding the presence of the advocate to be "intimidating". (Testimony, Mother; Testimony, Gaspar; Testimony, Ireland)
65. The PPT agreed to fund Lindamood Bell services for the 2016-2017 school year. In addition to Lindamood Bell instruction, the PPT agreed to pay for the services of Sheryl Knapp, a literacy specialist and math tutoring, first through a math tutor and later through the Lindamood Bell Center where the Student took the Lindamood Cloud Nine program. Ms. Knapp, an Orton Gillingham instructor, helped Student with decoding and reading fluency. She also helped Students with functional reading, such as reading newspapers articles. Student had already read newspapers as part of his special education program in high school. The Student did obtain educational benefit from Ms. Knapp's tutoring. She gave the Student instruction with functional reading. (Testimony, Knapp, B-2; B-4)
66. In addition, the PPT agreed to an Occupational Therapy evaluation after the Parents disagreed with the evaluation conducted by the Board's Occupational Therapist. The PPT agreed to fund an Independent Educational Evaluation. Aubrey Schmale, an

Occupational Therapist, conducted this evaluation. Ms. Schmalle recommended occupational therapy services, evaluation by an audiologist and continued instruction by Lindamood Bell. The Board paid for all of Ms. Schmalle's services. Her recommendations were in part based upon interviews with Colin Jenkins of Lindamood Bell and Douglas DeMassa, a chiropractor and friend and advisor to the Student's family. Dr. DeMassa's doctorate is in Chiropractic, which involves the diagnosis and treatment of the musculoskeletal system. He testified that he developed a program called Neuron-Do and provides this commercial service to students with disabilities. Dr. DeMassa has no training in Special Education or specialized instruction of students with disabilities. However, he provides tutoring to special education students in subjects such as math as a service to his Neuron Do students with disabilities. He testified that he was an advisor to the Parents and had attended a number of PPTs. (Testimony, Schmalle; Testimony, DeMassa).

67. Ms. Schmalle helped the Student with learning the shape of coins, sorting coins and counting coins. Many of the lessons Ms. Schmalle had already been provided to the Student in high school. Eventually, Ms. Schmalle worked with the Student to sort coins and determine sums using a calculator. These were the skills that the Student had worked on during high school. Some of the skills were apparently mastered only later forgotten by the Student. Ms. Schmalle also helped Student to prepare for his driving test, which he passed. Ms. Schmalle recommended that an audiologist evaluate the Student for Central Auditory Processing Disorder. The PPT agreed to fund the evaluation. The evaluation was reviewed in February of 2017. Among other things, the audiologist recommended to use of a Dichotic Listening program also known as the CAPDOTs program. The school members of the PPT agreed to purchase the program. However, the school was not able to have the program delivered before the end of the school year. (Testimony, Schmalle, B-4, B-6, B-54, B-56.).
68. Student turned twenty-one years of age on April 1, 2017. At a May 17, 2017, the Parents requested an Independent Psychoeducational Evaluation and Independent Literacy evaluation. This request was denied by the PPT. Additionally, the PPT denied the Parents' request to provide an additional year of Transition Services. The PPT provided Transition services until the end of June 2017. (B-58).
69. Although the Parents presented evidence about the appropriateness of the Lindamood Bell program; the Occupational Therapy services delivered by Aubrey Schmalle and Orton Gillingham tutoring from Sheryl Knapp, the Parents did not present any evidence about concerning the loss of educational benefits. These included services that were not delivered or implemented including audiology services known as the CAPDOTs program and "Push-in" speech and language services. There was no testimony presented as to why the services were necessary in order for the Student to derive educational benefit. Further there was no evidence presented about how losses of these services impacted the Student. The Parents requested the Speech and Language services were not provided on the IEPs and the PPT agreed. The School Team could not locate a Speech and Language Pathologist who would travel to Ms. Knapp's office to deliver speech and language services as was requested by the Parents. (Testimony, Ireland) Further, the Complaint requests reimbursement for an evaluation provided by a Behavioral Optometrist. There was only scant evidence regarding the Behavioral

Optometrist's evaluation. No evidence was presented as to how this related to the IEPs in question. Finally, there were requests for an Independent Psychoeducational Evaluation and Independent Literacy Evaluation in May of 2017. These requests were not made as a result of disagreement with any Board evaluation. Other than scant references and the educational record, the Parents produced no evidence showing why the services were necessary and why the failure to implement them resulted in losses in educational benefit to warrant an award of compensatory education. (B-58)

CONCLUSIONS OF LAW AND DISCUSSION:

1. During the 2015-2016 and 2016-2017 school years, the Student was eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et seq., and under Conn. Gen. Stat. Sec. 10-76 et seq. Connecticut state regulations provide that children under twenty-one years of age are eligible to receive FAPE. Regulation of Connecticut State Agencies (R.C.S.A.) sec. 10-76a-1.
2. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes "special education and related services designed to meet their unique needs" and "prepare them for further education, employment and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1).
3. The Act defines FAPE as special education and related services which "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. §1401 (8).
4. Under R.C.S.A. Sec.10-76d-12(b), Parents were appointed plenary guardians of the Student who is over the age of eighteen and as guardians possess legal rights in educational decision making on behalf of the Student. *Findings of Fact No. 2.*
5. The Parents have the burden of production of evidence. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. R.C.S.A. Sec 10-76h-14. The Student is over the age of twenty-one and the Parents have requested the remedy of compensatory education. Hearing officers are empowered to "grant such relief as [they] determine is appropriate." 34 CFR 300.516 (c)(3). Compensatory Education is an equitable remedy. *Burlington Sch. Comm. v. Massachusetts Dep't of Educ.*, 556 IDELR 389 (U.S. 1985).
6. Since the Student is over twenty-one, the law in this Circuit and State requires the Parents show "gross" violations of the IDEA in order to be entitled to Compensatory Education. See *Garro v. State of Connecticut Department of Education, et al.* 23 F3d 734 (2d. 1994).
7. 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). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207

8. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in Rowley, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans, reflects a "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP." 458 US at 206. " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child's unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5th Cir. 1989). 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). However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child's educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the "loss of educational opportunities or seriously infringed upon the parent's opportunity to participate in formulating the [IEP]..." Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877 (9th Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child's needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoening v. Doe* 484 US 305, 311 (1988).
9. The record supports any finding of procedural violations. The Parents were provided procedural safeguards and participated in development of the IEPs at issue. The Parents input was considered. When the Parents disagreed, the school team agreed provide the services everything that the Parent's desired. *Findings of Fact No. 12.*
10. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998), citing *Rowley, supra.*; *KP v*

Juzwic, 891 F Supp 703, 71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful' way." *Walczak*, 142 F.3d at 130. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132. The IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ___, 137 S. Ct. 988(2017).

11. The Second Circuit has recently described the level of benefits that must be provided under the IDEA as "an education that 'afford[s] the student with an opportunity greater than mere trivial advancement.'" (*T.K. v. N.Y.C. Dep't of Educ.*, 810F.3d 869, 875 (2d Cir. 2016) quoting *M.O. v. N.Y. City Dep't of Educ.*, 793 F.3d 236, 239 (2d Cir. 2015)); accord *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001, 197 L. Ed. 2d 335 (2017)
12. The school years at issue in this hearing (2015-2016 and 2016-2017) involve the appropriateness of Transition-only services. The Student had graduated from Norwalk High School after progressing in the regular education curriculum and graduated in accordance with state standards. After graduation, the Student received transition-only services.
13. The 2006 IDEA Part B regulations at 34 CFR 300.43 (a) define transition services as a coordinated set of activities for a child with a disability that:(1) 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 postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes: (i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
14. The definition of transition services is written broadly to include a range of services, including vocational and career training that is needed to meet the individual needs of a child with a disability. The definition states that decisions regarding transition services must be made on the basis of the child's individual needs, taking into account the child's strengths, preferences, and interests. 71 Fed. Reg. 46,579 (2006).
15. According to state guidelines, "[t]ransition-only services are typically discussed during the senior year of high school. Transition-only services are not needed for graduation but *may* include academic, vocational, and independent living activities that will help students meet their post-school goals. Transition-only services should be based in the local community to the greatest extent possible to prepare students for life after high school" "In addition, annual goals and objectives should include Connecticut CORE Transition Skills, such as health care, transportation, self-determination and social skills." See *State Department of Education Transition Bill of Rights, May 4, 2016*.
16. The Transition programs could be viewed as two different programs.

17. The first Transition program was the program the PPT planned before the Parent's disagreement with the Student's IEP. That Transition services program for the 2015-2016 school year was implemented until the Parent's request changed the character of the vocational programming to academic programming. That Transition services was delivered at worksites and in the community settings as required by state standards. The program that was provided to the Student aligned with state CORE Transition skills standards. Although it was implemented for only a short time, it provided the Student with educational benefit. The skills taught and practiced in that program provided Student necessary skills to be successful in employment and in his lawn mowing business. The program provided educational benefit to Student. *Findings of Fact No. 37, 38 and 42.*
18. The second Transition program was not a cohesive program but a series of services requested by the Parents, which the PPT agreed to fund. The PPT agreed to fund every requested evaluation, and service until May of 2017. These included the intensive Lindamood Bell Visualizing and Verbalizing program, Occupational Therapy Services, Orton Gillingham Services and math instruction. Even though the value of the Lindamood Bell program to Students progress is questionable, neither Board nor the Parents argue that the second program was not designed to provide FAPE. At the time Lindamood Bell services were proposed, all members of the PPT believed that the Student would receive educational benefits from the program. See *R.E. v. New York City Department of Education*, 59 IDELR 241(2d Cir. 2012).
19. With regard to Lindamood Bell, it is noteworthy that this is not the only case in which Lindamood Bell evaluations have been called into question by an Impartial Hearing Officer under the IDEA as to Lindamood Bell services for children with cognitive disabilities. In *Downey Unified School District*, California State Educational Agency, 114 LRP 53221 (2014), a Due Process Hearing in California, the Administrative Law Judge commented on Lindamood Bell evaluations as follows: "Lindamood Bell Learning Process, a private company that claims to teach children to read. Lindamood-Bell does not conduct a reading assessment as that term is commonly understood, as it does not report on the significance of each test result, does not identify the child's needs, and does not explain how or which components of its program will address the child's needs. Lindamood-Bell administers to all children the same fixed battery of tests, pre-chosen by its main office. Lindamood-Bell does not afford its staff the flexibility to choose which tests are appropriate to measure a particular student's abilities, and does not appear to have staff at its offices educated or trained to make such choices. Lindamood-Bell does not review existing reports on a child's cognitive abilities or academic levels... Lindamood-Bell also administers several outdated tests, which are not normed against current populations. Newer populations tend to have a broader knowledge base, so administration of an outdated test may artificially inflate the knowledge or skill measured as compared to the current population. Lindamood-Bell has negotiated special license agreements with test manufacturers to continue administering outdated tests.... The evaluation report did not identify Student's needs, explain how the recommended programs would address Student's needs, or provide a breakdown of the instruction time to be allocated among the three recommended programs. None of the three recommended Lindamood-Bell programs are based upon peer reviewed scientific research, and they have not been shown to be effective for teaching reading skills, or any skills, to children with severe developmental disabilities)."

20. The Parents argue that the second program, which consists of this flawed Lindamood Bell program, was appropriate and the program the Board provided previously was inappropriate. As stated above, the Board's initial Transition services program was appropriate and calculated to allow the Student to make progress in light of his circumstances. See *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, supra. There was no violation of the IDEA. *Findings of Fact No. 37, 38 and 42.*
21. As stated in Conclusion of Law No. 18 above, the appropriateness of the IEP containing Parents' services should be judged by the information that was available at the time it was developed for the purposes of determining whether it was reasonably calculated to provide educational benefits. The school team had no reason to know that the evaluations that were presented were unreliable and the person who was reporting educational progress had not taken a single education course in any institution of higher education. See *R.E. v. New York City Department of Education*, 59 IDELR 241(2d Cir. 2012).
22. The Student was not provided with certain Speech and Language services and a Dichotic Listening program (CAPDOTs) in the second Transition program. These services included in the Student's IEP were not implemented. The failure to implement these services is a denial of FAPE. In addition, the PPT denied the Parents' request for independent educational evaluations for literacy and a psychoeducational evaluation. *Findings of Fact No. 69.*
23. In order to warrant consideration for compensatory education, the Parents bear the burden of proving that the failure to provide these services was a gross violation of the IDEA that resulted in loss of educational benefits. See *Garro v. State of Connecticut Department of Education, et al.* 23 F3d 734 (2d. 1994). The Parents have not sustained their burden of proof and therefore, no compensatory education is warranted. *Findings of Fact No. 69.*

FINAL DECISION AND ORDER:

1. The Board provided appropriate programs for the 2015-2016 school year and extended school year.
2. The Board did not provide an appropriate program for the 2015-2016 and 2016-2017 school year because it failed to implement Speech and Language services and the CAPDOTs program as was provided by the Student's IEP.
3. The Parents have failed to sustain their burden of proof that the failure to implement Speech and Language services and/or the CAPDOTs program amounted to gross violations that resulted in the loss of educational benefits such that the circumstances warrant an award of compensatory education. Therefore, no compensatory education is awarded.