

STATE OF VERMONT

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION)

Case No. DP 12-09)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This due process case was heard on the merits by Jeffrey W. Spencer, Hearing Officer, on January 25 and January 31, 2012 at Randolph, Vermont. The parent appeared *pro se* and the LEA, the Windsor Northwest Supervisory Union ("District") was represented by Dina Atwood, Esq.

Based on the evidence presented and the arguments and memoranda submitted by the parties, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

Procedural Facts.

- 1) If find that the parent well versed in procedural, legal, and factual matters relative to this proceeding. Despite the fact that the parent was unrepresented by counsel, she was exceedingly well versed in the facts, law, and processes involved in this matter.
- 2) Regardless, recognizing that the parent was appearing *pro se*, significant pre-hearing communications took place from the time of the first teleconference through the last day

of hearing to ensure the fair, efficient, and full introduction of evidence and argument by both parties.

- 3) Applicable rules and guidelines were established clearly and repeatedly, avoiding “legaleze” and relying upon plain language. The parent acknowledged that she did have copies of the rules and that she understood them.
- 4) The Parent filed her due process complaint on November 8, 2011. Her initial faxed complaint was in some places illegible, was out of order, and upside down. Consequently, I requested that the parent type her complaint. That typewritten complaint was received and did appear to be consistent with the initial faxed item.
- 5) Both complaint documents (the original fax and follow up typewritten item) identified three issues for due process:
 - a) “Page 5. Evaluation. Failure to provide an appropriate Evaluation and Services. 11/09/09 produced an report that stated [Student] did not meet the requirements for any) because was verbal. failed to administer a[n] intelligibility assessment of [Student] in that 11/09/09 report- rendering her findings/report meaningless. [Student] was without needed during WNWSU school years 11/9/09 -3/1/11;
 - b) Educational Placement/ and or Evaluation (?) Failure of WNWSU to provide a[n] to [Student] based on the 9/16/09 findings of DCF (17 page report from 6/09 stating that [Student] was in need of an to reduce high risk of; being ; being a

or because of - that and Family are at risk of WNWSU filing another against Mother; and

- c) Failure to provide appropriate learning space for [Student] as a school choice student 8/20/10- 3/1/11 while at RUHS.”
- 6) With the exception of the third item, the documents added information relative to the issues. As for the first (), it referenced an evaluation obtained by the parent by ; and that “an intelligibility assessment is the corner stone of any .” and evaluation produced needs. (Student) was found to have the expressive intelligibility of less than a four year old”.
- 7) It is significant that no mention is made of . nor raised a question of a second diagnosis.
- 8) The second issue curriculum was supplemented by information solely about facts relative to Vermont DCF. It made no mention of any connection between the issue and skills.
- 9) Virtually no additional information was supplied to support the the third issue.
- 10) At the initial telephone conference on November 15, 2011, the parties agreed to engage in mediation and agreed to an extension of the 45 day requirement to February 6, 2012. In the first Scheduling Order, November 15, 2011, I set the pre-hearing conference for January 16, 2012, and the dates for hearing for January 25th and 27th, 2012. Dates for the Complainant’s Detailed Written Statement and the District’s Statement of Defenses, the 5 day Rule for the exchange of evidence, submission of affidavits to be used at hearing, post hearing submissions and the Decision and Order were also set.

- 11) In an impromptu teleconference with the parties I reiterated again for the need of detail in the parties' written statements to ensure the proper and complete understanding of the issues raised.
- 12) The Parent's Detailed Written Statement was filed on January 11, 2012. The District's Statement of Defenses was filed on January 13, 2012.
- 13) The parent's statement was lengthy and included many items not presented at hearing. As for the first issue, it did, however, include reference to a report of _____ for the first time. The statement then mentioned "a lack of connection" between a report of _____ and an evaluation by _____ the latter having been mentioned in the original complaint. It also accused the District of also ignoring reports of _____ and _____ and referred to a report of _____ (Para. 14-10)
- 14) On January 16, I confirmed that I *may* exclude opinion evidence if not offered live, or in the alternative that if reports were admitted that that absence of live testimony could affect the weight that I afford the evidence.
- 15) The Pre-Hearing Conference ("PHC") was held in Randolph, Vermont, on January 16, 2012, with the parties and Hearing Officer in attendance.
- 16) The parent promptly requested a continuance of the scheduled hearing for three to four weeks.
- 17) I took steps to confirm that the parent understood her burden and went over my understanding of the issues raised. In particular, the three (3) specific complaints were noted as: 1) That the Student was not supplied with appropriate services, in particular _____ and _____ services from

11/9/09 -3/1/11, at least in part due to a flawed evaluation by _____ 2) That the Student was not supplied with an appropriate _____ Curriculum, in particular subsequent to 6/09; and 3) That the Student was not provided appropriate learning space at the school choice institution from 8/20/10-3/1/11. The parent agreed with this summary of the issues.

18) The parent also presented her list of witnesses that contained some 19 persons ranging from music teachers to physicians practicing in New York City.

19) The parent confirmed that she could introduce these witnesses in one day. However, upon my inquiry, the parent confirmed that she either had made little or, in most cases, no effort to arrange any witness to be present to testify.

20) It was particularly noteworthy that the parent admitted having made no effort to arrange the testimony of _____ ; as of that point it had become clear that _____ report was the mainstay of the parent's first complaint of the three complaints.

21) On January 20, 2012 the parent provided an updated Witness List which contained but two witnesses; Parent and Student.

22) Parent presented her case in chief on January 25, 2012. Parent indicated that she had decided not to introduce the student's testimony. As a result, Parent was the only witness provided for her case in chief.

23) Parent, at the onset of her testimony indicated that, "upon preparing for hearing" she determined that her complaint against the District was one of 'identification' and not evaluation. That is, the District had not identified Student as "_____ having a _____". The District objected, arguing that the issue was not identified.

- 24) Over the District's objection at the time Parent began her testimony and I allowed her substantial latitude to introduce her evidence and argument. In fact, the parent's testimony and argument filled the entire first day.
- 25) The vast majority of the parent's testimony related to the first issue and focused mainly upon report.
- 26) Parent's testimony and argument also, again corroborated my previous observations relative to the parent's significant level of experience and expertise. She demonstrated an excellent ability to understand the legal requirements, burdens of proof, statute of limitations¹.
- 27) I afforded the parent to introduce significant evidence, much of which was of questionable relevance to any identified issue.
- 28) On January 26, 2012, the parties agreed to a continuation of the District's case in chief due to the National Weather Service's issuance of a winter storm warning for the Bethel/Randolph area, including snow, sleet and ice accumulation, for January 27, 2012. Upon agreement, the District's presentation of its case in chief was delayed until January 31, 2012.
- 29) The district presented its case on January 31, 2012. The District called the following witnesses:

¹ For example, at the pre-hearing conference the parent, on her own, carried on a detailed and sophisticated discussion relative to the affect upon the statute of limitations if she were to withdraw her complaint until she could arrange for witnesses. I was also aware from the parent that she had been through one previous due process hearing. The parent quickly corrected me, on her own, indicating that "this was her fourth" due process hearing, holding up four fingers in what I interpreted as her indication to me of her level of experience.

- a) Deborah Mathews, former Director of Special Education for the District at relevant times
- b) _____, School _____
- c) _____ former para-educator for the student
- d) _____, special education teacher for the student
- e) _____
- f) _____ Special Education case manager for the student

30) Due to the weather related delay in the second day of hearing, the parties also agreed on January 31, 2012 to extend the time lines for the filing of Post Hearing Memorandum to February 6, 2012 and the filing of a final order to February 16, 2012.

Substantive Facts.

31) _____, a _____, saw the student on September 1, 2009. The District received the report, but the date of receipt is unclear. EX 371. It is the report of this visit that the parent relies heavily upon and alleges that the District ignored.

32) _____ apparently was unable to observe the student adequately. Based, therefore, on history and observations of others, she wrote that “I think it is likely that _____ has _____ and a _____ that goes beyond what we might attribute to _____”. She thought that it might be _____, as such had been mentioned in a resort of another physician. EX 374.

33) _____ a Clinical _____ evaluated the student on November 19, 2009 in order to better understand the student’s strengths and needs. _____ also reviewed other evaluations, including, notably, that of _____ evaluation

appears to have been more fruitful, since the student was pleasant and affable during contact with EX 379.

- 34) found that the student “is a year old grade with the full spectrum of long standing and consistent with diagnosis of”, calling the student’s presentation “classic” and “typical”.
- 35) presented six recommendations. He concurred with that the school-parent relationship was poor and impacting the student, and suggested, as had, a facilitator.
- 36) During this time period the student was often late for school from August, 2009 getting progressively worse through early February, 2010. EX 428-449. As a result missed classes and many of sessions for services.
- 37) The minutes of IEP and team meetings re illustrative and corroborative of testimony at hearing.
- 38) IEP meetings were held on September 24, 2009 and October 1, 2009, leading to an IEP for the 2009-2010 school year. The IEP was sent to the parent on October 13, 2009, to be implemented on October 15, 2009, the annual implementation date. EX 2. The IEP contained certain communications goals, and the student was to be placed inside regular classes 40-79% of the time. EX 22.
- 39) The minutes reflect nearly constant differences of opinion, in fact common ground is difficult to find.

- 40) Of note, there was a difference of opinion regarding the student's abilities between observations at home versus those at school, and it was discussed at the August 24, 2009 IEP meeting. EX 68-69.
- 41) The parent also brought up the issue of curriculum at the meeting, and the parent was given a copy of Alone/Not Alone. The parent was also asked to bring in words that the student used at home to identify behaviors to assist the staff in the program. EX 69.
- 42) As a result of the meeting, certain programs were established in order to address the core of the student's and deficits. They included work, "Classroom Suite", Theory of Mind, Video Modeling, Joint Attention/Social Referencing, and Social Stories. They were to be addressed by the in three hours of sessions per week and via supplemental work by special educators during their direct instruction time. Ex 32. The District witnesses further testified that these methods were utilized with success.
- 43) Substantial discussion between the District and the parent occurred during an IEP meeting on October 1, 2009. The parent raised a multitude of issues, including EX 73. The parent also sought weekly meetings with her and "took exception" to the District's failure to do so.
- 44) The District was also waiting for a release from the parent to allow to talk to at the University of Vermont. EX 74.
- 45) On November 9, 2009 evaluated the student and made recommendations. (EX 333). It was this evaluation that the parent relied upon as the

core of her initial complaint alleging that it did not include an intelligibility evaluation or suggestion that an additional disability existed.

46) The minutes all of the meetings corroborate the District's testimony that the parent was not collaborative. For example, the parent told the District that she "was not going to do that" when asked about the words that the student used at home that she was to supply the staff for use with the program. Ex. 72. The parent testified under cross examination that she refused to do so because she disagreed with the program.

47) A meeting was held on January 18, 2010, around the time that the student's attendance was going for bad to worse. Lack of sleep and staying up late was a concern and the resultant missed classes and services.

48) The parent responded to the concern by blaming the lack of "a functioning team".² For the lack of attendance. The minutes reflect continuing general dissatisfaction by the parent. Ex 75.

49) A notable exchange took place during that meeting that is probative of misperceptions on the part of the parent. She had again raised the issue of weekly meetings and a need for a facilitator to assist in the school-parent relationship with Dr. . Dr. had been a facilitator used in such an effort with the parent in the past.

² I can find no evidence to support the assertion that the team, whether functioning or not, was responsible to the student's attendance issues. The testimony and minutes of IEP meetings suggest that lack of sleep was the major driving force behind the worsening attendance issues and the parent has supplied little evidence that I can give significant weight to relative to medical causes.

- 50) The parent expressed her belief that “the other meetings worked when you were the facilitator”, and that weekly meetings would help. In contrast, Dr. _____ appeared to flatly disagree with both of the parent’s conclusions. Ex 79.
- 51) A meeting was held on February 4, 2010, and the parent was given Dr. _____ report. The parent indicated that she was going to bring the student to another Discussion about the student’s attendance continued.
- 52) The student stopped coming to school at all on February 12, 2010.
- 53) A meeting was held on March 8, 2010. The parent brought her _____, a special educator from Arizona to assist her. The minutes reflect continuing disagreements, and the parent’s _____ attributed the attendance issue to medical reasons.
- 54) The minutes also corroborate testimony from the district that the parent had been controlling access to outside medical providers but that as of that dates she had “given the release (to him) now” and that Drs. _____ and _____ can be involved “again”. Ex 85, 86.
- 55) A meeting was held on May 4, 2010. At that point it appeared clear that the student’s absence had serious consequences. It also again corroborated previous notes and district testimony that the parent had failed to supply some, if not most releases necessary in order for the District to tap into the outside medical providers. Ex. 89.
- 56) The parent chose to have the student attend a different school, Randolph Union High School, in the fall under school choice.
- 57) On June 19, 2010 _____ evaluated the student. _____ found the student capable of constructing sentences with structure embedded in the task. EX 404.

- 58) A meeting was held on July 28, 2010 with emphasis on the transition to the new school.
- 59) Despite the change, the District maintained responsibility for FAPE.
- 60) The minutes reflected a strong desire on the part of the parent that [redacted] have no contact with the student.
- 61) During the meeting the issue of space at the new school. The District provided testimony that a separate room was not available at the new school.
- 62) The District noted that a cubby could be set up on Room 151, the resource room, allowing privacy. The parent responded, "Resource Room, No thank You". In contrast to the parent's testimony at hearing, the minutes reflected her concern that the student should not be in the resource room because "needed to be with [redacted]-typical peers". Ex 97.
- 63) A meeting was held on August 19, 2010. The parent brought an educational advocate with her. The parent again attempted to remove [redacted], and the minutes indicate that she connected [redacted] with the student's problems. Ex 101.
- 64) Discussions relative to the parent's demand for individualized space continued at a meeting on August 24, 2010. Ex. 106. The parent also presented recommendations of [redacted] who the student had seen over the summer. Ex 33-35.
- 65) Disagreements continued at meetings held on October 7, 2010. Dr. [redacted], who had evaluated the student over the summer of 2009 (Ex 351-369-A) was present to discuss present levels and Dr. [redacted] was available by telephone.
- 66) Meetings continued on October 13, 2010 with disagreement specifically relative to whether or not the input of [redacted] professionals had been appropriately considered

continuing to exist. EX 116. The parent agreed to supply a report from [redacted], that she had set up in order to determine the need for [redacted] as soon as it is available.

67) [redacted] in fact did evaluate the student on November 3, 2010 for the purpose of determining the need for [redacted]. Ex. 317. She suggested an [redacted] as a “high tech” device, to the responsibility of the parent. The parent was to supply the District with the report, and according to testimony did not do so until January or February 2011.

68) According to testimony, the [redacted] was in fact supplied to the student but the student did not bring it to school until early 2011 and then only used it as a toy.

69) A meeting was held on January 27, 2011. The District expressed concern over derogatory remarks made about staff by the student. EX 124

70) Training for the [redacted] was set for February 3, 2011 and the parent invited any staff to attend. Ex 129.

71) An emergency meeting was held on February 9, 2011. The District expressed concern about continued absences. Ex 132. The student continued to suffer from [redacted]. The parent raised the question of a disorder beyond [redacted] EX 133.

72) The parent and student moved out of the district on March 1, 2011.

Facts – Issue No. 1 (Failure to provide [redacted] and [redacted] as result of the failure to heed the recommendations of certain experts).

73) [redacted] While the initial complaint related the District’s deficiencies to [redacted] report as the basis for the first of the three complaints, the parent’s argument expanded to one asserting that the District, in essence, failed to provide appropriate [redacted] and [redacted]

services because it ignored a variety of expert reports, in particular that of Dr.

74) Unfortunately, the parent did not make efforts to provide any expert testimony, leaving me with the reports alone in order to draw conclusions and to support her burden.

75) I did consider the reports over objection, but weighed them in accordance with the lack of ability to learn their basis or to cross examine.

76) Even though it was not mentioned until the parent's statement of facts, the report of Dr. _____, and specifically one sentence raising the possibility of a second disability beyond _____, was the mainstay of the first issue of the complaint.

77) _____ incorporates _____ disability. VDE Rule 2362.1(a) - Categories of Disabilities, define _____ Disorder as "...means a _____ disability significantly affecting _____ and _____ and _____, generally evident before age three. (1) Included in the spectrum are: _____, _____ disorder- not otherwise specified []; and(2) Other characteristics often associated with _____ disorder are engagement in _____ activities and _____ or _____, and _____ to _____ experiences. Characteristics vary from mild to severe as well as in the number of symptoms present."

78) As outline in previous findings of fact, not one other specialist opined that another disability existed that was not covered by the diagnosis of _____ and the other specialists' reports appear to be supportive of the District's programming.

- 79) and testified that Student's and deficits were characteristics of and could not be separated out as a disability.
- 80) Most important, however, is that also testified that Student's IEP goals and objectives and programming *would not have been different* if could were diagnosed with a secondary separate and distinct Disability.
- 81) Given the failure of the parent to attempt to provide the testimony of , I did allow testimony from who stated that had told her that she was unhappy with the quality of her report because she had been unable to "hang with or observe" or to test Student.
- 82) I also cannot conclude, as the parent suggests, that mere existence of reference to a second disability represents a failure to provide FAPE.
- 83) The record is replete with evaluations of , none of whom reached such a conclusion, and the parent offered no evidence that the services provided by the District were inconsistent with the recommendations of the various specialists.
- 84) The parent also argues that the District did not supply appropriate supports, relying upon the report of
- 85) First, it is not clear that the reports were necessary, even though the District chose to provide them. Each of the District witnesses agreed that the student was capable of communicating verbally, and utilizes verbal communication as preferred method.

- 86) _____, the student's para-educator, testified could demonstrate humor, interest in music, and communicate _____ wants and needs effectively through supported and unsupported verbal communication.
- 87) _____ testimony is buttressed by Ex. 586, where in four DVD's, specifically the fourth and longest video, Student demonstrates receptive and expressive communication in a very fluid, natural and understandable manner.
- 88) _____ also found that, with appropriate supports, that the student could communicate in complete sentences. EX 404-405 (relying upon the Clinical Evaluation of _____).
- 89) Both _____ and, according to the District's testimony, the District agreed that _____ might even be not in the student's best interests. _____ noted that "[Student] demonstrates the ability and inclination to use speech for a variety of purposes in a range of communication contexts. Given _____ natural ability, it is this evaluator's opinion that an _____ system would supplant rather than supplement the preferred communication mode of [Student]'s and _____ peers... Although an _____ system is currently contraindicated for [Student], best practice dictates that _____ team members continue to conduct periodic assessment using the _____ Model." Ex 334-335. (emphasis supplied)
- 90) _____ testified that Student's intelligibility of 74 – 76% in a new situation with familiar and unfamiliar partners was an excellent rating for an individual with _____ such as Student. _____ testified that she, as the _____ who provided direct services to

Student when attended during the 2010-2011 school year, found Student to be intelligible.

91) further pointed out that business is solely focused on providing evaluations for devices.

92) Further, the report, while it did recommend , assigned that responsibility to the a parent. Ex. 329-330. The single recommendation for involvement of school personnel in the use of the was for the school to program scripts. Ex. 329- #2 Visual Supports.

93) As many of the District's witnesses testified, Student brought the into school, at best, once. testified that she had never seen the Student access the independently; rather used it as "a toy". According to , the District was willing and prepared to use the as a tool if it was brought in. See also Ex. 129.

94) I find that the District provided Student with appropriate Services and for both 2009-2010 and 2010-2011 school years.

95) and testified that both the 2009-2010 and 2010-2011 IEPs for Student contain goals which Student worked on, when present at school, throughout educational day. Ex. 7-8, 42.

96) Also, and testified that student also utilized various strategies including a with , folder system, checklists, maps, social stories, written schedules, white boards, communication books, and post-its.

97) The exhibits, including the minutes of meetings, further corroborate the availability of these strategies. Ex. 32, 588.

98) In sum, the evidence shows that Student had substantial access to strategies and supports throughout the 2009-2010 and 2010-2011 school years.

Facts – Issue No. 2 (Failure to Provide appropriate).

99) Parent provided little evidence and little argument relative to the second issue, that of a Curriculum. The basis for that argument changed from a reliance upon the Department for Children and Families to later the conclusion that it stemmed from the failure to provide services.

100) testified that the District had reviewed Parent's preferred program, curriculum, and had determined that it was inappropriate for Student and for introduction to the school. provided examples of alternative programs which she recommended to Parent, one run by , a class for Students.

101) The testimony of , indicated that the Parent refused the offers, and that was corroborated by the minutes of the IEP meetings over the period of time in question.

102) The district continued to attempt to address Parent's concerns within the school and student's curriculum. In school year 2009-2010 Student was enrolled in the at Ex.190-191. The program was a graduation requirement for all high school students and the curriculum was modified for Student.

- 103) The second semester of _____ was _____. Due to the student's absence, _____ missed this opportunity to take _____.
- 104) _____ testified that he preparing and offering a highly visual program in 2009-2010 titled _____ Ex. 137-158 which was geared towards students on the _____ and had been used by _____ with other students with success.
- 105) The district witnesses testified that the _____ program was appropriate for the Student, and the parent has provided no evidence to the contrary. According the District, it would provide student with instruction geared towards _____ learning abilities; and would assist Student in _____ skills.
- 106) It appears that if the parent did not agree with the district, she simply refused all cooperation.
- 107) The _____ program is illustrative. The parent testified that she refused to provide information to the District as requested (providing words used at home) because she disagreed with the program.
- 108) _____ testified that the basis of her disagreement was, quite simply that she alone could not control how the program was implemented. Parent's focus on her disagreement with the vocabulary used, ignores the offer of the District to utilize and incorporate vocabulary used at home.
- 109) In 2010-2011 the District again offered Student a _____ class, a graduation requirement, at _____ for second semester. Ex. 125.
- 110) The parent apparently refused because the student was taking a _____ class with an outside provider.

- 111) During the 2010-2011 school year the District also introduced the _____ to Student.
- 112) According to _____ the program is a concrete and _____ program especially well-suited for _____ students such as Student. The program assists a student with learning appropriate _____ and _____ out in the community. Ex. 171.
- 113) Again, according to _____ due to Student's _____ and _____ issues during the fall semester of 2010, _____ missed approximately 72% of the direct instruction classes where this program was to be provided.
- 114) The overall program offered the student was based upon _____ (_____) methodology developed by _____ and the _____ of _____ and related _____) developed by the University of North Carolina-Chapel Hill. Id.
- 115) Student's program is designed to address the everyday _____ and _____ interactions necessary for individual success for Student: appropriateness of understanding _____ work which works on understanding the _____ and _____ behaviors of others. Id. The _____ curriculum, as developed by _____ is an integral part of working with students who have _____ deficits. Both the special educator and the _____ utilized this educational curriculum.
- 116) Student's program provided _____ an instructional method which provides a structure to support _____ and _____ It breaks down a problem into small

steps, so that ; and ; can be taught to Student in a setting. As the Student masters the , the assists Student with transferring to a natural setting with Success in the natural setting then leads to the fading of

Absence from school.

117) The student's absence from school is of significant relevance to Issue 1 and 2 as it greatly thwarted the District's program. The student simply was not present at school for many of the services, including that of

118) I do see reference in the minutes of meetings of varying explanations for the absences, but no evidence was offered supporting any justification thereof.

119) To the extent that the parent relies upon the notes of the student's medical providers to indicate a medical justification, I cannot afford significant weight. Those notes were premised solely upon information provided by the parent without the benefits or availability of input or feedback to or from the District that the evidence suggests was limited by the parent.

120) testified, as corroborated by the minutes of IEP meetings, that the parent did not provide authorizations for the District to communicate with the student's providers, including those that she suggested opined that the student should not be in school.

Facts – Issue No. 3 (Resource Room- aka Room 151)

121) Parent provided no evidence -- beyond her preference -- that the use of the represented a denial of FAPE.

- 122) Each of the District's witnesses who observed Student in Room or provided direct instruction/services to Student in Room clearly and credibly described how well Student acclimated to being in Room
- 123) testified that the student was anxious before arrived at the primarily due to the fact that was late. Further, the witnesses indicated that the student was off and nearly always
- 124) The student was mainstreamed for six out of the eight daily schedule blocks while was a school choice student at As such, time in Room was minimal.
- 125) According to the minutes of the meetings before the student even attended the school and used the room the parent rejected the room outright, because she did not want the student around students.
- 126) There was no violation of the IDEA mandate that Student be educated in the Least Restrictive Environment (LRE); Student was mainstreamed for the majority of school day both at and The District complied fully with VDE Rule 2364.1 and 20 U.S.C. §1412(a)(5)(A) in that "[t]o the maximum extent appropriate, children with disabilities... are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of the child is such that the education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily." Student was mainstreamed and was educated in the Least Restrictive Environment.

CONCLUSIONS OF LAW

- 127) The IDEA is predicated upon giving children with disabilities a free and appropriate education designed to meet their unique needs. 20 U.S.C. § 1401; *Schaeffer v. Weast*, 126 S. Ct. 528 (2005). FAPE includes a written IEP that is designed to reflect the results of evaluations identifying the student's needs and skills, establish annual goals and objectives, and identify the use of appropriate special educational services including any related services.
- 128) A FAPE is offered when the district has complied with both the procedural requirements of the act and when the IEP is reasonably calculated to enable the student to receive educational benefits. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-207 (1982).
- 129) Parent, as the complaining party, has the burden of proof in this matter. Specifically, she has the burden to show that (1) the program offered by the District was not "reasonably calculated to enable the student to receive educational benefits and/or that procedurally that the District failed to comply adequately with IDEA procedures. *Bd. of Education v. Rowley*, 458 U.S. 176, 206-207 (1982).

Procedural Violations

- 130) The first prong of the *Rowley* decision is to determine whether there are any procedural violations. However, the existence of a procedural violation alone is not sufficient to void an IEP. Relief is only warranted if the violation affects the student's right to FAPE. *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F. 3d 377, 381 (2d. Cir. 2003); *J.D. v. Pawlet Sch. Dist.*, 224 F. 3d 60, 69 (2d. Cir. 2000). In particular, FAPE is denied when the procedural violations either result in a loss of educational opportunity for the student or

seriously infringe on the parent's opportunity to participate in the IEP process. *Briere v. Fair Haven Grade Sch. Dist.*, 948 F. Supp. 1242, 1255 (D. Vt. 1996); *Deal ex rel. Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004).

131) The minutes are replete with indications of many other disagreements, but “meaningful participation” does not mean that the district acquiesces to the parent in every respect. *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999).

132) I cannot conclude that the failure to respond to _____ sentence suggesting the existence of a second disability represents a procedural violation in light of the various other evaluations and recommendations that exist and are consistent with the services provided.

133) The second prong of the *Rowley* decision is whether the IEP is reasonably calculated to enable the student to receive educational benefit. *Rowley* has been characterized as providing the student with a “basic floor of opportunity”; there is no requirement to maximize the student's program. *Rowley*, supra; *Walczak v. Florida Union Free S.D.*, 142 F.3d 119 (2nd Cir. 1998); *Robinson v. Council Rock Sch. Dist.*, 46 IDELR 38 (E.D.Pa. 2006); and *Doe v. Bd. of Education of Tullahoma City Sch.*, 20 IDELR 617 (6th Cir. 1993).

134) In order to comply with FAPE, more than minimal educational benefit is necessary. *Oberti v. Bd. of Educ.*, 995 F.2d 1204 (3rd Cir. 1993). The Second Circuit stated that “for an IEP to be reasonably calculated to enable the child to receive educational benefits, it must be likely to produce progress, not regression”. *Weixel v. Bd. of Educ.*, 287 F.3d 138, 151 (2nd Cir. 2002) quoting *M.S. v. Bd. of Educ.*, 231 F.3d 96, 103 (2nd Cir. 1998).

135) Based on the evidence submitted and the testimony provided, it is clear that the Parent has failed to meet her burden of proof. A variety of services were offered to service the student's needs and goals, including strategies. While the record clearly indicated that the parent was not satisfied or agreed with most of the program, the District has provided Student both substantive and procedural FAPE during the 2009-2010 and 2010-2011 school years.

136) Student was provided with a wide range of and strategies and supports, whether or such as the with Student's IEPs contained goals and objectives individually tailored to Student's unique and Student's IEPs call for direct and for implementation of goals and objectives across mainstream environment. Student's programming worked on and all important to a Student diagnosed with .

137) While the District's legal obligation was to provide a "basic floor of opportunity" through its IEPs, the District did also make efforts to meet the reasonable requests of the parent even if not required to do so. *Grim v. Rhinebeck Central School District*, 346 F.3d 377, 379 (2d Cir. 2003) ("IEPS are subject to numerous requirements but are not required to furnish every special service necessary to maximize each handicapped child's potential, but a basic floor of opportunity, consisting of services that are individually designed to provide educational benefit to a child with a disability") (Citing Rowley).

138) I do conclude that all involved are focused upon the interests of the student.

; comment about her desire to retain a report with a color picture of the student and the palpable affection of para-educator towards the student were probative.

139) I similarly believe that the parent also is dedicated to the interests of the student, but cannot avoid the conclusion that she has been less than collaborative within the process.

140) Special Educator and LEA Representative both expressed that Parent was, as testified, “both an advocate and an obstacle” for Student. Or as testified, Parent was the “barrier” and that it was “hard” because nothing was ever right according to Parent. Despite Parent’s obstructionist approach, the record demonstrates that the District continued to attempt to collaborate with Parent with the Notes to Home, investigation of outside programming and the instructional plan for community. The minutes of the meetings further corroborate the fact that the parent was not collaborative.

141) The IDEA requires that Parents are needed and important members of an IEP team. However, the law does not permit a parent to blame a school district for the consequences of her own actions. *School for the Arts and Learning v. Johnson*, 2006 WL 1000337, *5 (D.D.C.) unpublished. (Education of a disabled child is not a game of “gotcha”). Similarly, when parents allege that they have been denied meaningful participation or otherwise denied FAPE due to procedural errors, it is fair to ask whether the parents have contributed to the alleged errors. *A.B. v. Lawson*, 354 F. 2d 315, 326 n. 4 (4th Cir. 2004).

142) The IDEA neither contemplates nor mandates that parent preference overrides the decision making authority of school personnel to determine curriculum and methodology. Brougham v. Town of Yarmouth, 823 F. Supp. 9, 16 (D. ME 1993) (“Parental preference alone cannot be the basis for compelling a school district to provide a certain educational plan” for an eligible child.)

143) Further, the District is not required by the IDEA to adopt any or all of a report.

144) Parent has not provided evidence or testimony which supported her allegations, the District has, demonstrated that it has provided Student with both substantive and procedural FAPE.

ORDER

Based on the foregoing, the application of the parent for compensatory services is hereby denied.

Dated at Essex Junction, Vermont this 16th day of February, 2012.

By: _____

Jeffrey W. Spencer, Hearing Officer