

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Enfield Board of Education

Appearing on Behalf of the Parents:

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Appearing on Behalf of the Board:

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Appearing Before:

Attorney Robert L. Skelley
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Enfield Board of Education (“Board”) deny a free and appropriate public education (“FAPE”) to Student during the 2011–2012 academic year?
2. Did the Board deny a FAPE to the Student by failing to provide for an extended school year program for the 2011–2012 academic year?
3. Did the Board fail to provide a FAPE to the Student by failing to provide appropriate programming for the 2010-2011 academic year covered by this complaint?
4. If the answer to any of the above questions is YES, is the Student entitled to compensatory services and if so, what services and for how long?
5. Did the Enfield Board of Education deny a FAPE to the Student by failing to provide an extended school year program for the 2012 summer?
6. Does the 2012-2013 Individualized Education Program provide a FAPE to the Student?

SUMMARY:

In order to comply with 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”, “Parent”, and titles of school staff members and other witnesses in place of names and other personally identifiable information.

This Final Decision and Order sets forth the Hearing Officer’s summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993)

The Student is identified as a student who has a disability and is entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act ("IDEA") 20 United States Code ("U.S.C.") §1401 et seq. and Connecticut General Statute ("C.G.S.") §10-76a. The Student is eligible to receive special education services as a student with a Specific Learning Disability.

The Parents allege that starting in the Student's 7th Grade, the Student was subjected to bullying behaviors at the hands of her peers. This was known by the School, who exerted minimal effort to rectify the situation. The Student's grades began to deteriorate, to the point of failure. In addition, Parents feel the Student was not properly evaluated to determine the full extent and impact of any disabilities of the Student and as a result the Board failed to provide the Student with an appropriate program and resulting services, denying the Student FAPE for the 2010-2011 and 2011-2012 academic years.

The Board denies that the Student was subjected to any bullying behaviors, that the evaluations that were completed were appropriate and that if there were evaluations that were not completed it was because the Parent either refused to allow the evaluation or failed to notify the Board of a need to conduct such evaluations. The Student's failure to attend school and the Parents' failure to make the Student attend, are seen as the primary cause of any failing grades and that the program and services offered to the Student were appropriate at all times.

The Student ceased attending school, in May of the 2010-2011 school years. This followed her arrest allegedly assaulting a teacher. A Planning and Placement Team meeting ("PPT") was held on 6/10/11. The Parents requested an out of district placement for the remainder of the school year; the request was denied.

The Parents sought an independent neuropsychological evaluation of the Student, which was conducted over the months of February, August and September 2011. A PPT was held on 11/29/11 to review the evaluation. The Parents were informed that the PPT team did not believe that the Student had ever been bullied and that almost all of the recommendations requested by the evaluation were already part of the Student's IEP. The Team added Social work services. The Parents requested placement at an out-of-district therapeutic day program along with compensatory services for two years. The request was denied by the PPT Team, allegedly without consideration or discussion with the Parents.

The IEP for the 2012-2013 academic year was created at a 6/26/12 PPT. Programming and services for the Student remained the same as the programs and services offered in the 6/10/11 and 6/7/10 IEPs. The Parents again requested an out-of-district placement as well as compensatory education services, which was again denied by the Board.

The Student remains out of school at this point in time

PROCEDURAL HISTORY:

This matter was heard as a contested case pursuant to C.G.S. §10-76h and related regulations; 20 U.S.C. §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act ("U.A.P.A."); C.G.S. §§ 4-176e to 4-178 inclusive, and 4-181a and 4-186.

The Parents filed the request for a Due Process Hearing on or about 4/5/12. A pre-hearing conference was held on 4/26/12, in which the parties identified the issues for a due process hearing. The parties agreed to seek the services of a mediator in an attempt to resolve the matter.

Subsequently, on 4/26/12, Counsel for the Parents requested and was granted a thirty (30) day extension of the resolution period to allow for the mediation that was tentatively scheduled for 4/30/12. The Board was not opposed to such an extension.

Initial hearing dates were set for 6/14/12, 6/15/12, and 6/26/12. Mediation was held but proved to be unsuccessful in resolving the issues at hand.

Hearings were held and testimony taken on 6/14/12, 6/15/12, and 6/26/12, with additional hearing dates requested by the parties. 7/17/12, 7/31/12, 8/13/12, and 8/14/12 were selected by the parties as additional dates.

On 6/14/12 the Parents filed an Emergency Motion for Relief, requesting an order that the Board send referrals to therapeutic schools on behalf of the Student. The parties reached agreement on the Emergency Motion on their own accord prior to the motion being heard.

On 7/17/12 the hearing convened, with the parties immediately requesting that the hearing be postponed as the parties felt that they were close to settlement and did not want to incur additional expenses on the part of their clients by having a full day of hearing. The hearing was closed on 7/17/12, with no further testimony being taken in relation to the complaint. The additional date of 7/31/12 was to remain available should the parties not reach settlement.

The Hearing Officer was subsequently notified by counsel for the Parents that settlement was not going to be reached and that additional dates for hearing would probably be needed. The Due Process Hearing reconvened on 7/31/12 with testimony taken. The Parents moved, with no objection from the Board, to add the 2012 extended school year program and the 2012-2013 school year to the issues before the Hearing Officer. The request was granted. The parties then requested the additional dates of 8/13/12, 8/14/12 and 9/4/12 for hearing. Counsel for the Parent then requested in writing, and for good cause shown, an extension of the mailing date for the final decision and order to allow for further settlement discussions. The Board had no objection to the request for extension. The extension of the mailing date for the final decision and order was granted, moving the mailing date for the final decision date to 9/27/12.

Hearings were convened on 8/13/12 and 8/14/12; the hearing concluded with both parties resting on 8/14/12. The parties agreed that the 9/4/12 date would no longer be necessary. Final briefs were ordered to be completed by close of business on 9/7/12. On 9/6/12, the Board requested an extension of one week to 9/14/12, to submit final briefs. The mailing date for the final decision and order was moved to 10/4/2012. There was no objection to the request from the Student and the request was granted.

The Parents presented 45 full exhibits in the hearing. The Board presented 7 full exhibits in the hearing.

Six witnesses testified on behalf of the Board in the following order:

(i) Principal N. had been Principal of John F. Kennedy Middle School ("JFKMS") for nineteen years, until 6/30/11, including the first year the Student attended there, 2010-2011. (6/26/12 Tr. P. 14-16; 127-129) Principal N. had previously served as a history teacher, a special education teacher, a special education department chair, and a vice principal, and has 38 years of experience in education. (6/26/12 Tr. P. 14-16; 127-129) Principal N holds a bachelor's degree, a master's degree in special education from Southern Connecticut State University, and a sixth year certificate in educational leadership. (6/26/12 Tr. P. 14-16; 127-129) He is certified as an administrator. (6/26/12 Tr. P. 14-16; 127-129)

(ii) Special Education Coordinator has been in that role for the past eight years, including the 2010-2011, 2011-2012 and 2012-12 school years. She is responsible for several schools in addition to JFKMS. (7/31/12 Tr.) She was previously the special education department chair at JFKMS, a special education teacher at JFKMS and other schools, a regular education teacher at Windsor Locks High School and a vocational regional school operated by EastConn. (7/31/12 Tr.) She has a bachelor's degree from Southern Connecticut State University in special education, a Master's degree in special education, and a certificate in educational leadership and as an administrator. (7/31/12 Tr.)

(iii) Principal T. of JFKMS, currently in his second year in that position with three prior years of experience as an elementary school principal. (8/13/12 Tr. P. 4-6) Principal T. holds a Bachelor of Science in Regional Planning from Westfield State College, a Masters of Public Administration from American International College, a Masters of Education from Cambridge College, and a Sixth Year Certificate from the University of Connecticut.

(iv) Special Education Teacher is a certified special education teacher at JFKMS with thirteen years of experience, and worked with the Student during the 2010-11 school year. (8/13/12 Tr. P.38) Special Education Teacher holds a Bachelor of Arts in Human Development from Boston College and a Master's of Special Education from Wheelock College in Boston. (8/13/12 Tr. P.38-39)

(v) Regular Education Teacher is a regular education English teacher at JFKMS with thirty-four years of experience and who taught the Student during the 2010-11 school year. (8/14/12 Tr. P. 4-5) Regular Education Teacher holds a Bachelor of Science in degree in English Education, a Master's Degree as a reading consultant, K through 12, and 30 hours beyond a Master's Degree in general education. (8/14/12 Tr. P. 4)

(vi) School Psychologist, a school psychologist assigned for the past nine years to JFKMS. (8/14/12 Tr. P. 18) He has a Master's degree in Education, a Sixth Year degree in School Psychology and a Ph.D. in Educational Psychology, and is a certified school psychologist as well as a Connecticut licensed psychologist. (8/14/12 Tr. P. 18) In addition to his employment by the Enfield Public Schools, he has a private practice and conducts independent psychoeducational evaluations. (8/14/12 Tr. P. 18-21)

Two witnesses testified on behalf of the Parents in the following order:

- i. Mother of the Student;
- ii. Independent Neuropsychologist is a licensed Clinical Psychologist and a neuropsychologist. She received her Psy.D. in clinical psychology from the Miami Institute of Psychology, specializing in both clinical and neuropsychological tracks. She is in private practice specializing in the evaluation of children and adolescents with Neurological Impairments, Pervasive Developmental Disorders, General and Specific Learning Disabilities, Nonverbal Learning Disabilities, Attention-Deficit Hyperactivity Disorders, and Intellectual Impairment. She also consults with planning and placement teams including staff education and program development.

Several of the witnesses called by the Board were also called by the Parents, with an agreement by the parties to call joint witnesses only one time and to alternate direct and cross-examination of those witnesses so as to minimize the need for the witnesses to be called at separate times.

FINDINGS OF FACT:

1. The Student is a 13 year old female, currently attending Enfield Public Schools in the 8th grade¹, identified as a special education student, under the category of Specific Learning Disability, and found to be eligible to receive special education and related services under the IDEA. (Board-1, Parent-14)²
2. The Student resided in Enfield and attended the Enfield Public Schools from the second grade through the end of the 2011-2012. (Tr. Mother p.18) The Student continues to reside in Enfield. (6/13/12 Tr.)
3. The Student was described by her mother as struggling with homework, having difficulty making friends and always by herself. She has issues with trust, has difficulties communicating with adults and can be disrespectful. (Tr. Mother., p.91)
4. The last formal evaluations conducted by the Enfield Public Schools of the Student were completed in June, 2008³. (B-2, PPT Meeting Summary, P-8) and presented in a PPT held on 6/19/08 (P-9⁴). The Student's IQ scores showed variability. She scored in the average range with the exception of perceptual reasoning where she scored in the borderline range with a 77. Comments of the evaluator stated that given the discrepancy, the Student's language based scores, which were in the average range, should be the best estimate of her potential. (P-8, p.6) The evaluator found that her weak mental control may impede the processing of complex information and slow new learning. (*Id.*). The Student was found to have difficulty with perceptual motor competencies, non-verbal fluid reasoning and with the ability to mentally organize visual information. (P-8, pp. 5, 6)
5. According to the evaluation, the Student was having academic difficulty in all areas. (*Id.*). While she had average comprehension, she had not mastered basic reading skills such as the sound/symbol relationships, and had not mastered basic math facts or basic writing skills such as punctuation and capitalization. (*Id.*). It was noted that she read b for d, d for p and p for d. (*Id.* p. 6) The evaluator reported that Student was described as demonstrating a positive attitude toward learning, good work habits and study skills, and an ability to interact with others. (*Id.* p. 2) Weaknesses were noted by staff in the areas of reading, written language, spelling, social studies and math. (*Id.* p. 2) The evaluation encouraged the team to consider Student's need for a specialized, guided, sequential, phonetic approach to improve her reading deficiencies. (*Id.* p. 8-9)
6. The Student and her Parents attended the PPT, with the Student requesting extra help with math and reading. (P-9 p.2) The PPT indicated that the Student would be provided with 5.83 hours of direct special education instruction in language arts in the resource room, and five hours per week of support in math class. (*Id.* p.16).

¹ As of the date of the decision, the Student will be entering her freshman year.

² Henceforth exhibits for the Board will be denoted with a "B " and a corresponding number; exhibits for the Parents will be denoted with a "P" and a corresponding number.

³ Connecticut Mastery Testing was completed on March 3, 2010, the Student scored at the Below Basic level on Mathematics, mastering 3 out of 23 strands; Basic level on the Grade 6 Reading test, mastering 1 out of four strands; and Basic level on the Grade 6 Writing test, mastering 0 of 2 strands. The Vertical Score Results indicated an increase in ability over the previous two testing periods in both Mathematics and Reading, however in Mathematics the Student never progressed past stage 1 and entered stage 2 in Reading only on the 2010 testing. In 2010, the School and District average was on stage 4 for both Mathematics and Reading.

⁴ While this IEP is not a subject of this Due Process Hearing, it is the first IEP to incorporate and discuss the last formal evaluation conducted by the Board of this Student and so is being presented to provide context to subsequent discussions and findings.

7. When the Student entered seventh grade, the Principal of JFKMS held a number of meetings with the Student's father and the Student to establish a trusting relationship with them. (Tr. Principal N. p.130) Principal N. also handpicked the team of teachers who would be working with the Student for the two years she would be in attendance at JFKMS. (*Id.* p.130) Principal N. also made himself, rather than a house master, the supervisor of the Student's team. (*Id.* p.130) He did so to provide the family with a single point of contact, and because he had developed a good relationship with the Student's father. (*Id.* pps.131-132)
8. The IEP for the Student's seventh grade was developed at a PPT held on 6/7/10. (P-14)
9. Both Parents attended the PPT meeting at which the IEP for the 2010-2011 school year was designed. (P-14, p.1) Principal N. attended the meeting as did staff members. (*Id.*)
10. The 6/7/10 IEP is developed from the previous IEP, dated 6/1/09⁵. The goals and objectives in math for the 6/7/10 IEP are virtually identical to the 6/1/09 IEP. (P-14, P-12)
11. Pursuant to the 2010-2011 IEP, the Student was to receive instruction in collaborative classes in remedial reading, mathematics, English, social studies, and science. (P-14, p. 2, 24) The Student's special education direct services in language arts in the resource room were reduced from 5.83 hours per week to 3.75 hours per week. The in-class math instruction was removed from the IEP. (P-12 p.20, P-14 p. 2, 24)
12. Collaborative classes involve a certified special education teacher, in the Student's case, Special Education Teacher, providing direct instruction to the Student along with a regular education subject matter teacher. (Tr. Special Education Teacher p. 36) In the Student's support class, Special Education Teacher provided the Student with individual direct instruction. (*Id.*)
13. At the PPT at which the 2010-11 IEP was developed, staff reported that the Student was passing her classes and working on grade level. (P- 14, p. 2)
14. The PPT held on 6/7/10 identified weaknesses in reading comprehension, phonics, decoding, and writing. (P-14, p.4) These weaknesses were addressed by placement of the Student in collaborative classes for reading and English, and by goals concerning writing and reading comprehension with objectives concerning decoding. (P-14, pp. 10, 11, 12, 13, 16, 17)
15. The PPT held on 6/7/10 identified mathematics as an area of concern. (P-14, p. 4) These weaknesses were addressed by goals and objectives in the area of math concepts. (P-14, pp. 8-9)
16. The Grade 6 Connecticut Mastery Test Student Report ("CMT"), taken on 3/3/10 showed the Student as scoring Below Basic level on the Mathematics test, mastering 3 out of 23 content strands; scoring Basic level on the Reading test, mastering 1 out of 4 content strands; and scoring at the Basic level on the Writing test, mastering 0 out of 2 content strands.
17. The 6/7/10 IEP called for a triennial evaluation to be conducted by 9/19/11.

⁵ The June 1, 2009 IEP is not a subject of this Due Process Hearing but is referenced to provide the proper context for the IEP's in question in this matter.

18. The PPT held on 6/7/10 noted that the Student's behavior was age appropriate, and that the Student should be held to the regular school code of conduct. (P-14, p. 5) All Team members are in agreement with the planned program. (P-14, p.2)
19. The Notice and Consent to Conduct a Reevaluation was signed by the Parents on 6/7/10 and received by the Board on 6/15/10. (B-1)
20. The first three months of 7th grade started well before the Student sought assistance from Principal N. for not being able to learn and her perception that she was being bullied. (Tr. Mother p.34)
21. In November 2010 the Student was involved in an incident on the school bus involving a physical altercation with another student which resulted in both students being suspended. This Student was given a two day suspension; the other student received a one day suspension. (Id. p.36)
22. In the months of December 2010, January 2011 and February 2011, Parents reported continued physical and verbal harassment of the Student. Parents reported hair pulling, calling the Student "fat, stupid" and calling the Student a boy. In February 2011 additional students were involved, allegedly following the Student home and calling the Student "gay, dyke, lesbian". The Parents reported this behavior to the Principal and the school based Enfield Police. (Tr. Mother p.39-40)
23. Principal N. stated that there were no investigative reports or documentation of any investigations. (Tr. Principal N. p.81)
24. The most recent formal evaluation of the Student, a neuropsychological evaluation requested by the Parents, was conducted by Independent Neuropsychologist. The evaluation was conducted over the time period of 2/12/11, 8/2/11 and 9/7/11, and stated the following diagnoses:
 - a) Mathematics Disorder
 - b) Reading Disorder
 - c) Disorder of Written Expression
 - d) Attention Deficit Hyperactivity Disorder of the Inattentive Type
 - e) Learning Disorder Not Otherwise Specified (Executive Dysfunction)
 - f) Adjustment Disorder with mixed emotional features
 - g) Rule out Overanxious Disorder
25. The neuropsychological evaluation was independently sought by the Parents for the purposes of "clarifying the student's learning profile, understand the impact of bullying on her emotional status, and provide appropriate educational recommendations in order to facilitate her safe return to school". (P-24)
26. The Student was evaluated by Independent Neuropsychologist over three sessions, beginning on 2/12/11, followed by 8/2/11 and 9/7/11. (P-24 p.1, Tr. Independent Neuropsychologist p.89)
27. The following records provided by the Parents were reviewed for the evaluation: 2007-2010 Connecticut Mastery Test Student Reports, Grades 3-6; Planning and Placement Team Meeting, dated 1/18/07 (determination of eligibility for special education); Letters/Notifications between Parents and Central Administration at Enfield Public Schools, dated 2007-2011; School suspension notice, Henry Barnard Elementary School, Enfield Public Schools (suspension for bullying), dated 11/27/07; Planning and Placement Team Meeting, dated 3/21/08; Planning and Placement Team Meeting, dated 4/3/08; Psychological Assessment completed by the current Enfield Public School's school psychologist, dated

28. June 6th, 9th, and 12th 2008; Planning and Placement Team Meeting, dated 6/19/08; Planning and Placement Team Meeting, dated 6/1/09; Planning and Placement Team Meeting, dated 6/7/10; School Suspension Notifications, dated September, 2010 through May, 2011. (P-24 pp. 1-5)
29. Independent Neuropsychologist reported background information that was provided by the Student and Parents. The information is reported as told to her in her report. Independent Neuropsychologist felt that the information helps to set the framework allowing her to get to know the student and to understand the dynamics of an individual in a short period of time. (Tr. Independent Neuropsychologist, p.107). Clinical assessments are utilized to make her findings. (Tr. Independent Neuropsychologist, p. 107-108)
30. Twenty assessments were utilized in conducting both a neuropsychological and a psychological evaluation. The Tests administered were:
- Auditory Attention Test
 - Category Test – Intermediate
 - Children’s Color Trails Test
 - Clinical Interview
 - Conners Continuous Performance Test-II
 - Controlled Oral Word Fluency Test
 - D 2 Test of Attention
 - Diagnostic Achievement Battery – 3rd Edition
 - Gray Oral Reading Test – 4
 - Grooved Pegboard Test
 - Hooper Visual Organization Test
 - Kaufman Brief Intelligence – 2
 - Millon Adolescent Personality Inventory
 - Rey Osterreith Complex Figure Test (Copy only)
 - Record Review
 - Sentence Repetition Test
 - Stroop Color and Word Test – Children’s version
 - Symbol Digit Modalities Test
 - Test of Nonverbal Intelligence – 4
 - Visuomotor Integration Test. (P-24, p. 24)
31. Independent Neuropsychologist found that the Student’s intellectual functioning was consistent with prior testing by the Board. (Tr. Independent Neuropsychologist, p. 16). Culturally normed instruments were utilized to account for the Student’s introduction to the Hispanic culture. (*Id.* p. 112)
32. Testing data showed difficulties in sustained attention in both auditory and visual areas and difficulties with executive functioning or cognitive flexibility. (*Id.* p. 17)
33. The Student showed auditory processing difficulties in that she can hear but she has difficulty processing what she hears and then responding to it. (Tr. Independent Neuropsychologist pp. 113-114)
34. Processing speed is very low at the first percentile. (*Id.*; P-24 p.9) Testing showed difficulty with problem solving and demonstrated pre-frontal or executive functioning difficulties on multiple measures. (Tr. Independent Neuropsychologist, p. 17) The Student scored low on a test of single word decoding. (*Id.*) Results of the Gray Oral Reading Test showed low scores in the area of fluency, accuracy and decoding. (*Id.* p.18)

35. Writing showed difficulties with contextual language, formation of sentences, capitalization, punctuation and spelling. (*Id.*) Handwriting declined as the Student became fatigued. (*Id.*)
36. In math, the Student showed difficulties in both basic calculations and mathematics reasoning. (*Id.*)
37. With regard to attention, the Student had difficulties in multiple areas whether auditory or visual. (*Id.* p. 20) The loss of attention over time, in conjunction with the executive functioning difficulties was consistent with a diagnosis of ADHD, Inattentive type. (*Id.* p. 20)
38. The Connors Continuous Performance Test and the D2 Test of Attention demonstrated a vigilance decrease over time. (*Id.* p. 115).
39. The Student scored in the below average range on the story comprehension test, which measured her comprehension after hearing something auditorily.
40. On the Millon Adolescent Personality Inventory, the Student ascribed to significant expressed concerns. She feels considerable distress when viewing herself and has awareness that others reject her as well. She also endorsed higher than typical distress concerning her sexuality, reporting feelings of confusion and unhappiness with her impulses or the roles they may require of her. (P-24, p. 13-14) She experienced a sense of isolation and rejection from peers. (*Id.*p.14)
41. Neuropsychological assessment pointed to average intellectual functioning on two separate measures with no statistical variance between verbal and nonverbal skills. Despite the Student's average intelligence, her academic skills were lower. Reading ranked at the below average range, writing at the poor range and mathematics at the very poor range. She struggled with reading decoding, fluency and encoding. Writing skills were marked by poor contextual language: weakness in capitalization/punctuation, poor sentence structure, and spelling errors. Story construction was much stronger as was reading comprehension. Mathematics was poor for both mental and written computations. The findings were clearly consistent with Specific Learning Disabilities in reading, writing, and mathematics. (P-24, p. 15)
42. Independent Neuropsychologist made 21 recommendations following her evaluation. One of her recommendations was that given the Student's personality dynamics, her learning difficulties and cognitive deficits, the Team should consider outplacement in a small specialized, therapeutic school where staff can address her direct psychological and cognitive needs. (P-24, p. 16)
43. Another recommendation was to conduct an independent assistive technology evaluation in order to determine appropriate compensatory tools that may enhance her performance in reading, writing and math within the classroom.
44. She also recommended social skills support to develop positive social relationships, improve her social comfort, and minimize her fear of ridicule and rejection.
45. She recommended that the Team develop a detailed behavioral management program to minimize reactivity and the Student's own negative response or acting-out in response to incidents. To this end, a Functional Behavioral Assessment was recommended to be performed by an outside, specialized consultant to devise the programming if one is not afforded within her placement; in addition, therapeutic support in order to provide a safe medium for communication, build self-esteem and discuss appropriate problem solving strategies when difficult situations arise were also recommended. (P-24, p.17)

46. Independent Neuropsychologist testified in regard to the 2008 evaluation that was completed by the district, that if the Student had made academic progress, her scores from the 2008 evaluation would have increased in the 2011 evaluation. (Tr. Independent Neuropsychologist, pp. 32-33) She further opined that because there was no change, the Student had made limited progress. (*Id.* p.33)
47. Independent Neuropsychologist testified that the tests utilized in the 2008 and 2011 evaluations were similar and that only the reading comprehension test on the 2011 evaluation was more difficult. (*Id.* p.33) The Word Reading score from the 2008 evaluation was comparable to the alphabet work knowledge on the 2011 test where the Student's score dropped by five points. (*Id.* p. 33; P-8 p.4; P-24, p.12)
48. The results of the assessments given by Independent Neuropsychologist indicate that the Student is functioning below grade level in all academic areas. (P-24, p.12)
49. Independent Neuropsychologist was specific in how her recommendations should be implemented. She believed that the services had to be direct services aimed at those identified areas of deficit which related to academics. Whether delivered in a resource room environment or whatever setting they chose, it had to be direct and it had to be systematic and theoretically based programming to enhance those disabled areas. (Tr. Independent Neuropsychologist p.126)
50. In the evaluation process Independent Neuropsychologist did not speak with any members of the JFKMS staff, observe the JFKMS program, speak with any community treating clinicians, or review any non-evaluative information that was not provided by the Student or the Student's mother. (P-24, pp. 1-7; Tr. Independent Neuropsychologist, p. 79)
51. School Psychologist, the Enfield School Psychologist, was questioned as to the neuropsychological evaluation conducted by Independent Neuropsychologist. (Tr. School Psychologist p.24) He opined that the norm referenced testing seemed "pretty good" with regard to the Student's cognitive profile and academic strengths and weaknesses. (*Id.* p.24)
52. He acknowledged that Independent Neuropsychologist reviewed the school records that existed prior to the start of her testing and that therefore she had received a report of what was occurring in school. (*Id.* p.40)
53. Without further clarification, he opined that some of the findings were inconsistent with school records. (*Id.* p.39)
54. School Psychologist was concerned about the findings regarding social-emotional issues. (Tr. School Psychologist p.24) School Psychologist preferred the Behavior Assessment System Checklist for Children ("BASC"). (*Id.* pp.24-25)
55. His opinion was that utilizing a multi-modal approach, such as is recommended by the National Association of School Psychologists, provided a broader, more accurate depiction of the Student when evaluating for emotional issues. (Tr. School Psychologist pp.75-82) He felt that the information regarding the social/emotional issues was gathered from non-normed reference materials. (*Id.* pp.24-26)
56. The Millon Adolescent Personality Inventory is a normed testing evaluation which requires the taker to respond to 375 questions about themselves, and contains validity measures built in to determine if the reporter is being less than candid. (Tr. Independent Neuropsychologist p.130) Independent

Neuropsychologist felt that there were no indications of misrepresentations by the Student in any of the tests that were taken. (*Id.*)

57. The Student reported to her Parents that she was threatened by other students that if she attended the annual Valentine's Day dance, she would be verbally accosted again until she admitted to being bi-sexual. (Tr. Mother p. 45)
58. The Student requested her money back for the Valentine's Day dance from Principal N. and did not attend. The Student's money was refunded and there was no further contact from the school regarding the situation. (Tr. Mother pp. 45-46)
59. The words "Bitch" and "Lesbian" were carved into the Student's homeroom locker door. The principal spoke to the Student's homeroom teacher about the incident but did not ask what specifically was written there, assigned the Student a new locker and instructed the janitorial staff to remove the offensive language from the locker. The Principal never investigated the locker door and does not know if the language was ever removed. (Tr. Principal N. p.32)
60. The School took two weeks to provide the student with a new locker but never removed the derogatory language from the original locker door. (Tr. Mother pp. 48-49)
61. No investigative report was created by the Board or provided to the Parents. No forms to report bullying or sexual harassment were provided to either the Student or her Parents. (Record)
62. It is the general policy of the principal and the staff to inform "people" when they talked to them that they could fill out the Board's forms for bullying. (Tr. Principal N. p.20)
63. The Student reported to her Parents that the bullying continued throughout the school and on the bus, with other students threatening to "jump" her and calling her names such as "dyke", "gay" and "lesbian". Other students told the Parents that they witnessed these acts.
64. Mother called the principal and the in-school police officer. Principal N. told mother that these behaviors were "kid stuff". (Tr. Mother pp.42-43, 94-95)
65. The bullying and sexual harassment behavior continued into the lunchroom; the Student stopped going to lunch with her peers. (Tr. Mother p. 44).
66. Principal N. was aware that the Parents were concerned about the possibility of their daughter being bullied and had reported it on various occasions directly to him. (Tr. Principal N. p.72)
67. Principal N. was aware that the Parents were asking for the instruction given to their daughter to be done in a more concrete way. Principal N. felt that the request was "kind of below [the Student's] level and that the teachers were asking higher level questions. (*Id.* pp.95-96)
68. The 2008 evaluation conducted by and in the possession of the school found that the Student had more success learning things in context versus isolation and that she had difficulty retaining and sequencing information. (P-8 p.8) The neuropsychological evaluation conducted by Independent Neuropsychologist recommended utilizing repetition and breaking tasks down for the Student. (P-24 p.16)

69. Independent Neuropsychologist opined that she had no doubt that the Student had been bullied. (Tr. Independent Neuropsychologist, p.44) It was her opinion that the bullying would have a significant impact on the Student, given her fragile emotional state and her struggles with her sexuality; in conjunction with the reality of her father's cancer, it would be debilitating for her. (*Id.* p.45) Independent Neuropsychologist further opined that because the testing showed that the Student does not like to lose control, the fact that she did would suggest that the triggers were beyond what she was capable of dealing with. (*Id.* p.60) Independent Neuropsychologist recommended therapy and medication management, both in and out of school. (*Id.* p.50)
70. Independent Neuropsychologist opined that if the Student were placed back with the students who bullied her, the possibility of hurting herself or someone else would be elevated. (*Id.* p.62)
71. From the month of February 2011 onward, the Student spent her lunch period outside of the Principal's office. Most times she was not eating lunch. (Tr. Principal N. p. 23) Principal N. called the Student's parent once to report that she was eating lunch outside of his office. (*Id.* p.23) Principal N. felt it was an issue between the Student and her Parents. (*Id.* p. 140)
72. The Student took the Connecticut Mastery Test in March 2011. She scored at the Below Basic level on the Mathematics test, mastering 0 out of 23 content strands. She scored at the Basic level on the Grade 7 Reading test, mastering 3 out of 4 content strands, and she scored Below Basic level on the Grade 7 Writing test, mastering 0 out of 2 content strands. The Vertical scores indicated that there was negligible improvement from 2010 in Mathematics, with the Student entering Stage 2 (the School and District averages were at the last third of Stage 4); she showed more marked improvement in Reading, barely entering Stage 3 (the School and District were in the last third of Stage 4). (P-15)
73. May 9, 2011, the Student was called to the office for allegedly striking her Art teacher; Student was sent home. The next day the Parents are told to bring the Student to the school by the Enfield Police, where she was arrested for assault. (B-5 pp.9-10)
74. The Student refused to return to school from that point onward. (Tr. Principal N. p.162)
75. No evidence was presented that any school official requested a PPT to address the Student's changing grades, the increased acting out behaviors, her extended absence from school or to question the efficacy of the current IEP. (Record)
76. From May of 2011 until March 23, 2011 the Student received no tutoring or educational services. (Tr. Mother p. 79)
77. Principal N. testified that he could not remember if he ever read a letter dated 5/10/11 sent from the Student's father that mentioned bullying by several students of his daughter. (Tr. Principal N. pp. 72-74) Principal N. was consistently inconsistent in his testimony regarding his knowledge of and response to any complaints of bullying of the Student. (Tr. Principal N.)
78. A PPT was held on 6/10/11. (P-14) Team members present were: Principal T. Principal N., Mother, Special Education Teacher, School Psychologist, Guidance Counselor, Regular Education Teacher, Special Education Coordinator, Counsel for the Board and Counsel for the Parents.

79. At the 6/10/11 PPT, Mother informed the school that the Student was being bullied and sexually harassed. (Tr. Mother p.60; B-2 p.3) The Student had been absent 48 days at that point. The Parents requested a safety plan to help the Student return to the school in response to the allegations of bullying and sexual harassment. (B-2 p.3) No safety plan was incorporated into the IEP developed on 6/10/11. No transition plan was developed to return the Student to school. No investigation was suggested by the School Administration and no forms requesting information regarding the bullying or sexual harassment were given to the Parents. (B-2)
80. The School Psychologist reviewed and utilized the 2008 psycho-educational testing for the purposes of providing information for the 6/10/11 PPT, stating that formal triennial evaluations could not be completed due to the Student's absences. (B-2 p.2)
81. Parental consent for the triennial evaluation had been signed on 6/7/10. (P-21)
82. School Psychologist stated that it would have taken him only three or four class periods to complete his testing but that he had not made any attempts to do so because it was his practice to test as close to the triennial date as possible. (Tr. School Psychologist p.22) He further testified that it was best practice to test within 30 days of the triennial, that sometimes there were exceptions to testing earlier than that and doing so would not invalidate the testing. (*Id.* pp. 55-57)
83. School Psychologist testified that he could have tested the Student even when she was not in school if he had contacted the Parents to do so, but he did not do so. (*Id.* p.61) He acknowledged that the Student was in school for four weeks prior to when her triennial testing was to have been completed⁶. (*Id.* p.22)
84. School Psychologist acknowledged that at least as of the 6/10/11 PPT meeting, it was clear that the Parents were reporting bullying and sexual harassment of the Student to the school. (*Id.* p.42; B-2 p.3)
85. School Psychologist did not recommend, either at the PPT or during the time the Student was absent, counseling services, either community based or with himself. (*Id.* p.35; p.76) He did not provide or recommend the provision of bullying or sexual harassment forms to the Student or her Parents after hearing the allegations at the 6/10/11 PPT. (*Id.* pp.43-44)
86. The 6/10/11 PPT was the first PPT that the Special Education Coordinator attended for the Student. (*Id.*p.13; B-2)
87. Special Education Coordinator testified that she would have reviewed the Student's CMT scores prior to attending the PPT and that she was aware that the Student had not at any time reached proficiency in reading, writing or math. (Tr. Stamm p.60-62) She further testified that the CMT scores from the previous year would have been one of the documents that they would use in determining programming. (*Id.* pp.60-62)
88. Special Education Coordinator felt that the Student was performing adequately academically and that she herself did not raise concerns regarding the Student's academics. (*Id.* p.17) In response to reviewing the teacher reports that documented attentional, social, emotional, behavioral and academic concerns, she felt

⁶ There is a discrepancy in when the triennial evaluation was due as the 6/7/10 IEP lists both 6/19/11 and 9/19/11 as the date by which it was to be completed. (P-14 p.2-3)

that the only concerns were homework and work completion. (*Id.* pp.19-20) She did acknowledge the increase in absences throughout the year. (*Id.* p.22)

89. Special Education Coordinator acknowledged receiving a letter from the Student's treating clinician diagnosing the Student with a Major Depressive Disorder. (*Id.* p.28) She could not recall anyone at the PPT questioning the diagnosis, including herself. (*Id.*) She did testify under cross-examination that even though no one questioned the diagnosis at the 6/10/11 and subsequent PPT meetings, the school did not believe the diagnosis was valid due to having no documentation other than the letter from her treating clinician and an independent neuropsychologist. (*Id.* pp.82-83)
90. Special Education Coordinator was aware that the Student had reading issues when creating the IEP at the June, 2011 PPT, but did not know the specifics of why she was having difficulty reading. (*Id.* p.43) She was unable to say if the Student was provided with a specialized reading program, but clarified that if she was, data from the program would be part of the record. (*Id.* pp.45-46)
91. No evidence was presented during the Hearing that data from a reading program was provided to the Student.
92. The Special Education Coordinator testified that the Student's goals and objectives have not changed, other than changing the grade level, since 2010. (*Id.* pp.79-85; 94-95)
93. Special Education Coordinator acknowledged that the Parents reported that someone carved or wrote on the Student's locker that she was a lesbian. (*Id.* p.69)
94. Special Education Coordinator did not provide or recommend the provision of bullying or sexual harassment forms to either the Student or Parents. (Record) Special Education Coordinator has never discussed the bullying and sexual harassment allegations with Principal N. (*Id.* p.88)
95. Special Education Coordinator was aware, at least as of the June, 2011 PPT, of teacher reports that the Student was having difficulty with peers, including having to be separated from her peers in class, threatening and eventually being arrested for assaulting a teacher. (*Id.* pp.90-91) Special Education Coordinator felt that despite the reports, the discipline record, and the extended student absences, the Student did not have a social or emotional issue. (*Id.* p.92)
96. Special Education Coordinator did not recommend at the June, 2011 PPT a functional behavioral assessment, a safety plan, or a transition plan to bring the Student back to the school. (*Id.*p.58)
97. Special Education Teacher was the Student's Special Education Teacher during the seventh and eighth grades. (Tr. Special Education Teacher p.35) The Student was one of 16 special education students that Special Education Teacher had during the Student's seventh grade. (*Id.* pp.35, 37) In the Student's support class, she was one of ten that Special Education Teacher would provide direct instruction to. (*Id.* p.36)
98. The June, 2011 PPT would have developed the Student's IEP that Special Education Teacher would have implemented in the seventh grade for the 2010-2011 school year. (*Id.* pp.37-38)
99. Special Education Teacher testified that the expectation for students as they progress from grade to grade would be that they would advance their skills. (*Id.* pp.59-60) Special Education Teacher admitted that the

goals and objectives for the Student's sixth, seventh and eighth grades were identical, save for the change in grade level. (*Id.* pp.39-40)

100. Special Education Teacher testified that the objective listed in the Student's IEPs from sixth through eighth grade, such as phonics, is a skill that is mastered in the third or fourth grade. Once it is mastered, there is no need to have it re-learned. Once one learns phonics, you are essentially able to read. (*Id.* p.61)
101. Special Education Teacher testified that even if the Student had made 70% progress on her goals and objectives, which was the marker for mastery of the goal and objectives (*Id.* p.81), they would not be considered mastered and could be repeated without increasing any expectations year after year. (*Id.* pp.62-63)
102. The Special Education Teacher was not aware of the Student's cognitive level, and believed that the Student had learning disabilities in math, reading and writing and not in any other areas. (*Id.* p.63)
103. Special Education Teacher does not believe that the Student was bullied. (*Id.* p.48)
104. The Parents requested receipt of academic assignments and a tutor for the Student in her absence. The Team decided that Guidance would notify Mother when assignments were available and that Counsel would be notified when a decision was reached regarding tutoring. (B-2 p.3)
105. In early October, 2011 the District became aware of the Student receiving a diagnosis of Major Depressive Disorder, single episode, moderate and Peer Relationship Problems by way of a letter provided to the District from the Student's treating clinician from The Village⁷. (P-27; Tr. Mother p.77) The clinician recommended that the Student receive homebound tutoring while the school worked to build "an environment that is supportive to her and that she views as caring, accommodating and safe". (P-27)
106. The District, through Special Education Coordinator, attempted to locate a tutor. Near the end of October 2011, through counsel, the Parents were informed that a tutor had been located and would be contacting the family. (P-28) Problems ensued with matching a tutor with the times and locations that the tutor and the Student were able to meet. (Tr. Mother pp.77-78; P-31) Issues outside of the control of the District, and to a large extent, the family (medical issues, other sibling issues, size of the apartment that the family lived in) interfered with the establishment of the tutoring services.
107. The Board provided Homebound instruction after receiving the letter from the Student's clinician in October 2011, despite the family not meeting the requirements of state law for Homebound instruction.
108. On 11/29/11 the Planning and Placement Team met. In attendance were: Administrator, Mother, Regular Education teacher, Special Education teacher, Social Worker, Special Education Coordinator, White Housemaster, School Counselor, Counsel for Parents, and Counsel for the Board.
109. The neuropsychological evaluation conducted by Independent Neuropsychologist was discussed by the Team. (B-3 p.2)

⁷ The Village for Families & Children, Inc., 160 Albany Avenue, Hartford, CT is a non-profit community based program offering a variety of service including psychotherapy for children and adolescents.

110. The resulting IEP calls for a functional behavior assessment to be conducted by the school psychologist, with an individual behavior plan to address specific targets of: school attendance, mutual respectful relationships between peers and adults, and access to support services. (B-3 p.2) One half hour per week of social work services were added and an assistive technology evaluation would be conducted. IEP goals, objectives and modifications established at the 6/10/11 IEP would remain in effect. The actions proposed were to be implemented a “minimum of five school days from date parent received prior written notice, dated: 12/06/2011”. (B-3 p.4)
111. As of the dates of the Due Process Hearing, a functional behavior assessment had not been completed or started; there has been no assistive technology evaluation; and no behavior plan has been created. (Record)
112. The recommendations of Independent Neuropsychologist were read to the Team. (B-3 p.2)
113. The Parents requested an out-of-district placement, two years of compensatory education services, and reimbursement for the costs of the independent neuropsychological evaluation conducted by Independent Neuropsychologist. The Board, through their counsel, rejected those requests. (B-3 p.2)
114. As of the date of the November, 2011 PPT meeting, the issues surrounding the tutoring services had not been resolved. (Record)
115. The District did not support the recommendation for outplacement made by Independent Neuropsychologist because the District believed that the teacher reports and the Student’s present level of performance did not warrant an outplacement; the Board felt they had an appropriate program to offer the Student. (Tr. Stamm pp.67-68) The Parent’s report that the Student was terrified to return to school was considered in the decision to return the Student to the same program the Student had been receiving. (*Id.* p.68)
116. The eighth grade Principal testified that he was aware at the PPT that the Parents had raised concerns about the Student returning to the school and that they discussed interactions with teachers and students. (Tr. Principal T. p.11)
117. The District is aware of the mandate to implement the Safe School Climate Act, which is required by the State of Connecticut to be implemented in all Connecticut schools. (*Id.* pp.11, 26) There was no specific plan for the Student. (*Id.* p.27)
118. Principal T. did not provide the Student or the Parents with forms regarding bullying. (*Id.* pp.28-29)
119. The Student received tutoring services from 3/23/11 through 6/20/12, 8 hours per week. (B-7, p.2) Based on modified grade 8 work, the Student received the following grades: English: B, math: C+, science: A- and history: A-. (*Id.*)
120. Based on the testimony and exhibits, the Student received 106 hours of instruction of a modified grade 8 curriculum for the 2011-2012 academic years. (B-7 p2; Tr. Special Education Teacher pp. 106-107)
121. A PPT was convened on 6/26/12 to plan the Student’s IEP for the 2012-2013 school years. (B-7) Given the Student’s success in her seventh grade year and her progress in the tutoring program, the PPT recommended placement at Enfield High School, in collaborative classes for English, Algebra, Science and World History, a daily support class, and one half-hour per week of social work services. (B-7, p. 2)

122. The PPT was attended by the following: Special Education Coordinator/ Administrator, Mother, Special Education teacher, School Psychologist, Regular Education teacher, Principal, Counsel for the Board, and Counsel for the Parents.
123. The IEP drafted on 6/26/12 states that the goals and objectives from the 11/29/2011 IEP remain the same for this IEP dated 6/26/2012. (B-7 p.2) The 6/26/2012 IEP does not contain goals and objectives regarding reading despite there being such goals in the 11/29/2011 and there being no discussion of the Student having mastered those goals and objectives shown in the Summary section of the IEP. (B-7 p.2)
124. The 6/26/2012 IEP requested a psychiatric evaluation of the Student, which was declined by counsel for the Parents; no rationale for the request is listed in the Summary of the PPT meeting. (*Id.*) There is no change to services offered, counseling was not offered and no transition or safety plan was offered. (*Id.*)
125. Extended School Year services were not discussed or offered for the 6/26/2012 IEP. (B-7)
126. The Student has never been offered Extended Year Services. (Tr. Special Education Teacher, p.73)

CONCLUSIONS OF LAW:

1. The Student is a thirteen years old; she was deemed eligible for special education and related services by the Board as defined in the Individuals with Disabilities Education Improvement Act ("IDEA") as a student with a Specific Learning Disability and is entitled to a free appropriate public education ("FAPE") with special education and related services to be provided at public expense pursuant to 20 U.S.C. §§1401, et seq. , 34 C.F.R. §300 et seq. and Connecticut General Statutes §§ 10-76 et seq. and Connecticut State Regulations §761(d).
2. The Board has the burden of proving the appropriateness of the program and placement that they have offered, and this burden must be met by a preponderance of the evidence. R.S.A. §10-76h-14(a) *see also, Walczak v. Florida Free Union Sch. Dist.*, 142 F.2d 119, 122 (2d Cir. 1998)
3. A party seeking a private placement or program must prove the appropriateness of such placement or program by a preponderance of the evidence. R.S.A. §10-76h-14(c)
4. The purpose of IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living and to "ensure that the rights of children with disabilities and Parents of such children are protected..." 20 U.S.C. §1400(d)(1)
5. "Special Education" means: "specially designed instruction at no cost to Parents to meet the unique needs of a child with a disability." 20 U.S.C. §1401(25)
6. "Related Services" means : transportation, and such developmental, corrective, and other supportive services (including speech/language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children. 20 U.S.C. §1401(22)

7. The standard for determining whether a Board has provided FAPE is set forth in a two part inquiry. *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).
8. The two pronged standard for determining whether the Board offered the Student an appropriate IEP for the 2010-11 and 2011-12 school years is: first, whether the procedural requirements of IDEA have been met and second whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. 176, 206-07 (1982). "Only if a court determines that a challenged IEP was inadequate should it proceed to the question of the appropriateness of the Parents' proposed outplacement." *M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed.*, 226 F.3d 60, 66 (2d Cir. 2000)
9. Relief for procedural violations is only warranted when FAPE has been denied. *J.S. v. Pawlett Sch. Dist.*, 224 F.3d 60,69 (2d Cir. 2000)
10. "In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-- (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit." 34 CFR §300.513 (a)(2)
11. According to IDEA, a denial of a FAPE can be found if the procedural inadequacies of a district "[s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child", even without a showing of educational harm. 34 C.F.R. §300.513(a)(2) *See also W.A. v. Pascarella*, 153 F. Supp. 2d 144 (D. Conn 2001)
12. The Student alleges procedural violations on the part of the Board to the extent that that there was a denial of a FAPE. Of the three conditions described in 34 C.F.R. §300.513, condition (ii) will be addressed first. During the academic years in question in this matter, 2010-2011, 2011-2012 and 2012-2013, no evidence was presented that showed that the Board failed to send timely notices of the PPTs or that they failed to invite or have present the necessary parties at the PPT meetings. The Parents were represented by Mother, Father and/or legal counsel at each of the PPT meetings. Historically, the Student has participated in PPT meetings (6/7/2010), though unfortunately that has not been the case during the last few meetings. Nothing has been presented which indicates that the Board either prevented or discouraged the Student from participating. Nothing in the record suggests that the Parents or their legal counsel were not afforded an opportunity to participate in the PPT or to voice their concerns or suggestions for the Team to consider. In all respects it appears that the Parents were afforded an opportunity to participate in the meetings.
13. There remain two other situations in which a Hearing Officer may find that a procedural inadequacy was sufficient to deny a FAPE; (i) if the inadequacy impeded a child's right to a FAPE, or (iii) the procedural inadequacy caused a deprivation of educational benefit. 34 C.F.R. §300.513 (a)(2) The IDEA does not require the district to provide a student with everything that might be thought desirable by loving Parents. *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (1989) The IDEA requires only that a school board provide each child a "basic floor of opportunity." *A.E. v. Westport Board of Ed.*, 46 IDELR 277 (D. Conn. 2006) The Board argues that all procedural requirements were met for all years in question in this matter. They point to the IEPs created in this matter as demonstrative of that fact. The Parents argue that the Board failed procedurally by failing to reevaluate the Student when it became apparent through the Student's behaviors, academic performance and deteriorating interpersonal relationships that she was struggling under the IEP as written.

14. The law requires that a student must be reevaluated if the educational or related service needs, including academic achievement and functional performance of the child warrant a reevaluation. 34 C.F.R. §300.303(a)(1)
15. In the June, 2010 IEP, the Team called for and wrote into the IEP that a functional behavioral assessment was to be completed by June, 2011. To date, no functional behavioral assessment has been completed.
16. Under no circumstances can a student go longer than three years without a reevaluation unless the Parent and the school agree the reevaluation is not needed. 34 C.F.R. §300.303(b)(2)
17. Screening used for instructional purposes is not evaluation. 34 C.F.R. §300.302
18. The IEP must set forth goals and objectives which provide a mechanism to determine whether the placement and services are enabling the child to make educational progress. 20 U.S.C. §1401(a)(20)
19. An IEP must include a statement of the child's present level of performance, a statement of measurable annual goals, including academic and functional goals designed to meet each of the child's educational needs that result from the child's disability. 34 C.F.R. §300.320(a)(1)(2). All of the IEPs in question in this matter fail to provide functional goals that are designed to meet each of the Student's educational needs that arise from her disabilities. Each goal and objective is global in nature, does not provide for individualized instruction, indeed they seem generic and applicable to any student, and describe no supportive services that will help her achieve those goals and objectives. The fact that these goals and objectives are repeated annually supports that the goals and objectives are not specific enough to either allow the Student to make incremental advances or indicate at what point the Student needs additional assistance; they do not allow for measurable increases which would then support the validity of the goal and objectives themselves.
20. The IEP must contain a statement of the individualized instruction and related services and supports to enable the child to advance toward attaining the goals. 34 C.F.R. §300.320(a)(4)
21. The June 2009 IEP, which determined the working IEP for the Student's 7th grade, did not provide individualized instruction and related services and supports to enable the Student to advance towards attaining those goals. The June 2009 IEP replicates the two preceding IEPs; with the same goals and objectives. None of the three IEPs addresses the 2008 evaluation's recommendations for assisting the Student in achieving progress. The 2008 evaluation provided strategies for reading, handwriting, mathematics and memory enhancements, none of which are shown in the form of individualized instruction or related services. The 2009 IEP, like its predecessors, provides global goals and objectives where the evaluation is clear that step by step instructions are required for this Student to gain benefit. Subsequent IEPs are likewise deficient. Each successor goal and objective seems to bear little correlation to the actual levels of performance of the Student herself. Even where the same goals and objectives are repeated throughout the IEPs in question, such as in mathematics, they do not address where the Student is struggling and what will be done to overcome that struggle; goals and objectives are simply repeated again and again.
22. The IEP must be reviewed not less than annually to determine whether the goals are being achieved and the IEP must be revised to address any lack of expected progress toward annual goals, to address the results of any reevaluations, to consider information about the child provided to, or by, the Parents, and to address the student's anticipated needs. 34 C.F.R. §300.324(b)(ii)(A-E)

23. The Board satisfied the requirement to review each IEP annually. However, there is nothing in the IEP summaries that indicates discussion around achievement or lack thereof for any goal. The testimony by the Special Education teacher vacillated between whether the Student achieved the required 70% goal or she did not. When the teacher testified that the goal was reached, she then stated that keeping the same goal and objective despite reaching the performance indicator was sufficient. If that is the case the Board failed to adjust the IEP to reflect the Student's progress; if the teacher was incorrect and the Student did not reach the performance goal, then the Board was deficient for not adjusting the goals and objectives to account for the lack of progress. Either way, the IEPs were deficient.
24. Failure by the Board to develop an IEP in accordance with procedures mandated by IDEA, in and of itself, can be deemed a denial of a FAPE. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877, 9th Cir (2001)
25. The Board has failed to develop the IEP in accordance with procedures mandated by IDEA resulting in a denial of the Student's right to a FAPE and a deprivation of educational benefits.
26. Connecticut courts have determined that in order for an IEP to be found appropriate, it must provide more than mere trivial advancement, it must be one that is "likely to produce progress, not regress." *Mrs. B. v. Milford B.O.E.*, 103 F.2d 1114, 1121 (2d Cir. 1997)
27. The student's capabilities, intellectual progress and what the LEA has to offer must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit to the child. See *Hall v. Vance County Bd. of Ed.* 774 F.2d 629, 635 (1985)
28. Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispositive. See *Mrs. B. v. Milford B.O.E.*, 103 F.2d 1120 (2d Cir. 1997)
29. The Board's 2008 evaluation indicated that the student was struggling in all areas. She had not mastered sound/symbol relationships, basic math facts, or basic writing skills such as punctuation and capitalization and spelling. She compensated for these deficits through her well-developed verbal skills. At the point that the Board's 2008 evaluation was written, the relevant CMT scores (3rd Grade) that were utilized by the evaluator indicated that the Student scored Below Basic level on Mathematics, Reading and Writing tests. Her full scale IQ determined through the evaluation was Low Average. A review of the CMT Student Scores taken since the 2008 evaluation show that the Student has never achieved a score higher than Below Basic in Mathematics, the Student was able to reach a score of Basic on the Reading test and has maintained that level, but is still significantly below the school average and the district average. The Student regressed from the Basic level in Writing in the 5th and 6th grades to Below Basic on the 7th grade Writing test. It is important to note that when the school psychologist who evaluated the Student in 2008 asked the teachers of the Student to describe her, the Student had been described as demonstrating a positive attitude toward learning, good work habits and study skills and an ability to interact with others.
30. The relevant evidence presented in this matter suggests that there has been little academic progress for this Student since that 2008 evaluation. The IEPs still indicate that the Student struggles with basic mathematics, understanding and solving word problems, multi-step problems, math vocabulary, computing negative integers, fractions with unlike denominations, decimals, using functions of a scientific calculator. She

struggles with writing, spelling, organization, comprehension, elaboration in writing, applying strategies in compositions, applying editing/revising skills to written work.

31. The preceding June, 2011 IEP does not contain social work services. At that point the Student had not been in school since the previous May and all of the behavioral issues concerning peers and teachers would have already occurred. The functional behavioral assessment, which would have addressed those behaviors, was to have been completed for the June, 2011 PPT.
32. The November 29, 2011 IEP references no changes in goals or objectives despite the fact that the teachers provided "recollections" of her behavior because they have not seen the Student since the prior May, there are no current grades or evaluations to consider, and no one from the school has had contact with this Student in eight months.
33. It is noted on the November 2011 IEP that the Student has a three year history of extensive school absences however no evidence of this was presented nor is there any discussion or resolution as to how this issue will be addressed and resolved.
34. Independent Neuropsychologist's evaluation was presented and discussed. A need to conduct a functional behavioral assessment was made a part of the IEP, as well as the need to conduct an assistive technology evaluation, and a half hour per week of counseling with the school social worker was provided.
35. These are the only recommendations taken from the neuropsychological evaluation.
36. The results garnered by the neuropsychological and psychological evaluation conducted by Independent Neuropsychologist mirror the results of the Board's 2008 evaluation.
37. The testimony of Independent Neuropsychologist was credible and noteworthy, despite the Board's objections to the issues raised by Independent Neuropsychologist of poor socialization skills. The Board feels that because Independent Neuropsychologist did not speak to the teachers, did not observe the student in the program, her perspective of the Student is tainted by presumably faulty information provided by the Parents and Student.
38. The Board did not provide any concrete evidence that any of the information provided by the Parent or the Student was actually untrue.
39. The Board's witness, School Psychologist, found no fault with the normed evaluations that were given and found the results to be properly attained.
40. Independent Neuropsychologist testified that not only was normed testing material utilized, the evaluation was also culturally normed to the Student's exposure to Hispanic culture.
41. Independent Neuropsychologist found that the Student achieved virtually the same scores on both evaluations. This was of concern to her as it indicated that despite the passage of almost three years and the implementation of the program provided by the Board, the Student had not made the progress that she would have expected.
42. Independent Neuropsychologist compared the testing that she utilized with the testing completed by the Board in 2008. In her professional opinion, and with corresponding data, the evaluations were very similar

and comparable. She pointed out the differences and what effect those differences might present when comparing the two evaluations.

43. The Board did not present any evidence or testimony that disputed her comparison of the two evaluations, or the results that were garnered by each.
44. The Board's exhibits indicated that the Student had made progress through their program, had achieved moderate success with her grades in her subjects, and that she had been promoted from the seventh grade to the eighth grade and was now being promoted to the ninth grade.
45. The only empirical evidence in the record showing the progress of the Student is the CMT scores, the interim report cards and the one report card in evidence that showed grades for the 3rd quarter of 2011. That report card showed 14 days absence that quarter alone and 36 days absence for the year to date. The grades were low C's, regressing from earlier grades of B's and C's. The Interim Grade Reports in evidence showed from October, 2010 through March, 2011 there was a steady decline in the Student's grades, from A's and B's to F's and low C's. (P-19)
46. The Interim Report Cards contain pleas by the Parents to have a meeting to discuss the Student's grades, make-up work and the instructional process with their daughter.
47. The evidence also shows that almost every teacher indicated that the Student was lagging considerably in completing homework, to the degree that grades in classes were being inferred from minimal work completed. Disciplinary measures were taken to address the homework issue, apparently to no avail. Disruptions in class are pointed out, conflicts with teachers, some to the point of physical confrontations. Suspensions occurred.
48. The Student was arrested for assaulting/threatening a teacher. The Student has not attended class since May of 2011.
49. The functional behavioral assessment has not been completed. A functional behavioral assessment is essential to addressing a child's behavioral difficulties and as such plays an integral role in the development of an IEP. *Harris v. District of Columbia*, 561 F. Supp. 2d 63 (6/23/08)
50. Failure to conduct a functional behavioral assessment does not amount to a procedural violation of the IDEA where the IEP sets forth other means to address the student's problematic behaviors.
51. The November 2011-2012 IEP incorporates one-half hour of social work services for addressing the Student's anxiety surrounding school, low self-esteem, and conflicts with peers.
52. To the extent that the IEP does contain a means to address at least some of the Student's behavioral issues, the failure to have the functional behavioral assessment completed for the Nov. 2011 IEP, the failure does not rise to the level of a procedural violation that deprives the Student of her right to a FAPE, it does however continue to deprive her of educational benefits and as such it is a denial of the Student's right to a FAPE.
53. Given that the Student had not been in school for almost six months, the IEP should have specified that the social worker was to seek out the Student outside of the school setting if necessary, to address the issues, or that the Board was going to exercise its own power and right to administer the IEP.

54. Knowing that the Student was not in school and that the IEP was doing nothing to bring her back to school makes the offer of in-house social work a bit pointless.
55. It is inconceivable that a Team would attempt to create a program and placement for a child without knowing the nature and severity of the Student's disability. The last evaluation of the Student by the Board was in June, 2008. The triennial evaluation was legally due to occur no later than June, 2011. 34 C.F.R. §300.303(b)(2)
56. Under no circumstances can a student go longer than three years without a reevaluation unless the Parent and school agree the evaluation is not necessary. 34 C.F.R. §300.303(b)(2)
57. The Board argues that the district cannot be faulted for not evaluating the Student because the Parents refused to allow the district to conduct evaluations. That argument fails to persuade.
58. The evidence produced at the hearing suggests a different reality. The Parents signed the consent to evaluate on June 7, 2010; it was stamped as received by the Board on 6/15/10. That consent was offered into evidence with no objection from the Parent. (B-1)
59. Even if the Board was correct that the Parents had refused consent, IDEA provides that if the parent refuses to consent, the LEA may pursue reevaluation by utilizing the mediation and due process procedures, except to the extent it is inconsistent with State law relating to parental consent. 20 U.S.C. §1414(a)(1)(c)(ii). Connecticut State law does not bar the LEA's pursuit of evaluations, State law and Federal law require only that the LEA must comply with the procedural safeguards outlined in 34 C.F.R. §300.504 and the parental consent requirements of 34 C.F.R. §300.305.
60. The 6/7/10 IEP stated the triennial was to be completed by 6/19/11. The Board failed to produce any evidence that the Parents rescinded that consent or that the Board attempted to schedule the triennial and the Parents refused to cooperate.
61. The last formal evaluation of the Student, by the Board, was completed in 2008. This evaluation has been utilized by the Board as one of the underpinnings for the Board's creation of every subsequent IEP since it was completed.
62. The findings of that 2008 evaluation, which were subsequently replicated in greater detail through the neuropsychological evaluation completed in 2011, provided the Board with a blueprint from which to develop a program and services that would have satisfied the Board's subsequent requirement to provide the Student with a FAPE.
63. The failure to reevaluate the Student without agreement between the Parent and the Board that the evaluation is not necessary is a procedural evaluation for which the consequence is a denial of the Student's right to a FAPE, a denial of the Parent's right to participate in the subsequent discussion and analysis of the evaluation completed, and a deprivation of educational benefits to the Student
64. The 6/26/12 IEP attempts to resolve the issue by incorporating that the school social worker will work with the student on her transition to the high school, social skills and emotional issues.
65. Transitions have not been presented by any party as a problem behavior; and counseling can meet the requirement to provide positive behavioral interventions and support.

66. To that extent, the Board has negated the procedural violation of not completing the functional behavioral assessment for the 2012-2013 academic years, however because it does not address the issue of getting the Student back into school, the IEP does continue to deprive the Student of educational benefits and thus is a denial of the Student's right to a FAPE.
67. To offer a vital service that has no hope of being provided because there is no recipient to receive it and failing to make a concerted effort to connect with the intended recipient is a meaningless gesture. After almost 18 mos. of absences it is all the more incumbent upon the Board to have recognized that at some level the issues concerning bullying and sexual harassment would have to be dealt with to get this Student back into the building.
68. At the 6/26/12 PPT meeting the IEP for the 2012-2013 academic year was created. The Board used the modified grades of a tutor who provided eight hours a week of tutoring and determines that the Student has produced sufficient work with sufficient grades to be promoted to ninth grade and a move to the high school.
69. No evidence that the tutor provided the required IEP services or material in accordance with the IEP was presented.
70. There was no evidence of the actual work performed or the marking system utilized to evaluate that work, other than saying it was modified, was presented.
71. No evidence was presented which showed the credentials of the tutor.
72. Not a single regular education teacher, not a special education teacher, not an administrator made contact with this Student from May, 2011 onward.
73. In terms of her social and emotional realms, this Student has regressed significantly. From being described as positive and demonstrating good work habits on the 2008 evaluation and 2009 IEP, the Team is now presented with a clinically depressed student who refuses to complete her work, has demonstrated assaultive and aggressive behaviors to peers and teachers, is currently considered at risk for self-harm and requires medication to manage her daily life and is totally school avoidant.
74. If Independent Neuropsychologist's evaluation had stood in isolation because there was no other evaluation to compare it to, if the Board had presented empirical data that challenged the results presented from her evaluation sufficiently to call the data into question, more weight would be given to the Board's perspective that the social/emotional information garnered was tainted. The Board did not provide evidence that refuted her findings
75. The Board was clear that it disagreed with the *characterizations* of some of the events provided, but the Board did not proffer any credible evidence that refuted the information itself.
76. During the November, 2011 PPT, there is no transition plan created to bring this Student back to school. This despite the fact that this Student has not been in school for approx. 5 mos. of academic time (May, 2011 – Nov. 2011), despite having numerous notifications to the Board by the Parents and the Student that they were raising serious allegations of bullying and sexual harassment. In the Due Process hearing multiple members of the administration of the school acknowledged they had received notice of the allegations.
77. There is no safety plan created to allay the Parents fears that their daughter was unsafe in the school setting.

78. Bullying may amount to a denial of a FAPE when school personnel are deliberately indifferent to, or failed to take reasonable steps to prevent bullying that substantially restricted a child with learning disabilities in [their] educational opportunities. *T.K. v. New York City Dept. of Educ.*, 56 IDELR 228 (4/25/2011). In that case the District Court stated that when responding to bullying of a student with a disability, a district must take prompt and appropriate action, including investigating, and taking appropriate steps to prevent it from recurring. (*Id.*). In *T.K.*, as in this case, the principal acknowledged knowing about an incident of bullying, however the Board denied the allegations that bullying occurred, failed to provide documentation that it either investigated claims of bullying or took steps to remedy the conduct. (*Id.*)
79. In this present matter, just as in *T.K.*, the school had no verified acts of bullying against the student and in fact the Parents were told that the Student was the aggressor.
80. To be denied educational benefit a student need not regress but only have her educational benefit adversely affected. *T.K. v. New York City Dept. of Educ.*, 56 IDELR 228 (4/25/2011)
81. Independent Neuropsychologist's opinion was that the Student had been bullied, the result of which had a significant negative impact on the Student's emotional well-being and sense of safety at the school.
82. In a decision that supported the out-of-district placement of a bullied child, the court stated "... bullies generally do not stop on their own; even "intensive interventions" are often not effective when they are not begun until after a course of harassment has continued for some time ..." *Shore Regional High School Bd. of Educ. v. P.S.*, 381 F.3d 194 (8/20/04) The removal to an out-of-district placement was premised on the belief that the school would not be able to keep the student safe from the offending peers who would continue to be in the student's classes and grade. (*Id.*). It certainly stands to reason that if late action is rarely successful in stopping bullying, then no action must certainly assure that bullying will certainly continue.
83. The Principal of the Student, after being shown documentation to that effect, testified that he was aware of the incident where students wrote derogatory and sexually harassing comments on the Student's locker; he was aware that the Student's father had made numerous complaints that his daughter was being bullied and sexually harassed; and that the Student spent a large portion of the year outside his office during the lunch period rather than having lunch with her peers.
84. The Principal stated that he investigated, or at least thought he did, but did not produce any evidence of the investigation or the results from such an investigation.
85. The Board did not present any evidence of investigations for any of the complaints made by the Student regarding bullying or sexual harassment, with the exception of a video of a bus incident that resulted in the Student and a peer being suspended. The parties agreed that the sound quality of the video was too chaotic and confused to allow for conclusions to be drawn from the video. There was no written evidence from that incident or any other introduced into evidence.
86. There was nothing presented by the Board to show that they took steps to prevent the re-occurrence of the derogatory and sexually harassing language from being targeted at the Student, or any other student for that matter, in the future.
87. The Student's peers from the seventh and eighth grades would also be moving on to the same high school as the Student for the 2012-2013 academic years.

88. The behaviors of the Student changed as the allegations of bullying and sexual harassment continued without intervention. The Student became both aggressive physically and verbally; she became self-abusive and threatened suicide; she demonstrated clinically significant indicators to be diagnosed with a Major Depressive Disorder and she became totally school avoidant.
89. There was no concrete evidence refuting the Student's claims of bullying and sexual harassment; there was no investigatory reports provided refuting her claims; the principal acknowledged the existence of the derogatory and sexually harassing terms put on the Student's locker even though he never looked at them; and the Board never presented any evidence that they took concrete steps to identify the harassers or to prevent such behavior from occurring again.
90. The Student's complaints of harassment for the Valentine's Day dance and for the incident with the locker are tacitly acknowledged to have occurred by the Board's witnesses, even though they did not create a record pro or con of their investigations or identify any of the harassing students.
91. The Student stopped coming to school in May, 2011 and has not returned since, citing harassment and feeling unsafe in the school environment as the causes.
92. All of the Board's witnesses testified that they did not believe that the Student was bullied or sexually harassed. It was alluded to by several witnesses that the Student herself was the problem with her peers.
93. If that was the belief of the Board, then it stands that they should have recognized that this was a Student who was acting outside of the norm and that there had to be some precipitant, either psychological or otherwise, that would cause such behavior.
94. If it truly was the belief of the Board that these incidents did not occur as bullying behaviors, when they were presented with the constant perspective of the Student and the Parents that this was indeed happening, they owed it to this Student to seek the truth. It is incredulous that the Board did not find that this situation was exactly what 34 C.F.R. §300.301(a)(1) addresses. Under IDEA a Board may be required to consider special factors in the development of a student's IEP. Among the special factors in the case of a student whose behavior impedes his or her learning or that of others, the Board shall consider positive behavioral interventions and supports, and other strategies, to address that behavior 20 U.S.C. § 1414(d)(3)(B)(i); 34 CFR 300.324(a)(2)(i)
95. Certainly the Student was presenting behaviors that were interfering with her learning and possibly the learning of other students. The Board addressed the behavior punitively with suspensions, and when the Student stopped coming to school, they simply ignored that she was no longer there. There was no consideration of questioning if the Student's disabilities had some contributing factor to the situation.
96. The Student has shown that the bullying and sexually harassing behaviors impeded her educational benefits, and because of this, was denied a FAPE.
97. Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities including special schools. 34 C.F.R. §300.115. At no time were alternative placements explored for the Student despite her continued academic, social and behavioral difficulties, the request of the Parents to consider therapeutic placements and the recommendation of the neuropsychologist that she be placed in a therapeutic school.

98. Predetermination by a school Board prevents Parents from having a meaningful opportunity to participate and amounts to a denial of a FAPE. *Shore Regional High School Bd. of Educ. v. P.S.*, 381 F.3d 194 (8/20/04). In *Deal* the sixth Circuit found that the district had pre-decided not to offer a student intensive ABA services “regardless of any evidence concerning [the student’s] individual needs and the effectiveness of his private program.” *Id.* A finding of predetermination was concluded despite the fact that the Parents were allowed to attend PPT meetings and voice their opinions. *Id.* In *Plainville Bd. of Educ.*, 52 IDELR 27, (12/26/08) a school district was found to have denied a FAPE to a student for considering only one option at a PPT, failing to consider school avoidance, transitions, and other student needs as well as ignoring the recommendations of the treating clinician and outside neurological evaluation in creating the program.
99. In the matter of *Ms. C. ex rel. N.L. v. Knox County Schools*, 315 F.3d 688 (6th Cir. 2003) the court emphasized school officials are permitted to form opinions and compile reports prior to IEP meetings (*Knox* at 693-4 n.3). The court cautioned, however that such conduct is only harmless as long as school officials are “willing to listen to the Parents.” *Id.* at 694-5 (noting that school system representatives should “come to the meeting with suggestions and open minds, not a required course of action.”
100. The Board did not appear to come to the PPT meetings with an “open mind” but instead with “a required course of action.”
101. All of the Board staff admitted to not having considered any option other than the public school. The Special Education Coordinator testified that she never considered outplacement because she felt the teacher’s reports and present levels of performance showed that the Board had an appropriate program.
102. The Special Education Coordinator was specifically called in by the Board to handle the Student’s case. She testified that she reviewed the Student’s file and was familiar with the program offered by the Board, and was aware of the concerns raised by the teaching staff, the Student’s grades, the CMT scores, the discipline reports, the increasing behaviors, and the school avoidant behavior yet she could not recall many of the Student’s disabilities.
103. The Special Education Coordinator was aware of the letters from the treating clinician and the attending psychiatrist but stated that the Team did not agree with the diagnosis because the school personnel were not part of the discussion which formulated them.
104. Boards of Education cannot simply ignore the information from a Student’s treating clinician in determining what program and placement a student requires. *Fairfield Board of Educ.*, 109 LRP 53093 (May 11, 2007)
105. The Board ignored the information from the Student’s treating clinician and supervising psychiatrist in formulating the subsequent program and services because it did not accept the diagnosis, yet the Board did nothing to obtain their own diagnosis or to refute the one provided by the clinicians.
106. This Student needed a reevaluation for it was clear that no matter how well intended the Board’s program may have been, it was failing in providing this Student a FAPE. The evaluation did not occur until the Parents took it upon themselves to provide a reevaluation of their daughter and the Board summarily dismissed the evaluation.
107. The IEP created for the 2012-2013 academic years carried forth the same goals and objectives that the 11/29/11 IEP had, which is the same as the 6/10/11 IEP, which is the same as the 6/7/10 IEP.

108. After not being present in the school for over a year, receiving none of the services and program called for in her IEP it is inconceivable that the Board would suggest that this Student has not only progressed but done so sufficiently to pass not only the seventh grade where she missed more than one-quarter's worth of days and instruction and was close to failing all of her classes when she finally stopped going to school, but to also pass the eighth grade where she missed the entire year and received NONE of her required services and programs.
109. The Board would have the Student and the Parents believe that after receiving tutoring for the equivalent of 1.5 days of school a week for maximum of perhaps 52 weeks, or 78 days, the Student has been provided a sufficient program to pass the eighth grade despite all of the Student's disabilities and not receiving any of the services specified in her IEP.
110. The Board was unwilling to accept Independent Neuropsychologist's evaluation and recommendations yet they had done nothing to obtain that information on their own.
111. The triennial evaluation, which was made a part of the 6/7/10 IEP and due to be completed by 6/19/11, has not yet been completed or even scheduled.
112. Without having a reevaluation and by dismissing the worthiness of the evaluation by Independent Neuropsychologist, the Board approached all of the IEP's since June 2011 blindly. Any measure proposed or instituted was an estimation of what this child needed, not an empirically based determination. "No case stands for the proposition that an IEP could be adequate where it does not provide for teaching techniques required by the child." *S.A. Riverside-Delanco Sch. Dist. Bd. of Educ.*, 45 IDELR 215 (D.N.J. 2006)
113. If a parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation "must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a FAPE to the child." 34 C.F.R. §300.502(c), 20 U.S.C. §§1415(b)(1) and (d)(2)(A). The Board did not present evidence that the neuropsychological and psychological evaluation completed by Independent Neuropsychologist did not meet agency criteria with the exception of the social/emotional findings. The Board's witnesses testified that the findings of the evaluation were similar to what was being presented in school. The school psychologist stated the assessments used that were normed were appropriate to be utilized and he presented no evidence that Independent Neuropsychologist's clinical findings were inaccurate.
114. The Board has the burden of proving by a preponderance of the evidence that the program and placement that they offered the Student was appropriate, they have not satisfied their burden. The failure of the Board to reevaluate the Student or to more appropriately incorporate the neuropsychological and psychological evaluation findings into the subsequent IEP's has impeded the Student's right to a FAPE and has caused a deprivation of educational benefits.
115. The Parents asked for an out of district educational placement, two years of compensatory education and reimbursement for the independent neuropsychological and psychological evaluation. The Board denied the request.
116. The second prong of Rowley requires a finding that the IEP is "reasonably calculated to enable the child to receive educational benefits." *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206, 207 (1982). The IDEA requires only that school districts provide an "appropriate" IEP, gauged by whether the IEP is "sufficient to confer some educational benefit." *Id.*, at 200; *see also Mrs. B. v.*

Milford Board of Education, 103 F.3d 1114, 1120 (2d Cir. 1997). An appropriate education under IDEA is one that is likely to produce progress, not regression. *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2d Cir. 1998)

117. The objective data that has been presented previously in this Decision suggests that the Student has not progressed. To the extent that the Board continues to reject the evaluation of Independent Neuropsychologist, it still has not conducted a reevaluation of the Student in violation of 34 C.F.R. §300.303(b)(2). This fact alone makes the IEP created on June 26, 2012 faulty because it fails to ensure that the Student has been assessed in all areas related to the suspected disability in violation of IDEA. 34 C.F.R. §300.309
118. The required behavioral plan that the June, 2011 IEP called for has not yet been created. Positive behavioral interventions, supports and other strategies must be considered by the PPT when a student's behaviors impede his or her learning or the learning of those around him or her. 34 C.F.R. §300.324 (a)(2)(i). The assistive technology evaluation has not been completed.
119. Despite the consistent struggles this disabled student has had the Board has never offered or provided specific evaluations in Mathematics, Reading or Writing. These failures prevent the Student from receiving a FAPE.
120. The school district must consider ESY services through a PPT.
121. 34 C.F.R. §300.106 states: (a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (3) In implementing the requirements of this section, a public agency may not—
 (i) Limit extended school year services to particular categories of disability; or
 (ii) Unilaterally limit the type, amount, or duration of those services.
 (b) Definition. As used in this section, the term extended school year services means special education and related services that—
 (1) Are provided to a child with a disability—
 (iii) Beyond the normal school year of the public agency;
 (iv) In accordance with the child's IEP; and
 (v) At no cost to the Parents of the child; and
 (2) Meet the standards of the SEA.
122. There is no evidence that ESY services were ever considered or discussed. 34C.F.R. §300.324(b)(ii)(A-E) requires that the Team address anticipated problems that the Student may have, lack of progress shown, issues identified by the Parents or evaluations provided. Between the summers of the seventh and eighth grade, and then the eighth and ninth grades at a minimum, with the Student not having been in school for an extended period of time and not having resolved any of the bullying and sexual harassment issues for the Student, the Team should have anticipated that there would be regression across academics and social/emotional issues. Extended school year services would have been intended to address those issues. The Team should have, at the very least, discussed and resolved if ESY services were warranted, documenting the results and reasons therefore.

123. The failure to do so for the June, 2011 and June 2012 IEP's is a denial of the Student's right to a FAPE, a denial of the Parents' right to participate fully, and a denial of education benefits to the Student.
124. Compensatory education is the "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he would have occupied absent the school board's failures." *Reid ex rel. Reid v. Board of Columbia*, 401 F. 3d 516,518, 524-27 (D.C. Cir. 2005)
125. Compensatory education has been recognized as an available remedy under IDEA for failure of the Board to provide FAPE. *See, K.P. v. Juzwic*, 891 F.Supp. 703 (D.Conn. 1995); *Burr v. Amback*, 863 F.2d 1071 (2d Cir. 1988)
126. Hearing Officers have the authority to provide compensatory education as an equitable remedy for denial of FAPE. *Student v. Greenwich B.O.E.*, CT. DOE Case No. 06-005 at 19; *Inquiry of Kohn*, 17 EHLR 522 (OSEP) (2/13/91)(citing with approval *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990)
127. Placement of a child is paramount to the central tenets of IDEA. "Because the law expresses a strong preference for children with disabilities to be educated "to the maximum extent appropriate,' together with their non-disabled peers, 20 U.S.C. §1412(5), special education and related services must be provided in the least restrictive setting consistent with a child's needs. Only "when the nature or severity "of a child's disability is such that "education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" should a child be segregated." *Walzak*, supra (citations omitted)
128. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. *Oberti v. Board of Education*, 995 F.2d 1204, 1216 (3d Cir. 1993)
129. The Board has demonstrated that they cannot, or will not; educate this Student in a regular or collaborative setting. This Student needs to be placed outside of the Board's setting to allow her to re-coup what she has been denied.
130. The Board sent records to three therapeutic schools, High Road School, Grace Webb and CCMC; doing so as an accepted resolution to the Parents Motion for Emergency Interim Relief (which was then withdrawn by the Parents). The Board was clear that they were not supporting placement in any of these therapeutic schools, thus precluding acceptance by any of these schools.

FINAL DECISION AND ORDER

1. The Board did not provide a FAPE to the Student for the 2010-2011 academic years.
2. The Board did not provide a FAPE to the Student for the 2011-2012 academic years.
3. The Board did not propose a program for the 2012-2013 academic years that would provide the Student with a FAPE.
4. The Board will place the Student in a therapeutic day-treatment program for two years that will provide a program consistent with 2012-2013 and 2013-2014 IEP's that incorporates the relevant parts of Independent Neuropsychologist's evaluation and recommendations and provides a FAPE to the Student.

5. Within two weeks of receipt of this Final Decision and Order the Board will meet with the Parents and/or Parent's legal counsel to create a new 2012-2013 IEP for this Student reflecting this decision and order.
6. Placement will be made, if space is immediately (within one week) available, from one of the three therapeutic schools suggested by the Parents; if space is not immediately available from one of the three schools suggested by the Parents, the PPT Team will immediately provide the Parents with a list of alternative therapeutic day schools that the Board will provide placement to.
7. The Board will provide transition assistance through its school social workers to the Student and Parents to assure rapid placement and transition counseling, if needed.
8. The Board will assure that the 2012-2013 and 2013-2014 IEP's contain ESY services for both IEP's, inclusive of after school programming if available at the day or community placement that will touch on the issues of GLBT for adolescents, social skills and conflict resolution.
9. The Board will reimburse the Parents for the cost of the independent neuropsychological and psychological conducted by Independent Neuropsychologist.