

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Suffield Board of Education

Appearing on behalf of the Parent: Courtney P. Spencer, Esq.
Klebanoff & Alfano, P.C.
433 South Main Street, Suite 102
West Hartford, CT 06110

Appearing on behalf of the Board: Dr. Anne C. Loughrain, Esq.
Director of Pupil Services
Suffield Public Schools
350 Mountain Road
Suffield, CT 06078

Appearing before: Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Are the individualized education program (IEP) and placement offered by the Board appropriate to Student's special education needs in the least restrictive environment?
2. If not, is placement at Ben Bronz Academy appropriate to Student's special education needs?
3. If placement at Ben Bronz Academy is appropriate, is the Board responsible for funding that placement?

PROCEDURAL HISTORY:

Parents requested this hearing by letter dated September 13, 2004, and received at the State Department of Education on September 16, 2004. The Hearing Officer was appointed on September 17 and a pre-hearing conference was held on September 23, 2004. The parties attempted to resolve their dispute in mediation, which was unsuccessful. The initial deadline for mailing of the final decision and order, November 1, was extended to December 1 to provide for settlement negotiations (mediation). This deadline was again extended, to December 1, 2004, to provide for additional hearing

dates requested by the parties. The hearing convened on October 12, continued on November 10 and 12, and concluded on November 18, 2004.

All motions and objections not previously ruled upon, if any, are hereby overruled.

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. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

The Parents, concerned about Student's increasing anxiety about school, lack of progress in reading and other areas, and withdrawal from outside activities, requested placement at Ben Bronz, a private school approved for special education by the State Department of Education. The Board disagreed, defending the program offered Student as appropriate to his special education needs in the least restrictive environment.

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student, born on December 19, 1990, is now thirteen years of age and enrolled in the eighth grade in the Board's middle school. He has received special education support as speech/language (S/L) impaired, from first grade to the middle of his fifth grade year, and since then as other health impaired (non-verbal learning disorder). (Ex. B-4, B-6, B-8, B-10, B-12, B-17, B-20, B-22, B-24, B-27, B-31, B-32)
2. Parents attended Planning and Placement Team (PPT) meetings for Student on June 6, 1998 (both parents), May 25, 1999 (one parent), June 6, 2000 (both parents), June 6, 2001 (both parents), January 18, 2002 (one parent), March 27, 2002 (both parents), September 25, 2002 (both parents), March 26, 2003 (both parents), March 31, 2004 (both parents), June 14, 2004 (both parents), September 7, 2004 (both parents), and October 4, 2004 (both parents). Parents did not attend a PPT meeting held on March 24, 2004: they had requested a postponement. (Ex. B-4 p.1; B-6 p.1; B-8 p. 1; B-10 p. 1; B-12 p.1; B-17 p. 1; B-18 p. 1; B-20 p. 1; B-22 p. 1; B-24 p. 1; B-27 p. 1; B-31 p. 1; B-32 p. 1; P-2; P-3; Testimony of Parent)
3. The Board provided S/L reports for Student in 1998 and 1999. The 1998 report concluded;
[Student's] articulation, fluency and voice are appropriate. He continues to have difficulty in the area of memory for sentences. This also weakens his ability to recall directions. He has made great strides in word retrieval but continues to need extra time to use work retrieval strategies and has not organized his thinking

to group things by similarities. Problems on the “word classes” subtest of the CELF may be due to memory, to word retrieval, or a combination of the two. The 1999 report shows ratings of average on two sections of the CELF-R and two sections of the LPT, and two below average ratings on the CELF-R. The evaluator summarized:

[Student] has done an excellent job using word knowledge and retrieval skills. Continued practice is recommended. Auditory memory continues to be difficult but Student is able to derive meaning and recall story elements for retelling paragraphs. Sequencing stories and re-sequencing longer narratives continues to be a struggle.

This S/L Pathologist had provided services to Student in grades one and two, and had not seen him since. She remembered no social or emotional issues. (Ex. B-1, B-5, B-39; Testimony, First S/L Pathologist)

4. A second Board S/L Pathologist reported another S/L evaluation on June 6, 2001. Concerns at that time were listed as: lack of understanding of concepts and abstract thinking and difficulties expressing his ideas in writing. After performing The Listening Test, Clinical Evaluation of Language Fundamentals (CELF-3), Comprehensive Assessment of Spoken Language (CASL), The Word Test, and The Screening Test for Auditory Processing Disorders (SCAN), this evaluator summarized results:

Student is a fourth grader who puts forth a lot of effort in order to achieve. Two previous intellectual evaluations conducted in 1998 and 2000 revealed that Student’s intellectual profile is that of a student with borderline to average intelligence with a tendency to remain at the literal or concrete level of processing rather than venture into the abstract. In both evaluations his verbal skills were stronger than his performance. Many of Student’s language skills are commensurate with his verbal intelligence score, however, there are some areas of language that fall below this level. These language areas involve receptive and expressive semantics and listening skills. Areas of relative strengths for Student include receptive and expressive syntax, word retrieval, pragmatics, following oral directions when provided with a visual, and generation of original oral narratives. Student needs continued support in the areas that include listening comprehension as well as receptive and expressive semantics.

This evaluator provided S/L services to Student in grades three and four, and has not seen him since. (Ex. B-9, B-30, B-36; Testimony, Second S/L Pathologist)

5. The report of an individual psycho-educational evaluation performed by Board staff members on February 7, 13, and 14, 2002, Student’s fifth grade year, cited concerns about Student struggling with academics despite modifications, and the possibility of a learning disability. The summary of earlier evaluation results included scores in the average and low average range. Support services had started with S/L therapy. Reading, math and writing support were added later and gradually increased. While his Parents described Student as “struggling” and increasingly discouraged by his schoolwork, Board staff members found his modest achievement scores consistent with his measured intellectual potential. In the February, 2002, evaluation, his

WISC-III scores were Verbal IQ 83, Performance IQ 65, Full Scale IQ 72: reported as a significant discrepancy between Verbal and Performance scores. On achievement tests, Student scored in the mid-third grade level for reading and writing, described as low average to below average range, and the end of second grade level for math, described as low to very low range. The report concluded with recommendations for modifications in instruction. (Ex. B-14)

6. The PPT met on March 27, 2002, to discuss Student's evaluation. A multidisciplinary evaluation report confirmed his non-verbal learning disability. Based on the non-verbal learning disability, his classification was changed from S/L impaired to other health impaired. On present levels of educational performance, Student's Social/Emotional/Behavioral level was reported as "age/grade appropriate" with the comment "gets along well with peers and adults". The following goals and objectives were adopted:

[Student] will increase math skills and problem solving to a fourth grade level.

... will demonstrate understanding of place value up to 1,000.

... will rename equivalent fractions to decimals and percents, using a calculator.

... will add four-digit numbers with regrouping.

... will subtract four-digit numbers with regrouping.

... will multiply 2 digit X 2 digit numbers using traditional, touch math algorithm or lattice method.

... will perform long-division with one digit divisors.

... will master multiplication facts 3's, 4's, 7's [and] 8's.

... will measure, using an inch ruler, to the nearest inch, ½ inch, ¼ inch.

... will master division facts 1-5.

... will tell time to the nearest 5-minutes.

[Student] will increase skills in the area of reading comprehension.

Given a paragraph on his (non-fiction) instructional level, ... will summarize the main idea [and] supporting details.

Given a chapter in a novel at his instructional level (fiction), ... will retell the chapter, including characters, problem/conflict and main events.

... will answer inferential questions after reading fourth-grade level texts – fiction – nonfiction.

[Student] will increase skills in the area of written expression.

Given non-fiction texts at fourth-grade instructional level, ... will complete an outline stating main idea [and] supporting details.

... will complete an expository planning sheet prior to beginning a writing piece.

... will write an introduction to an expository piece containing his purpose, main ideas/reasoning and position.

... will show evidence of elaboration by writing 3-sentence anecdotes.

... will show evidence of elaboration by writing descriptive segments showing the five senses.

... will write a conclusion to an exposition/ essay restating his purpose/position for writing and main ideas/reasons. (Ex. B-17)

7. Modifications listed for the March 27, 2002, IEP were:
 - Materials/books/equipment: modified worksheets.
 - Tests/quizzes/time: prior notice of tests; extra time – tests; test study guide; no cursive [writing] required.
 - Grading: modified grades; Pass/fail for Science, social studies, math and language arts. [These three sets of modifications were requested for all classes, with additional comment: the special education and academic teacher will meet to discuss Pass/fail criteria.]
 - Instructional strategies: extra drill/practice; pre-teach vocabulary; no cursive [writing] required. (Ex. B-17 p. 14)
8. The March 27, 2002, IEP goals and objectives included monthly progress reports. The April, May, and June, 2002, progress recorded shows: Satisfactory progress (S) likely to achieve goal for 16 objectives measured monthly; S- for 24; S+ for 2 and Not Introduced (NI) for 10. (Ex. B-17, pp. 5-10)
9. Student's June 20, 2002, report card for the end of his fifth grade year showed the following grades and comments: Math, Pass, a pleasure to have in class; Science, Pass, excellent in-class effort; Social Studies, Pass; Language Arts, C; Music Enrichment, A-; Art, B+; and Physical Education, A-. (Ex. B-19)
10. The PPT reconvened as planned on September 25, 2002, to review Student's progress. The PPT recommendations listed for this meeting were: to follow the IEP dated 3/27/02 as written; no changes were made to the IEP. (Ex. B-18)
11. The PPT convened for an annual review on March 26, 2003. Progress on the March, 2002, goals and objectives was recorded for October, November and December, 2002, and January and March, 2003, and progress shown was: Satisfactory Progress (S) likely to achieve goal for 64 objectives measured monthly; S- for 5; S+ for 1; Limited Progress, 2; and Unsatisfactory Progress (U) unlikely to achieve goal, 3. The goals rated Unsatisfactory Progress were multiplication (2 digit X 2 digit) and long division one digit. (Ex. B-17, pp. 5-10)
12. The March 26, 2003, PPT Present Levels of Educational Performance were recorded, with strengths: task completion given prompting; peer and adult relations; prepared for class – materials, assignments; and responds well to visual cues. Student's concerns/needs were also listed: reading – decoding, fluency, comprehension; writing – paragraph development – organization, elaboration, description, editing skills; mathematics – computation and reasoning; and retention of skills non-verbal reasoning visual/fine motor skills. Social/Emotional/Behavioral was marked age /grade appropriate. (Ex. B-20, p. 3)
13. Student's March 26, 2003, IEP showed services to be provided:
 - Co-taught [regular and special education teachers working together in the classroom] Language Arts 8.0 hrs/wk (daily, 2 periods);

Co-taught Math – 4.0 hrs/wk (daily, 1 period);
Resource – 2.4 hrs/wk (3 periods per rotation);
Adult-assist Science and Geography daily (1 period for each subject) (Ex. B-20, p.1)

14. Goals and objectives written on March 26, 2003, were:

To improve reading skills to an upper fifth grade level.

- ... decode a passage with 93% accuracy.
- ... read a passage with fluency (100 CWPM)
- ... answer literal and inferential comprehension questions with 80% accuracy.
- ... complete cloze sentences given 4-5 multiple choice options.
- ... demonstrate the ability to use a glossary in a grade level text or dictionary by looking up assigned words and recording definitions.

To improve written language skills to an upper fifth grade level.

- ... write paragraphs with topic and concluding sentences in response to a prompt.
- ... write paragraphs with elaboration details in response to a prompt.
- ... achieve 80% or higher on modified spelling tests in Language Arts.
- ... edit sentences with grammar, spelling, punctuation and capitalization errors.

To improve mathematics skills to a lower fifth grade level.

- ... purchase items given \$5.00 to spend by adding the prices than subtracting that total from \$5.00 to determine his change.
- ... tell time on a wall clock to the exact minute.
- ... determine elapsed time given starting and ending times using hour and half hour intervals.
- ... read a problem, choose an operation [add, subtract, multiply, divide], then solve.
- ... demonstrate the ability to use a ruler by measuring items to the exact inch.
- ... read a problem, identify key information, then estimate the answer prior to performing the calculations. (Ex. B-20 pp. 4-9)

15. Modifications/adaptations provided for the March 26, 2003 IEP for all academic subjects in the regular education classrooms were:

- Materials/books/equipment: modified worksheets; calculator.
- Tests/quizzes/time: prior notice of tests; extra time- tests; test study guides; extra time- written work; modified tests – reduce amount; reduced reading and writing; test read; no cursive [writing] on tests and class-work; for spelling tests, combine commonly misspelled words with curriculum words to form a list.
- Organization: post assignments.
- Instructional strategies: check work in progress; visual reinforcement; review sessions; provide models; pre-teach vocabulary; review directions; repeat instructions; oral reminders; visual reminders; have student re-state

information; support auditory presentations with visuals; display key vocabulary; reduce amount of class-work and homework; note: Student cannot read cursive writing.

Testing accommodations for Student were also listed: time extension, test setting, reader. (Ex. B-20 pp. 12, 13)

16. IEP progress was recorded for April, May and June, 2003. Student received Satisfactory Progress (S) likely to achieve goal for 45 objectives measured monthly. (Ex. B-20, pp.4-9)
17. Student's June 24, 2003, final grades and comments for grade six were: Geography, B+, good project; Mathematics, B+, consistently shows good effort; Science, B-, puts forth good effort; Language Arts, B-, shows good conduct; Art, B+; Spanish Enrichment, C-; Life Education, A-, shows consistent good work; Music Enrichment, A-, consistently shows effort; and Physical Education, A. (Ex. B-21)
18. The IEP progress reported for October, November and December, 2003, and January and March, 2004, was: Satisfactory Progress (S) likely to achieve goal for 57 objectives measured monthly; S- for 18 objectives; Not Introduced (NI) for 6 objectives. Student was reported "satisfactory" in the objectives for making change and telling time. (Ex. B-20, pp. 4-9)
19. Teachers' reports prepared for a PPT meeting scheduled for March 24, 2004, included the following:
 - Language Arts** (modified) current average, C. Academic: good general understanding of concepts; excellent responsibility, he works hard to complete all tasks. Communication: rarely volunteers, but will try to answer specific questions. He is correct about 50% of the time. Written work in on time – he tries hard. Elaboration of ideas and writing mechanics need work. Behavior: wants to succeed, is always polite and respectful. Rarely asks for help when he doesn't understand something. He doesn't want to be different. Therefore he doesn't want to ask for help.
 - Geography** current average, homework, 90%; quiz, 55%; test 64%. Academic: difficulty reading needs objective assessments. Very hard worker, eager to please; will work until job is done – needs guidance doing projects. Communication: will only answer if called upon; difficulty completing written answers; worried about correctness of answer; avoidance of embarrassment. Behavior: always great behavior, always polite.
 - Science** current average, C-. Academic: Needs extra time to absorb information but he can do it; good responsibility. Communication: Rarely [participates orally], very limited written work. Behavior: good, appears to want to learn. He needs to be comfortable with the assignments. Appropriate interactions with peers/adults. Very polite and kind to others.
 - Mathematics** current average term 1, 78 (C+); term 2, 83 (B); term 3, midterm C-. Academic: weak in many areas, does not know [multiplication] facts, very low test scores even with modified tests. Work completion, very good, tried

- homework on a regular basis. Communication: does not volunteer to participate, weak written work. Behavior: wants to do well and is a hard worker, [he is] appropriate with peers and very respectful towards adults.
- Life Education** current average, B+. Academic: finished 5 out of 7 homework, does well with more instruction and peers' help. Communication: good participation but weak in following instructions, difficulties in communication (verbal). Behavior: willing to learn.
- Physical Education** Academic: good physical skills and basic fundamentals in basketball and volleyball; did well with dance steps; prepares for class. Communication: [written] this quarter 18/20 on a dance quiz and a recall of gymnastics safety rules from a video. Behavior: hard worker, works best with immediate feedback, cues for specific tasks. [Teacher comment] pleased with participation and growth in this class. (Ex. B-23)
20. The PPT convened on March 24, 2004, for an annual review of Student's seventh grade year. Parents had asked that this meeting be postponed because their attorney had not yet received Student's school records, which she wished to review prior to the meeting. Parents were not present. Present Levels of Educational Performance showed Social/Emotional/Behavioral as age/grade appropriate. Strengths were: hardworking; task completion; class preparation; eager to please; and peer social relationships. Concerns/needs were: reading comprehension; writing mechanics, organization, elaboration; mathematics computation of basic skills, reasoning; retention of skills and strategies. (Ex. B-22 p.3; P-2; P-3; Testimony, Parent)
21. Goals and objectives developed at the March 24, 2004, PPT meeting were:
- [Student] will improve reading skills to a sixth grade level.
 - ... will decode a passage with 95% accuracy.
 - ... will read a passage fluently (100-125 WPM).
 - ... will answer literal and inferential comprehension questions.
 - ... will participate in discussion and activities after reading a passage.
 - ... will use context clues to find meaning of theme within a passage.
 - [Student] will improve written language to a seventh grade level.
 - ... will pre-plan and organize writing.
 - ... will write a paragraph to include an introduction, elaboration details, and a concluding/transition sentence.
 - ... will edit written work for spelling, grammar, punctuation, and capitalization errors.
 - [Student] will improve mathematical skills and fluency.
 - Given a word problem, [Student] will recognize and utilize basic operational skills (add, subtract, multiply, divide).
 - ... will utilize manipulatives to practice counting, estimating, and creating change with money.
 - ... will improve mathematical fluency by practicing basic facts and using them to solve problems including fractions and decimals.
 - [Student] will improve self-advocacy skills.
 - ... will ask for assistance or clarification without an adult prompt.

... will be aware of and utilize the support available.

[Student] will improve study skills.

... will use class notes and homework to prepare for tests and quizzes.

... will use flashcards and learning strategies to prepare for tests and quizzes in advance.

... will use class materials to prepare a study guide prior to a test or quiz.

(Ex. B-22, pp. 4-9)

22. Modifications/adaptations for the March 24, 2004, IEP were listed:

- Materials/books/equipment: manipulatives (content level and amount); spell check; access to computer; calculator; Alphasmart.
- Tests/quizzes/time: extra time- tests; pace long term projects; re-phrase test questions/directions; test study guides; shortened tasks as deemed appropriate; simplify test wording; modified tests; test read.
- Organization: provide study outlines; AA [adult assistance] in science and geography.
- Environment: preferential seating.
- Instructional strategies: check work in progress; extra drill/practice; use manipulatives; monitor assignments. Drill/practice and manipulatives in math only; the rest apply to all academics. (Ex. B-22 p. 13)

23. Co-taught Language Arts and Mathematics were planned for the 2004-2005 IEP, as well as 2.4 hours per week in Resource. The PPT would reconvene within the school year with Parents. (Ex. B-22, pp. 1,11)

24. The PPT convened at Parent request on March 31, 2004. An additional goal dated March 31, 2004, provided:

[Student] will decrease his anxiety in regard to school functioning.

... will be able to identify areas of concern where he is anxious.

... will discuss strategies to reduce anxiety around academic and social functioning.

... will practice what is discussed. (Ex. B-24 p.10)

25. The March 31, 2004, PPT agreed to a neuropsychological evaluation in response to Parents' request. Parents also requested a "smaller school setting to address emotional/social and academics": the PPT rejected that request. (Ex. B-24 pp.1, 2)

26. The School Psychologist who was providing counseling to Student pursuant to the March 31, 2004, goal and objectives prepared a summary of his progress dated June 9, 2004. Although progress was reported, especially with techniques for relaxation and reducing anxiety, the School Psychologist noted specific areas of continuing concern:

- Speed of presentation of concepts in math class.
- Amount of homework in 7th grade.
- Initiating phone calls.

- Independent requests for assistance in class. (Ex. B-26; Testimony, School Psychologist)

27. Teachers' reports prepared for a June 14, 2004, PPT meeting included:

Physical Education current average, 92; 1st Q., A-; 2nd Q., A-; 3rd Q., A-.

Academic: Gymnastics, softball skills, track and field 4th quarter activities; continue to work on endurance running; has had a strong year in being prepared for class and completing tasks. Communication: oral participation, none; written, quizzes, 80 and above. Behavior: has worked hard this year, positive feedback on immediate task is important; positive interaction with peers.

Life Education current average, C+. Academic: he is very quiet in my class; he got 16/25 in his test; he did all his homework; he is also very passive and required extra time in organization; he also 9/16 in his other tests; he pays attention in class.

Mathematics current average, C range. Academic: Good responsibility, tries very hard; tests/assignments are always modified for him; has many mathematical gaps. Communication: does not participate orally; weak written participation. Behavior: Never a discipline problem, participates in group activities with peers. A polite, respectful young man.

Language Arts current average, 71, C-. Academic: has a basic understanding of language arts concepts, does need help with complex concepts and ideas; excellent responsibility, is a very hard worker. Communication: has begun to volunteer more lately – always responsive when called on; has done a wonderful job on his self portrait. He completed all the requirements, most on his own with no modifications. Behavior: wonderful; is one of the most respectful students I have. He also has good relationships with other students – he enjoys and participates in all our activities. I have thoroughly enjoyed having him as a student. His willingness to try anything and his consistently good work ethic make him a pleasure to have in class.

Geography current average, homework, 100%; quiz, 77%; test, 79; 1st [Q], 80; 2nd [Q], 81; 3rd [Q], 70; 4th [Q], 84. Academic: has difficulty with recalling facts he has read – concepts and skills are very difficult; excellent work completion all year – all assignments completed only two late. Communication: will participate when called on but ...; is very hesitant to participate in class; has difficulty completing written assignments. Behavior: is an extremely hard worker and shows great responsibility for work completion; good interaction with both peers and adults.

Science current average, B-; T[erm] 1, A-; T 2, C; T 3, C-. Academic: continues to need extra time to learn information and some concepts have been very difficult for him; good responsibility. Communication: rarely participates orally; very limited written responses. Behavior: good – just needs to understand what he has to do with each assignment; appropriate interactions with peers/adults. A very pleasant student. (Ex. B-25)

28. The PPT convened on June 14, 2004, to address Parents' request for an extended year program at Ben Bronz Academy. The PPT found Student ineligible for extended year

services, but did arrange for his participation in a summer school program that involved reading the two novels required for 8th grade and some individual tutoring in math. The written prior notice page incorrectly shows “No other options were considered and rejected”. (Ex. B-27, pp.1, 2; Testimony, Parent)

29. Student’s 7th grade report card showed the following grades and comments:

	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter
Industrial Arts	B-	A-		
Computer Technology	A	B+		
Life Education			C-	C-
Work shows improvement				
Mathematics	C+	B-	C-	C+
Appears to struggle with the curriculum				
Geography	B-	B-	C-	B-
Consistently shows effort				
Physical Education	A-	A-	A-	A-
Is a pleasure to have in class; shows consistent good work				
Language Arts	C-	C-	C-	B-
Is very cooperative				
Science	A-	C	C	B
Is attentive in class (Ex. B-28)				

30. The IEP progress reported for April, May and June, 2004, was: Satisfactory Progress (S) likely to achieve goal for 34 objectives measured monthly; S- for 21 objectives. Student was reported “satisfactory” in the objective for making change. (Ex. B-20 pp. 4-9)
31. An undated report summarized Student’s work in the Board’s summer school: he listened to the two required novels on tape, following along in the print version, and worked on multiplication and division facts and word problems. (Ex. B-29)
32. Student’s neuropsychological evaluation was performed on July 14 and 28, 2004. The evaluator has worked with children and adults in a variety of settings, and has provided evaluations to other school districts. The evaluator prepared a summary of Student’s school records, which had been provided by the Board, showing that Student’s difficulties in reading, writing and math were reported year by year. In her own testing, Neuropsychologist reported Student’s scores on the WRAT-3: reading, grade equivalent, 6; spelling, grade equivalent 3; and arithmetic, grade equivalent 4. Using the Gray Oral Reading Test-3, Student scored grade equivalents of: rate, 3.7; accuracy, 5.8; passage, 4.7; and comprehension, 4.8. Her professional opinion was that Student “should have been doing better academically”. (Ex. B-30; P-5 p. 1; Testimony, Neuropsychologist)
33. In her summary and recommendations and in testimony, the independent neuropsychologist included several comments that confirm both parental concerns and school staff reports:

- He was extremely compliant, conscientious, and well behaved, which oftentimes drew attention away from his difficulties.
 - [recent] diminishing friends and reduced interest in social interactions, being in crowds, or going outside the safety of his home.
 - Anxiety regarding other people has escalated to unmanageable levels. ... begun to refuse participating in sports-related activities due to anxiety regarding others' perception of him. [Student] claimed that he was concerned or interpreted that others were talking about him and he was frightened of either humiliating or embarrassing himself.
 - Problems with executive functioning.
 - "Unusual behaviors" reported by Parents: always wearing two shirts, even when swimming; extreme concerns about appearance of his hair; frequent showers.
- (Ex. B-30 pp. 24-27; Testimony, Neuropsychologist)

34. In testimony, Neuropsychologist characterized the faculty members who participated in the October 4, 2004, PPT meeting as "well-meaning" and approved the goals and objectives in Student's IEP. However, she disagreed with the provision of these services within regular education classes. She felt that rather than providing Student with higher-functioning student "role models", the comparison by Student with his own struggle and lesser achievement has been destroying his self esteem. (Testimony, Neuropsychologist)

35. Neuropsychologist's report discussed specific areas in which Student's nonverbal learning disability caused problems, as well as his "avoidance, anxious anticipation, and distress regarding unfamiliar social or performance situations" impacting on many aspects of his functioning. Among her recommendations were:

- A specialized educational program with significant support in all facets of his learning, social emotional interactions, and consequent esteem and psychological implications.
- Intervention by a professional knowledgeable ... in particular nonverbal learning disabilities and their direct impact on academic and social functioning.
- A smaller environment with a small student to teacher ratio ...
- Multidimensional and multifaceted teaching approach that not only addresses the subtle speech and language deficits in pragmatics, semantics, and prosody manifested in nonverbal learning disabilities, but also directly addresses his inattention, difficulties in concept formation and problem solving, deficits in forgetting to remember, within the context of a tendency to shy away from overwhelming circumstances, withdrawing socially, and exhibiting little initiation or attempts to independently seek out support.
- Direct support in the analysis of the visuospatial features of words to assist in reading and spelling, the organizing, sequencing, and repetition of rules to assist in arithmetic, as well as graphomotor practice and use of compensatory strategies to facilitate the elaboration in written expression within the rubric of a specialized, structured, and extremely well organized academic curriculum.
- Use of technical devices such as computers ...

- Exposure to any novel situations, particularly those involving a novel environment, requires titrated previous exposure to the environment with significant support from staff in order to circumvent becoming overwhelmed, facilitate processing the complexities of the external environment, and navigate the topographical features of the environment.
 - Preferential seating ... also to minimize the tendency for Student to recede into the background and escape support and detection due to his incredibly well-behaved and polite manner.
 - ... he has developed a clinical diagnosable Social Anxiety Disorder that precludes him from interacting outside the safety of his own home. He was referred for psychological intervention ...
 - ... requires intervention in order to bolster social skills ...
 - ... generally dependent on his family with limited life skills such as making change and reading a clock. These difficulties should be addressed directly ...
 - Student requires support and encouragement in order to engage in social circumstances in order to limit avoidance. Strategies for managing anxiety will need to be implemented ... The support must be provided in all setting including at school, the home, and extracurricular activities.
 - Communication between the academic environment/team, the family, and psychologist is extremely important in order to encourage a consistent application of strategies in a similar manner. Tracking progress and measurable successes is also extremely important ... (Ex. B-30 pp. 27-29)
36. By letter dated July 20, 2004, Parent requested a language evaluation for Student. Later, in discussion of the neuropsychological evaluation, they also requested an assistive technology evaluation. Both requests were denied at the October 4, 2004, PPT meeting. (Ex. P-1; B-31; B-32)
37. The PPT convened on October 4, 2004 to modify Student's IEP. Present Levels of Educational Performance on the record of the PPT meeting show the following regarding communication:
- Age appropriate. 2001 scores indicate many areas of language are commensurate with his verbal intelligence score. Annual progress reported 3/27/02 indicated that the student had achieved maximum compensatory speech/language skills. SLP available for consultation as needed.
- IEP modifications included references to assistive technology and social work contact concerning opportunities for extra curricular participation. (Ex. B-32 pp. 1, 3; P-12)
38. Based on his informal contacts and observation of Student in the cafeteria at lunch time, the Principal of the Board's Middle School reported no significant problems. This principal is a former special education teacher with 15 years of experience as a teacher and 15 years of school administrative experience. He described Student as "not initiating conversation". (Ex. B-37; Testimony, Principal)
39. Student's Physical Education (PE) teacher described him as having positive interactions with classmates although he participates in PE "with effort". (Ex. B-38; Testimony, PE Teacher)

40. Student's 7th grade Language Arts teacher has 15 years of teaching experience. She discussed the modifications he used following Student's IEP, and described him as polite and trying hard. Although he didn't volunteer in class, when called on he was correct about 50% of the time. He didn't ask for help, and he didn't display any anxiety in class. Although he was "quiet", he got along well with peers. (Ex. B-40; Testimony, 7th Grade Language Arts Teacher)
41. Student's 7th grade special education teacher co-taught in his Math and Language Arts classes. This fifth year teacher described him as pleasant, happy, quiet, shy, and reported that he volunteered in class "toward the end of the year". She had discussed Student's anxiety with Parent, and observed that he could read at school some things that he was unable to read at home. She saw him as happy in school and working very hard. (Ex. B-41; Testimony, 7th Grade Special Education Teacher)
42. Student's 8th grade Language Arts teacher described him as being age-appropriate in class and getting along with peers, although he seemed to be very worried about perceptions of not doing well in class. This teacher has no training in learning disabilities. (Ex. B-42; Testimony, 8th Grade Language Arts Teacher)
43. Student's guidance counselor for 7th and 8th grades has observed "appropriate interactions" between Student and peers in the hallway and the lunchroom at school. Other than the goal of improving self-advocacy skills, the guidance counselor is not aware of any social difficulties at school. (Ex. B-43; Testimony, Guidance Counselor)
44. Student's 8th grade Science teacher has 32 years of experience as a teacher. He described the modifications in Student's IEP that he implements in his Science class, including taking tests in the resource room. He has observed Student communicating with others at his table in science class. (Ex. B-44; Testimony, Science Teacher)
45. Student's 8th grade Math teacher implements modifications in Student's IEP. She reported that he has exhibited no anxiety in her class although he doesn't ask for help "in front of the class". She has seen him talkative and laughing in class, although "not very often". (Ex. B-45; Testimony, 8th Grade Math Teacher)
46. A third S/L Pathologist provided services to Student in 5th grade and served as his case manager at that time. She also worked with him in the Multiple Intelligence Literacy Lab program. After providing group S/L therapy, she recommended dismissing Student from S/L services because he was functioning well. She continued to be available as a consultant to Parents and his teachers. She felt that the language evaluation requested by Parent on July 20, 2004, was unnecessary. She has observed him getting along well with peers, and she feels that those peers model speech for him. In testimony, she did not agree with some of Neuropsychologist's findings concerning Student's language. (Ex. B-16, B-17, B-46; Testimony, Third S/L Pathologist)

47. A School Psychologist with 30 years of experience evaluated Student in 2002 and has provided counseling weekly since April, 2004. She has not used any behavior rating scales, and addresses anxiety as reported by Parents. She describes Student as quiet and wanting to please, although he showed anxiety at testing. She has discussed relaxation techniques with him and with his parents, and sees progress. (Ex. B-14 pp. 1-5, B-26, B-47; Testimony, School Psychologist)
48. Student's 8th grade special education teacher (science, math) has a B.A. and an M.A. in education and special education, and is certified as a special education teacher, K-12. She implements Student's IEP modifications in co-taught science and math classes. She reads tests to him, sometimes re-phrasing the questions. He asks questions "when I am close by". When questioned about Student's reported embarrassment over using a calculator, she responded with surprise, commenting that all the students in that class used calculators. She characterized his work as improving, but not on 8th grade level. (Ex. B-48; Testimony, 8th Grade Special Education Teacher (science, math))
49. Student's 8th grade special education teacher (language arts) tutored him in math during the summer of 2004 and is his Case Manager. She works with him in the Resource Room as well as co-teaching in his Language Arts class. She helps him with organization, study skills and self advocacy, and prepares his communication log for Parents on Fridays. She has more than 20 years of experience as a special education teacher. She described Student as reading on a 6th grade level and writing on a 6th grade level, although she had done no formal assessments. She had discussed his anxiety about assignments with the School Psychologist. (Ex. B-49; Testimony, 8th Grade Special Education Teacher (Language Arts))
50. Parents report that Student's anxiety about school is particularly severe on Sunday nights, when he often develops physical symptoms such as stomachaches. They find it increasingly difficult to force him to go to school. (Testimony, Parents)
51. Parents question Student's reported mastery of telling time and making change, because he has not generalized these skills and does not demonstrate them at home. He refuses to buy lunch at school because he cannot make change. When questioned, school staff members acknowledged that though he could tell time with a digital clock, he still has difficulty with a traditional one. He was reported as making "satisfactory progress" on these specific goals in 2002, 2003, and 2004. (Ex. B-17 p. 7; Testimony, Parents, 8th Grade Special Education Teacher (science, math))
52. The Educational Director of Ben Bronz Academy offered testimony describing their program and how it could address the Student's reported problems. Ben Bronz is approved for special education by the Connecticut State Department of Education and currently has 59 students enrolled, from eight to 19 years of age. The program primarily addresses the needs of children with learning disabilities and reading problems, with counseling and a social pragmatics class available. Ben Bronz has a

S/L consultant, but does not provide direct S/L services by a certified S/L pathologist. Student attended the summer program in 2004, and has been accepted at Ben Bronz. (Testimony, Educational Director)

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible for special education, as defined at 34 C.F.R. § 300.7(a)(1) and Section 10-76a-1(d), Regulations of Connecticut State Agencies (RCSA). The parties have not questioned the current classification of other health impaired (nonverbal learning disability), which was confirmed by the recent neuropsychological evaluation.
2. The standard for determining whether a free appropriate public education (FAPE) has been provided begins with the two-prong test established by the Supreme Court in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176 (1982). First, the procedural requirements of the Individuals with Disabilities Education Act (IDEA) must have been met by the school district. Second, the IEP must be reasonably calculated to enable the child to receive educational benefit. The IEP must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), cert. Denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993))
3. Parents claim that a variety of procedural errors have been made by the Board. The only errors substantiated by the record of this hearing were:
 - Denial of Parents' request for postponement of the March 24, 2004, PPT meeting, a violation of 34 C.F.R. § 300.345(a) and Section 10-76d-12, RCSA.
 - Lack of a documented, timely response to Parent's July 20, 2004, request for a language evaluation, a violation of 34 C.F.R. § 300.536(b) and Section 10-76d-9, RCSA. Both the language evaluation and an assistive technology evaluation recommended by Neuropsychologist were later refused by the PPT.

The question remains whether these procedural errors resulted in either the denial of the Parents' right to participate in the development of Student's IEP or the compromise of the appropriateness of the IEP and placement for Student. Parents effectively "cured" the first problem by immediately requesting another PPT meeting, which was held on March 31, 2004: however, the record does not explain why Parents, who had demonstrated their interest in attending PPT meetings, were refused a postponement. The reason given – requested school records not yet received by their attorney, who wanted to review records prior to attending the PPT meeting – was reasonable. The school's response – that Student's IEP was about to "expire" – was unreasonable. In fact, the goals and objectives developed on March 24, without parental participation, remained the same on March 31, 2004, with a counseling goal added.

A lack of documentation or testimony concerning timely disposition of the Parents' request for a language evaluation is troubling. Neuropsychologist's report includes

many references to Student's language problems and suggests an assistive technology evaluation as well. The PPT "considered" this report and Neuropsychologist attended the PPT meetings on September 7 and October 4, 2004, but the record of the October 4, 2004, PPT meeting indicates only that a counseling goal was added. There is no record of any effort to gather more data. There is no record of any effort to improve communication and coordination among Student's several service providers to address his avoidance behavior, some of which appears to be related to language issues. Despite the great differences in the school's perception of Student and his Parents' and Neuropsychologist's perceptions, the PPT refused additional evaluation of language and assistive technology requested by Parents.

4. Parents question the "educational benefit" received by Student in his current program, citing his continuing below grade level performance in reading, writing and math. Good report card grades and IEP progress reports contrast with uneven performance on standardized testing in 2002 and 2004. The reason provided by several school staff members – that scores were consistent with measures of Student's ability – also contrasts with the anxiety which might have depressed many of his scores. His need for support and encouragement during testing is well documented. The record of the hearing does not include reports of measurable progress during 7th and 8th grades.
5. Based on their observation of a "happy kid" in school, the PPT initially minimized Parents' reports of Student's anxiety concerning school. Without any formal evaluation, a goal and objectives addressing anxiety were added to his IEP in 7th grade, and counseling with a School Psychologist was then provided. At about the same time, Parents reported providing counseling outside of school. The June, 2004, report of the School Psychologist and her testimony confirmed that Student had significant problems with speaking in class (volunteering or asking for help). Neuropsychologist commented that Student's extremely good behavior, high rate of completion of his assignments, and eagerness to please adults mask his anxiety. Although he was reported as socializing appropriately with peers in class and in the lunchroom, his reported anxiety at home about school has been confirmed by the neuropsychological evaluation. His social withdrawal and somewhat obsessive behavior outside of school are valid concerns. Parents have done their part by arranging for private treatment, and the School Psychologist has worked with Student for several months. It is likely too soon to know whether there has been a decrease in anxiety or a general improvement in socialization and self-advocacy. However, a smaller school setting with a less challenging population, as supported by the independent Neuropsychologist, would address both needed skill development and emotional support in a more comprehensive way than the piecemeal services offered by the Board.

FINAL DECISION AND ORDER:

The IEP and placement provided by the Board, while including some appropriate supports and modifications, does not address the interactions of Student's nonverbal

learning disability and social problems in a comprehensive way. The report of the neuropsychological evaluation was considered, but the PPT adopted only a few isolated recommendations. Therefore, this program is not appropriate to Student's current needs.

The program proposed by Ben Bronz Academy is generally appropriate to Student's needs, and the Board is responsible for funding that placement. The PPT shall convene as soon as possible to develop an IEP for Student's placement at Ben Bronz, and the placement shall be made as soon as possible.

The PPT shall arrange for a language evaluation by a certified S/L pathologist who has not previously evaluated or provided services to Student. If this evaluation recommends resuming S/L therapy, the Board is responsible for working with Ben Bronz to insure that such services are provided by a certified S/L pathologist.

The PPT shall arrange for an assistive technology evaluation for Student.

COMMENT ON CONDUCT OF THE HEARING:

Both attorneys are to be complimented on their well-organized presentations. By allowing witnesses to appear "out of order", it was possible to save a significant amount of time.