STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Board of Education

Appearing on behalf of the Parent:	Jennifer Laviano, Esq. The Law Offices of Jennifer Laviano, LLC 76 Route 37 South Sherman, CT 06784
Appearing on behalf of the Board:	Abby R. Wadler, Esq. Assistant Town Attorney Town of Greenwich 101 Field Point Road Greenwich, CT 06830
Appearing before:	Mary H.B. Gelfman, Esq. Hearing Officer

FINAL DECISION AND ORDER

ISSUES: (as agreed at the prehearing conference, May 9, 2011):

1. Did the Board offer a free appropriate public education (FAPE) to the Student for the school years 2009-2010 and 2010-2011?

2. If not, is placement at Eagle Hill School appropriate to the Student's special education needs in the least restrictive environment?

3. If placement at Eagle Hill School is appropriate, is the Board responsible for reimbursement to the Parents for documented costs of the placement for school years 2009-2010 and 2010-2011?

ISSUES: (as added by agreement of the Parties, August 9, 2011):

4. Is the proposed Individualized Education Program (IEP) for the 2011-2012 school year appropriate to the Student's special education needs?

5. If not, is placement at Eagle Hill School appropriate to the Student's special education needs in the least restrictive environment?

6. If placement for 2011-2012 at Eagle Hill is appropriate, is the Board responsible for funding that placement?

PROCEDURAL HISTORY (all dates are 2011 unless otherwise indicated):

This hearing was requested by Parents on April 21 and the Hearing Officer was appointed on April 25. The original date for mailing the decision was July 5.

A pre-hearing conference was held on May 9. At that time, the Parties reported that they had agreed to waive the resolution meeting and request mediation from the State Department of Education, although a mediation date had not been set. The hearing was scheduled for June 13 and 20, and July 12, 13, and 14. The mailing date for the decision was extended from July 5 to August 4 to accommodate the additional hearing dates.

Mediation was scheduled for June 13, and the Parties requested that the hearing session scheduled for June 13 be postponed. The Hearing Officer granted that postponement. The Board requested that the June 20 hearing session be postponed to provide more time for the Board to respond to the Parents' rejection of the proposed 2011-2012 IEP. The Hearing Officer granted that postponement. The Hearing Officer postponed the July 12, 13 and 14 hearing sessions due to a scheduling conflict. The Parties agreed to schedule the hearing for August 8, 9 and 10, and requested extension of the decision date to September 2. The Hearing Officer granted the extension of the decision date and agreed to the new hearing dates.

On July 11 the Hearing Officer added hearing dates of September 23 and 30. On July 25, Parents informed the Hearing Officer that witnesses would not be available on August 8 and requested that hearing date be postponed. The Hearing Officer granted that request. In response to requests from the Parties, the decision date was extended from September 2 to October 3.

The hearing convened on August 9. Due to unavailability of witnesses during summer vacation, the August 10 hearing session was postponed. The Hearing Officer granted the Parties' request to extend the decision date to November 2.

The hearing re-convened on September 23, but the September 30 session was postponed due to illness. The Hearing Officer re-scheduled the hearing for October 20 and November 2. In response to a request from Parents, on October 17 the Hearing Officer extended the decision date to December 2.

The hearing re-convened on October 20. The Parties requested that the November 2 hearing session be postponed: the Hearing Officer granted that request. On November 5, the Hearing Officer scheduled hearing sessions for December 20 and 21. The Parents requested that the decision date be extended to January 2, 2012, and the Hearing Officer granted that request.

The hearing re-convened on December 20 and 21. At the December 21 hearing session, the Parties asked that they be allowed to submit briefs in lieu of closing arguments, and asked that the decision date be extended to accommodate time for receipt of transcripts and briefing. The Hearing Officer granted these requests and provided a briefing schedule. Briefs were to be due on January 13, 2012. At the request of the Parties, the decision date was extended to February 1, 2012.

Briefs were received on January 13 and 17, 2012: Parents had requested an extension of the deadline, which was granted. The record was closed on January 17, 2012.

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

SUMMARY:

Parents unilaterally placed the Student at Eagle Hill School and are requesting that the Board reimburse the costs of this placement for three school years. The Board maintains that it has offered appropriate programs and placements for the Student.

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g and related regulations at 34 C.F.R. § 99, the following decision uses "Student", "School", "Parent" and titles of school staff members and other witnesses in place of names and other personally identifiable information. In this decision, "Board" is used for the Board of Education or the school district and to identify school district professional staff, as "Board's School Psychologist".

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. 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. For reference, see *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District,* 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts.

1. The Student was born on October 2, 1998, and is now thirteen years of age. When he was registered on March 22, 2004 for the Board's Kindergarten for the school year 2004-2005, it was noted that he had attended a private preschool. On the Kindergarten Parent Questionnaire, his Mother reported that his pre-school teacher had noted "lack of focus sometimes". Other comments she made about the Student at that time included:

   [N]ot socially or behaviorally, but he may struggle with penmanship and he may "tune out" sometimes.

   It is hard to keep him on task when the interest level is low or he feels he can't accomplish something.

   The Assistant Principal at the Board's Elementary School that Student attended remembered a variety of issues during his kindergarten year. (Ex. P-17; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 6-8)

2. The Student's Parents had him evaluated by a Pediatric Neuropsychologist: the report of this evaluation is dated July 18, 2004. His Preschool Teacher reported to this evaluator that his progress had been variable:

> Problems with following directions, working in groups, fine motor struggles affecting writing, and diminished confidence in his abilities. Socially, [the Student] does have friends and is well liked by others. Core readiness skills were developing nicely.

The Pediatric Neuropsychologist's report included his clinical impressions:

> [The Student] presented as an adequately related youngster who put forth good effort in the assessment situation. ... [The Student] has significant attentional problems ... While the attentional issues are not derailing processing some vulnerability was noted in the classroom and some degree of behavioral difficulty again in the classroom was noted. ... He does meet DSM-IV criteria for the Inattentive Type of ADHD [Attention Deficit Hyperactivity Disorder] ...

The Pediatric Neuropsychologist provided two pages of recommendations for Student's school program. (Ex. P-13 pp. 1, 5-8; B-14)

3. Student entered kindergarten at the Board's Elementary School for the 2004-2005 school year. (Ex. P-1)

4. A Board Physical Therapist (PT) observed the Student in school on October 1, 4, 8, and 18, 2004. This observation was noted as having been discussed at a Planning and Placement Team (PPT) meeting held on September 14, 2004. The observation report included a summary of findings/impressions:

> [The Student] is a solidly built and strong little boy. [He] demonstrates the ability to negotiate his school environment without difficulty. [He] appears to be a kinesthetic learner, who learns most easily by doing activities and is often found in motion (as seen when getting instruction from his classroom teacher and gym teacher). He appreciates activities that allow for rough and tumble play and enjoys obtaining tactile feedback from his environment (as seen from stomping and making contact with objects within reach). At times, this behavior interferes with his success in the classroom. However, [his] physical status is not interfering with his participation in and ability to benefit from his educational program. [PT] would not be expected to contribute to the achievement of overall educational goals, and therefore further evaluation is not necessary at this time.

Recommendations by the PT:

- Recommendations of adding gross motor activities with the entire class have been discussed with [Classroom Teacher]. They may provide benefit during times when [Student] appears to need tactile input or activity to expel energy during class periods.
- [Student] may have more success in the hallway or walking between classes by being provided an activity to do or responsibility to carry out (such as helping the teacher carry something or being line leader).
- Also, [Student] would benefit from activities outside the school environment, such as martial arts, Pilates or yoga for children, and swimming, which promote balance and redirection of energy. (Ex. B-15)

5. The Student was evaluated by a private Occupational Therapist (OT), whose report is dated November 28, 2004. This report identified significant deficits:
   - Processing/integration of proprioceptive input from muscles and joints
   - Limited proximal tone, body awareness and kinesthetic sense
   - Deficits in postural control and the ability to maintain adequate posture for the performance of visual motor tasks
   - Deficits in motor planning – including devising and implementing consistent motor plans as well as learning new tasks
   - Deficits in visual motor integration including learning letter formation, coloring, cutting and drawing skills
   - Deficits in gross motor coordination and ability to master new games/sports

   Recommended goals were provided:
   - Gross motor games and exercise to increase proximal control/tone, body awareness and kinesthetic sense
   - Gross motor activities that involve complex movement, sequencing and timing to increase motor planning skills
   - Visual motor activities to increase visual motor integration and to improve writing, coloring, drawing and cutting skills
   - Instruction in multisensory approach to handwriting e.g. handwriting without tears to enhance fine motor planning skills
   - Provide equipment to support visual motor activities in school e.g. pencil grip/wide barrel pencils, slant board, color coded writing paper, seat cushions
   - Explore alerting activities that can help [Student] maintain focus independently in school (Ex. B-16 pp. 6-7)

6. The Board of Education's OT performed an evaluation on January 11, 2005. This evaluator reported difficulties with visual motor skills, certain areas of visual perception, sensory integration, maintaining focus, increased amount of pressure on the writing utensil when copying the alphabet and inability to sit still in his seat for a period of time. She recommended OT services at school to address these problems. (Ex. B-18 pp. 5-6)

7. A Board PPT meeting was held on January 18, 2005. Reference was made in the record of this meeting to an earlier PPT meeting that had found Student eligible for special education based on the neuropsychological evaluation provided by Parents and had identified him as Other Health Impaired. OT services were planned, and the PPT adjourned to a meeting to consider services to be provided under Section 504. This meeting was attended by Elementary School Assistant Principal, Student's Mother, Regular and Special Education Teachers, a School Psychologist and an OT. (Ex. P-21)

8. A partially illegible Early Intervention/Modification Plan described Student's problems in kindergarten as: lack of attention, difficulty following directions, difficulty with completion of tasks. In February 2005 a plan was devised to help the Student listen to and understand directions by repeating directions. This plan was reviewed in April 2005 and continuing difficulties were noted. (Ex. P-18)

9. The Student's Kindergarten Progress Report for 2004-2005 showed "demonstrates consistently", "significant progress shown", "progress shown", "has achieved all, or almost all, kindergarten objectives", or "has achieved most kindergarten objectives" in every area. Teacher comments were enthusiastic, but also included:

   March 2005: ... [The Student's] work habits continue to suffer due to his inattentiveness and distractibility. When focused and on task he is able to complete work accurately and in the allotted time. However, he often needs constant reminders to remain on task and without them will take quite a bit of extra time to complete tasks. ...

   May 2005: [The Student] continues to make progress in his academics as well as his social skills. He is reading books independently and in the reading group and is able to write responses based on what he has read. He is improving his ability to sound out his words to write sentences, however his handwriting continues to be illegible. [The Student] works hard to combine drawing and writing and has had some success in drawing clearer pictures when he is concentrating. Unfortunately, he is often distracted while doing his work which causes him to require extended time to complete tasks. [The Student's] math skills are good and he enjoyed math and is able to add and subtract using manipulatives with ease. [The Student] will benefit greatly from continued practice at home working on his reading and writing, as well as his handwriting and focus. ... (Ex. P-22)

10. A PPT meeting was held on September 13, 2005, at the beginning of Student's first grade year. This meeting was attended by Elementary School Assistant Principal, both of Student's Parents, Regular and Special Education Teachers, a School Psychologist, an OT and two members of the Board's Evaluation Team. The PPT recommended educational and psychological evaluations, and Parents consented to the evaluations at that meeting. (Ex. B-32)

11. By letter dated October 12, 2005, and noted as received by the Assistant Principal on October 20, 2005, Student's Mother reported:

    I am attaching a memo from our family pediatrician [name omitted] requesting a hold on the [school] testing of [Student].

    We will be conducting medical tests as well as some coordinating psychological tests during this time and will follow up with a letter about reinstating the testing.

    We will be asking [Teacher] to fill out a rating scale regarding [Student] as part of the testing. She will be forwarding it directly to [Pediatrician] to maintain confidentiality, allowing her to give the best possible information for the tests.

    The School staff interpreted this as parental withdrawal of consent to evaluate. (Ex. B-34 pp.1, 2; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 9-10; Testimony, Mother, Tr. 12/20/2011 pp. 12-14)

12. Parents arranged for a private psychological evaluation of the Student by a licensed Clinical Psychologist. Testing was done on October 14, 17 and 19, November 1, 4, 8, 15, 18, 22, 28, 29 and 30, December 2, 13, 23 and 30, 2005 and January 9, 2006. The Clinical Psychologist's report included a summary:

> The results of this evaluation suggest that [Student] has Dyslexia and an Anxiety Disorder. As noted above, he does not have a thought disorder, but the quality of his thinking deteriorates when he becomes overwhelmed with anxiety.
> [discussion of reading disorders]
> An anxiety disorder is diagnosed when a child has excessive anxiety and worry about a number of events, and finds it difficult to control the worry. The anxiety is associated with symptoms such as restlessness, being easily fatigued, difficulty concentrating, irritability, muscle tension, and sleep problems. These problems have to be significant enough to cause the child to be distressed or create significant social or academic problems. (Ex. B-17, pp. 1, 21-22)

13. The Clinical Psychologist provided recommendations:
    - A multi-dimensional approach to treatment is recommended.
    - Parents may wish to investigate an alternative educational setting. [suggested private schools] While [Student] remains in his current educational setting, he would greatly benefit from working with a learning specialist.
    - Modifications should be provided in the current classroom setting regarding work which requires reading and writing.
    - Intensive [OT] evaluation should continue.
    - There is concern about [Student's] written expression and use of language. In addition, whenever a diagnosis of Dyslexia is made, a language evaluation by a medical speech and language pathologist is recommended in order to help pinpoint the nature of these problems, and to devise appropriate remedial strategies.
    - It is believed that the ideal treatment approach to anxiety disorders is to combine medication with psychotherapy, so that the child learns effective coping strategies. Therefore, it is felt that [Student] would benefit from weekly individual psychotherapy. [Student] should also be evaluated by a child psychiatrist who can assess the efficacy of a medication trial. (Ex. B-17 pp. 22-23)

14. The Clinical Psychologist also made specific recommendations concerning the Student's school program, commenting that some of them would be appropriate when he is older. (Ex. B-17 pp. 23-29)

15. A Section 504 Student Accommodation Plan for the Student dated February 28, 2006, described a concern about Student's "fine-motor difficulties, visual-motor weaknesses, inattentiveness". An outside neuropsychological evaluation had provided a diagnosis of Attention Deficit Hyperactivity Disorder. The impact of this diagnosis was reported as:
    - Work completion, ability to complete routine tasks
    - Completing written work in timely fashion + fulfilling morning routines.

    Necessary accommodations to be implemented were:
    - Continue w/ OT services (2X/week)
    - Reminders to stay on task, preferential seating
    - Review in June 2006.

    This meeting was attended by Student's Mother, a School Psychologist, Student's Teacher and an OT. (Ex. P-19)

16. A Speech and Language Screening performed on April 28, 2006 was reported by a Board Speech/Language Pathologist (S/LP). She determined that Student "does not appear to have significant difficulty processing language or producing language in terms of form, content or structure according to the results of [CELF]. Informally, it was observed that [Student] was able to carry on a conversation, respond to questions, give directions when asked, follow directions, share social information, make sufficient eye contact, produce complete sentences of adequate syntactic structure and grammatic form and produce age-appropriate speech. (Ex. B-19)

17. The PPT met on May 9, 2006, with Elementary School Assistant Principal, Mother, Regular and Special Education Teachers, School Psychologist, School S/LP, School OT and two members of the Evaluation Team present. Since Student was "successfully completing grade level work" the PPT did not pursue consent to complete the evaluations. It was noted that the PPT would reconvene if the Parents would share the results of their private evaluations. (Ex. B-31)

18. Parents placed Student at Villa Maria, a state-approved private special education school in Stamford, for the 2006-2007 and 2007-2008 school years. (Ex. P-1; Testimony of Mother, Tr. 12/20.2011 pp. 15-17; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 10-12)

19. In early 2008, Mother inquired about special education services for Student. She was advised by the Assistant Principal at his former Board Elementary School that an evaluation would be necessary, and that Stamford, the town where the private school was located, was responsible for providing such an evaluation. Mother contacted Stamford, consented to evaluation, and an Achievement Assessment and a Psychoeducational Evaluation were performed. (Ex. B-30; Testimony, Elementary School Assistant Principal)

20. The Psychoeducational Evaluation was performed by Stamford school personnel on March 17, 2008. Concerns noted by teachers were: handwriting, organization, distractibility and developing abstract thinking ability. Student's areas of strength were: grammar, mathematical abilities, decoding and spelling skills, solid comprehension, work completion and positive adult and peer relations. This evaluator noted:

    Observations: [Student] is a friendly and sweet young boy. His speech was normal and was clearly understood as he conversed easily with the examiner. Throughout the testing sessions, [Student] appeared to be confident in his abilities. His vision, hearing, understanding and motor control appeared to be within the normal ranges. He was always very polite and was a pleasure to work with. A nice rapport was established and [Student] appeared alert and oriented. Overall, [Student] worked diligently throughout the testing sessions and as he was involved in the tasks presented, the results of this evaluation should be viewed as a valid indication of current levels of functioning.

    The Stamford School Psychologist listed the tests administered: WISC-IV, GORT-4, TRS of the BASC-2, PRS of the BASC-2, VCPT, and VMI. The evaluation also included projective drawings, an interview of the Student and a File Review. (Ex. B-21 p. 2-3)

21. The Summary and Conclusions of the April, 2008, report of the Stamford Psychoeducational Evaluation are summarized:

Overall level of intellectual functioning in the average range; general verbal comprehension abilities superior range; general perceptual reasoning abilities high average range.
Verbal reasoning and nonverbal reasoning abilities are better developed than his ability to process visual material quickly.
Fluency and comprehension on the GORT-4 average range. Oral Reading Quotient average range. Weakness in visual-motor skills
On the BASC-2, one teacher found Student's physical symptoms of stress in the At-Risk range, and his Mother found taking care of his needs and expressing his needs or ideas in the At-Risk range.
Student's attention appeared to wane as time progressed.
Projective drawings may indicate high aspirations for himself, wariness in meeting expectations and possible feelings of anxiety.
In his interview with the School Psychologist, the Student revealed positive family relations, a sense of confidence and explained how he would like to become a Steelers football player.

The Stamford School Psychologist's recommendations:

- Share the results of this evaluation at PPT with a multidisciplinary team and [Student's] parents.
- Share concerns with visual motor integration skills with [OT].
- Encourage [Student] to read aloud at home for at least 30 minutes a day to improve decoding and comprehension skills
- Due to concentration concerns, break down challenging tasks into 4 minute or less increments of time. (Ex. B-21, pp. 12-13)

22. The Achievement Assessment was performed by Stamford school personnel on April 2, 2008. The Stamford Special Education Teacher made a classroom observation of the Student at Villa Maria and administered the Woodcock-Johnson III Test of Achievement, Form B. Student's scores:

Cluster	SS
Broad Reading	103
Broad Math	112
Broad Written Language	104
Total Achievement	107

The evaluator commented:

When compared to the scores earned by other at his age level, [Student's] overall level of achievement is average. His academic skills are in the high average range. [Student's] ability to apply academic skills is within the high average range. His fluency with academic tasks is within the low average range.
When compared to others at his age level, [Student's] standard score is superior in math reasoning. His basic reading skills, broad mathematics and brief mathematics scores are in the high average range. His standard scores are average (compared to age peers) in broad reading, brief reading, math calculation skills, broad written language, written expression and brief writing. (Ex. B-21, pp. 1, 8-9, 14-15)

23. After Stamford had completed the evaluations, a PPT was called in that school district to consider whether Student was eligible for special education. Present at the June 3, 2008, Stamford PPT meeting were an administrative designee, Mother, a Special Education Teacher, a School Psychologist and a School Social Worker. The Stamford PPT reviewed the evaluation results and determined that Student was not eligible for special education. Attached to the record of this meeting was a list of suggestions from the Stamford School Psychologist:

    Student does not meet state/federal guidelines for specific learning disabilities identification due to commensurate intellectual and academic levels, however, concerns are raised by mild to moderate processing weaknesses that may be related to his identified anxiety issues.

    - Provide extended time and quiet, supportive setting for course and standardized testing to compensate for slow processing speed.
    - Reduce written work to minimum to help with visual-motor integration delays. Explore alternative ways to test for concept mastery other than in written form.
    - Check early for task understanding (ask him what he is to do and where he will start) and check on progress. Attention support.
    - Break down instructions into short, concise statements.
    - Break down work into short units. Present one unit at a time to reduce stress.
    - Provide multiple supports for new information (visual written lists of crucial information, facts, dates, names, etc., pictures, graphs, models of finished work ...)
    - Teach efficient note taking skills and keyboarding abilities as student gets older.
    - Explore ways to provide counseling support in a school setting. Encourage and help student practice self-calming techniques. (Ex. B-30; P-2)

24. Although Student started the 2008-2009 school year at a different private school, he re-enrolled at the Board's Elementary School in October, 2008. His Mother had discussed his re-enrollment with school staff, but no documentation of his prior private school placements was provided to the school and no specific date for actual enrollment had been agreed to. The Board's Elementary School requested Parents to release Student's records from his prior schools to assist in planning for him. No records were received. The first day that Student appeared at school, the teacher who had been designated for him was absent. However, some of the students remembered him and the Substitute Teacher and his friends helped him to get settled. (Ex. B-34 pp. 15, 18, 20, 22; Testimony of Mother, Tr. 12/20/2011 pp. 25-30; Testimony of Elementary School Assistant Principal, 10-20/2011 pp. 14-17; Testimony of 4th grade teacher, Tr. 12/20/2011 p. 133-134)

25. The 4th grade Teacher whose class Student joined has an M.A. in Early Childhood and Elementary Education and eleven years of experience at the Board's Elementary School. This Teacher accepted some of Mother's suggestions for individual accommodations for the Student, and provided the services approved at the October 30, 2008 PPT meeting. (Ex. B-38; Testimony, 4th Grade Teacher Tr. 12/20/2011 p. 160)

26. The Board's PPT met on October 30, 2008, to consider the Stamford evaluation. Present were Elementary School Assistant Principal, both Parents, Regular and Special Education Teachers, School Psychologist and S/LP. Pending the gathering of information for

consideration of Student's possible eligibility for special education services, the team agreed that since he had been receiving services under Section 504 when he was previously enrolled at the Board's school, some services would be provided immediately:

- Organizational tools
- Preview questions before reading text to help him know what he needs to be looking for as he reads
- Assign a classroom buddy
- When appropriate, provide a second set of books for home (some materials can be accessed via the computer (math))
- Provide work sheets with less on the page (Mom feels too much on a page has a negative impact on Student
- Have Student use a computer program once a week to improve fluency
- Have Student participate in a fluency group
- Provide a color tracking overlay (Ex. B-28; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 23)

27. The 4th grade teacher provided the classroom modifications agreed to at the October 30, 2008, PPT meeting. This Teacher observed that Student found writing very difficult: he enjoyed her writing to his dictation. She tried having him use a computer to write, but observed that his speed was "very, very slow".
(Testimony, 4th grade Teacher, Tr. 12/20/2011 pp. 136-141)

28. The PPT met on December 18, 2008, to consider a psychological evaluation from 2005 provided by Parents. Present at this meeting were Elementary School Assistant Principal, Mother, Father by telephone, Regular and Special Education Teachers, School Psychologist and S/LP. (This evaluation is discussed at Findings of Fact 12-14, above.) The record of this meeting shows that the reason for the meeting was "consider private evaluation/update" and the primary disability was "To be determined". The record also shows that Student was not eligible for special education. The PPT recommended the following classroom modifications:

- [Student] will participate in a fluency group which will work on word attack skills
- A new word study book will be given to [Student]
- A homework buddy will be designated for [Student]
- [Mother] will send in a note if she doesn't see his word study list
- [Mother] was provided a math reference book to keep at home
- [Classroom Teacher] will continue to check [Student's] assignment book
- Intervention in the area of written expression will be implemented
- [Mother] doesn't feel that it's necessary to provide assignments with less information on the page

Mother was quoted as saying that she did not want Student's 504 plan (from grade 1) implemented. (Ex. B-1)

29. The PPT met again on February 4, 2009, because Parents disagreed with the Stamford evaluation and denial of eligibility for special education. Present were Elementary School Assistant Principal, both Parents, Regular and Special Education Teachers, School

Psychologist and two members of the Evaluation Team. The PPT discussed the need for evaluations by school staff. Parents signed consent for the completion of educational and psychological evaluations, as well as observations and rating scales. (Ex. B-2)

30. The Board staff performed a Multidisciplinary Evaluation on March 17 and 31, 2009. The School Psychologist and the Educational Evaluator provided recommendations for the PPT:
    - Since pencil and paper work in a timed context results in a poor product and increased anxiety, some consideration should be given to alternate formats when reasonable.
    - All directions should be delivered utilizing multiple sensory domains to maintain his focus and interest.
    - [Student] would benefit from staff allowing him time to process concepts prior to beginning work.
    - Repetition of directions is imperative. Ideally, [Student] should demonstrate his understanding to the teacher prior to beginning independent work.
    - Increased repetition and review would help [Student] become more fluent, though accuracy should be prioritized.
    - Parents and staff members should consider the effect that frequent change may have on [Student] and modify expectations as necessary. (Ex. B-23 p. 12)

31. Student's 4th grade report card for the 2008-2009 school year in the Board's Elementary school showed the following grades:
    Social Development: first marking period, one "very good" (VG), two "satisfactory" (S); second marking period, two VG and one S; third marking period, two VG and one S.
    Work Habits and Attitudes: first marking period one S and four NI (not introduced); second marking period one VG and four NI; third marking period, one VG, one S and three NI.
    Reading: first marking period, two VG, three S; second marking period, one VG, four S; third marking period, two VG, three S, End-of-year grade S.
    Oral Language: first marking period, one VG, two S; second marking period, two VG, one S; third marking period, three Excellent (E); end-of-year grade E.
    Writing: first marking period, three VG, two S, two NI; second marking period, one VG, three S, three NI; third marking period, one VG, five S, one NI; end-of-year grade, S.
    Mathematics: first marking period, one VG, one S; second marking period, two S; third marking period, one VG, one S.
    Social Studies: first marking period, no grades; second marking period, three S; third marking period, three VG; end-of-year grade, VG.
    Science: first marking period, two VG, one S; second marking period, three S; third marking period, two VG, one S; end-of-year grade, VG. (Ex. B-36 p. 1)

32. This report card also noted that Student had been tardy 45 days in the school year. When the 4th Grade Teacher asked Student's Mother about his frequent lateness, she responded that he was difficult to get going in the morning and was also spending time with his Father. The Teacher was concerned because the time that Student missed at the beginning of the day was used to get organized for the day. Mother also defended nine absences as health-related doctor's appointments and visits to other schools. (Ex. B-36 p. 1; Testimony 4th Grade

Teacher Tr. 12/20/2011 p. 147-149; Testimony, Mother, Tr. 9/23/2011 pp. 93, 101-105; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 53-57)

33. The Student's 4th grade report card for the 2008-2009 school year at the Board's Elementary School included narrative comments from his classroom teacher:

Fall 2008: [Student] seems to be a capable writer when he commits himself to expressing his thoughts on paper. His writing is structurally sound, and can be descriptive, but his capitalization and punctuation can be distracting to the meaning he is trying to convey. I understand that the physical act of writing is difficult for [Student], and next marking period we will experiment with using a keyboard.

Although his attention has improved since he first arrived, [Student] is easily distracted, and can bring others off task as well. He is slow to begin a task, and often does not have the materials needed, but he understands the directions and is able to complete the assignment. He has shown no trouble with recording homework or notes from the board. He has completed all assessments within the time period prescribed, and his scores show a high level of comprehension.

March 2009: This marking period has been difficult for [Student]. He has been distracted and reserved. I do not sense that he is involved in his learning. Although he does not draw other students off task anymore, he does not engage with them in positive ways either. His attention is often focused on items inside his desk, and he needs frequent reminders to attend to lessons and to his work. I am so pleased to see sparkles of the old [Student] from time to time, and will continue to encourage him in any way I can.

Our writing has been prolific with two major goals – improvement of narrative and short answers to questions. Fluent organization of ideas is hard for [Student], and he tends to state his thoughts without support. His narratives start out with some steam, and even incorporate some description, but he quickly loses focus and stamina. The stories are short and unelaborated. [Student's] vocabulary is strong, and his editing skills are solid, but punctuation is not consistently present in his own writing. Although his keyboarding is still very slow (about 2 sentences per ½ hour), we will give it a try, and see if it helps. In reading we focused on nonfiction as [Student] researched facts about sharks for the informational narrative we are writing now. He drew some detailed drawings, but found few facts to support his story. We also read a variety of short text, including poetry, to improve analysis and written response to text. [Student] participated in a small group to improve reading skills and written response.

Math tackled difficult concepts such as the relationship between decimals, fractions, and metric measurement. We also struggled with difficult algorithms –multi-digit multiplication and partial products division. [Student] has not met the goal of 30 basic facts per minute in any operation except addition. He has improved, but will need to practice diligently at home to meet the goal by the end of the year. Otherwise his skills are fine. He grasps concepts quickly, and is often able to help other students. Math is [Student's] strongest discipline, and he is proud of being able to help others.

A new science unit is explored each marking period, and grades often fluctuate depending on student interest/motivation and the nature of the investigation. Ecology/Zoology is more language-based than the experimental Electricity unit was. The

concept of adaptation to change in the environment is less concrete, and more difficult to understand.

June 2009: Overall, the year has been an adventure, and [Student] has shown growth in most subject areas. He should be especially proud of the excellent portrayal of Mark Twain that he presented to the class. I was very impressed with his perceptive understanding of the issues and personalities that shape the history of our country. His comments and questions deepened our discussions. I am also pleased that he reading fluency has improved, and that he almost made the goal of 30 math facts per minute! [Student] should continue reading and writing over the summer to better prepare for 5th grade. (Ex. B-36 p. 2))

34. Included with Student's 2008-2009 report card was a listing of math topics as "beginning", "developing" and "secure". Nineteen were rated secure at the end of the year, eleven were rated developing and none were rated as beginning. (Ex. B-36 p. 3)

35. The Board's PPT met on April 22, 2009. Present were Elementary School Assistant Principal, Mother, Regular and Special Education Teachers, School Psychologist and two members of the Evaluation Team. The purpose of this meeting was to review evaluations and determine eligibility for special education. The PPT determined that Student was eligible for special education as Learning Disabled. The School Psychologist and Educational Evaluator recommended six program elements for the Student in their written report. Mother provided a current update from Student's private OT. Because the PPT ran out of time, Mother did not have an opportunity to discuss a proposed IEP. She did not sign consent to implement special education services, and took the draft IEP home to study. (Ex. B-12; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 34-38; Testimony, Mother, Tr. 12/20/2011 pp. 40-44)

36. The PPT meeting continued on April 23, 2009, with Elementary School Assistant Principal, Mother, Regular and Special Education Teachers and S/LP in attendance. Present Levels of Academic Achievement and Functional Performance were determined as:

Academic/Cognitive: Language Arts: Strengths: [Student] has shown many strengths in the areas of reading and writing, both in his classwork and in previous testing. He met the fourth grade benchmarks on the Fountas & Pinnel testing (one-to-one test that measures comprehensions and accuracy). In writing, [Student] is able to write personal narratives that include action and a beginning, middle and end, as well as a problem, plan and solution.

Concerns/Challenges/Needs: [Student] has a difficult time with tasks requiring fluency. He needs to work on his fluency in reading grade level passages. Additionally, he needs to work on his fluency in writing to convey a meaning.

Impact of Student's Disability: Due to [Student's] challenges with fluency, he may need wait time in the classroom. Additionally, he will benefit from looking at the quality of the work he completes (as opposed to the quantity) or increased time for production.

Academic/Cognitive: Math: Strengths: From classroom performance as well as previous testing, [Student's] ability to work in the grade level math curriculum with the concepts presented is intact.

Concerns/Challenges/Needs: [Student] also has difficulty with fluency when it comes to his math production, specifically basic facts. On the WJIII Math Fluency Subtest, [Student] scored an 88 of 92. While this score is still in the average range, it is a relative weakness for him.
Impact of Student's Disability: [Student] may need some additional time on his math work as most math problems rely on computation which will come out slower for [Student]. He may also need someone to review the directions/concepts with him to ensure that he under stands the material when presented.
Social/Emotional: Strengths: [Student] is a friendly [child] who wants to please and do well. He has a good fund of information and is knowledgeable about a variety of topics. He wants to be accepted by peers and adults.
Concerns/Challenges/Needs: [Student] is sensitive to criticism and he does not feel confident. He tries to hide his weaknesses and is vulnerable. This creates a negative cycle which reinforces his low self esteem.
Impact of Student's Disability: This impacts [Student's] ability to rely on his strengths and participate in class and social activities.
Areas that were marked "Age/Grade Appropriate" were: Other Academic/Nonacademic areas; Communication; Vocational/Transition; Health and Development – Vision and Hearing; Fine Motor; Gross Motor; and Activities of Daily Living. (Ex. B-5 pp. 7-8)

37. Goals for 2009-2010 proposed at the April 23, 2009, PPT meeting:
Goal #1: [Student] will increase his rate of reading in fourth grade level tests to 30 words over baseline.
Goal #2: Given a specific topic or picture to write about, [Student] will be able to produce four meaningful sentences in a minute about the picture.
Goal #3: Given a closed set (based on those he knows) of math facts from one operation, [Student] will increase his rate of fluency with the facts.
Goal #4: [Student] will increase his confidence and ability to help himself when he encounters something that is difficult for him to do. (Ex. B-5 pp. 11-15)

38. Program modifications/accommodations for Student in the April 23, 2009 IEP:
Materials/Books/Equipment: Graphic Organizers for writing, duration of the IEP.
Tests/Quizzes/Time: Separate seating except spelling; extra time – 150%, duration of the IEP.
Grading: Focus on quality over quantity or allow extra time, duration of the IEP.
Organization: Provide structures to organize paperwork, duration of the IEP.
Behavior Management/Support: Point out [Student's] strengths, positive reinforcement, duration of the IEP.
Instructional Strategies: Allow wait time & break down longer tasks, Multi-sensory approach, have Student restate information, review directions, duration of the IEP. (Ex. B-5 p.16)

39. The April 23, 2009, PPT provided that Student receive some accommodations for State and District testing. While he would take the standard CMT/CAPT, accommodations of time and test setting would be provided. For Districtwide Assessments, he would take the standard assessments also with accommodations. (Ex. B-5 pp. 18, 23)

40. The April 23, 2009, IEP provided for Student to receive his instruction in reading, writing and math groups in the special education classroom from special education teachers. The PPT also determined that he did not need any assistive technology or an extended school year in order to benefit from special education. The Mother did not sign consent for Student's initial special education placement, but did take the proposed IEP home to review. (Ex. B-5 pp.21, 24-26; Testimony, Mother, Tr. 12/20/2011 pp. 44-50)

41. The report of OT screening on May 1, 2009, included a recommendation that he have an OT evaluation. (Ex. B-8 p.1)

42. The PPT re-convened on May 7, 2009, with Elementary School Assistant Principal, Mother, Regular and Special Education Teachers and School Psychologist in attendance. The purpose of this meeting was to review the proposed IEP. Student's Mother had called the Assistant Principal to tell her that she didn't feel that the proposed IEP was appropriate for Student. The PPT agreed to add reading services 5 X 60 minutes a week in a general education setting in another fourth grade classroom. The Mother requested a private school placement for Student, which the PPT school members refused. (Ex. B-9 pp. 1,2; Testimony, Mother, Tr. 12/20/2011 pp. 51-54)

43. On May 7, 2009, Mother signed consent for an OT evaluation of the Student. Mother wrote the following on the consent form for initial special education placement and signed in the margin:

> I consent that my son is eligible for special education under the learning disability category. I do not consent to the placement described in this IEP, because it is not appropriate [illegible copy]. (Ex. B-6 pp.3, 7; Testimony, Assistant Principal, Tr. 10/20/2011 pp. 42-45)

44. An OT evaluation of Student was performed on June 17, 2009. The report of this evaluation concluded:

> [Student] was cooperative and motivated during the evaluation and in addition was polite and interactive with this therapist. He presented with many areas of strengths. Based on the above information, [Student] would not benefit from direct [OT] services in the school setting.
>
> School/Home Recommendations
>
> - [Student] would benefit from continued keyboarding instruction, as this is a fine motor task that also provides a functional skill for academic use. Keyboarding helps to enhance the speed of written communication.
> - Encourage [Student] to participate in daily typing practice once instruction has begun to practice these skills and to provide daily fine motor and visual motor activities at home.
> - [Student] would benefit from having a letter strip and editing checklist on his desk to enhance his legibility and accuracy. (Ex. B-23 p. 4)

45. The PPT re-convened on June 23, 2009, to review the OT evaluation. Elementary School Assistant Principal, Mother, Regular and Special Education Teachers and School

Psychologist were in attendance. The OT evaluation concluded with a finding that Student would not benefit from direct OT services in the school setting. The PPT accepted the OT report and denied OT services. (Ex. B-12) B-23 pp. 1-5)

46. Parents enrolled Student in the Upper School at Eagle Hill School for the 2009-2010 school year. Eagle Hill is approved by the Connecticut State Department of Education for placement of students with disabilities. Student continued at Eagle Hill for the 2010-2011 and 2011-2012 school years. (Testimony, Mother, Eagle Hill Educational Advisor; Tr. 8/9/2011 pp. 10-11, 13)

47. The Student's Educational Advisor at Eagle Hill described him as anxious at the beginning of the 2009-2010 school year. He had expressed his anxiety in "silly" behavior that was difficult to discourage and problems with transitions during the school day. She also reported that he did settle down to work. (Testimony, Educational Advisor, Tr. 8/9/2011 pp. 14-18, 31-37)

48. Parents arranged for a private psychological evaluation of Student which was performed on February 8, 9 and 17, 2010. The February 26, 2010, report of this evaluation provided a DSM IV diagnosis:

Axis One:	Attention Deficit Hyperactivity Disorder, Primarily Inattentive Type, Generalized Anxiety Disorder
Axis two	Learning Disorder
Axis Three	No reported problems
Axis Four	Educational Problems
Axis Five	65 (Ex, 24 p. 23)

49. The February 26, 2010, psychological evaluation report concluded with a summary and recommendations. The Student was described as functioning in the upper end of the average range of intellectual capability. He has strengths in abstract verbal reasoning skills and knowledge of general information. He has an excellent vocabulary, but is sometimes slow to organize his verbal thoughts. Knowledge of social information is quite strong.

> [Student] possesses a strong capability to complete tasks involving perceptual reasoning and spatial reasoning. His understanding of part-whole visual relationships is excellent and he is able to grasp visual patterns. Yet, he is having significant difficulty in processing and integrating complex visual information. He becomes overwhelmed by visual complexity and demonstrates symptoms consistent with a visual convergence deficiency. He has weaknesses on tasks involving visual motor integration, though he appears to have made improvements in this area over the last several years. His overall processing speed is quite weak and he demonstrates very weak cognitive efficiency. [Student] possesses weak levels of attention span. His cognitive arousal levels are relatively low for an 11-year old boy. He demonstrates adequate impulse control but is weak in areas relating to cognitive flexibility. While his active working memory skills are within the average range, there are inconsistencies in his ability to keep information in a sequential format when he is performing mental manipulations with the information. Furthermore, on tasks involving executive functions, he often struggles ... (Testimony, Psychologist, Tr. 9/23/2011; Ex. B-24)

50. This Psychologist commented that Student "quickly reached a level of fatigue" during the evaluation. More than once on the days of the evaluation, Student expressed anxiety about his performance. Student also commented that work often took him longer than his classmates at school. This Psychologist also recommended "more intensive intervention in terms of executive function development". He also endorsed Student's need to develop his keyboarding skills. In a brief encounter with Student in August 2011, the Psychologist described him as "poised". (Testimony, Psychologist, Tr. 9/23/2011, pp. 8, 13-14, 27, 31-33, 46, 50, 74)

51. The February 26, 2010, report of the psychological evaluation concludes with five pages of suggestions for Student's educational program. Many of the suggestions duplicate those made by the Stamford PPT, accommodations recommended by the Board's PPT and included in proposed IEPs. (Ex. B-24 pp. 24-28)

52. The Teacher of Student's Study Skills class at Eagle Hill during 2010-2011 described him as pleasant and cooperative. She recognized his problems with attention, executive functions, and task initiation. She seated him in a place that helped him avoid distractions. She encouraged him to use a computer since his handwriting was difficult to read. (Testimony, Study Skills Teacher, Eagle Hill, Tr. 8/9/2011 pp. 94-96, 102-104, 111)

53. The record of the hearing includes no evidence of contact between the Board and Student's family between his enrollment at Eagle Hill in the fall of 2009 and a March 7, 2011 PPT meeting.

54. The PPT convened on March 7, 2011, with an Assistant Principal at the Middle School, Mother, Board Special Education Teacher, School Psychologist and S/LP, in attendance. Two Eagle Hill teachers participated in the meeting by telephone. Mother signed consents for release of information about the Student from Eagle Hill School and for a re-evaluation. The team would re-convene after the evaluation was completed. (Ex. B-13; Testimony, Assistant Principal, Tr. 12/21/2011 pp. 7-9)

55. An educational evaluation of Student was performed by a Board Special Education Teacher on March 14, 2011. This Teacher reported:

> [Student] scored in the average range for the Reading Fluency, Math Fluency and Writing Fluency (WJ-III), above average range for the Contextual Conventions subtest of the TOEL-4 and very superior for the Story Composition of the TOWL-4. (Ex. 26 pp. 31-33; Testimony, Board's Special Education Teacher, Tr. 12/21/2011 pp. 30-33)

56. On March 31, 2011, Student had a Psychological Update by a Board School Psychologist. The School Psychologist reviewed Student's records, made a classroom observation at Eagle Hill School, and gave Behavior Rating Inventory of Executive Function and Connors-3 Parent Short Form to Parents and to one of Student's Teachers. This evaluator's summary:

> [Student] is a twelve-year-old boy with a history of ADHD and learning problems. Ratings by both his parents and his teachers are significant for inattention and executive

functioning issues. (Ex. B-26; Testimony, Board's School Psychologist, Tr. 12/21/2011 pp. 48-56)

57. The PPT convened on April 26, 2011, to seek consent for more testing. Present were: Middle School Assistant Principal, Mother, an Eagle Hill Teacher by telephone, a Board Special Education Teacher, School Psychologist and Eagle Hill Teacher/Administrator. The Eagle Hill staff members reviewed Student's progress there. Mother signed consent for testing of executive function, including Parent and Teacher forms. (Ex. B-25; Testimony, Assistant Principal, Tr. 12/21/2011 pp. 11-12)

58. The PPT convened on May 20, 2011. Present were: Middle School Assistant Principal, Mother, Regular and Special Education Teachers and School Psychologist. The results of the observation of Student and his evaluations were reviewed. The Present Levels of Academic Achievement and Functional Performance were updated based on reports from Student's Eagle Hill Teachers:

Academic/Cognitive: Language Arts: Strengths: According to the December 2010 progress reports from [Student's] current school he has mastered the decoding and spelling goals. In isolation he has mastered most of the vocabulary goals and comprehension questions.

Concerns/Challenges/Needs: According to December 2010 progress reports from [Student's] current school he still struggles with inferential comprehension questions, making predictions and summarizing the text.

Impact of Student's Disability: Due to [Student's] difficulty maintaining attention and consistently sustaining his performance, teachers will need to check for understanding and work in progress.

Other Academic/Nonacademic Areas: Strengths: According to reports from [Student's] current school he has begun to make progress towards organizing his materials with encouragement. He understands his own learning style and applies strategies that are appropriate for him.

Concerns/Challenges/Needs: [Student] is not completely independent in his ability to keep his materials organized. [Student] will need help planning long term assignments that are required in the middle school setting.

Impact of Student's Disability: Due to [Student's] difficulty maintaining attention and consistently sustaining his performance, teachers will need to check for understanding and work in progress.

Social/Emotional: Strengths: Based on information from his current school, [Student] is noted to have a positive attitude and is an eager participant in classes. He is described as someone who is often socially engaged and who can empathize with peers. By direct observation [Student] is a student who is well liked by peers and often socially engaged throughout the school day.

Concerns/Challenges/Needs: According to his teacher reports [Student] still lacks confidence in his academic skills and may not always self-advocate (especially ask for help).

Impact of Student's Disability: Because [Student] has some difficulty maintaining attention and consistently sustaining his performance, teachers will need to check for understanding and work progress.

Areas that were marked "Age/Grade Appropriate" were: Academic/Cognitive: Math; Communication; Vocational/Transition; Health and Development – Vision and Hearing; Fine Motor; Gross Motor and Activities of Daily Living. (Ex. B-26 pp. 3-5; Testimony, Assistant Principal, Tr. 12/21/2011 pp. 12-15)

59. Goals for 2011-2012 proposed at the May 20, 2011, PPT meeting were:
Goal #1: [Student] will utilize strategies to improve organization.
Goal #2: Given academic classes [Student] will utilize organizational strategies necessary to complete assignments in a timely manner.
Goal #3: Using a focus checklist [Student] will independently monitor his level of focus in class.
Goal #4: Given a passage in his grade level general education classroom [Student] will read the passage and then answer inferential comprehension questions.
Goal #5: [Student] will demonstrate confidence in his academic performance and practice self-advocacy. (Ex. B-26 pp. 7-12)

60. Program Modifications/Accommodations for Student in the May 20, 2011 IEP:
Materials/Books/Equipment: Calculator, Graphic Organizer, Manipulatives for all classes.
Tests/Quizzes/Time: Extra time – 150% May be taken in Alternate Setting for all classes.
Grading: No Handwriting Penalty.
Organization: Post Assignments, Provide Study Outlines, all classes.
Environment: Preferential Seating, all classes.
Behavior Management/Support: Positive Reinforcement. all classes.
Instructional Strategies: Extra Drill and Practice, Check Work in Progress, Have Student Restate Information, Multi-Sensory Approach, Provide Models, for all classes. (Ex. B-26 p. 13)

61. The May 20, 2011, IEP provided for some accommodations for Student for State and District Testing. The IEP included Collaborative Support for Language Arts 7.5 x 45 mins/week, Learning Center 2.5 x 45 mins/week and Counseling 1 x 45 mins/week. Counseling would be provided both individually and in a group. (Ex. B-26; Testimony, Assistant Principal, Tr. 12/21/2011 pp. 2, 16-21)

CONCLUSIONS OF LAW:

1. Section 10-76h, Connecticut General Statutes (C.G.S.), and related regulations at Section 10-76h, Regulations of Connecticut State Agencies (R.C.S.A.), authorize an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Sections 4-181a of the C.G.S. Section 20 U.S.C. § 1415(f) and related regulations at 34 C.F.R. § 300.511 through § 300.520 also authorize special education hearings.

2. The federal Individuals with Disabilities Education Act sets forth the procedural requirements for students who may be in need of special education due to one or more disabilities. At 34 C.F.R. §300.301(a):

> Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability.

At 34 C.F.R. §300.300(a), parental consent is required prior to the school district conducting this evaluation.

3. The PPT must consider any evaluation that the Parent provides. After a school district evaluation, parents who disagree with that evaluation may request an independent evaluation at public expense (34 C.F.R. §300.502). In this case, Parents have not requested reimbursement for any of the many evaluations they have shared with the PPT. However, by pre-empting school evaluations and by early denial of consent to school evaluations, they have limited the number and type of evaluative tests that have been used with the Student. At 34 C.F.R. §300.304, Evaluation Procedures, the requirements for evaluation for special education eligibility are laid out in great detail.

At 34 C.F.R. §300.304 (c) (4):

> The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]

4. The standard for determining whether a free appropriate public education has been offered or provided to a child who is eligible for special education 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.

5. While Parent alleges that early PPT meetings were not procedurally correct, little evidence of specific problems was shown. The regulations require at least one PPT meeting each school year be held for students receiving special education (34 C.F.R. §§300.116 (b) (1), 300.324 (a) (4) and Section 10-76d-11 (b), R.C.S.A.) During the school year 2005-2006, Student's first grade year, three PPT meetings were held, at least one parent was present at each one, and information about procedural requirements was provided to Parents. During 2008-2009, six PPT meetings were held (one carried over to a second day), at least one parent was present at each one and information was provided about procedural requirements. During 2010-2011, three PPT meetings were held, at least one parent was present at each one and information was provided about procedural requirements. The IEPs presented to Parent, based on the information available to the PPT at the times, were reasonably calculated to enable the Student to receive educational benefit.

6. When parents have made a unilateral placement of a student requiring special education, and then request reimbursement from the school district for that placement, the parent must show 1) that the special education program and placement offered by the public school was not appropriate to the student's special education needs and 2) that the unilateral placement was

appropriate to the Student's special education needs, in order to secure reimbursement. *Burlington School Committee, et al. v. Massachusetts Department of Education,* 471 U.S. 359, 369-370 (1985). The Board's PPT offered appropriate programs and placements, based on the information available to them at the time.

7. Pursuant to Section 10-76h-14, R.C.S.A., while the party who has filed for a hearing has the burden of going forward, the Board has the burden of proving the appropriateness of the Student's program and placement. The Board has met that burden by providing IEPs based on the information available at the time of each PPT meeting, but the Parents have not consented to special education placement for Student.

DISCUSSION

Although concerns had been raised about Student starting in 2004, Parents did not consent to a multi-disciplinary evaluation by professional school staff until early in 2008. Because Student was attending a private school in Stamford at that time, Stamford received a signed consent and performed the evaluation. At a Stamford PPT meeting on June 3, 2008, the Stamford PPT found the Student not eligible for special education.

After Student re-enrolled in the Board's Elementary School in October, 2008, there were PPT meetings on October 30 and December 18, 2008: at each of these meetings, classroom accommodations were instituted to address Student's problems. At a PPT meeting on February 4, 2009, Parent signed a consent for the Board to conduct an evaluation to determine eligibility for special education. Student's eligibility was determined at a PPT meeting on April 22, 2009 and an IEP was offered at the meeting's continuation on April 23, 2009. Parent noted on the consent form that she consented to the Student's eligibility for special education but did not agree with the proposed IEP. A consent to eligibility, which is not required by law, is not equivalent to a consent to the initial provision of special education, which does require parent consent. Parent did not sign consent for the initial provision of special education at that meeting, nor did she sign consent at subsequent PPT meetings on May 7 and June 23, 2009.

It was reported that Student had been identified as in need of special education during his kindergarten year, but neither party to this hearing produced documentation of an early PPT meeting or parental consent for services. The services provided were described as "under Section 504" in later records. While Parent argues that procedural errors prevented the Student from receiving an appropriate and timely special education program, Parent's lack of consent for the initial provision of special education was the actual barrier to implementation of an IEP for Student.

From 2004 to the present, the findings and recommendations of many of the evaluators, private professionals and professional school staff members in two school districts, were similar. Without an IEP, Board's Teachers tried to accommodate his difficulties on an informal basis. One example of the result of this is the problem of Student's handwriting. Keyboarding is mentioned in Findings of Fact 23 (6/3/2008 Stamford PPT), 26 (PPT 10/30/2008), 27 (4th grade teacher), 30 (Board Evaluation 3/2009), 33 (March 2009 Report Card), 44 (OT evaluation

6/17/2009), 50 (2/26/2010 psychological evaluation) and 52 (Testimony, Eagle Hill Teacher 2010-2011). There is no record of a systematic, individualized effort to help the Student acquire this skill. Since an IEP is legally binding on the school, there could have been documentation of instruction provided and the results. If keyboarding was NOT the solution, other alternatives might have been considered.

The record of the hearing is silent regarding an IEP and placement for 2010-2011, although there is no evidence that Student could not have been provided with an appropriate IEP if he had re-enrolled in the Board's Middle School and his Parents had consented to special education placement.

The various IEPs and placements offered by the Board and rejected by Parents were appropriate to the special education needs of the Student. While the programs offered at Eagle Hill School may also have been appropriate, it is not necessary to address a comparison. The Board's proposed IEPs and placements were appropriate and would have provided a free appropriate public education for the Student if his Parents had consented to special education placement.

FINAL DECISION AND ORDER:

The IEPs and placements developed by the School for Student for school years 2009-2010 and 2011-2012, were appropriate to his identified special education needs.

Because Student was not enrolled in the Board's school during 2010-2011 and there was no contact suggesting that he would re-enroll during that school year, the Board was not required to prepare an IEP for 2010-2011.

Because the Board's programs have been found appropriate, it is not necessary to address the appropriateness of the programs provided at Eagle Hill School.

Because the Board's programs have been found appropriate, no reimbursement of the Eagle Hill School placement by the School District is ordered.