

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Wilton Board of Education

Appearing on behalf of the Parent: Jennifer D. Laviano, Esq.
77 Danbury Road, Suite C-6
Ridgefield, CT 06877

Appearing on behalf of the Board: Lawrence J. Campana, Esq.
Sullivan, Schoen, Campana
& Connon, LLC
646 Prospect Avenue
Hartford, CT 06105-4286

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

FINAL DECISION AND ORDER

ISSUES:

1. Were the special education programs and placements offered to Student by the Board for the 2003-2004 and 2004-2005 school years appropriate to her needs in the least restrictive environment?
2. Did the Board evaluate Student properly?
3. Did Student require extended year services in 2004?
4. Has the Board provided appropriate related services?
5. Shall the Board reimburse the Parents for an evaluation performed by Dr. Krueger?
6. Shall the Board reimburse the Parents for privately obtained services?
7. If the Board's special education programs/placements were not appropriate, is placement at Eagle Hill in Hardwick, MA, appropriate for Student?
8. Shall the Board reimburse the Parents for the cost of Student's placement at Eagle Hill?
9. Is the Board liable for compensatory education?

PROCEDURAL HISTORY:

This hearing was requested by Parents on March 8, 2005, and the hearing officer was appointed on March 9, 2005. To accommodate an attorney's vacation schedule, the pre-hearing conference was held on March 23, 2005. The hearing was scheduled for April 19, May 6, 11, and 13, 2005. In order to accommodate these additional hearing dates, the parties requested that the hearing officer extend the deadline for the mailing of the final decision and order from April 22 to May 22, 2005, which the hearing officer granted. The hearing convened on these dates. On May 13, the parties requested additional hearing dates and a further extension of the deadline. The hearing officer agreed, scheduling hearing dates of June 15 and 16, 2005, and extending the deadline for the final decision and order from May 22 to June 21, 2005. The deadline was extended again, to June 28, 2005, to provide time for the writing of the decision after the hearing closed on June 16, 2005.

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

SUMMARY:

Student had received some special education services since kindergarten. After difficulties in eighth grade (2003-2004), Parents consulted a Clinical Psychologist and secured an independent evaluation. Parents determined that Student needed more support in her educational program. They sent her to a summer program at Eagle Hill School in Hardwick, Massachusetts. Student did well in the Eagle Hill summer program, and asked to continue there for ninth grade. Parents made a unilateral placement at Eagle Hill and asked the Board to fund the placement. The Board refused funding, and asserts that the program devised by the Planning and Placement Team (PPT) for 2004-2005 was appropriate to Student's special education needs.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

FINDINGS OF FACT:

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

1. Student was referred for evaluation in November of her kindergarten year (1994-1995). She repeated kindergarten in 1995-1996. After consulting with Student's pediatrician, Parent requested an evaluation concerning Student's poor focusing and listening skills. The PPT met on April 3, 1996, to discuss this request, and Parent signed consent for an evaluation. (Exhibits B-6, B-13, B-14)

2. Because of concerns regarding language processing, distractibility and social maturity, Student had a psychological evaluation in May, 1996. A history of ear infections and inconsistent failure of the school hearing screening were reported. She scored an 83 verbal IQ, 89 performance IQ, and 84 full scale IQ, considered a low average score. Her scores on the Wechsler Individual Achievement Test (WIAT) were reading and spelling, average range, and math reasoning, low average, with no significant discrepancies. On the Connors scale, she showed no significant conduct problems, and significant issues in hyperactivity, inattention-passivity and hyperactivity index. This evaluator described her: "... presents as a language impaired student with deficits in auditory comprehension and processing ... impulsivity and hyperactivity are significantly elevated". (Exhibit B-17)
3. In May and June, 1996, Student also had a speech/language evaluation. Her hearing acuity had been inconsistent through the school year. Her auditory processing and receptive and expressive language skills were "generally weak for her age and grade level". On the Clinical Evaluation of Language Fundamentals-3 (CELF-3), she showed strengths in receptive single-word vocabulary, processing of word classes, and knowledge of word structure rules. She performed at a low average level on: tasks assessing her ability to state a precise definition or two descriptive characteristics for a given word, her understanding of syntactic rules at the sentence level, short term auditory memory for imitative sentences, ability to follow oral directions giving a point response and giving a written response. Weaknesses noted were inferential reasoning skills, auditory comprehension, ability to state at least two interpretations for multiple meaning words or phrases, ability to interpret expressions, and word retrieval. The Speech/Language Pathologist (S/LP) who evaluated Student summarized recommendations:
to address inconsistent hearing acuity, a structured classroom with as few auditory distractions as possible; preferential seating; visual and contextual cues; S/L services to address articulation, appropriate voice, auditory processing and language skills; and extra processing time for responding orally and in writing. (Exhibit B-20)
4. After the evaluation, the PPT met on June 11, 1996, to review evaluation results. Student was identified as having a speech/language impairment. Her Individualized Education Program (IEP) provided for 2.5 hours in the resource room per week, and 1.5 hours of group S/L therapy. (Exhibits B-8, B-21)
5. In January, 1997, the PPT recommended that Parents discuss Student's attention problems with their pediatrician. Written language and reading comprehension goals were added to Student's IEP. (Exhibit B-27)
6. A S/L progress report dated May, 1997, concluded with recommendations:
... during the 1997-98 school year (1) Student [should] continue to receive small group auditory processing and language services 1.5 hours per week, (2) her auditory processing and language skills [should] also continue to be addressed

- within the classroom setting by the S/LP and classroom teacher through a language consultation/collaboration program, (3) in view of her hearing acuity difficulty and her weak auditory attention and auditory figure-ground discrimination skills, she [should] continue to receive preferential seating in the classroom, and (4) in view of her delays before responding, she [should] be given “processing time” before responding orally and in writing. Exhibit B-31, pp. 6-11)
7. The PPT met on May 28, 1997, to discuss Student’s progress and to plan for the next year. Her IEP provided for five hours in the resource room per week and 1.5 hours of group S/L therapy. Modifications were listed for her regular education program. (Exhibit B-33, pp. 8-9)
 8. In October, 1997, the PPT requested consent to evaluate Student for learning disabilities and attention problems. A modified homework program was started, and Parent consented for further evaluation. (Exhibit B-37)
 9. A psychoeducational evaluation was performed in January, 1998. On the WISC-III, Student scored 85 in verbal comprehension, 94 in perceptual organization, and 104 in freedom from distractibility. Her IQ scores were verbal, 87; performance, 95; and full scale, 90. On the WIAT, she scored 88 in basic reading; 92 in mathematical reasoning; and 96 in spelling. This evaluator noted relative strengths in short term auditory memory, fund of information and math concepts. Weaknesses were noted in auditory processing, abstract and conceptual thinking, and expressive language. Although she had improved in sustaining attention, her reading decoding and math application scores were depressed. These results were discussed at a PPT meeting on January 27, 1998. (Exhibits B-44, B-46)
 10. A May/June S/L progress report mentioned improvement. Scores on the CELF-3 showed a total language score in the average range. Three subtests were in the high average range, three in the average range, and two in the low average range. (Exhibit B-42)
 11. A reading assessment was performed on May 14, 1998, the end of Student’s second grade year. This evaluator noted that:

Student’s conversational speech and language abilities seemed limited for her age level. She was cooperative throughout the examination. [Student] appeared attentive to the tasks. She responded very slowly and carefully to the test questions. She noticeably increased her level of effort for difficult tasks.

This evaluator summarized test results:
When compared to others at her age level, [Student’s] overall reading performance is average. Her performance is average in basic reading skills and average in reading comprehension. [Student] will find the reading demands of age-level tasks difficult. Age-level tasks requiring basic reading skills will be very difficult for her. Age-level tasks requiring reading comprehension will be difficult for her.

- [Student's] phonological awareness and oral comprehension are low average when compared to others at her age level. The phonological awareness demands of age-level tasks will be very difficult for her. The oral comprehension demands of age-level tasks will also be very difficult for her.
No significant aptitude/achievement discrepancies were found among [Student's] predicted and actual reading scores. (Exhibit B-48)
12. At a May 19, 1998, PPT meeting, Student's special education services were increased to seven hours a week for language arts and math support and an extended year program was offered. An instructional aide was to be provided for 45 minutes a day and S/L services for 1.5 hours per week continued. At this time, strengths were listed as: a hard working student, very good social skills, understanding of the school environment, and motivated to succeed academically. Concerns/needs were listed as "distractible without Ritalin, severe decoding difficulties". (Exhibit B-43)
 13. The PPT met on February 22, 1999, to review Student's progress. Because of her difficulties with handwriting, word processing was to be encouraged. Strengths were listed: well related to adults and peers, she is invested in her school work and is very determined to learn although many aspects of language arts and math are hard for her; and concerns/needs: distractible without stimulant medication, moderate decoding difficulties, lack of fluency, spelling errors. (Exhibit B-54)
 14. A reading assessment was performed on April 12, 1999, the end of Student's third grade year. The evaluator commented that Student's conversational speech and language abilities seemed typical for her grade level. She summarized the results of the evaluation:
When compared to others at her grade level, [Student's] overall reading performance is average. Her performance is average in basic reading skills and average in reading comprehension. [Student] will find the reading demands of grade-level tasks manageable. Grade-level tasks requiring basic reading skills will be manageable for her. Grade-level tasks requiring reading comprehension will also be manageable for her. (Exhibit B-57)
 15. A PPT meeting record dated April 19, 1999, noted S/L services, support in math and language arts, hearing checks by school nurse, medication for attention, and an extended year program. Strengths were listed: highly receptive to instruction, well related to both adults and peers; and concerns/needs: significant decoding and comprehension difficulties, poor integration of skills, needs prompting to use skills, Math is also impacted by lack of integration skills. For the next year, her IEP called for eight hours per week of support in language arts (in the classroom and in the resource room), 2.5 hours per week of phonics skills program in the resource room, two hours per week of math support, and one hour per week of S/L therapy. (Exhibit B-56)
 16. A May/June, 1999, S/L report showed CELF-3 scores for receptive and expressive language in the average range. The S/LP summarized:

- She is conscientious and always tries her best at whatever program is being taught. Language comprehension is difficult for [Student], but she has progressed nicely through the Visualizing and Verbalizing program. (Exhibit B-58)
17. The PPT met on October 28, 1999, and changed Student's disability category to learning disability. An Occupational Therapy (OT) evaluation was planned. Student needed to wear her glasses, and written work would be presented on a clipboard. Extra help after school would be given on Tuesdays. Parents reported a change in attention medication. (Exhibit B-61)
 18. Student took the KeyMath Revised on December 9, 1999. In basic concepts, she scored in the average range on seven subtests and was rated weak on three subtests. In operations, she scored average in four areas and weak in five areas. In applications, she scored average in five areas and weak in six areas. (Exhibit B-63)
 19. After the OT evaluation, the PPT added OT services to Student's IEP on December 13, 1999, and also scheduled OT consultation with her teachers. Student was using a slant board for written work. (Exhibit B-65)
 20. Student was evaluated on May 8, 2000, at the end of her fourth grade year. On the Woodcock-Johnson-Revised, her achievement scores were average in Broad Reading and Broad Mathematics, and low average in Broad Written Language. The evaluator commented that;
Student will find the performance demands of age-level tasks involving Broad Reading, Broad Mathematics, and Broad Written Language difficult. (Exhibit B-69)
 21. On May 22, 2000, services were again slightly increased and the PPT planned for a triennial evaluation. Although Student's strengths were given as highly receptive to instruction and a hard worker, relating well to peers and adults, she also had significant concerns/needs: significant decoding and written language difficulties, poor integration of skills – needs prompting to use skills, math impacted by lack of integration of skills and weak basic facts, and weak fine motor and visual motor skills. Help with all teachers both before and after school was planned. Extended year services were recommended. OT and S/L would continue. (Exhibit B-72)
 22. The record includes a report of summer services in reading, math and writing for the year 2000. (Exhibit B-74)
 23. The report of a S/L evaluation dated December, 2000, average standard scores on the CELF-3 and demonstrated excellent articulation skills. The evaluator's summary concluded:
[Student] exhibited language skills in the average and above average range. Testing results do not indicate need for services in grade six. [Student] will continue [S/L] services until the end of grade five to address memory skill strategies.

In testimony, this evaluator elaborated on Student's good progress and cooperation and friendliness. (Exhibit B-67, Testimony, S/LP)

24. An OT progress evaluation dated January 8, 2001, noted a diagnosis of progressive dystonia. Student was reported as making steady progress, although handwriting remained illegible at times. (Exhibit B-75)

25. A January, 2001, report from Student's Resource Room teacher listed strengths:

- Good comprehension skills despite poor decoding and fluency
- Basic calculation skills have improved
- [Student] has made an effort to learn the basic math facts
- Receptive to instruction and will apply strategies
- Good attitude towards school and works very hard to achieve
- Cooperates and works well with others in small groups
- Participates in class discussions

Areas of concern:

- Decoding words, especially when read in isolation
- Reading fluency – she will insert and omit words while reading
- Written pieces are simplistic
- Fine motor and visual motor skills, impacts handwriting
- Slow processing speed impacts integration of skills (Exhibit B-76)

26. On the Woodcock-Johnson, Student received standard scores in several achievement areas on January 22, 2001:

[Math] Calculation	100
Word Identification	89
Passage Comprehension	106
Broad Reading	95
Writing Samples	94 (Exhibit B-78)

27. An OT progress report dated January 24, 2001, concluded with a summary and recommendations:

Despite consistent [OT] intervention to remediate fine-motor and graphomotor skills, [Student] continues to exhibit significant difficulties with written communication that negatively impact her ability to succeed and benefit from her educational program

It is recommended that [Occupational Therapist] and the PPT incorporate a compensatory and adaptation model of intervention in this area to assist [Student] in being more successful in school environments with the skills that she currently demonstrates. In this way we can provide modifications that will enhance the fit between [Student] and her learning environments. [OT] service time is recommended to stay the same for the school year with an increase in the use of the allotted time for consultation in the PPT. (Exhibit B-79)

28. The report of a January, 2001, psychoeducational evaluation concluded with a summary:

Overall, [Student] presents as a polite and confident child who responds well to encouragement, praise and direction. Test results of this [evaluation] indicate that [Student] is functioning overall within the Average range of intelligence. Her verbal reasoning skills and nonverbal reasoning skills are within the Average range. However, specific areas of strength and weakness are evident within [Student's] profile.

[Student's] verbal reasoning skills including her general fund of factual information, arithmetic, vocabulary and comprehension are intact. However, difficulties with oral expression and language were noted. In the nonverbal area [Student's] skills range from below average to above average. Her visual sequencing skills, social awareness, attention to visual details in pictures and perceptual organization when given a visual prompt are average to above average. Her significant weaknesses lie within the visual motor skill area and perceptual organization without prompting or model. These are areas of significant weakness for [Student].

And recommendations:

1. ... the PPT [should] review all evaluations, current academic performance, family history and other pertinent information to determine if [Student] is eligible for further special education services.
2. It is recommended that the test results are reviewed and discussed with [Student]. It is important for [Student] to understand the purpose, results and recommendations from this evaluation and to learn self-advocacy skills. In addition, personal learning strategies can be discussed to help [Student] learn to be a more independent student.
3. Many of the following interventions/recommendations are already in place in the classroom and may be helpful to continue with [Student] when she begins 6th grade at [Middle School].
 - Provide written outlines ... whenever possible, she cannot be expected to copy written material from the chalkboard.
 - Check for understanding.
 - Encourage [Student] to seek help when she doesn't understand something.
 - Allow extra time on tests/quizzes – take tests off site, provide a reader when necessary.
 - Break up tasks into workable and obtainable steps.
 - Set realistic, obtainable goals ... to ensure frequent success.
 - Reduce assignment length and strive for quality.
 - Ask for [Student's] attention before giving directions.
 - Alert [Student] to cues, accompany oral directions with written directions.
 - Increase the frequency of positive reinforcement and specific praise.

(Exhibit B-80)

29. The January 25, 2001, PPT meeting continued the current special education services. Student was making progress but was still below grade level in many areas. (Exhibit B-82)

30. The PPT met on March 22, 2001, for an annual review and to plan Student's transition to the Middle School. An extended school year was recommended. Student would be scheduled for Modified (special education) English and Math and daily Resource Room. OT would continue twice a week. Student would take the Connecticut Mastery Test (CMT) off level, with several modifications. S/L would end at the end of fifth grade. Student would meet with her sixth grade guidance counselor at the beginning of the 2001-2002 school year. (Exhibit B-86)
31. Strengths identified at the March 22, 2001, PPT: highly receptive to instruction and is a hard worker; relates well to adults and peers; good literal comprehension; will ask questions for clarification. Concerns/needs were also listed: significant decoding and written language difficulties; poor integration of skills – needs prompting to use skills; reading fluency; math is also impacted by lack of integration and weak basic facts; weak fine motor and visual motor skills; needs a lot of attention; needs close monitoring; poor handwriting. (Exhibit B-86, p.5)
32. The March 22, 2001, PPT included modifications for the Connecticut Mastery Test (CMT), with the justification that: "current academic functioning necessitates out of level testing (grade 4)". Specific modifications were identified.
Math: time extensions, test setting, readers, scribe.
DRG [Degrees of Reading Power]: time extensions, test setting, scribe.
Reading Comprehension: time extensions, test setting, scribe.
Writing: word processor, time extensions, test setting.
Editing and Revising: time extensions, test setting, scribe. (Exhibit B-86, p. 47)
33. The report of Student's 2001 summer program included the following remarks related to achievement of goals and objectives:
[Student] wrote topic sentences that identified the main idea of paragraphs.
[Student] wrote sentences using relevant and supporting details.
[Student] wrote a concluding sentence that relates to the topic sentence.
[Student] worked on reading orally, daily fluency was good.
[Student] identified the main idea for several stories we read.
[Student] identified important details of a complete work.
[Student] worked on multiplying and dividing 2 and 3 digit numbers.
[Student] added and subtracted simple fractions.
[Student] worked on solving 1 and 2 step problems using whole numbers and money amounts. Exhibit B-90)
34. On the CMT administered in October, 2001, Student (then a sixth grader) scored well below the writing goal, below the reading goal, and at or above the math goal, on the fourth grade level test. (Exhibit B-91)
35. At a PPT meeting held on March 25, 2002, her strengths were listed: relates well with adults and peers; good literal comprehension; cooperative and eager to please; wants to do well. Her concerns/needs were also listed: significant decoding and written language difficulties; poor integration of skills – needs prompting to use skills;

reading fluency; weak fine motor and visual motor skills (significantly impedes handwriting); poor handwriting; [needs] self advocacy. Special education and extended year services continued. Modifications in regular education classes were to be provided: materials/books/equipment, alternative/modified worksheets when required, computer for writing assignments, copy of classroom notes when available, and use of AlphaSmart; Tests/quizzes/time, alternative tests, extra time tests as needed, study guides, word bank as needed; grading, no spelling penalty, reduce quantity of work, as needed; environment, preferential seating/away from peers that she is social with; behavior management/support, encourage her to stay for extra help on a regular basis; instructional strategies, extra drill and practice, modified content, pre-teach content when possible, confirm Student is getting and understanding instruction, encourage oral reading. This PPT meeting offered an extended year program. (Exhibits B-95, B-115A, p.3)

36. An OT report dated March, 2002, concluded with a recommendation:
[Student] continues to demonstrate difficulty in handwriting. Unfortunately [Student's] progress in the area of handwriting has plateaued and does not appear to be benefiting from services. At this time it is recommended that [Student] be discharged from educationally based [OT] services. It is recommended that [Student] have access to a computer in school, practice keyboarding at home, be provided with class notes, and not be held responsible for her handwriting. (Exhibit B-96)
37. Student's sixth grade report card shows A's in Modified English, Modified Math, Physical Education, General Music Theory, and Chorus; A- in Art; B- in science; C in Social Studies; and P (pass) in Family and Consumer Science and Keyboarding. All teachers' comments were positive. (Exhibit B-115A-2)
38. An OT Dismissal Summary dated March 5, 2003, found her no longer eligible for OT services. Recommendations were:
- Engage in bilateral upper extremity arm, wrist and finger exercises to include elbow and wrist flexion and extension, and weight bearing daily.
 - Attempt to maintain bilateral hand coordination by using one hand to dominate and the other to assist during handwriting, scissor use and other fine motor tasks.
 - Engage in gross motor/bilateral hand coordination games including basketball, Frisbee and 'stress'/'koosh' ball exercises.
 - Use a computer to complete tasks when available and engage in bilateral hand typing.
 - Continue to practice cursive handwriting. This will improve her fluidity of movement. [Student's] cursive handwriting skills have improved significantly and will continue to improve with practice.
 - Demonstrate care and consideration when writing numbers. [Student] is to be encouraged to write her numbers slowly and neatly.
- The OT recommended no further direct services in school. (Exhibit B-101)

39. On March 5, 2003, the PPT met to review Student's progress and to plan for her eighth grade year at the Board's Middle School. Because Student was having a difficult time with Math 7 (a regular education class) the PPT decided to immediately move her into a modified math class (a special education class). The plan for eighth grade included daily resource room and modified English and Math. Based on the report of the Therapist, Student would exit OT. (Exhibits B-102, B-115A, p. 5)
40. The Health and Development section in the present levels of educational performance for the March 5, 2003, PPT meeting shows:
No medication for ADD. Diagnosed by [Pediatrician] with dystonia neurological motor disease which affects tone in arm. (Exhibit B-102 p. 3)
41. The March 5, 2003, PPT also noted the testing accommodation of using a word processor for writing tests. (Exhibit B-102, p.34)
42. Student's seventh grade goals and objectives, with progress noted, were:
[Student] will increase proficiency in reading, decoding and word recognition skills by June, 2003.
With teacher instruction, [Student] will utilize syllabication to decode and read. Progress: three quarters, in progress; last quarter, satisfactory progress – likely to achieve goal.
With teacher instruction, [Student] will utilize structural analysis rules: i.e., rootwords and affixes. Progress: second quarter, not introduced; third quarter, in progress; last quarter, satisfactory progress, likely to achieve goal.
With teacher instruction, [Student] will utilize phonetic analysis. Progress: second quarter, not introduced; third quarter, in progress; last quarter, satisfactory progress, likely to achieve goal.
Will exhibit the ability to write a coherent multi-paragraph essay by June, 2003.
With minimal assistance, will write topic sentences with supporting main points, details and concluding sentences for each paragraph. Progress: first quarter, in progress; second, third and last quarter, satisfactory progress – likely to achieve goal.
Independently will utilize transitions. Progress: first quarter, in progress; second, third and last quarter, satisfactory progress – likely to achieve goal.
Independently, will write a conclusion. Progress: first quarter, in progress; second, third and last quarter, satisfactory progress – likely to achieve goal.
Will increase her self-advocacy skills by June, 2003.
With reminders, will seek out additional support from classroom teachers during the school day and/or after school. Progress: first quarter, in progress; second, third and last quarter, satisfactory progress – likely to achieve goal.

In a one to one situation, will demonstrate understanding of individual strengths and areas of concern. Progress: first quarter, in progress; second, third and last quarter, satisfactory progress – likely to achieve goal. Without reminders, will initiate requests for individual accommodations with classroom teachers within required time frame. Progress: first quarter, in progress; second, third and last quarter, satisfactory progress – likely to achieve goal. (Exhibit B-97)

43. Student's seventh grade report card shows A's in Physical Education and Chorus; an A- in General Music Theory; B's in Modified English, Modified Math and Art; B-'s in Reading/Writing Workshop and Social Studies; C in Science; and P (pass) in Family and Consumer Science and Technology Applications. All teachers' comments were positive. (Exhibit B-115A-4)
44. Student took the CMT on September 17, 2003. In reading, she scored at the basic level, with a DRP score of 58 and reading comprehension below mastery level. Her writing score was at the basic level, with a holistic writing score of 8 and editing and revising below mastery level. In mathematics, she scored at the basic level, and had mastered five out of 23 content strands. (Exhibit B-124)
45. In November, 2003, of Student's eighth grade year, Parent consulted Student's School Counselor about some social concerns, including one instance involving alcohol. Counselor referred Student to School Social Worker, who met with Student on a regular basis. School Social Worker described Student as distracted from her school work by her increasing interest in social life with peers and romantic relationships, adding that this was not unusual for her age group. School Social Worker described her sessions with Student as focused on identifying desirable traits in oneself and in friends, and making responsible social choices. Initially, this support was regarded as available on a short-term basis to any student; at a PPT meeting on March 9, 2004, weekly counseling was added to Student's IEP as a related service. (Exhibit B-109; Testimony, Parent, School Social Worker)
46. Parents also consulted a private Clinical Psychologist, who met with Parents and several times with Student. Clinical Psychologist made a Neurobehavioral Assessment of Student, based on visits between September, 2003, and February, 2004. The Clinical Psychologist's diagnostic formulation was given as :
[Student] is a dyslexic youngster with at least average intellectual ability. Currently, she is struggling in school. An assessment of her academic skills indicates clear deficits in reading decoding and comprehension as well as written expression. Additionally, she suffers from an attention deficit disorder without hyperactivity but characterized by distractibility and executive dysfunction. Finally, there are clear indications of a significant language processing disorder affecting [Student's] ability to put her thoughts into words and understand abstract language. She also has great difficulty in verbal reasoning and verbal problem solving.

Clinical Psychologist recommended a consultation with Student's physician about medication for her attention problems, noting that she was not using medication at the time of testing. (Exhibit B-107, p. 3; Testimony, Clinical Psychologist)

47. An educational evaluation of Student was performed in February, 2004, by Student's special education teacher. The report of this evaluation includes observations during testing:

[Student] was cooperative throughout the testing sessions. She approached the testing in a serious manner. During the reading comprehension subtest [Student] reread paragraphs several times before responding. On the applied problems subtest she did not know a yard stick, and she confused nickels and dimes. However, she successfully drew pictures on this subtest which aided in answering questions correctly. On the writing fluency subtest, her handwriting went from barely legible to illegible by the end of the seven minutes time frame.

This evaluator summarized Student's test results:

[Student's] broad math score on the Woodcock-Johnson III is one point below average. Her scores on the subtests are in the average range on math calculation and applied problems while in the limited range on the math fluency section. Her [Comprehensive Testing Program] CTP IV scores in mathematics and quantitative ability, based on suburban norms, are below average. [Student] is presently taking a modified math class to address her weak math skills. Based on the Woodcock-Johnson III [Student's] broad written language score is in the average range. Her scores on all three subtests fall within the average range. However, her writing skills based on the ERB, a school wide writing assessment, are below goal. In addition, her CTP IV's scores in writing mechanics and writing process are in the below average range. Finally, [Student's] broad reading score on the Woodcock-Johnson III is in the low average range. Similar to her math subtests, she scores in the average range on the letter word identification and passage comprehension subtests and in the low average range in reading fluency. Her fluency in reading and math are areas of concern. Reading comprehension is an area of concern on other standardized tests. Her [Degrees of Reading Power] DRP scores from 6th 7th and 8th grades are all below goal. [Student] attends a modified English class which works specifically with reading comprehension and writing skills. (Exhibit B-106.

48. Student's eighth grade Special Education Teacher, who has ten years of experience at the Middle School, saw Student daily in the Resource Room and for Modified Language Arts class. Student appeared comfortable in these classes, and volunteered to read aloud, despite her limited fluency. She needed extra time to process information. Special Education Teacher worked with Student to make up and hand in missing homework assignments. She also focused on self advocacy, feeling that it would be needed at the high school the next year. Student had often agreed to come in after school for extra help, and then not shown up. Special Education Teacher concluded that her concerns about Student were neither in type or level extreme in comparison with Student's peers. (Testimony, Special Education Teacher)

49. The PPT met on March 9, 2004, to review Student's progress and discuss the independent neurobehavioral assessment with the Clinical Psychologist. Student was identified as having a specific learning disability. At this time, Student's strengths were listed as: good literal comprehension; attention to visual detail; nonverbal problem solving; visual narrative sequencing; and cooperative/wants to do well. Concerns/needs were also listed: reading skills – comprehension, decoding, fluency; written language skills; ADD – distractible, poor task persistence; basic math skills; graphomotor skills; difficulty with word retrieval/figurative language; weak self-advocacy skills; and self esteem. It was noted that Student was receiving medication for ADD. The PPT offered an extended year program, a reading and writing summer tutorial. It was reported that Student was receiving S/L services outside of school. Her teachers reported that she had work missing and [was] avoiding extra help even when asked. (Exhibits B-109, B-112, B-115A p.6)
50. The March 9, 2004, PPT meeting added a new goal with objectives, for counseling with the School Social Worker:
- [Student] will be able to identify positive characteristics in her peers.
 - [Student] will be able to list positive characteristics she will look for in friendships.
 - [Student] will choose and apply appropriate techniques of responsible decision making. (Exhibit B-109, p. 20)
51. The March 9, 2004, PPT meeting also provided for the testing modification of using a word processor for writing tests. (Exhibit B-109, p. 24)
52. An OT consultation report dated April 20, 2004, included the following statement concerning Student's progress:
- At this time, [Student] would not benefit from direct [O/T] interventions due to the fact that the accommodations and modifications necessary are already in place during the school day. She is able to compensate for her areas of concern and demonstrate the ability to access the tools that she needs in order to make gains and to succeed in her educational program. Handwriting and posture may be inconsistent at times however adjustments will be made in the classroom to accommodate for these concerns. ... Continued support from the special education team will allow [Student] the opportunity to improve processing speed and executive problem solving skills, and to make adjustments in course requirements as appropriate. (Exhibit B-116)
53. An assessment report dated April, 2004, discussed Student's performance on the Wide Range Assessment of Memory and Learning (WRAML). Student scored within the average range on verbal scales of story memory and number/letter memory and on the visual scale on picture memory. Her visual scale design memory was below average. (Exhibit B-118)
54. In response to Clinical Psychologist's concerns about Student's S/L, the Board ordered a S/L evaluation. The evaluator had provided direct therapy to Student and

had more than 15 years of experience as a school S/LP. The report of the April, 2004, evaluation included a summary of Student's results on the CELF-3, Peabody Picture Vocabulary Test, Third Edition, and Expressive One-Word Picture Vocabulary Test:

[Student] displayed language skills in the average range in a one to one situation. She worked hard at achieving these scores. She displayed good effort although her processing speed was slow. As determined by [Clinical Psychologist], her intellectual functioning is in the low average range but her effort and performance showed language scores that are more than commensurate with her intellectual ability. [Student] does not qualify for direct [S/L] services.

The S/LP commented in testimony that Student's lower scores on problem solving had been addressed by the School Social Worker. (Exhibit B-119, Testimony, School Social Worker)

55. Student's Guidance Counselor for sixth, seventh and eighth grade at the Middle School reported that Student had made a good transition from elementary school and had initially done well and had friends. There had been no discipline issues, and she was always polite to staff members. In seventh grade, she was overwhelmed by her regular education math class. She began to miss some homework assignments and resisted after school help. She still had friends and seemed to have good self esteem. In eighth grade, she was increasing socialization in the school hallways. When Parent called with concerns, the Guidance Counselor referred Student to the School Social Worker. (Testimony, Guidance Counselor)
56. The PPT met on May 6, 2004, to review evaluation results: she was identified as other health impaired (OHI). There is nothing in the record to support this classification except for the minimal notes about ADD and medication. The PPT recommended continuing weekly counseling with a School Social Worker, an extended school year program, and no direct S/L or OT services. At this time, Student's strengths were listed as: cooperative; relative strength – auditory processing; verbal skills (relative strength); and participates in class discussions. Her concerns/needs were given as : slow processing; visual memory significantly impaired; ADD; reading skills – comprehension, decoding, encoding, fluency; written language skills; math skills; graphomotor skills; difficulty with figurative language; self-advocacy skills; and self esteem. At this meeting, Parent requested direct S/L services and reimbursement for a summer program at Eagle Hill School, Hardwick, MA. The PPT denied both these requests. (Exhibit B-121)
57. The PPT met again on June 7, 2004, to develop an IEP for Student's ninth grade year. PPT recommendations included classroom accommodations where appropriate; two sessions of Academic Lab [per day]; counseling with a School Social Worker; Basic (special education) English and Western Civilization; Corrective Reading; Developmental Reading; postpone Biology until sophomore year; and discuss independent language evaluation. Parents rejected the proposed extended year program. Parents and Clinical Psychologist requested direct S/L services, which the PPT rejected. (Exhibit B-123, pp. 1-2)

58. Goals and objectives proposed for Student for ninth grade at the Board's high school were:

[Student] will exhibit the ability to utilize supports provided in the Academic Lab.

Without reminders, will come to Academic Lab with necessary materials.

Without reminders will prioritize assignments.

Will complete homework and hand in on time to classroom teachers.

With adult assistance will break down long term assignments into manageable segments and complete.

Will independently complete assignments within Academic Lab.

Will demonstrate ability to sustain on-task behavior.

[Student] will establish self-advocacy skills.

With Academic Lab support will seek support from classroom teachers as needed.

Without Academic Lab support will seek support from classroom teachers as needed.

With reminders will initiate requests for individual accommodations with classroom teachers within required time frames.

Will independently initiate requests for individual accommodations with classroom teachers within required time frame.

[Student] will improve written language skills.

Demonstrate improved understanding of grammar and punctuation.

Organize and express ideas through well-organized paragraphs.

[Student] will improve reading comprehension.

Understand and apply literary elements of literature.

Demonstrate an ability to move from a literal to an inferential level of comprehension.

Demonstrate ability to determine meaning through context clues.

[Student] will develop word attack skills through a structured program of phonics.

Understand sound-symbol relationships.

Increase reading fluency through syllabication.

[Student] will improve Reading Comprehension skills.

[Student] will understand and answer comprehension questions.

[Student] will use context clues to understand new words or phrases.

[Student] will be able to get the gist of a story by forming an image of the setting and characters and constructing a mental image of the basic story line with a variety of reading materials.

[Student] will consider potential post-high school options for education and employment.

Complete Student Vocational Interview Form and discuss at PPT.

Discuss resources available in the Career Center.

[Student] will be able to identify positive characteristics in her peers.

[Student] will be able to list positive characteristics she will look for in friendships.

[Student] will choose and apply appropriate techniques of responsible decision making. (Exhibit B-123, pp. 4-14)

59. Student's eighth grade goals and objectives, with progress noted, were:

Student] will increase proficiency in reading, decoding and word recognition skills by June, 2004.

With teacher instruction, [Student] will utilize syllabication rules to decode and read. Progress: first and second quarter, not introduced; third quarter, satisfactory progress – likely to achieve goal; last quarter, needs continued improvement.

With teacher instruction, [Student] will utilize structural analysis rules; i.e., root words and affixes. Progress: first and second quarter, not introduced; third quarter, satisfactory progress – likely to achieve goal; last quarter, needs continued improvement.

With teacher instruction, [Student] will utilize phonetic analysis. Progress: first and second quarter, not introduced; third quarter, satisfactory progress – likely to achieve goal; last quarter, needs continued improvement.

When given a writing prompt, will exhibit the ability to use prewriting strategies to pass ERB by June, 2004.

Independently, will generate ideas for specific writing assignment.

Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Independently, will organize ideas and develop a plan for specific writing assignment (ex: brainstorming, graphic organizers). Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Will exhibit the ability to write a coherent five paragraph essay by June, 2004.

With minimal assistance, will develop a clear thesis statement for a multi-paragraph writing assignment. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

With minimal assistance, will write topic sentences with supporting main points, details, and concluding sentences for each paragraph. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Independently, will use transitions. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Independently, will write concluding sentences for each paragraph.

Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Independently, will write a conclusion. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Will exhibit the ability to use varied sentence structure within a written assignment by June, 2004.

With minimal assistance, will write complete sentences. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

With adult support, will write sentences that vary in structure and length. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

With adult support, will correctly utilize rules of grammar in a written assignment. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Will exhibit the ability to use correct mechanics in written expression at the 8th grade level by spring, 2004.

Independently, will write a paragraph without a disproportionate number of spelling errors. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Independently, will correctly apply the rules of capitalization. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

With adult assistance will correctly apply the rules of punctuation.

Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs improvement.

Will increase the ability to state the meaning of reading selections at an 8th grade level by spring, 2004.

Independently, will utilize context clues to aid in understanding passage.

Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, satisfactory plus.

Independently will identify stated main idea. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, satisfactory plus.

Independently, will identify important details. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, satisfactory plus.

Independently, will predict the next event at the end of a reading selection.

Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, satisfactory plus.

Independently, will predict the next event at the end of a multi-paragraph selection and will list supporting evidence. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, satisfactory plus.

Independently, will predict the conclusion and outcome of a complete work and list supporting evidence. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, satisfactory plus.

Will increase her self-advocacy skills by June, 2004.

With reminders, will seek out additional support from classroom teachers during the school day and/or after school. Progress: first three quarters,

satisfactory progress minus – likely to achieve goal; last quarter, needs continued improvement.

In a one-to-one situation, will demonstrate understanding of individual strengths and areas of concern. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, needs continued improvement.

Without reminders, will initiate requests for individual accommodations with classroom teachers within required timeframe. Progress: first two quarters, unsatisfactory progress – unlikely to achieve goal; third quarter, satisfactory progress minus – likely to achieve goal; last quarter, needs continued improvement.

Will increase or maintain the ability to utilize a time management system for long- and short-term assignments.

With adult assistance, will break down long- and short-term assignments into manageable segments. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs continued improvement.

With adult assistance or independently, will develop individual time management schedules when not provided by teacher. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs continued improvement.

With adult reminders or without adult support, will complete and submit pre-determined segments on time. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, needs continued improvement.

Will increase computational skills for decimal numbers by June, 2004.

Will independently and accurately add and subtract 2, 3, and 4-digit decimal numbers 80% of the time. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, mastered.

Will independently and accurately multiply 1 and 2 digit decimal numbers 80% of the time. Progress: first three quarters, satisfactory progress, likely to achieve goal; last quarter, mastered.

Will independently and accurately divide decimals by one digit 80% of the time. Progress: first quarter, not introduced; second and third quarters, satisfactory progress, likely to achieve goal; last quarter, mastered.

Will increase skills for identifying mean, median and mode.

Will independently identify the mean 80% of the time. First two quarters, not introduced; third quarter, satisfactory progress – likely to achieve goal; last quarter, mastered.

Will independently identify the mode 80% of the time. First three quarters, not introduced; last quarter, mastered.

Will independently identify the median 80% of the time. First three quarters, not introduced; last quarter, mastered.

Will increase the ability to solve word problems by June, 2004.

Will independently identify the pertinent information in a word problem and write equations for word problems 80% of the time. Progress: first

three quarters, satisfactory progress – likely to achieve goal; last quarter, mastered.

Will independently solve one-step problems involving whole numbers, decimals, and money 80% of the time. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, mastered.

Will independently solve multi-step problems including averaging 80% of the time. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, has shown improvement but needs continued work.

Will independently solve problems involving time, 80% of the time.

Progress: all four quarters, not introduced.

Will independently interpret graphs, tables, and charts 80% of the time.

Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, mastered.

Given the necessary information, the student will independently be able to develop graphs, tables and charts 80% of the time. Progress: all four quarters, not introduced.

Given a graph or table, will independently analyze data with 80% accuracy. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, mastered.

Will understand the basic concepts of geometry by June, 2004.

Will independently identify and draw simple geometric shapes and figures 80% of the time. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, mastered.

Will independently compute area and perimeter of simple geometric shapes 80% of the time. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, mastered.

Will independently compute the volume of simple geometric shapes 80% of the time. Progress: first three quarters, not introduced; last quarter, mastered.

Will increase computational skills for solving algebraic equations.

Will independently and accurately solve algebraic equations using addition and subtraction 80% of the time. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, has shown progress but needs continued work.

Will independently and accurately solve algebraic equations using multiplication and division 80% of the time. Progress: first three quarters, satisfactory progress – likely to achieve goal; last quarter, has shown progress but needs continued work. (Exhibits B-102, B-102A)

60. Student's eighth grade report card shows: A's in Modified Math and Chorus; A- in Physical Education; B+'s in Family and Consumer Science and Art; B- in Modified English; C+ in Science; C- in Reading/writing Workshop; and P (pass) in Health. Six teachers' comments were positive, and others were "Encourage summer reading" (3); and "Needs to assume more responsibility for own learning". (Exhibit B-125)

61. Parents again requested that the Board fund Student's placement at Eagle Hill School, by letter received on August 24, 2004. Student also requested placement at Eagle Hill. A progress report for the 2004 summer program at Eagle Hill showed that Student had done well, progressing on all Eagle Hill goals and receiving grades in the A range. (Exhibits B-131, B-133)
62. The PPT met again on September 7 and 30, 2004. The PPT reaffirmed its position supporting the June 7, 2004 IEP, and rejected Parents' request for independent S/L and OT evaluations and an assistive technology evaluation, reimbursement of Clinical Psychologist's evaluation and the summer program at Eagle Hill. Parents had unilaterally placed Student at Eagle Hill for the 2004-2005 school year. (Exhibits B-136A, B-136B, B-137, B-141)
63. The Dean of Education, Eagle Hill School, testified concerning the school's program. His letter of September 20, 2004, to the Board's Director of Special Services listed her program. He did not provide any additional specifics concerning Student's program or progress. (Exhibit B-137, pp. 20-21; Testimony, Dean of Education)
64. The Dean of Education, Eagle Hill School, Hartwick, MA, confirmed that Eagle Hill is not approved for special education by the State of Massachusetts. (Testimony, Dean of Education)
65. Parents' Advocate offered an analysis of test scores in support of her position that the Board's program for Student had not been appropriate. Since not all the test data had been accurately recorded, this position lacked credibility. Data interpreted as "regressions" may actually be scores within the published margins of error. (Testimony, Parent Advocate)
66. Parents' Advocate questioned Student's lack of improvement in handwriting. (Testimony, Parent Advocate)
67. In testimony, the specialized reading instruction proposed for Student's ninth grade year was described in detail. While there had been a change in staffing since the last PPT meeting, the distinctions between certification as a special education teacher and certification as a reading specialist were discussed. An additional issue was "certification" for participation in specific publishers' programs for presentation of their material in the classroom. (Testimony, Special Education Teacher, High School Language Arts; High School Special Education Instructional Leader)
68. Student made very good progress at Eagle Hill during the 2004-2005 school year. As a unilaterally placed student, her educational plan was developed by Eagle Hill staff members without participation by Board staff members. (Exhibits P-2, P-3)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The standard for determining whether a free appropriate public education (FAPE) has been provided begins with the two-prong test established by the Supreme Court in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176 (1982). First, the procedural requirements of the IDEA must have been met by the school district. Second, the IEP must be reasonably calculated to enable the child to receive some educational benefit. The IEP must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), cert. Denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993)). In this case, the Board has established that it met the procedural requirements and that Student did gain educational benefit from year to year. While her progress on goals and objectives was uneven, she was able to master the accommodations necessary to perform in the classroom. The record of her S/L progress and her OT show progress followed by a shift from direct services to consultation services. With allowances for processing time, extended time on tests, and use of a word processor whenever possible for written assignments, she performed on the average level on most standardized measurements. Her grades were good.
2. There is no dispute that Student qualifies as a student with learning disabilities who needs special education. Her evaluation results and observed classroom learning style conform to 34 CFR § 300.7(c)(10), and Section 10-76a-2(d), Regulations of Connecticut State Agencies (RCSA). Student also qualifies as a student with other health impairment, an attention deficit disorder (ADD) and progressive dystonia. The record includes only a Connors scale rating, classroom observations, and good results from medication from time to time to support the ADD diagnosis. The notations for the dystonia diagnosis do not include documentation from a physician, but again the progress reported after OT serves as confirmation.
3. Student does not qualify as a student with speech or language impairment at this time, pursuant to 34 CFR § 300.7(c)(11) and Section 10-76a-2(n), RCSA. The Board's record of evaluations confirms that her initial S/L difficulties were effectively addressed. Slow language processing has been addressed through classroom accommodations. Where reading difficulties may be also S/L problems, individualized reading instruction has shown progress in reading.
4. In order to secure public funding for a unilateral placement, a parent must prove 1) School District placement was or is not appropriate for the individual child and 2) unilateral placement is appropriate for that child. *Burlington v. Department of Education*, 736 F.2d 773 (1st Cir. 1984). Unilateral placement may not be approved for special education placements if a hearing officer determines that the school district's placement is appropriate (*Florence County School District Four v. Carter*, 510 U.S. 359 (1985)).

5. Much time in this hearing was devoted to discussions of evaluation scores, with emphasis on relatively minimal differences in test results. The larger picture of Student, as a student with learning disabilities and an attention problem that require specialized instruction, was consistent over several years. Student consistently scored in the average and low average range on many different standardized tests. Her particular difficulties in reading, writing and math were identified and targeted, and she made progress in those areas. After a rocky eighth grade year dominated by social problems appropriately addressed with a School Social Worker, she appears to have made good progress in the Eagle Hill program. This progress does not, alone, establish the inappropriateness of the Board's programs.
6. The evaluations performed by the Board in 1996, 1998, 2000, 2001, and 2004 met the requirements of 34 CFR §§ 300.532, 300.533, 300.534, 300.535, 300.536, 300.540, 300.541, and 300.542. Of particular interest are the evaluations performed as follow-up to the evaluation by the Clinical Psychologist in 2004. While the Clinical Psychologist's use of standardized testing materials was at times unconventional, he identified the same problems the PPT had documented, with the exception of his position concerning S/L. Since he is not a professional expert in S/L, the Board's S/L evaluations by certified S/L therapists have greater credibility. Furthermore, specific language-based problems like auditory processing have been appropriately addressed in specialized instruction and classroom modifications provided in Student's IEPs.
7. Eligibility determinations conform to the 1999 Connecticut State Department of Education *Guidelines for Identifying Children with Learning Disabilities* and the 1999 *Guidelines for Speech and Language Programs, Volume II, Determining Eligibility for Special Education Speech and Language Services*. While most disabilities are not "cured" and don't "go away", many special education students achieve a level of accommodation by means of specialized techniques that they are no longer technically eligible for continuing special education services. Student's success in dealing with her S/L and handwriting issues should be recognized.
8. Parents requested reimbursement for Clinical Psychologist's evaluation, and additional independent S/L and OT evaluations. Parents' rights to independent evaluations are set forth at 34 CFR § 300.502. The basis for public funding of an independent evaluation is that a parent "disagrees with an evaluation obtained by the public agency" (§ 300.502 (b)(1)).
In the case of S/L and OT evaluations, Parents clearly disagreed with the Board's evaluations. At § 300.502(b)(2), Boards of Education MUST either initiate a hearing concerning the adequacy of their own evaluation OR provide the requested independent evaluation. The Board did not initiate a hearing; therefore, it is liable for funding independent S/L and OT evaluations.
In the case of reimbursement of the Clinical Psychologist's Neurobehavioral Assessment, the Parents appear to have acted out of concern about their daughter's problems in school, rather than in direct disagreement with a specific and recent evaluation by the Board. The Board complains that the timing of this evaluation prevented the Board from using several standardized tests which cannot validly be

repeated within a short time, and the Board disagrees with some of Clinical Psychologist's conclusions, especially his position regarding Student's speech and language performance. Evaluations obtained by Parents must be considered by the PPT, pursuant to 34 CFR § 300.502(c). The presence of Clinical Psychologist at the March 9, 2004, PPT meeting and the evaluations performed by the Board in response to his report confirm that such consideration was given.

9. From time to time, Student has been medicated for her attention problems. While this appears to have been helpful to her school performance, Parents have been concerned about side effects and have periodically stopped medication. Parents have the right to make decisions regarding medication of minor children in non-life threatening situations, and the Board is responsible for providing a free appropriate public education to Student whether or not she is medicated. No school health records were submitted on the record, so it is impossible to determine whether Parents notified the Board in a timely manner of each medication change.
10. Whether S/L and OT issues are being adequately addressed through modifications and accommodations without direct therapy appears to have been resolved in that no S/L or OT services are being provided at Eagle Hill.
11. The IEPs that must be reviewed for 2003-2004 and 2004-2005 are those dated March 5, 2003, and June 7, 2004. While there are many styles of writing IEP goals and objectives, these written for Student track her identified needs. When she showed progress but had not mastered a goal, it appears again. In several instances, she did well for a while, and then apparently stopped trying. There is no question that Student had to work very hard to do well, and there were times when she seemed to prefer social opportunities to after school help from teachers. The School Social Worker who worked with her in eighth grade was confident that eventually Student would make wiser choices. Another disagreement concerns whether specialized reading instruction is to be provided by a reading specialist or a special education teacher. Ironically, this issue of certification may also determine whether specialized reading instruction is "special education" or "regular education". Here we must look beyond the staff titles to IEP goals and objectives as well as regular education curriculum. The reading goals and objectives in the Board's IEPs for 2003-2004 and 2004-2005 are reasonable, given Student's evaluation results and her classroom performance.
12. Some of the discussions of evaluation results stressed that Student probably had difficulty with "age level" reading tasks; another discussion pointed out that she could handle "grade level" reading tasks. It must be noted that Student had repeated kindergarten, a fact to be considered in analyzing her test results.
13. Given that the Board's program was appropriate, there is no need to discuss details of the Eagle Hill program.

14. The decision that the Eagle Hill placement is not eligible for public funding is not intended to mean that the placement is not a reasonable one for a family to make. From time to time, the totality of family circumstances and a student's interests and preferences suggest that a private school is a reasonable alternative.

FINAL DECISION AND ORDER:

1. The special education programs and placements offered to Student by the Board for the 2003-2004 and 2004-2005 school years were appropriate to her special education needs in the least restrictive environment.
2. Student was thoroughly and carefully evaluated. The only flaw in the Board's record is the PPT's failure to respond correctly to Parents' request for independent S/L and OT evaluations when they disagreed with the Board's evaluations. When the Board fails to initiate a hearing to defend its own evaluations, it is then responsible for funding independent ones.
3. Student required extended year services in 2004, and the PPT recommended a program that year and for several prior years. Some years, Student attended the Board's summer program of individualized tutoring, and did well.
4. Both S/L and OT service providers worked diligently with Student until she had reached a level of performance that meant she was no longer eligible for these services. By continuing consulting services and later evaluations, the Board confirmed that she no longer needed these direct services. The Counseling provided in eighth grade and offered for ninth grade was appropriate to her needs at that time.
5. The Board is not responsible for reimbursing the cost of the evaluation performed by Dr. Krueger.
6. Since the issue of reimbursement for privately provided services was not raised or documented in the hearing, no reimbursement is ordered.
7. The Eagle Hill program, while providing benefits to Student, does not include all of the services in her Board IEP and is not appropriate to her special education needs in the least restrictive environment.
8. The Board is not responsible for reimbursing either the 2004 summer program or the 2004-2005 school year program for Student at Eagle Hill.
9. The Board is not responsible for compensatory education.