

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Parent: Attorney Meredith C. Braxton
270 Greenwich Avenue
Greenwich, CT 06830

Appearing on behalf of the Board: Attorney Gail Sassos
Assistant Town Attorney
Law Department - Town Hall
101 Field Point Road
P.O. Box 2540
Greenwich, CT 06836

Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Whether the Board's program for the Student for the 2003-2004 school year is appropriate.

If not, whether the Parent's proposed placement at Clarke School or a similar program is appropriate.

PROCEDURAL HISTORY:

The Parent requested this hearing on July 25, 2003, and a prehearing conference was held on July 30 and August 6. The mailing date of the decision was extended three weeks by Motion of the Board's attorney based on a request to schedule an additional hearing date. The hearing proceeded on August 25, August 28, September 2 and September 11.

The Parent's witnesses were the Mother; Bonnie Strunin, a speech and language evaluator for the Board; Jen LaGreca, a Board special education teacher; Carleen Wood, a Board coordinator for special education; Sunny Gold, an independent observer for CREC Soundbridge; Jennifer Hulme, director of CREC Soundbridge.

The Board's witnesses were Francisco Albarran, a Board social worker; Patricia McNamara, a Board social worker; Sara Reilly, a Board teacher leader and Sandra Ford, a Board teacher of the hearing impaired.

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

SUMMARY:

The ten year old hearing impaired Student, who uses the oral/aural method of communication, has been educated in the Board's schools since 1998. The Board offered the Student a program for the 2003-2004 school year which included, *inter alia*, services from the teacher of the hearing impaired in a "push in/pull out" mode; auditory, verbal, pre-teaching and post-teaching by the teacher of the hearing impaired; consulting time for the teacher of the hearing impaired; special education in math and classes in the mainstream. A comprehensive evaluation of the Student noted that the Student with a severe to profound hearing loss has severe delays in her auditory, speech and language skills, and her hearing loss has impacted the development of higher order thinking skills.

The Parent requested this due process hearing to challenge the appropriateness of the Board's program. The Parent seeks placement at Clarke School for the Deaf, including the residential program as the school is not located within commuting distance to the Student's home.

FINDINGS OF FACT:

1. The Student is ten years old, and is currently in the fifth grade at a Board elementary school. The Student is identified as eligible for special education and related services as Hearing Impaired/Deaf, and uses the oral/aural method of communication. [Testimony Mother, Exhibit P-40]
2. The Student attended kindergarten in the Bronx, where she received special education and related services. The following year, the Student was enrolled in the Board schools, repeating kindergarten. She has attended the Board schools since 1998, and has been received special education and related services since that time. [Testimony Mother]
3. The Student has a severe to profound mixed hearing loss in her right ear and a profound loss in her left ear. According to the most recent evaluation of the Student, this hearing loss has resulted in severe delays in the Student's auditory, speech and language skills. [Exhibit P-38]

4. The Student uses a hearing aid in her right ear. An FM system is used by teachers, and used at home. The Student also lip reads. [Testimony Mother, Exhibit P-38]

5. In April 2000, as part of the Student's triennial evaluations, the Student was administered the Wechsler Individual Achievement Test [WIAT], which was described in the evaluative report as a comprehensive individually administered battery for assessing the achievement of children in kindergarten through twelfth grade. At that time, the Student was seven years old, and was in the last half of her first grade year. It was noted in the report that the Student's score on the Oral Comprehension subtest of the WIAT was in the borderline range. It was noted that difficulties in understanding words such as "take away" on the Numerical Operations subtests as well as performance on the vocabulary sections of the Listening Comprehension and Oral Expression subtests of the WIAT point to vocabulary knowledge as a weakness. It was further noted that communication factors, which influenced the accuracy of this evaluation, are ones that also affect the Student's performance in her typical classroom as well. [Exhibit P-1] The Student's scores on the WIAT [Exhibit P-1] were as follows:

	Standard Score	Percentile Rank
Basic Reading	95	37
Math Reasoning	89	23
Spelling	96	39
Reading Comprehension	93	32
Numerical Operations	86	18
Listening Comprehension	82	12
Oral Expression	77	6
Composite – Reading	94	34
Composite – Mathematics	85	16
Composite – Language	75	5
Composite – Total	80	9

6. In fourth grade during the 2002-2003 school year, the Student's program consisted of 60 minutes of reading/language arts per day, four and a half hours per week of math, speech services five times per week, for 30 minutes and services from the teacher of the deaf for one hour, three times per week. The Student's program was a combination of time in the resource room, therapy room and speech office, with time in the regular education classroom. [Testimony Mother, Exhibit P-16]

7. As part of the Student's triennial evaluations in the March 2003, during the spring of the Student's fourth grade, she was administered a set of tests from the Woodcock Johnson III Tests of Achievement. The results from the Woodcock-Johnson test indicated that the Student's oral language skills were very low, her oral expression skills were low and her listening comprehension skills are very low. The Student's Oral Language score was in the 1st percentile, with a grade equivalency of K.5. Her Oral Expression score was at the 7th percentile, with a grade equivalency of 1.0. Her Listening

Comprehension score was at the less than 1st percentile level, with a grade equivalency of K.1. [Testimony Ms. LaGreca, Exhibit P-29]

8. In the Student Assessment Report, which accompanied the results of the Woodcock-Johnson results, it was noted that the Student has social-emotional problems with other students. The report noted that the Student has been observed initiating teasing, including pushing, cutting in line, staring at someone to annoy/irritate, accusing others of cheating and attempting to trip others. [Exhibit P-29] While this was noted by Ms. LaGreca, the administrator of the test, she testified at the hearing that she had not seen the Student appearing sad or isolated, characterizing the Student as social with many friends. [Testimony Ms. LaGreca, Exhibit P-29]

9. The Board also completed a speech and language evaluation of the Student in April 2003. The Peabody Picture Vocabulary Test, Third Edition was administered to the Student. The Student's Raw Score was 81, her stanine was 1, her percentile rank was 1, and her age equivalency was 6-1. [Exhibit P-30] The results of this test indicate that the Student has a severely impaired vocabulary. This would indicate that the Student does not have basic words in her vocabulary. [Testimony Ms. Strunin] The Student was also administered the Expressive One-Word Picture Vocabulary Test, Revised. In that test, her raw score was 55, her stanine was 1, her percentile rank was 2, and her age equivalency was 6-10. [Exhibit P-30] The percentile ranking on this test would indicate that the Student doesn't have expressive words in her basic vocabulary. [Testimony Ms. Strunin] The Student was also administered the Elementary Test of Problem Solving, Revised. In that test, her raw score was 25, her age equivalency was below 5-6, and her percentile rank and standard scores were below norms. [Exhibit P-30] The Student had difficulty with this test of higher level thinking, critical thinking and problem solving skills, which resulted in an age equivalency of a less than average kindergartner. [Testimony Ms. Strunin] The Student was administered subtests of the Clinical Evaluation of Language Fundamentals, Third Edition. In concepts and directions, the Student had a percentile rank of 2. In formulated sentences and listening to paragraphs, she ranked in the 1st percentile. In word associations she ranked in the 9th percentile. [Exhibit P-30] The Board's evaluator concluded that the Student's speech and language skills significantly impact the Student's success in the academic environment, and recommended that the Student's speech and language goals should continue to target the following: (1) reduced speech intelligibility, (2) reduced expressive and receptive vocabulary, (3) word retrieval deficits, (4) reduced syntactic skills, (5) delayed narrative skills, (6) reduced listening comprehension, and (7) depressed critical thinking, reasoning and problem solving skills. [Exhibit P-30]

10. In the spring of the Student's fourth grade, the Parent and Board agreed that the Student would be evaluated by an independent evaluative team at the Capitol Region Education Council [CREC] Soundbridge in Wethersfield, Connecticut. [Testimony Mother, Exhibit P-31] CREC is a Regional Educational Service Center established under Conn. General Statutes Sec. 10-66. It is a public education authority pursuant to Conn. General Statutes Sec. 10-66c. The CREC evaluation was performed at the request of the

Board, and the CREC Soundbridge director testified at the hearing during the Parent's case under subpoena. [Testimony Ms. Hulme]

11. The CREC Soundbridge evaluation included an independent classroom evaluation. The observation for CREC Soundbridge occurred over a full day in all of the Student's school settings including: opening and morning announcements, social studies in the mainstream class, music, computer lab, math with the special education resource teacher, lunch, recess, speech with the speech pathologist, reading and language with the special education resource teacher, clean up/closing and an after school tutoring session with a teacher of the hearing impaired. [Exhibit P-27] The observer for the CREC evaluation was an experienced teacher of the hearing impaired who noted that the Student's education was being compromised as the Student failed to comprehend what was being said to her. The observer noted that the special education teacher was not particularly skilled at teaching an aural child, as the Student could not understand words with multiple meanings and idioms. A Board staff member told the observer at recess that the Student often had bad days at recess. The observer noted that the Student was still developing age appropriate skills with peers. [Testimony Ms. Gold, Exhibit P-27]

12. The observation by CREC concluded that the Student is faced with a setting as if people were talking in foreign language in scientific terms that one does not understand. The Student is sitting in the classroom, and missing what seems like every third word. The Student sits on the edge of her seat all day long, trying to comprehend the content of the communications. When the Student hears something, she doesn't understand everything. This is very stressful, as the Student sits in a "world of confusion." The Student's comprehension is greatly below the mainstream setting, and as the years go by and the communication gets more complex, the Student will fall more and more behind. The observer noted that the level of modifications, pull out services, and one-to-one settings isolates the child. The Student is attempting to learn English at the same time as she is learning the curriculum, and it doesn't work well, according to the observer. The observer noted that the mainstream setting is not appropriate for this student at this time, as the gap between comprehension and curriculum continues to increase. The current individualized education program for the Student is inappropriate because the content is beyond the Student's comprehension, and the level of time needed with a teacher of the hearing impaired at the Board schools is isolating, in itself. In order for the Student to develop her language, she needs to be in a setting where teachers and everyone around her is facilitating language development or she won't catch up, according to the observer. The observer noted that the only appropriate programs for the Student in the region would be CREC Soundbridge, some programs in New York State, Lexington School of the Deaf and Clarke School. [Testimony Ms. Gold]

13. In addition to the formal observation of the Student, CREC Soundbridge evaluators completed a comprehensive assessment of the Student. The team was led by Ms. Hulme, who is director of CREC Soundbridge, an auditory/aural program for hearing impaired students serving the North Central Region of Connecticut. An auditory/aural program is a program to help hearing impaired students to acquire speech and language using their residual hearing. The CREC evaluation consisted of background information, an

audiological evaluation, a psychological evaluation, a language evaluation, an audition and speech evaluation and the diagnostic assessment recommendations. The CREC director observed many of the evaluation sessions and was team leader for the assessment. [Testimony Ms. Hulme, Exhibit P-38]

14. The CREC audiological evaluation was completed in June 2003. The purpose of this evaluation was to obtain baseline on the Student's current status, and what equipment she was using. The evaluator noted that the Student uses amplification with her right ear only, through a Phonak Novo Forte E4 earlevel hearing aid and has a Phonak Microlink FM System with a Microvov TX2 transmitter and a boom microphone and a HandyMic transmitter for use when needed. The fact that the Student has unilateral hearing, and doesn't have two ears to aid her further complicates things for the Student in the classroom, according to the evaluator. The evaluation noted that the Student had access to speech sounds, except for high frequency, which means that the Student could totally miss out on meanings of words. To teach the Student in an aural program, she needs an acoustically treated environment, plus intensive instruction in learning to discriminate sounds, according to the evaluator. [Testimony Ms. Hulme, Exhibit P-38]

15. The CREC psychological evaluation was completed by Penny Miner, who has worked for CREC for almost 30 years. [Testimony Ms. Hulme] The Student was administered the WISC-III, and the results indicated that the Student scored below the borderline range for long-term auditory memory (information) and practical reasoning (comprehension), while she is borderline for concentration (arithmetic), expressive vocabulary and short-term auditory memory (digit span). The Student reaches the low average range for hearing peers for abstract reasoning (similarities). The evaluator concluded that these scores suggest that the Student does not have the verbal/thinking skills needed to access a regular education curriculum, and cannot at this time function successfully in a classroom of hearing peers. On the Matrix Analogies Test-Expanded Form, a non-verbal measure of intelligence, the Student obtained a total test score of 102, which falls within the average range of mental ability, and is consistent with the Student's results on the performance scale of the WISC-III. [Exhibit P-38]

16. In the psychological evaluation, the evaluator concluded that there was some distress in the Student's emotional adjustment. Developmentally, the evaluator noted that the Student presents herself as a child younger than she actually is, with coping skills inadequate to deal with her frustrations and sense of loss concerning life situations over which she has no control. In the evaluation, it was noted that the Student lacks stamina, and her emotional distress is almost certainly sapping the energy which she might otherwise be able to devote to academics. The evaluator further noted that the Student does not at this time seem able to profit from the concentrated help she is getting from school support staff and at home, noting that the Student is struggling in the mainstream, both academically and socially. While the Student is generally average to high average in her cognitive ability, the evaluator concluded that the Student has not yet acquired the necessary tools to benefit from her present setting. [Exhibit P-38] The director of CREC Soundbridge concurred that the Student cannot function in a classroom of hearing peers,

as she cannot access the essential understanding of a fifth grade curriculum. [Testimony Ms. Hulme]

17. The evaluator also noted that the Student and the family should be receiving counseling to help deal with the causes of the Student's overlying sadness and to acquire positive coping mechanisms. [Exhibit P-38] The CREC evaluation team considered the Student's sadness and grief over life situations, but this was not an overriding factor in the team's final recommendations. The overriding factor was the level of spoken language in the classroom, and the current level of the Student's academic performance. [Testimony Ms. Hulme]

18. The CREC evaluation also included a Language Evaluation completed by Jeanne Dagget. The Student was administered the Grammatical Test of Elicited Language: Complex Sentence Level, which is a test designed to assess a child's ability to produce and imitate sentences at a complex level. The test is normed on hearing children up to 5 years, 11 months of age, and hearing impaired children up to twelve years of age. In the test, the Student's language quotient scores fell in the average range when compared to severely hearing impaired children of her age. The evaluator noted that, considering the Student's current placement in a regular education setting it is more significant to compare the Student's performance with hearing peers. Children ten years of age with normal hearing have exceeded the language skills measured in this test. When compared to children 5.0 to 5.11 years, the Student's prompted and imitated language quotients are two to four standard deviations below the norm, and at least 95 percent of kindergarteners are able to exceed the Student's performance on this test. The evaluator noted that the Student's scores emphasize the barriers of the Student's current setting, as the Student cannot successfully handle the content of regular education if she has not developed the language skills that are a prerequisite to academic learning. [Exhibit P-38]

19. The CREC director agreed that this test of language indicates that the Student has difficulty accessing the curriculum in her mainstream classroom. The director noted that in the mainstream, the Student's teachers are speaking in complex language, with clauses and rich vocabulary. The CREC director said it is equivalent to placing someone in a foreign country with only the language competency to ask for a glass of water or bread, without knowing what is coming back at you. The language must be developed first for the Student. The CREC director said that the curriculum might be revised or rewritten, but that in reality is not a fifth grade curriculum, if you reduce it to the Student's level. [Testimony Ms. Hulme]

20. The language evaluator also administered the Evaluating Communicative Competence test, which is designed to assess the child's ability to use language in a pragmatic way. In this test, a paragraph at a second grade reading level was read to the Student, and comprehension questions were asked. The Student correctly responded to 40 percent of the questions, but was able to give only one explanation in a syntactically well-organized sentence. A paragraph at the fourth grade level was also read, and questions were asked that required her to infer bits of information. This portion of the

test was a real challenge for the Student, and she was unable to respond appropriately to any question. [Exhibit P-38]

21. The language evaluator recommended, *inter alia*, that the Student requires a school setting where her language needs can be addressed throughout her entire academic day by a teacher of the hearing impaired in a group of hearing impaired peers. The CREC director noted that the importance of being with hearing impaired peers is that when language is significantly delayed, it's very disheartening to be the only one. In addition in this special setting, the language needs are met throughout the entire day. The Student needs a setting where the teacher has responsibility for a whole group of hearing impaired students, where the job is to work on developing language, according to the CREC director. [Testimony Ms. Hulme, Exhibit P-38]

22. Another recommendation by the language evaluator was that the Student needs to develop and improve her simple and complex receptive and language skills. Without complex language development, including vocabulary expansion, it will be difficult for the Student to develop higher level thinking skills and academic skills, noted the evaluator. This recommendation would be implemented ideally with a set of individual language objectives with content and the development of the material pitched at the developmental level and interest level of the children. [Testimony Ms. Hulme, Exhibit P-38]

23. The final area of evaluation by the CREC team was the audition and speech evaluation. The evaluator noted that The Test of Auditory Comprehension revealed that listening in noise for unfamiliar information presents a challenge for the Student. That skill is required in a mainstream setting. The evaluator also administered Auditory Rehabilitation: Memory, Language, Comprehension, a criterion referenced assessment designed to evaluate how a child processes unfamiliar information presented through an auditory only manner. In this assessment, the Student had difficulties beginning at level one, of the six levels of information presented. The analysis of the Student's errors on this assessment indicates that she is having difficulty discriminating specific sounds, which impacts her comprehension on the entire passage. The Student could comprehend part of the information, and use her prior knowledge to fill in missing pieces, but that may not be the new information presented. The evaluator noted that when the Student is presented with unfamiliar information and vocabulary, the Student has difficulty comprehending. The Student does not have the language development, prior knowledge and vocabulary to achieve comprehension at this time. [Testimony Ms. Hulme, Exhibit P-38]

24. The CID Phonetic Inventory, a speech rating form for hearing impaired children, was administered to the Student as part of her audition and speech evaluation. The evaluator noted that the Student has highly intelligible speech marked with omissions and distortions of consonants. The Student was able to produce all vowels and diphthongs in repeated syllables with the exception of /ou/ and /au/. The Student had greatest difficulty rapidly alternating syllables while maintaining accuracy of articulation. This difficulty in alternation of syllables was apparent throughout the assessment. The Student's voice

quality is reasonably pleasant, and she has potential for very good speech. [Testimony Ms. Hulme, Exhibit P-38]

25. The CREC team summarized that the Student's hearing loss has impacted the development of the Student's higher order thinking skills. The Student has socially less mature behaviors, and she has had many experiences of frustration. The team noted that the Student's spoken language while sufficient for simple social interactions is not adequate for academic instruction with her peers. The Student's academic delays were noted by the team as well documented in the assessments. The Student's residual hearing when aided does not provide her with full access to speech. The team summary noted that the Student relies primarily on her auditory skills to comprehend information however her auditory skills are seriously compromised and result in many misunderstandings and lack of comprehension. The team further noted that the Student is functionally a unilateral listener which does not allow her to localize sound or deal efficiently with background noise. The Student's language development is delayed in all areas: syntactically, semantically and pragmatically. Her relative strength is her social language skills, and she has significant weaknesses in vocabulary development and compound and complex language structures at both receptive and expressive levels. The Student has difficulty understanding and expressing abstract concepts both orally and in writing. The Student's speech is generally intelligible and reflects mastery of the suprasegmental aspects of speech – pitch, duration and intensity. Her errors in speech lie in the omission or distortion of consonants and consonant blends. Psychological testing revealed an uneven profile of nonverbal cognitive skills and verbal subtest scores in the very low range, as well as testing which indicated the Student feels sad and lonely. [Exhibit P-38]

26. Based on its comprehensive assessment, the CREC team recommended: (1) Consideration of placement in an auditory oral program for the hearing impaired where the Student's language, speech, auditory and academic needs can be addressed through the entire day, and noted that this would be a less restrictive environment for the Student at this time in her life; (2) The Student's social skills, her immaturity and her isolation would be supported if she had a peer group of children who were also hearing impaired; (3) The Student's feelings of sadness and isolation, low frustration tolerance and her lack of success compared to her age peers was an area of concern for the team, which recommended individual and family counseling; (4) The Student needs more access to sound, so the use of the boom microphone is necessary for all academic instruction; (5) The Student requires an intensive developmental program to build her auditory skills so that she can comprehend auditory information; (6) The Student requires a developmental language program to advance to the complex language level with heavy emphasis on the syntax, semantic and pragmatic aspects of language; (7) The Student's speech needs should be addressed in an integrated fashion within the context of her spoken language and maximizing the use of her residual hearing; (8) An academic program of individualized small group instruction for reading, math, science and social studies is needed, as the Student cannot compete successfully with her age peers at this time; (9) The Student should be involved in decisions regarding after school activities, as her

interest and motivation are critical to the social benefits she will receive from these activities as she gets older. [Exhibit P-38]

27. The most important piece of the CREC recommendations was the first recommendation, according to the CREC director. The CREC team made the first recommendation that the team *consider* placement in an auditory oral program for the hearing impaired, as the team felt it could not make the final decision on placement for the child, as that is the responsibility of the Planning and Placement Team [PPT]. Nevertheless, the CREC director testified that in her professional opinion, mainstream education is not appropriate for the Student at this time, and more particularly, that the Board program is not appropriate. The Board program is not aimed at closing the gap between the Student and her peers, and it is not designed so that the Student can obtain educational benefit from her program, according to the CREC director. The CREC director noted that placement in an auditory oral program would be less restrictive, as the level of intervention necessary for the Student to be in the mainstream program, with the high level of one-to-one assistance, is more restrictive for the Student. Moreover, the time in the fifth grade classes is not a profitable use of the Student's time, as she can't independently access the curriculum, according to the CREC director. The CREC director concluded that the Student cannot possibly be in the mainstream home school. [Testimony Ms. Hulme]

28. The Individualized Educational Program [IEP] proposed by the Board for the 2003-2004 school year does not implement the recommendations of the CREC team. The CREC director noted that the IEP includes no spoken language goals. The speech objectives reflect targets at the word level, although according to the CREC evaluation the Student has not yet developed sounds at the syllable level. There are no auditory objectives that target the Student at her current skill level. Moreover, the specific components of the modifications to the IEP after the Board received the CREC evaluation, including the two hours of services from the teacher of the hearing impaired in a "push in or pull out mode;" one hour per day of services from the teacher of the hearing impaired for auditory, verbal, pre-teaching and post-teaching; consultation time for the teacher of the hearing impaired; special education group in math, with the remainder of the classes in the mainstream, indicates that the CREC recommendations were not implemented. [Testimony Ms. Hulme, Exhibit P-38]

29. The only aural/oral programs that the CREC director is aware of in this region are Nassau BOCES Long Island, Clarke School for the Deaf in Northampton, Mass., and CREC Soundbridge in Wethersfield, Conn. Clarke's program has the components that the CREC director would recommend. Although Clarke School is not within commuting distance for the Student, it does have a residential program for its students. The CREC program is a day program, and has had students commute from as far as one and a half hours away. [Testimony Ms. Hulme] The CREC director did not testify that any students attending CREC Soundbridge traveled from as far away as Greenwich, which commute time would meet and/or exceed the maximum commute of any student at CREC Soundbridge, without factoring in traffic delays. Moreover, neither the Board nor the Parent indicated that CREC Soundbridge was a requested placement for the Student.

30. The Student has been prescreened for admission to Clarke School, and has been admitted to Clarke, although the Student has not enrolled at Clarke. [Testimony Mother, Exhibit P-15] The acceptance letter from Clarke indicated that the Student had the potential to succeed educationally with her hearing peers. If the Student attends Clarke School, the school's goal would be to increase the Student's speech and language skills in order for her to return to the mainstream with more confidence and to reach her full potential. [Exhibit P-15]

CONCLUSIONS OF LAW:

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. 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. Conn. Agencies Regs. Sec.10-76h-14. The Board has not met its burden in this case.
3. 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). It must first be determined whether the Board complied with the procedural requirements of the Act. No evidence presented indicates that the Board failed to comply with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Plan [IEP] is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
4. The requirement of a free appropriate public education is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Education v. Rowley*, 458 U.S. at 201 Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. *Board of Education v. Rowley*, 458 U.S. at 203
5. The IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Hendrick Hudson v. Rowley* 458 U.S. at 204 When the child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade is one important factor in determining educational benefit. *Mrs. B. ex rel M.M. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2d Cir. 1997), citing *Board of Education v. Rowley, Id.* This standard, however, contemplates more than mere trivial advancement. *Id.*

6. The Student has made only trivial, de minimis advancement in this case. The Board attempted to show that advancement has been made by pointing out that the Student had a 14 point increase in her Degrees of Reading Power score in fourth grade. [Testimony Ms. Reilly, Mother] One isolated score, however, is not equivalent to progress.

7. Educational benefit contemplates more than the mere trivial advancement that this Student has made. Few changes from the Student's prior year's program were proposed. The Student has made very limited progress in the Board's program and placement. The Student will be unable to obtain educational benefit in the setting in which the Board contemplates placing the student. The CREC comprehensive individualized assessment overwhelmingly concluded that the Student is unable to obtain educational benefit from the Board's program. CREC's conclusions are well-reasoned and based on thorough evaluations of the Student's strengths, weaknesses and current level of functioning. The CREC evaluation is persuasive and compelling. Therefore, it is concluded that the Board's program for the Student is inappropriate.

8. When it is determined that the Board's program is inappropriate, the parent is entitled to placement at the Board's expense if the parent's private school placement is appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). The Board has asserted that the Parents' proposed placement is too restrictive. The parents seeking an alternative placement are not subject to the same mainstreaming requirements as a school board. *M.S. ex rel S.S. v. Board of Education of the City of Yonkers*, 33 IDELR 183 (2nd Cir. 2000), citing *Warren G. v. Cumberland County School District*, 190 F. 3d 80, 84 (3d Cir. 1999) (The test for the parents' private placement is that it is appropriate, and not that it is perfect) Under the appropriate standard, a disabled student is not required to demonstrate that he cannot be educated in a public setting. *Ridgewood Board of Education v. N.E.*, 30 IDELR 41 (3d Cir. 1999), citing *Florence County School District Four v. Carter*, 501 U.S. 7 (1993) Under IDEA, the relevant question is not whether a student could in theory receive an appropriate education in a public setting but whether he will receive such an education. *Id.* Under the Board's proposed IEP for the 2003-2004 school year, the Student will not receive such an appropriate education.

9. The Parent's proposed program is placement at Clarke School, including the residential program. In determining whether this more restrictive placement is appropriate, it is essential to look at the language and communication needs of this hearing impaired student, and determine the least restrictive environment for this particular child. In developing an IEP for a child who is deaf or hard of hearing, it is necessary to consider the opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. 34 C.F.R. Sec. 300.346(a)(2)(iv)

10. The U.S. Department of Education issued guidelines as to factors to consider when formulating an IEP and determining placement for a deaf child. School districts were directed to consider factors when developing an IEP for a deaf student, and to determine

placement on the basis of the individual needs of the Student in the setting, including: (1) communication needs and the child's and family's preferred mode of communication; (2) linguistic needs; (3) severity of hearing loss and potential for residual hearing; (4) academic level; (5) social, emotional and cultural needs, including opportunities for peer interactions and communication. In the policy guidelines, it was noted that any setting which does not meet the communication and related needs of a child who is deaf, and therefore does not allow for the provision of free appropriate public education cannot be considered the least restrictive environment for the child. According to the guidelines, the Secretary recognized that the regular classroom is an appropriate placement for some children who are deaf, but for others it is not. [Exhibit P-44] Subsequently, this policy guideline was clarified that the notice was not intended to alter the Board's obligation to educate a deaf student in a regular classroom if the student could receive a free appropriate public education in that setting. *OSEP Memorandum 94-15*, 20 IDELR 1181 (OSEP 1994)

11. The Student has significant weaknesses in vocabulary development and compound and complex language structures at both the receptive and expressive levels. The CREC evaluation noted that the Student's language, speech, auditory and academic needs should be addressed throughout the entire day, and the needs cannot be met in the Board's program. The deficits noted in the WIAT administered during the 2000 triennial evaluations in language, oral expression and listening comprehension have continued or worsened. While the Board's special education teacher has noted that a depressed vocabulary is common among the hearing impaired [Testimony Ms. LaGreca], the CREC director testified that the Student has a potential to learn in an integrated environment. The Board's program is not appropriate for this Student at this time. The Parent has articulated a proper placement for the Student at Clarke School, or a similar program.

12. Placement at the Clarke School will also necessitate placement in the residential program. Residential placement is appropriate in this case, as no appropriate placement is available for the Student within a reasonable commuting distance to her home. The only manner in which the Student can obtain a free appropriate public education is to be educated in an aural/oral program. No aural/oral program is in proximity to the Student's home. Therefore, the residential program at Clarke School shall also be the responsibility of the Board.

13. When it is determined that a private placement desired by the parent is proper under IDEA, and that the IEP with placement in a program at the public school is inappropriate, it is "clear beyond cavil" that "appropriate" relief would include a direction that the school official develop and implement at public expense an IEP placing the child in the private school. *Burlington School Committee*, 471 U.S. at 369-370

FINAL DECISION AND ORDER:

1. The Board's program for the Student for the 2003-2004 school year is not appropriate.
2. The Parent's proposed placement at Clarke School or a similar program is appropriate.
3. The Board is directed to develop and implement at public expense an IEP placing the child at the Clarke School. If a space is not available at the Clarke School for the Student, the Board shall place the Student at a program similar to Clarke School. If the parties are not in agreement as to whether a program is similar to Clarke School, the CREC Soundbridge director shall make the determination in accordance with the CREC evaluation of the Student.