

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Seymour Board of Education

Appearing on Behalf of the Parents: Attorney Andrew A. Feinstein  
Law Offices of David C. Shaw  
34 Jerome Avenue, Suite 210  
Bloomfield, Connecticut 06002

Appearing on Behalf of the Board: Attorney Frederick L. Dorsey  
Siegel, O'Connor, Zangari, O'Donnell & Beck  
150 Trumbull Street  
Hartford, Connecticut 06103

Appearing Before: Attorney Gail K. Mangs, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Should the Student be identified as eligible to receive special education services?
2. Did the Board of Education offer an appropriate program for the 2004-2005 school year?
3. If the Board of Education did not offer an appropriate program for the 2004-2005 school year, does The Foundation School offer an appropriate program?
4. Did the Student require an extended school year program for the 2004-2005 school year (summer, 2004)?
5. Does the Student require speech and language services and social skills education as related services?

**PROCEDURAL HISTORY:**

This hearing was requested on July 15, 2004. The prehearing conference was convened on July 22, 2004. The hearing convened on the following dates: August 13, August 19, September 7, September 24, September 27, September 30, October 6, October 19, October 26, November 9, November 11 and November 17, 2004. Briefs were requested by the parties and mailed, as scheduled, on December 6, 2004. The Parents called the following witness: The Student's Mother; Joan L. Black, speech and language pathologist; Sarah Julian, an art therapist; Dr. Geraldine Cassens, clinical neuropsychologist; Dr. Steven Spector, psychiatrist; Mary Kruger, individual and family

therapist; Diane Bourdeau, co-director of the middle school program at The Foundation School; and Dr. Miriam Cherkes-Julkowski, special education professor. The Board of Education called the following witnesses: Jayne Bachyrycz, Board speech and language pathologist; Jennifer Karpovich, Board speech and language pathologist; Deborah Durette, Board fifth grade math inclusion teacher; Deborah Baldarelli, Board third grade inclusion classroom teacher; Sara Morgatto, Board school psychologist; and Mary Anne Mascolo, Assistant Superintendent of the Board of Education. The Parents recalled Joan L. Black as rebuttal witness.

### **SUMMARY:**

The Student, who is now close to thirteen years old, is in the seventh grade at The Foundation School. While the Student received speech and language services during kindergarten and part of first grade, the Student has not been designated as eligible for special education services since that time. Although the Student has advanced a grade level each year and has received good grades on report cards, the Student exhibited a tendency to cry and become overwhelmed when presented with new or difficult material. The Student would become unable to produce any work during these “meltdowns.” The Parents obtained several evaluations that have described the Student as eligible for special education due to a language impairment and/or learning disability complicated by anxiety. The Board has acknowledged that the Student has a language impairment but argues that the impairment has had little or no adverse impact on the Student’s educational performance. The Parents placed the Student at The Foundation School for the 2003-2004 and 2004-2005 school years. The parties settled a due process hearing with regard to the 2003-2004 school year. The Parents now request a decision that the Student be found eligible for special education services and that the Board fund the 2004-2005 Foundation placement, extended school year program and related services (see Issues, above).

### **FINDINGS OF FACT:**

1. The Student’s Mother first expressed concerns about the Student’s speech, articulation and behavior in 1996, when the Student was four years old. After testing was performed, it was concluded that the Student’s misarticulations were age appropriate. Just before beginning kindergarten, the Student was found eligible to receive speech and language therapy due to disordered syntax. Speech and language therapy continued until the middle of first grade when the Student was exited from special education. (Exhibits B-1 through B-4, B-7, B-9 through B-17, Testimony of Mother)
2. Twice, during kindergarten and again in 2003, the Student has had surgery to release the frenulum (under her tongue) that interfered with her speech. (Testimony of Mother)
3. The IOWA Tests of Basic Skills were administered to the Student during the fall of the third, fourth and fifth grade years. Except for math computation, the Student generally demonstrated grade equivalent progress each year on the IOWA Tests. (Exhibit B-25, Testimony of Mother)

4. While the Student often cried in second grade, the Student began third grade by crying almost everyday. In seeking assistance from the Student Assistance Team, the Student's teacher reported that when faced with new material and concepts, the Student often cried and gave up without trying. At times, there were "meltdowns" where the Student, feeling confused, would shut down, cry and be unable to produce any work. The Student's emotional state often led to poor academic performance. In addition, the Student only had one particular friend (although the Student generally got along with other peers). A behavior chart was put into place and the Student was moved to a slower paced, inclusion math class (such classrooms are usually composed of 80% regular education students and 20% special education students and are team taught by regular and special education teachers). These changes appeared to help the Student's behavior and performance. The Student also met frequently with the school guidance counselor. By the end of third grade, the Student's teacher reported that the Student's self esteem and confidence had improved. According to the Student's Mother, the crying decreased but the Student's social skills did not improve. Grades on the third grade report card were mostly "goods" and "very goods." (Exhibits B-26 through B-30, Testimony of Mother and Deborah Baldarelli)

5. On the fourth grade Connecticut Mastery Test, the Student scored above the goal in reading and writing but somewhat below the goal in math. (Exhibit B-31)

6. On November 25, 2001 (during the fourth grade), the Student's Mother requested a psychoeducational evaluation, stating that the Student "...has difficulty putting her thoughts into words and at times her sentences make no sense." In addition, the Student's fourth grade teacher reported to the Student Assistance Team that the Student was motivated but became emotional which affected the Student's work, often cried, gave up too easily when frustrated and had a hard time breaking math problems into parts. Her teacher also stated that she would like the Student to interact with peers more often. A PPT was convened on January 2, 2002 during which the PPT agreed to administer ability and achievement evaluations. The Student was also moved to the inclusive math classroom where she would receive more assistance. (Exhibits B-32, B-35, B-36)

7. The school psychologist administered a psychoeducational evaluation during January, 2002. On the WISC III, the Student received a verbal score of 104, performance score of 89 and a full scale score of 96, falling within the average range of intellectual functioning. The school psychologist indicated that the Student's below average scores on the digit span, picture arrangement and mazes subtests could be signs of inadequate auditory memory and sequential and planning skills. The Student could also have poor organizational skills and difficulty learning new material quickly. In addition, the Student might have problems with social interaction due to an inability to see the nuances of social behaviors. Counseling was recommended. (Exhibits B-37, B-38 and B-40)

8. At a meeting of the Student Assistance Team on January 10, 2002, the Student's teachers reported that the Student had trouble understanding directions, lacked self-confidence and gave up easily when learning new material. The team's plan included

highlighting ideas and steps in directions, having the Student restate directions, and providing guidance counseling. (Exhibit B-39)

9. Jennifer Karpovich administered a language evaluation during February and March, 2002. On the Clinical Evaluation of Language Fundamental-3 (“CELF-3”), the Student received a total language score of 95 (the mean is 100) although the score on the recalling sentences subtest fell at the 9th percentile. On the Peabody Picture Vocabulary Test (“PPVT”) the Student received a score of 104. The Student received a score of 85 on the Expressive Vocabulary Test (“EVT”) but was upset during this test administration. (Towards the end of the evaluation, the Student became upset and started crying and breathing heavily. Ms. Karpovich was able to calm the Student down enough to finish the evaluation.) The Expressive One-Word Picture Vocabulary Test (“EOWPVT”) was then administered due to the discrepant score on the EVT; the Student scored 120 on the EOWPVT. On the Test of Word Finding-Second Edition (“TWF-2”), the Student received a score of 113. Based on these standardized tests, Ms. Karpovich concluded that the Student’s expressive and receptive language and vocabulary were age appropriate. (Exhibit B-42, Testimony of Jennifer Karpovich)

10. The Student received mostly average to above average scores on the Wechsler Individual Achievement Test and the Test of Written Language-3. (Exhibit B-44)

11. During a PPT convened on March 12, 2002, the evaluation results were reviewed. The team concluded that the Student did not qualify for special education services although the PPT directed the Student Assistance Team to continue to monitor the Student. (Exhibit B-43)

12. The Student’s report card grades during the fourth grade were all at the “good” or “very good” level. (Exhibit B-46)

13. During fifth grade, the Student Assistance Team continued to monitor the Student who still became easily upset, overwhelmed and cried frequently. Deborah Durette testified that she saw the Student teary at least a couple of times per month in the math inclusion class. Anxiety, low self esteem and low self confidence were noted as areas of difficulty. In addition, the Student suffered from panic attacks and physical manifestations of anxiety such as hyperventilating, vomiting and nosebleeds. During a March 14, 2003 meeting of the Student Assistance Team, it was noted that the Student was “fragile,” would fall apart easily and become unreachable when upset. A “tough love” approach – firm but nurturing – was used at school with some success. In the classroom, the Student was assisted by modifications such as extra time, less work, chunked directions and the help of a homework buddy. The Student was also placed in a lunch group to improve her social skills and was allowed to visit Debbie Baldarelli after a week of good behavior (the third grade teacher with whom the Student had a good relationship). Despite this assistance, the Student remained a loner in the classroom. (Exhibits B-48, B-49, B-51, B-52, Testimony of Mother and Deborah Durette)

14. At the Parents’ request, the Student was evaluated by Joan L. Black, a private speech and language pathologist, in March, 2003. During testing, the Student had difficulty understanding directions and required rephrasing and repetition. Ms. Black noted

articulation errors and disorganized verbal expression when the Student was directed to retell a factual event or story. Ms. Black determined that the Student's score on the Test for Auditory Processing Disorders in Children - Revised (SCAN-C) placed the Student in the auditory processing disorder category. On the Test of Word Finding – Second Edition, the Student demonstrated below average word retrieval skills (a standard score of 71; the mean is 100). This score is much lower than that attained by the Student during testing by Ms. Karpovich (Exhibit B-42). On the Ross Information Processing Assessment – Primary, the Student demonstrated good concrete reasoning skills but impaired abstract and inferential reasoning. Ms. Black concluded that the Student had developed compensatory strategies to cope with deficits but that the strategies would not be effective as the academic demands became more complex. Ms. Black recommended speech therapy for word finding, articulation errors, auditory comprehension and processing disorders as well as an evaluation for Central Auditory Processing Disorder. (Exhibits B-53 and B-56, Testimony of Joan L. Black)

15. PPT's were convened on April 1, April 29 and May 5, 2003 to discuss Joan Black's evaluations, evaluations the Parents were having performed at the Yale Child Study Center and additional evaluations requested by the Board. During this discussion, Jayne Bachyrycz described her observation of the Student in an English class. She noted that the Student paid attention but was very quiet. When asked to answer questions, the Student was able to answer one out of three questions but was led to the answer, "...[the teacher]...tried to walk ...[the Student]...down the path...to participate and I'm not sure if it was that...[the Student]...was not understanding or that...[the Student]...lacked in the desire to participate in open forum." (Exhibits B-54, B-55, B-57, B-62, B-63, B-64, Testimony of Jayne Bachyrycz)

16. In April, 2003, Jennifer Karpovich sought clarification from Carolyn Isakson, a state speech and language consultant, as to whether the Student could qualify for special education services or 504 accommodations if the Student was able to attain grades within the average to above average range. She noted in her email to Ms. Isakson that the Student "...does struggle but is doing ok with modifications." Ms. Isakson responded, "Adverse educational effect is more than academics." She suggested looking at the Student's participation in classroom discussions, comprehension of classroom material and interaction with peers. (Exhibit B-58)

17. The Yale Child Study Center evaluation was completed in May, 2003. During the evaluation, the Student became distressed when academically challenged and cried when test items were too difficult. It was concluded that the Student had deficits in the areas of verbal memory, auditory information retrieval, auditory sequential processing, inferential and non-literal language, and social skills. In particular, the Student's standard score on the non-literal language and inference subtests of the Comprehensive Assessment of Spoken Language ("CASL) fell in the deficient range (45 where the standard score is 100). On the Developmental Neuropsychological Assessment ("NEPSY"), the Student exhibited good ability to plan, monitor, self-regulate and problem solve but performed in the borderline range on a test that measured the ability to maintain selective auditory attention. On the Children's Memory Scale, the Student's immediate and delayed verbal memory scores were extremely low although immediate and delayed visual memory scores were average. This indicates a deficit in the Student's "... ability to process,

organize, and hold sequentially relevant auditory material in immediate working memory and a lack of ability to retrieve auditory information.” A statistically significant difference between the Student’s verbal and performance scores on the WISC-III (administered in 2002) was also noted. According to the Yale evaluator, such students, who exhibit features similar to a nonverbal processing disorder, also have low self-esteem and anxiety. Parental and teacher reports confirmed a clinically significant level of anxiety in the Student. The Yale team concluded that although the Student’s current academic achievement was at grade level, it would decrease as reading became more abstract and inferential. The Student’s reliance on literal language would also continue to impair social relationships. The team determined that the Student met the diagnostic criteria for a Generalized Anxiety Disorder and recommended that the PPT consider whether the Student would qualify for special education as “Other Learning Impaired, Seriously Emotionally Disturbed, or Language Impairment/Communications Disordered student.” If the Student did not qualify for special education services, then the Yale team suggested consideration of educational accommodations under Section 504. The Yale team also made several other recommendations including an intensive speech and language program, participation in a social skills training group and a psychiatric consultation to consider the possibility of anti-anxiety medication. (Exhibit B-68)

18. At the request of a parent advocate, Jennifer Karpovich and Jayne Bachyrycz completed a worksheet designed by the state Department of Education to assist in determining whether a student has a language disability (“Summary of Evaluation Findings: Language Worksheet”). Their responses on the worksheet, as requested, were based mostly upon a speech and language evaluation performed in 2002 by Ms. Karpovich (Exhibit B-42); additionally, fourth grade Connecticut Mastery Tests, teacher reports and report cards were considered. There was no parental input nor was there a speech sample or current Student interview. Ms. Bachyrycz has never worked directly with or evaluated the Student although she has observed the Student briefly at the Board elementary school and once at The Foundation School. The worksheet states, “...eligibility may not be determined solely on the basis of standardized tests.” Ms. Karpovich and Ms. Bachyrycz reported that the Student demonstrated strength and/or competency in all language areas listed on the worksheet except for reading and understanding a variety of genres and, by the report of one teacher, being able to predict, draw conclusions, problem solve and understand analogies (the language of thinking). The worksheet then lists various areas of potential educational concern that are to be labeled according to the following codes in determining the extent of adverse educational impact:

“A: Independent Performance: The student performs effectively all or most of the time with little, if any, assistance. He/she knows what to do and how.

B: Minimal Support: The student needs more cues, models, explanation, checks on progress or assistance than the typical student in his/her class. He/she may need some general education curriculum/program adjustment and/or remedial instruction.

C: Maximum Support: The student does not perform effectively most of the time, despite the provision of general education modifications and supports, e.g., prompts, cues, modeling, curriculum/program adjustments, remedial instruction.”

The form also states that at least two areas of educational concern must be labeled with a “C” before a student can be found to have a language disability. Based mostly upon the Student’s report card grades, Ms. Karpovich and Ms. Bachyrycz labeled just one area

with a “C:” social-emotional adjustment/behavior. Therefore, they determined that the Student did not have a language disability as there was insufficient evidence of adverse educational impact. During this hearing and for the purpose of testimony, Ms. Karpovich completed the worksheet again. Ms. Karpovich cited various tests and subtests from the Student’s many evaluations and found weaknesses in several areas, conceding that the Student does have a language impairment. However, she again found that the Student required maximum support in only one area (social-emotional adjustment/behavior) so that the Student was ineligible for special education. (Exhibits B-61, B-63 and B-85, Testimony of Jennifer Karpovich and Jayne Bachyrycz)

19. A PPT was convened on May 5, 2003 at which the language worksheet was discussed. Due to the differences in the test scores obtained by Joan Black and Jennifer Karpovich, the PPT requested consent for further evaluation. The Mother agreed but later rescinded her consent based upon the amount of testing the Student was undergoing at Yale. (Exhibit B-62, Testimony of Jayne Bachyrycz and the Mother)

20. The Student received “good” or “very good” in all subjects on the grade five report card. (Exhibit B-67)

21. On June 10, 2003, a PPT was convened in which the team determined that the Student did not qualify for special education services. The PPT was attended by Mary Kruger, Joan Black, and Dr. Maysa Akbar from Yale, all of who disagreed with the PPT decision. The PPT was ended and a 504 meeting was immediately convened. It was determined that the Student qualified for 504 accommodations due to Generalized Anxiety Disorder and Communication Impairment. A Student Accommodation Plan was developed which included a half hour per week of language therapy under the regular education initiative (for articulation and pragmatics) and guidance support. Classroom modifications were also to be provided including extra time for tests, projects and written work, preferential seating, placement in inclusion classrooms whenever possible and either talking the Student through stressful situations or removing the Student from such situations. (Exhibits B-69 and B-70, Testimony of Mother and Jennifer Karpovich)

22. Dr. Robert E. Jirsa of the Southern Connecticut State University Center for Communication Disorders performed an Auditory Processing Evaluation on June 11, 2003. He concluded that the Student had a severe auditory processing deficit primarily involving the prosodic and transfer processes. Testing suggested that there is a deficit in the transfer of information between the Student’s right and left brain via the corpus callosum. (According to Joan Black, the left side of the brain interprets verbal language while the right side of the brain interprets nonverbal meaning. The corpus callosum allows information to transfer from one side of the brain to the other. With this deficit, the Student hears the message but the information does not transfer to the right side of the brain so the Student is unable to understand the nonverbal, emotional meaning of what is heard.) People with this difficulty have problems understanding linguistically complex material and auditory intent so that it is difficult to interpret jokes, sarcasm and other language requiring an understanding of the subtleties of stress and intonation. Recommendations included a reevaluation in six to eight months, preferential classroom seating, prelearning complicated material, a reduction of auditory distraction in the classroom, frequent monitoring by the teacher to ensure that the Student understands the

information, language therapy and auditory training (which, according to Ms. Black, can strengthen certain avenues in the brain and stimulate the corpus callosum). (Exhibit B-73, Testimony of Joan L. Black)

23. During the summer, 2003, the Student received speech therapy from Ms. Black during which Ms. Black noted new areas of deficit. For example, the Student has difficulty understanding idioms and words with multiple meanings. The Student is also rigid with regard to learning new concepts: many activities were required before the Student understood that Alaska and Hawaii are detached from the mainland (because most maps show them in boxes on the same page as the rest of the country). (Exhibit P-2, Testimony of Joan L. Black)

24. To help develop social skills, the Student also began receiving art therapy during the summer of 2003. The art therapy was provided by Sarah Julian of Superkids in both individual and group sessions. The Student was in a group of six students that worked on peer relationships and conversation skills. The Student's social skills fell at the lower end of the group. The Student made some progress during the sessions but still needs to work on conversation skills. (Testimony of Sarah Julian and the Mother)

25. Dr. Steven Spector, a child and adolescent psychiatrist and clinical affiliate professor at Yale, began seeing the Student in July, 2003 after a referral from Superkids. He diagnosed the Student with Pervasive Development Disorder, Not Otherwise Specified ("PDD NOS") and with Generalized Anxiety Disorder as a secondary disorder. The PDD spectrum has three spheres characterized by social deficits, language delays, and rigidity or compulsive or stereotypical behaviors. He sees the Student's language disorder as falling within one of these spheres. Dr. Spector testified that the Student can not appreciate metaphoric phrases, abstract ideas or language with double meanings. As an example, Dr. Spector described asking the Student to "go up" during a number exercise, meaning to go up in numbers; instead, the Student stood up. The Student is also a rigid thinker and does not understand the intentions of language; this affects social functioning. Dr. Spector believes the Student needs to be with staff that understands the Student's disabilities and who can act proactively by teaching coping skills and strategies. The interplay of anxiety and PDD NOS would make it difficult for the Student to function in the mainstream where a teacher would be less likely to notice when the Student is confused. Dr. Spector also testified that the Student was relatively successful in elementary school because the curriculum and tasks are generally concrete; as the curriculum becomes more abstract, the Student will experience greater difficulty. (Testimony of Dr. Steven Spector)

26. Dr. Spector has prescribed medication to help control the Student's anxiety and meltdowns. The Student currently takes Zoloft and Respiridal.

27. The Parents enrolled the Student at the Foundation School for the 2003-2004 school year. They requested that the Board pay for the Student's tuition and transportation. Due Process and mediation was requested by the Parents. An agreement was reached in which the Parents received reimbursement for costs associated with the Student's attendance at Foundation, evaluations and attorney's fees. It was also agreed that regular



education would be the Student's stay put placement. (Exhibits B-74 through B-77, P-29)

28. The Foundation School is a state approved, language-based private special education school. Foundation is a fairly restrictive environment; all students at Foundation require special education services and there are no extracurricular activities. The Foundation School has two campuses; one in Orange, Connecticut that serves approximately 30 elementary aged students and 65 middle school students, and a campus in Milford with 65 high school students. Most students are placed at Foundation by their school districts. Half of the middle school students have speech and language disabilities and/or nonverbal learning disabilities. The other half of the middle school is composed of students with autism, neurological impairments and behavior issues. Within the middle school population, the Student functions socially within the middle to lower end of the group; academically, the Student functions in the middle. Ms. Bourdeau described the Student as a literal and concrete learner who learns best when given small chunks of information with visual supports. The Student has difficulty separating fact from fantasy. (The Student believes some cartoon characters are real.) The Student still experiences meltdowns every week or two if information is too abstract. Currently, the Student is receiving below grade level instruction in all academic areas based upon goals and objectives developed at Foundation. The curriculum includes all normal subject areas but classes are small (3 to 6 students) with speech and language issues consistently covered throughout the day (in addition to one hour per day of specific speech and language training). The Student also receives social skills training, adaptive physical education and occupational therapy (to help modulate arousal levels). The Student has developed a group of friends, has begun to self-advocate and is more comfortable asking questions and accepting help. (Exhibit P-21, Testimony of Diane Bourdeau)

29. The Foundation School issued progress reports in November, 2003 and January, April, and June, 2004. During the school year, the Student worked on improving auditory memory skills, verbal reasoning and pragmatic language skills. Earobics, a computer program, was used to improve auditory processing skills. Carol Grey's Comic Strip program was used to improve verbal reasoning and expression, interpersonal/social skills and conceptual language comprehension. Writing webs and outlines were used to improve the Student's writing skills although by June the Student still found it difficult to expand her writing beyond an outline. Reading instruction was provided through a fifth grade reading text. In the January, 2004 progress report, it was noted that the Student continued to misread social cues, could not follow age appropriate social dialogue and often misunderstood classroom directions or the content of discussions. These misunderstandings could lead to distress and often caused the Student to shut down. However, instead of crying and leaving the room, the Student was increasingly asking for clarification when confused. Gains were also made in the Student's ability to verbally repeat sentences of 8 to 11 words, solve simple problems, answer inferential questions and draw conclusions. However, the Student needed moderate to maximum support to recall facts from a 5 to 7 sentence paragraph. By June, the Student had further increased the ability to repeat sentences, recall facts from stories, answer questions related to a story and follow directions. The Student also continued to develop comprehension of the subtle aspects of conversation and abstract language. (Exhibits P-5, P-6, P-14 and P-20)

30. The sixth grade Connecticut Mastery Test was administered to the Student at The Foundation School in the fall of 2003. The test divides scores into five levels: below basic, basic, proficient, goal and advanced. In reading and writing, the Student scored in the "basic" range. According to the report of the test, students at this level can generally comprehend sixth grade textbooks although their writing tends to be brief, disorganized, awkward and confusing. In math, the Student scored at the "proficient" level. The test report states that these students have well-developed computational skills but partially developed conceptual understanding and problem-solving skills. (Exhibit P-23)

31. Dr. Geraldine Cassens, a clinical neuropsychologist and an associate professor in clinical psychiatry at the University of Connecticut School of Medicine, performed a neuropsychological evaluation of the Student on January 22, 2004. Dr. Cassens administered the WISC-III on which the Student obtained a verbal score of 98, performance score of 93 and full scale score of 95 (average range). Articulation deficits were noted, as was evidence of a Central Auditory Processing Disorder. Based upon her testing, Dr. Cassens concluded that the Student has an impaired memory for longer sentences, word finding deficits, impaired verbal fluency, impaired math skills, moderate deficits in executive functioning (sequencing, prioritizing and organizing), significant anxiety and a very significant expressive and receptive language disorder. Dr. Cassens' recommendations included consistent and intensive speech therapy, an updated Central Auditory Processing Disorder evaluation, placement in a small, language-based classroom, social skills training and support in mathematics. Dr. Cassens stated that a half hour per week of language therapy could not possibly meet the Student's needs. Dr. Cassens concluded that the Student's anxiety is secondary to and a result of a language disability; therefore, the Student should qualify for special education services under Language Impairment/Communications Disorder although if the Student's needs were not addressed, the Student could also soon qualify as Seriously Emotionally Disturbed. (Exhibit B-78, Testimony of Dr. Geraldine Cassens)

32. In March, 2004, the Board sent staff to observe the Student at the Foundation School. In the Student's language arts class, in which there were three students, it was reported that the Student seemed comfortable and engaged. In the social studies class where there were five students, it was noted that the Student appeared to be functioning in the middle of the group. The Student answered questions spontaneously although assistance was needed with some of the questions. All the students did well in the class as the lesson was fact-based. In the language class, the observer (Sara Morgatto) noted that the Student correctly answered an inferential question. The Student exhibited no signs of anxiety in any of the classes observed. Jayne Bachyrycz, one of the Board observers, testified that the class she observed was not educationally inappropriate. Foundation staff commented to the Board observers that the Student has immature social skills and difficulty interpreting social situations, tends to think that people are yelling at her, sometimes "freezes up" and cries, demonstrates convoluted writing and has a narrow focus and difficulty generalizing. None of the reports indicated that Foundation was an inappropriate placement for the Student. In addition, Jennifer Karpovich testified that most of the goals and objectives developed for the Student at Foundation (Exhibit P-21) are appropriate. (Exhibits P-10, P-11, P-21, Testimony of Jayne Bachyrycz and Jennifer Karpovich)

33. In May and June, 2004, Joan Black observed the Student at the Foundation School as well as the Board middle school. Ms. Black concluded that the educational program, small class space and limited background noise at Foundation presented an appropriate environment for the Student due to the Student's central auditory processing disorder, language processing disorder, nonverbal learning disability and anxiety. Ms. Black also testified that the Student appeared to be more focused and organized and seemed to have better peer relationships. Ms. Black found the Board middle school to be too large and too noisy. The classes also move too quickly for the Student and require an independence the Student does not yet possess. In addition, the student to teacher ratios in both the regular and inclusion classrooms are too high. (Exhibit P-25, Testimony of Joan Black)

34. Dr. Miriam Cherkas-Julkowski has a Ph.D. in special education and was a professor of special education for 25 years at the University of Connecticut. Dr. Cherkas-Julkowski performed a Diagnostic Cognitive and Achievement Evaluation of the Student on April 21, 2004. Dr. Cherkas-Julkowski concluded that the Student has a nonverbal learning disability or right hemisphere syndrome. Social interaction is difficult for someone with right hemisphere syndrome because social rules are fluid and depend upon context. In addition, if work is global and requires a non-literal understanding of the "big picture," the Student will be at a loss. For example, on the Rey Osterrieth Complex Figure test where the Student must draw a figure from memory, the Student was unable to grasp the overall design. The Student was only able to draw free floating, unconnected details from memory; the Student never saw the "big picture." The Student's writing samples were also fragmented and disorganized although there was a good use of vocabulary. On the Test of Written Language, the Student was unable to generate any writing until extensively prompted; according to Dr. Cherkas-Julkowski, the real score on the test should therefore be zero. Dr. Cherkas-Julkowski's recommendations included explicit instruction and directions with regular checking to ensure comprehension, extra time for work, structured social interactions, hands-on math, and the provision of experiences that will develop the right hemisphere. Public school could provide such a curriculum but would need informed teachers and small classes as the Student would require most of a teacher's time. (Exhibit B-79, Testimony of Dr. Miriam Cherkas-Julkowski)

35. While the Board has conceded that the Student does have a language impairment (see Finding of Fact No. 18, above), Board personnel testified that the Student does not have a learning disability. Jennifer Karpovich testified that a student with a nonverbal learning disability would have low scores on the block design and object assembly subtests of the WISC-III; the Student's scores on these subtests were average. Sara Morgatto, whose only involvement with the Student was an observation at Foundation, also testified that the WISC-III performance score would be significantly lower than the verbal score in the presence of a nonverbal learning disability. In Dr. Cassen's administration of the WISC-III, there was no significant discrepancy between these two scores but in any case, there is no specific "nonverbal learning disability" category in Connecticut. Ms. Morgatto believes Dr. Cherkas-Julkowski relied too heavily on the TOWL in making a nonverbal learning disability diagnosis. Had the Student not been prompted, the TOWL would have been unscorable – the Student would not receive a score of zero. Ms. Morgatto also testified that the Student does not have a learning

disability because there is no significant discrepancy between the Student's ability and achievement scores which, according to state guidelines, can only be found by looking at either the full scale, verbal, or performance scores of an ability test; subtest scores can not be used. While the Board does not dispute the existence of the Student's language impairment, this impairment, according to Board personnel, has not adversely affected the Student's educational performance as measured by standardized test scores, report card grades and class performance. (Testimony of Jennifer Karpovich and Sara Morgatto)

36. A 504 meeting was held on April 12, 2004. A Student Accommodation Plan was developed that found the Student eligible for 504 accommodations based upon a Generalized Anxiety Disorder and Communication Impairment. Speech support and a home program were offered along with various classroom, environmental, behavioral management and teaching strategy modifications. A middle school transition meeting was planned for June after the Student had spent a day at the middle school (which the Parents later refused to allow). (Exhibit B-82, Testimony of Mother)

37. On June 1, 2004, the PPT convened to determine the Student's eligibility for special education services. Once again, the PPT decided that the Student was not eligible. Jayne Bachyrycz testified that a student should not be designated as eligible for special education until teachers feel that they have tried everything possible and nothing has worked. According to Ms. Bachyrycz, if a student can perform acceptably, even if such performance requires remedial assistance and constant prompting and cues, then the student is not eligible for special education services. (Exhibit B-80, Testimony of Jayne Bachyrycz)

38. On June 9, 2004, the Student received an auditory re-evaluation at the Center for Communication Disorders at Southern Connecticut State University. Improvement was noted at this evaluation; it was concluded that the Student now had a mild to moderate auditory processing disorder. Significant difficulties continued in the area of auditory temporal processing. Although the disorder had improved, the Student would still experience difficulties comprehending in a noisy environment and would continue to have problems comprehending linguistically complex material or determining auditory intent. A re-evaluation in six to eight months was recommended as were classroom modifications such as preferential seating, reduced auditory distraction in the classroom and frequent monitoring by the teacher to ensure that material has been understood. Continued auditory training was also recommended. (Exhibit P-22)

39. Due to school anxiety and peer socialization problems, the Student has received therapy from Mary E. Kruger, a licensed marriage and family therapist, since November, 2002. Ms. Kruger has observed the Student's inconsolable meltdowns; once stuck in such a state, it is difficult for the Student to get out of the mood. And although aware of the meltdown, the Student is unable to describe the precipitating event. Ms. Kruger described the Student as a concrete thinker who is socially immature, easily upset and in need of structure and organization both at home and in school (although the Student may look like a regular student in a class as the Student often pretends to understand what is going on). As confirmed by other evaluators, the Student has difficulty processing auditory information so Ms. Kruger and the Student often write to each other on a white

board during therapy sessions. In July, 2004, after visiting both the Foundation School and the Board's middle school, Ms. Kruger determined that the middle school, with its level of activity and noise in the classroom, halls and cafeteria, would be too overwhelming for the Student. The social demands and lack of daily speech therapy would also lead to increased frustration and anxiety. Ms. Kruger stated that the Student functions in the middle of the group at Foundation and has developed friendships. The Foundation School curriculum also offers grade level subject matter but teaches it in a concrete fashion with the visual supports the Student needs. (Exhibits B-59 and P-24, Testimony of Mary E. Kruger)

40. The Student attended the Foundation summer program during the summer of 2004 during which another auditory training program, "Fast Forward," was used. The Parents reenrolled the Student in Foundation for the 2004-2005 school year. (Testimony of Mother)

41. Joan Black completed the state "Summary of Evaluation Finding; Language Worksheet" after Jennifer Karpovich had completed the worksheet for the second time (Exhibit B-85). Ms. Black found that the Student needed maximum support in four areas: listening comprehension, reading, written language and social-emotional adjustment/behavior and therefore qualified for special education services. (Testimony of Joan L. Black)

### **CONCLUSIONS OF LAW:**

1. 20 U.S.C. Section 1401(3)(A) states that a child with a disability means a child – "(i) with mental retardation, hearing impairments (including deafness), speech or language impairment, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services."
2. 34 C.F.R. Section 300.7(c)(11) states "Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance."
3. The Board has conceded that the Student has a language impairment but believes that this impairment has not adversely affected the Student's educational performance. Therefore, they have not found the Student eligible for special education as language impaired although they have found eligibility for accommodations under Section 504 of the Rehabilitation Act of 1974.
4. In making the determination that the Student's language impairment has not adversely affected educational performance, the Board has relied heavily on the language worksheet completed by Jennifer Karpovitch and Jayne Bachyrycz (Exhibits B-65 and B-85). There are several problems with the way in which the worksheet was completed. First, the worksheet clearly states that standardized tests may not be the sole determinant of eligibility, but in Exhibit B-65, the conclusions are mostly based upon the evaluation

done by Ms. Karpovitch almost a year and a half before (Exhibit B-42). (While it is understood that the use of Ms. Karpovich's evaluation had been requested by a parent advocate, the Board relies on this worksheet to support their determination.) In addition, Ms. Karpovitch and Ms. Bachyrycz used fourth grade Connecticut Mastery scores that were almost two years old. Ms. Karpovich testified that report card grades were also employed in filling out the worksheet, but the grades of "good" and "very good" are rather subjective and therefore not very useful. There was no parent input and no interview of the Student or current speech sample. Finally, neither Ms. Karpovitch nor Ms. Bachyrycz had recently worked with the Student in any significant way. Therefore, while the worksheet may be a starting point for discussion, it is not conclusive.

5. "Communication is a complex process and communicative competence may vary across time, settings and communication partners. Therefore, eligibility for speech and language services should be determined based on information gathered about a student's communication strengths and weaknesses over time and from a variety of sources and/or settings." (Guidelines for Speech and Language Programs, Volume II, Determining Eligibility for Special Education Speech and Language Services, State of Connecticut, Department of Education – 1999, Revised 2003. While the Guidelines do not have the force of law or regulation, they provide useful principles and guidelines to be followed in Connecticut). Therefore, it is not enough to look at grades and standardized test scores at one moment in time; the totality of the Student's entire record must be examined.

6. During the third, fourth, and fifth grades, the Student Assistance Team met to deal with the Student's behaviors. When confronted with new or difficult material, the Student would cry, refuse to work and shut down. Some of these "meltdowns" totally incapacitated the Student to the point where no work could be produced. The Student also had great difficulty understanding questions and directions. In addition, the Student's peer interactions were limited. The team recommended explaining directions and instructions and having the Student restate them. The Student was also placed into inclusive, lower level math classes. By the fifth grade, the Student was experiencing panic attacks in the classroom and physical manifestations of anxiety such as hyperventilating, vomiting and nosebleeds. A series of modifications were put into place that eased, but did not resolve the issues. Thus, each year, the Student presented with anxious behaviors and difficulty with new work and following directions. Each year, modifications and accommodations were put into place with limited success only to be repeated the following year.

7. Board evaluations also picked up some warning signs of speech and language difficulties. The school psychologist, in a psychoeducational evaluation administered in January, 2002, noted that some subtest scores indicated inadequate auditory memory and difficulty learning new material quickly. He predicted that the Student would have problems with social interactions due to an inability to see the nuances of social behaviors. Scores from Ms. Karpovich's speech and language evaluation performed in February and March, 2003 were mostly average but on the recalling sentences subtest of the CELF-3, the Student's score fell at the 9<sup>th</sup> percentile.

8. No real answers were forthcoming until the Parents obtained several independent evaluations. While the Mother had stated that the Student had difficulty putting her

thoughts into words and wrote sentences that made no sense, Joan L. Black's evaluation first noted the possibility of a Central Auditory Processing Disorder, later confirmed by Dr. Robert E. Jirsa. Ms. Black also commented on the Student's inability to meaningfully retell a factual event or story. The Yale Child Study Center evaluation found deficits in the areas of verbal memory, auditory information retrieval, inferential and non-literal language and social skills. They diagnosed the Student with Generalized Anxiety Disorder and recommended special education identification as Learning Impaired, Seriously Emotionally Disturbed or Language Impairment with 504 accommodations as a second choice. A later evaluation by Dr. Geraldine Cassens confirmed a language disability, memory deficits and anxiety and recommended special education identification under Language Impairment. Dr. Steven Spector also noted the Student's difficulty with non-literal language but felt the Student's language impairment fell within the PDD spectrum. Finally, Dr. Cherkes-Julkowski commented on the Student's difficulty with directions and non-literal language although she felt that non-verbal learning disability was a more accurate descriptor of the Student's exceptionality.

9. With the information obtained from these evaluations, it is clear that the Student has a language impairment and that the Student's difficulty understanding directions and dealing with new or more difficult and/or abstract material is a result of that impairment. When these language difficulties arise, the Student becomes upset and anxious.

10. Despite these evaluations and recommendations, the Board has been resolute in their belief that the Student's language impairment has not resulted in adverse educational impact. They have relied upon the Student's good report cards, average performance on many standardized instruments and the Student's promotion each year to the next grade level. In an email exchange between Jennifer Karpovich and Carolyn Isakson, Ms. Isakson stated that adverse educational effect is more than academics. Classroom discussions, comprehension of classroom material and peer interaction are also factors. These are all areas where the Student has struggled. Jayne Bachyrycz described her observation of the Student during fifth grade where the Student was very quiet; when asked to answer questions, the Student could only answer one out of three and even then had to be "led" to the answer. The Student's difficulty with peer interaction has also been an ongoing topic at the Student Assistance Team meetings.

11. The Board has argued that the Student generally needs only minimal support (as described in the language worksheet at Exhibit B-61) to make educational progress. In fact, the Board has been providing maximum support: each year, significant modifications and accommodations were put into place but the Student's difficulties persisted with the same issues being continuously raised with the Student Assistance Team. The Board has also relied on a number of cases where no adverse educational impact was found despite the existence of documented disabilities. In none of those cases, however, were Student Assistance Teams meeting every year to deal with the same issues: how to help the Student deal with new material, participate more actively in class, understand directions and improve peer relationships. Nor did the cases concern students who exhibited physical manifestations of anxiety when confronted with new or difficult educational demands. Therefore, the Student not only has a language impairment, but it has required maximum support and has resulted in an adverse impact on educational performance.

12. Many of the evaluators have explained the Student's often acceptable performance in class by stating that elementary education requires mostly concrete, rote learning. They have predicted that middle school and high school will present significant challenges to the Student who will not be able to keep up as the educational demands become more inferential and abstract. The Board has argued that a Student should not be found eligible for special education just because they might fail in the future. While this may be true, it is also true that every possible modification does not have to be offered to a student (as one witness argued) nor does a student have to fail before becoming eligible for special education. The possibility of future eligibility for special education services is also not sufficient to a finding of current eligibility. Here, however, the Student's downward drift was already becoming apparent. Not only had the problems discussed in the Student Assistance Team meetings become more serious, but the Student's sixth grade CMT scores had slipped from previous administrations: the Student went from scoring above goal in reading and writing in the fourth grade to the basic level in sixth grade.

13. Connecticut regulations provide that "...the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency." (Regulations of Connecticut State Agencies 10-76h-14(a)) The Student meets the requirements to be found eligible for special education as a speech and language impaired child, therefore, it is clear that the Board has not proved the appropriateness of the program offered to the Student for the 2004-2005 school year. While it is possible that sufficient support and modifications might have been offered under Section 504, what was offered to the Student does not come close to meeting the Student's needs. The vague "speech support along with a home program as needed" (Exhibit B-82) is totally insufficient if there is to be any remediation of the Student's specific expressive and receptive language needs. As recommended by Yale and Dr. Cassens, the Student requires a consistent and intensive speech and language program. In addition, the accommodations provided by the 504 plan are not much different than what had been offered – with limited success – in the past. One could not reasonably expect this program to be successful.

14. Seriously Emotionally Disturbed and Learning Disability were also suggested by the Parents as potential special education categories. However, the evidence points to a speech and language disability. There was disagreement among the evaluators as to the primary disability. There was some evidence of a learning disability although on Dr. Cassens' administration of the WISC-III, there was no discrepancy between the Student's verbal and performance scores. Dr. Cherkes-Julkowski diagnosed (and Yale mentioned) a non-verbal learning disability although this category does not specifically exist in Connecticut. Only Dr. Spector diagnosed PDD NOS although the characteristics he described are similar to a nonverbal learning disability. The only disability that all the evaluators agreed upon, and with which the Board concurred, is a speech and language impairment. The anxiety and emotional disturbance from which the Student suffers appears to be a secondary disability, and a result of the primary language disability as described by Dr. Cassens.

15. Under the line of cases that includes Burlington v. Dept. of Educ., 736 F.2d 773 (1<sup>st</sup> Cir. 1984). Aff'd 471 U.S. 359 (1985) and Florence County Sch. Dist. Four v. Carter, 510



U.S. 359 (1985), a parent can seek payment for a private placement from their school district if first, there is a finding that the school district's proposed placement was not appropriate, as here, and second, a finding that the private placement is appropriate.

16. The Foundation School offers the Student an appropriate, language-based program. Besides offering an appropriate curriculum and specific language classes, the school meets the Student's needs by integrating speech and language training into the curriculum throughout the day. It has also offered auditory training ("Earobics" and "Fast Forward") as recommended by Dr. Jirsa. In addition, the school provides social skills training and an environment composed of small, quiet classes with a low teacher/student ratio (as recommended by Dr. Cassens). By report of the Mother, Ms. Kruger, The Foundation School and Board observers, the Student appears to function near the middle of the school population both academically and socially. The Board observations also note that no anxiety was seen on the part of the Student; this may indicate that many of her language and comprehension needs are being met. In addition, Jayne Bachyrycz testified that the class she observed was not educationally inappropriate for the Student and Jennifer Karpovich testified that most of the goals and objectives developed for the Student were appropriate (See Finding of Fact No. 32). No Board observer claimed that Foundation was an inappropriate placement for the Student.

17. There is no doubt that The Foundation School is a fairly restrictive environment. All the students are disabled and there are no extracurricular activities. The IDEA requires that children with disabilities be educated, to the maximum extent appropriate, in the least restrictive environment ("LRE") and are to be removed from regular education only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 C.F.R. Section 300.550). Here, the Board neither found the Student eligible for special education nor did they offer the supplementary aids and services that might have made it possible for the Student to remain in regular education. Accordingly, the LRE for the Student, at the current time, is The Foundation School.

18. During The Foundation School's summer program, the Student participated in an auditory training program, "Fast Forward." Auditory training was strongly recommended for the Student by Dr. Jirsa and Joan Black in order to continue the progress made with the Student's Central Auditory Processing Disorder during the 2003-2004 school year (See Finding of Fact No. 38). Therefore, the Student required an extended school year program during the 2004-2005 school year.

19. The Foundation School is a language-based school that offers extensive programming both in social skills training and speech and language. As such, there is no reason to believe that the Student additionally needs the related services of speech and language therapy and social skills education when that is being provided every day, throughout the day, at The Foundation School.

**FINAL DECISION AND ORDER:**

1. The Student is eligible to receive special education services as a child with a speech and language impairment.
2. The Board of Education did not offer an appropriate program for the 2004-2005 school year.
3. The Foundation School has offered an appropriate program for the 2004-2005 school year. The Parents are to be reimbursed for all costs associated with the Student's attendance at The Foundation School for the 2004-2005 school year, including tuition and transportation.
4. The Student required an extended school year program for the 2004-2005 school year (summer, 2004). The Parents are to be reimbursed for all costs associated with the Student's attendance at the extended school year program at The Foundation School including tuition and transportation.
5. The Student does not require speech and language services and social skills education as related services due to their inclusion in The Foundation School curriculum.