

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Parent:

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Appearing before:

Sylvia Ho, Esq., Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board offer an appropriate program to Student by requesting a Diagnostic Placement?
2. Did the Board have sufficient information to develop an Individualized Education Program (“IEP”) for Student?
3. Is Eagle Hill School an appropriate placement for Student?
4. If Eagle Hill is an appropriate placement for Student, should the Parents be reimbursed for the costs of tuition and education related expenses?

**PROCEDURAL HISTORY:**

The Parent filed the Due Process Complaint/Hearing Request on May 2, 2014, which was received by the Board on May 5, 2014. The Hearing Officer was appointed on May 6, 2014 and conducted a Prehearing Conference on May 16, 2014 wherein the hearing issues above were identified and an initial hearing date was scheduled for July 9, 2014. On June 24, the hearing was postponed to July 24, 2014 so that the parties could engage in voluntary mediation with a state appointed mediator.

The hearing convened on July 24, September 4, September 11, October 8, October 14, October 27 and November 12, 2014. The Parents presented four witnesses. They were the Mother; Roger Rahtz, M.D., Student’s Psychiatrist; Julie Rosenberg, Private Speech and Language Pathologist; and Colleen Alfano, Central Middle School Guidance Counselor. The Board presented four witnesses. They were Scott McCarthy PhD, Central Middle School School Psychologist; Carolyn Hoette, Central Middle School Special Education Teacher; Karen Mabee, former Central Middle School Assistant Principal and Jo Frame, Central Middle School Assistant Principal.

The Board's exhibits B-1 to B-18 were admitted as full exhibits. The Parent exhibits P-7 to P-42 were admitted as full exhibits. Exhibits P-19; P-22-35 were admitted over the Board's objection taking into consideration that these exhibits were not previously reviewed by the Board in the decision making process. Exhibits P-1 to P-6 were marked for identification purposes only. The Due Process Complaint/Hearing Request was admitted as HO-1. The parties' Joint Stipulation of Facts was read into the record and admitted as HO-2. At the Hearing Officer's request, the Board produced a copy of the Student's enrollment form and accompanying letter from the Board's Attorney explaining the documentation that the Board had in its possession at a June 26, 2014 Planning and Placement Team meeting ("PPT"). The enrollment form was admitted as HO-3.

This Hearing Officer granted the parties' requests for extension of the mailing dates of the Final Decision as follows: On June 24, 2014, the mailing date of the Final Decision was extended from July 23, 2014 to August 15, 2014 to postpone the hearing date and allow the parties to engage in settlement negotiation. On July 24, 2014, the mailing date of the Final Decision was extended to September 12, 2014 to add hearing dates. On September 5, 2014, the mailing date of the Final Decision was extended to October 10, 2014 to add hearing dates. On October 8, 2014, the mailing date of the Final Decision was extended to November 17, 2014 to add hearing dates. On October 22, 2014, the mailing date of the Final Decision was extended to December 5, 2014 in order to allow time for the completion of transcripts of the hearing. On November 12, 2014, the mailing date of the Final Decision was extended to January 2, 2015 to allow the parties to submit briefs and proposed findings of fact by December 10, 2014. Both parties submitted briefs on December 10, 2014.

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

### **SUMMARY:**

The issues in this Due Process hearing involve whether the Board failed to provide a free and appropriate public education to a student with an IEP who was transferring from a New York public agency when it offered a trial placement for diagnostic purposes in the regular education classroom pursuant to RCSA 10-76d-14. The Parents allege that the trial placement for diagnostic purposes was an inappropriate program because the Parent had provided the Board with sufficient information to develop an individualized education program for Student. Parents allege that if the Board needed additional information it should have offered extended school year services for Student. Parents are seeking reimbursement for tuition and education related expenses of Student at Eagle Hill School in Greenwich, Connecticut.

**STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §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, §§4-181a and 4-186.

**FINDINGS OF FACT:**

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

1. Student was born on August 4, 2000 and currently lives in the town of Greenwich. (Stipulation of Facts).
2. The Student lived in and attended school in New York City as a student of the New York City Board of Education prior to moving to his current residence in Greenwich. (Testimony, Mother).
3. As of May 2013, the New York City educational agency had identified Student as qualifying for special education under the category of "Emotional Disturbance" and had placed Student in a self contained classroom at Summit School ("Summit"), a New York State approved nonpublic day school. (Stipulation of Facts).
4. The family made the decision to move to Greenwich after a difficult year. The family experienced financial struggles due to significant changes in the Father's employment. The Student was experiencing this stress at home and was struggling at home and school. (Testimony, Mother)
5. The Mother registered Student in Greenwich Public Schools ("GPS") on June 7, 2013, when classes were in progress in the 2012-2013 school year. The Mother indicated on the registration form that that the Student was to begin at Central Middle School ("CMS") in the 7<sup>th</sup> grade beginning in September of 2013. The Mother provided medical and residency information, but did not provide an IEP at the time of the registration." (HO-3)
6. At the time that Mother registered Student, the family had not physically moved to Greenwich. The family had finished the closing on their Greenwich home a day earlier on June 6, 2013. The Student was not present on June 7 when the Mother registered the Student for school. He finished the school year at Summit in New York City. After the Mother registered the Student, the CMS guidance counselor gave the Mother a short tour of CMS. The Mother visited the offices, saw the cafeteria and was present during the change of classes. (Testimony, Mother).
7. A Planning and Placement Team Meeting ("PPT") was held on June 26, 2013. The members of the PPT, in addition to the Mother, were Dr. Jo Frame (administrator); Carolyn Hoette (special education teacher); Kevin Krois (regular education teacher); Dr. Scott McCarthy (school psychologist); Julie Webster (speech and language pathologist); Colleen Alfano (guidance counselor) and Sheri Bordoff (Clinical Director of Summit School), who participated by phone. The Mother was provided procedural safeguards and signed a waiver of 5-day notice for permission for the PPT to take place. (B-3).

8. The Board had been provided two IEPs by Summit. One IEP, dated March 6, 2012 was developed when Student was in Grade 5 (B-1). Another IEP, dated May 24, 2013, was developed at the end of the 6<sup>th</sup> grade year. This IEP was faxed to the school two days before the scheduled PPT. (B-2). In addition, the PPT reviewed a report of a neuropsychological evaluation conducted by Dr. Andrew Morrell PhD dated 2011 when Student was 11 years of age. In his report, Dr. Morrell noted that the

[Student] is a boy of superior intellectual ability who is only intermittently able to function at the level of his potential owing to his uneven attention, motivation and frustration tolerance. His greatest cognitive skills lie in his reasoning and his visual spatial problem solving abilities, while relevant vulnerabilities were noted in his expressive language, his graphomotor facility and his attentional/executive skills. Academically, [Student] is a competent reader. His math skills seem potentially quite good as well... Writing is the area of greatest concern and the one where he is in need of additional support and encouragement. Finally, while [Student] is at present conflicted over how fully he wants to participate in the world around him, he ultimately comes across as someone who is looking to make positive changes in all areas of his life.”

Dr. Morrell’s recommendation included individual and group therapy as well as speech and language therapy to help Student with his expressive and written expression. (B-6).

9. Summit’s IEP dated May 24, 2013 was being implemented at the time of the PPT meeting. This IEP placed the Student in a self-contained classroom with a student to teacher and aide ratio of 12:1+1 five days a week for 7 periods per day. In addition, the Student received 1 to 1 psychological counseling services for .5 hours per week; 3 to 1 psychological counseling services for .5 hours per week; 3:1 speech/language services for .5 hours per week; 3 to 1 occupational therapy services for .5 hours twice per week and a Behavioral Intervention Plan (“BIP), which was not sent by Summit. The IEP did not include extended school year services. (Stipulation of Facts; B-2).
10. Academic performance was an area of strength for Student. The IEP reported Student’s 6<sup>th</sup> grade standardized test performance on district-wide assessments to be at a 6.7 grade level in math and 7.4 grade level in reading. The Student is described as exhibiting strong academic skills and “making good progress”. With regard to social development, the Student was described as “a happy and pleasant boy”; who “prefers to be on his own”; who “struggles with expressing his needs in an appropriate way”; who “requires prompting” and who “[a]t times will scream and cry and needs to be removed from class”. Areas of need included improving focus; coping strategies; improving self-advocacy; developing problem solving and organizational skills and developing strategies to reduce stress and anxiety. The writers of the Summit IEP did not specifically articulate why Student needed to be educated within a separate school setting from non-disabled peers beyond stating that Student “requires a highly specialized program with support services not available in a public school to meet his educational needs.” (B-2)
11. The Parent and Summit’s Clinical Director reported that the Student was struggling in the specialized setting at Summit. Student was feeling different. The Student had negative reactions to some of the counseling services he was receiving in the specialized environment. The Student had threatened to harm himself in the previous year. The goal was for Student to be mainstreamed but both Summit’s Clinical Director and the Mother expressed concern about the mainstream environment and the need for skilled staff to work with Student on a consistent

basis. During the PPT meeting, the Mother provided the team with permission to contact the Student's psychiatrist, Dr. Rahtz. (Testimony, Mother; Testimony, McCarthy; Testimony, Hoette; B-3).

12. The Board PPT members felt that CMS had sufficient clinical resources to meet the Student's behavioral and emotional needs. Dr. McCarthy, the school psychologist would be available to support the Student. In addition to Dr. McCarthy, CMS's clinical staff included a social worker and a counselor specializing in children in crisis. CMS also had three guidance counselors available to support Student. Based upon information that was provided, Dr. McCarthy determined that the Student's emotional and behavioral profile was similar to a number of other CMS students being served by clinical and special education staff. Dr. McCarthy did not consider Student's emotional and behavioral needs so extraordinary that he could not be served with CMS's then current clinical resources. (Testimony, McCarthy)
13. The PPT proposed a diagnostic placement for the Student to occur at the beginning of the next school year because CMS staff lacked sufficient information as to how the Student's IEP would be implemented in a mainstream setting. The staff was not clear as to the type of services that would be required to meet the Student's needs. During the diagnostic placement, the Summit IEP would be in place at CMS and CMS staff would closely monitor and evaluate Student to learn about the Student's emotional and behavioral responses and adjust services as necessary to meet the Student's needs. The team proposed to match the services and goals provided in the Student's Summit IEP during this evaluation period. The PPT team would meet every two weeks or earlier to review the Student's needs for specific services. In addition, the PPT offered a shortened school day to allow Student to adjust to the new school environment. The Mother rejected the team's offer to shorten the school day to ease the transition to school and the full number of counseling sessions contained in the Summit IEP because she felt that Student would feel different and have a negative response. (Testimony, McCarthy; Testimony, Hoette)
14. The special education teacher and school psychologist felt that the biggest questions that needed to be answered during the diagnostic placement involved the Student's response to the mainstream school environment after having been in a restrictive specialized school setting. During the course of the diagnostic placement, the school psychologist would monitor the Student's behavior closely. Diagnostic evaluations of Student that the team proposed would occur during academic/special education, speech and language therapy and counseling sessions. (Testimony, McCarthy; Testimony, Hoette)
15. The Board members of the PPT also offered an in home visit and to observe the Student over the summer in order to become acquainted with Student. The Mother was non-committal in giving consent for CMS staff to meet the Student. At the conclusion of the PPT, the Mother took the papers home for review. (Testimony, McCarthy; Testimony, Hoette; B-3)
16. On Sunday, June 30, 2013, a few days after the PPT, the Mother emailed Dr. Jo Frame, Assistant Principal at CMS, stating that the Parents were concerned that the diagnostic placement was not an appropriate placement for Student. The Mother stated, "[a]s you know from the information we and The Summit School provided at the PPT meeting, [Student] has been in a 12:1 specialized out of district placement for the last several years. Even in such a restrictive environment, he has struggled to make educational progress." It is important to note here that the Mother's statement that the Student had "struggled to make educational progress" is contrary to the results reported in Summit's May 24, 2013 IEP, and therefore lacks any credibility on this point. Although the Summit IEP outlined some behavioral issues, the Student

was described as making “good progress”. Furthermore, district-wide standardized assessments revealed that the Student was performing at above grade level as compared to all students, disabled and non-disabled. (B-3; B-9)

17. Dr. Frame emailed back on July 1 that she had forwarded the Mother’s email to the Special Education department and later on July 10 offering to schedule another PPT meeting to discuss the Parents’ concerns. On July 11, the Mother wrote back and stated as follows: “Given that [Student] had such a difficult year, we decided to have him evaluated again. Dr. Tim Heitzman of the Southfield Center in Darien is working on the evaluation and I’d like for him to attend the PPT meeting. Dr. Heitzman is currently on vacation but I think he will be back in another week and should be available in July so I’ll be trying to coordinate around that timing.” (B-9).
18. Sometime after this email exchange, Karen Mabee, CMS Assistant Principal, learned that the Student was also enrolled at Eagle Hill for the fall of 2013. Eagle Hill had called GPS to arrange for transportation services for the Student. (Testimony, Mabee)
19. On August 9, the Parents wrote to Shelly Somers, Principal of CMS, stating that the diagnostic placement “is not an appropriate placement for [Student], would not allow him to make meaningful educational progress, and places him at risk of regression.” Despite the Student’s identification as a child with Emotional Disturbance, the Parents stated that they had placed the Student at Eagle School. “Eagle Hill offers a language-based, remedial program committed to educating children with learning disabilities. The curriculum is individualized, interdisciplinary, and transitional in nature. We will be seeking tuition reimbursement and related expenses from Greenwich School Board.” (B-10).
20. On August 16, the Mother emailed Dr. Frame repeating their position that the Parents had felt that the proposed diagnostic placement was inappropriate and that the Student was being placed at Eagle Hill because “GPS left us with no option but to enroll [Student] at EHS. The only way to hold a place for [Student] was to enroll him.” (B-12)
21. On August 27, the Parents emailed GPS seeking to schedule a PPT meeting. A second PPT was convened on September 17. In addition to the Mother, the PPT members included Dr. McCarthy (school psychologist); Carolyn Hoette, (special education teacher); Dr. Jo Frame (regular education teacher); Karen Mabee, (administrator); Julie Webster (speech and language pathologist); Jeffrey Libby (Program Coordinator) and Dr. Rahtz, the Student’s psychiatrist. The PPT team reviewed Dr. Heitzman’s report and offered to add additional diagnostic services including a Board Certified Behavioral Analyst (“BCBA”) to assist during the diagnostic placement period and other support services.
22. Student’s psychiatrist Dr. Rahtz opined that the only appropriate setting for Student should be a private specialized school setting and that putting the Student in a mainstream school would be “deleterious to [Student’s] self esteem and might have a negative impact on him emotionally and psychologically.” Dr. Rahtz came to this opinion because he felt that the Student would not be able to compete and do well in a setting with nondisabled peers. Dr. Rahtz testified that he felt that the Student should be in private school even though he had no familiarity with GPS or CMS. He testified that his concern about placing the Student at CMS was that the Student would see that other students were able to fulfill higher expectations that the Student could not meet. (Testimony, Rahtz). Dr. Rahtz’s impression of the Student’s academic abilities compared to peers is contradicted by the Student’s Summit May 24, 2014 IEP in which educators at Summit report “superior” academic abilities and above grade level results compared to all disabled and nondisabled peers on a district-wide basis. (B-3).

23. The Mother testified that she did not agree with the diagnostic placement offered by the Board because she felt that it was a “trial and error approach to formulating a program as opposed to one that took everything into account that we had presented at the PPT”. The mother thought that she had provided enough information, including the access to the Student’s psychiatrist, and the inclusion of a Summit School representative, for the Board to develop an IEP without a diagnostic placement. (Testimony, Mother)
24. The Mother’s objection to the placement was due to Student’s educational placement in the mainstream classroom. Compared to the mainstream school setting, at Summit, the “class size was much smaller... The day was structured from beginning until the time he left.” The Student had sensory issues, including difficulty with loud noises, crowds, smells and tones of voices. He had previously had a behavioral incident resulting from the smell of eggs. She felt that the clinical and special education staff at Summit were trained to handle Student’s specific types of meltdowns. She felt that the mainstream environment at CMS would be “sensory challenging” for Student after she first visited CMS. In June 2013, the Mother took another “quick tour” of CMS and observed “classes changing when the bell rang” and concluded that “the bell is a sensory issue”. She did not tour the Student’s proposed classroom or the resource room. The Mother testified, “I don’t think there would be an environment in the school that would be appropriate for him.” She was “hopeful” that the PPT would offer a private placement or a self-contained program, such as the Board’s Arch Street alternative placement program for Greenwich High School. (Testimony, Mother)
25. The Mother testified that the Parents decided to place the Student at Eagle Hill School as a result of the Board’s proposed diagnostic placement in August 2013. Eagle Hill is a state approved non-public special education schools serving students with language based disabilities. There was no evidence at the hearing that Eagle Hill’s clinical services were different from or more appropriate than the services available through CMS clinical and special education staff. (Testimony, McCarthy; Testimony, Hoette; B-3).
26. The Board successfully challenged the Mother’s credibility on the assertion that the Parents had only decided to have the Student attend Eagle Hill as a result of the Board’s proposal of a diagnostic placement. Indeed, the Parents had enrolled the Student at Eagle Hill School in March 2013. On cross-examination, the Mother testified that she brought the Student to Eagle Hill in February 2013 for an interview and signed a contract with and provided a nonrefundable deposit of \$6075.00 to Eagle Hill. As of June 1, 2013, the Parents had committed to pay Eagle Hill the amount of a full year’s tuition, \$60,750.00. The Parents contractually committed to pay the amount of full tuition to Eagle Hill before the Mother registered the Student with GPS on June 7, 2013. (Testimony, Mother; P-14)
27. The Mother’s demeanor and answers on cross-examination were not credible. For instance, the Mother has a Master’s degree in Business Administration and works as a senior financial analyst in the finance industry in New York City. She testified that she did not pay attention to her contractual obligations to Eagle Hill as of the date she registered the Student for Greenwich Public Schools. Both she and her husband, a physician, signed the Eagle Hill contract and provided a deposit at a time of family financial crisis and income reduction. The Mother wrote checks for installment payments to Eagle Hill School during the same period of time when she met with CMS staff. At the same time, the Mother did not tell anyone at GPS that the Student was already enrolled and that the Parents had agreed to pay a full year’s of tuition at Eagle Hill as of the date of the Student’s registration. Further, the Mother’s non-committal response to the school psychologist and special education teacher’s request to observe the Student over the

summer in order to prepare for Student's arrival at school is not consistent with a parent who was working to help her child succeed at CMS. A parent who is interested in a child's success would make an extra effort to introduce the child to new school staff. In fact, the Mother demonstrated this effort by bringing the Student for a tour and interview at Eagle Hill in February of 2013. The Mother's noncommittal response reveals that she had in fact had already made the determination that Student would not need to meet GPS staff because Student would not be attending CMS in the fall of 2013.

28. The Mother's conduct raises troubling questions of whether the Parents had ever intended for the Student to attend a Board school when Mother registered the Student, and what the Parents' ultimate purpose is in filing this Due Process Complaint seeking reimbursement for tuition and education related expenses. (Testimony, Mother; P-14 and P-15).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. There is no dispute that Student became a student of the Board when Parent registered him at the Board's school on June 7, 2013 as a resident of the Town of Greenwich. This enrollment occurred in the 2012-2013 School Year even though the Student completed the school year at Summit School in New York, even though he never visited the Board's school and even though Parent stated on the enrollment form that the Student would begin attending the Board's school in September of 2013. See Conn. Gen. Stat. 10-220.
2. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
3. The purpose of the IDEA is to ensure that all children with disabilities have available to them 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). Congress did not intend the IDEA to guarantee a specific outcome, but to provide a basic level of educational opportunity for students with disabilities. A school district is not obligated to maximize the disabled student's potential. *Rowley*, 458 U.S. at 192, quoting S. Rep. No. 94-168, at 11. The IDEA only requires "the door of public education [to] be opened for a disabled child in a 'meaningful' way." *Walczak* 142 F.3d at 130, citing *Board of Education of the Hendrick Hudson Central School District v Rowley*, 458 U S 176(1982). However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132.
4. The Act defines FAPE as special education and related services which "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. §1401 (8).
5. The IDEA also mandates that "[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes



with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A); *P. v. Newington Board of Education*, 546 F.3d 11 (2d Cir. 2008) citing *Walczak*, *supra* 142 F.3d at 122.

6. In keeping with the IDEA's preference for mainstreaming students with disabilities, IDEA's implementing regulations require school districts to offer a continuum of alternative placements for students who require special education services. This continuum is a range of potential placements in which a district can implement a student's IEP. The preference order begins with placing a student in a regular classroom as the least restrictive environment through a continuum of more restrictive alternative placements such as special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR §300.115(b); *Letter to Cohen*, 25 IDELR 516 (OSEP 1996)
7. IDEA's implementing regulations, at 34 CFR § 300.323(f), outlines a receiving public agency's obligations to provide FAPE in the case of transfers from a public agency of another state. "Under 34 CFR § 300.323(f), if a child with a disability (who has an IEP in effect) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324." *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, Office of Special Education and Rehabilitative Services 54 IDELR 297 (June 1, 2010).
8. The evaluation referenced in §300.323(f) is considered an "initial evaluation" for the new public agency and for this new evaluation, "the implementing regulations at 34 CFR Part 300 do not obligate a school district receiving a special education student from another State to accept the evaluation results, eligibility determinations, and IEP decisions made in another State." *Letter to Sims*, 103 LRP 22737 (OSEP 10/9/02). School systems may insist on evaluation by qualified professionals who are satisfactory to school officials. *Dubois v. Connecticut State Board of Education, et al.*, 727 F.2d 44, 48 (2d Cir. 1984) quoting *Vander Malle v. Ambach*, 673 F.2d 49, 53 (2d Cir. 1982.)
9. In evaluating a child with a suspected disability under IDEA regulations, an IEP team must give "first consideration" to placement of a disabled student in the regular classroom with appropriate aids and services before more restrictive placements can be considered. *Letter to Cohen*, *supra*. Consideration of more restrictive environments such as special classes or special schools should only be made after a school district has made reasonable efforts to accommodate a child in a regular classroom with supplementary aids and services. See *Oberti v. Board of Education of the Borough of Clementon School District et al*, 995 F.2d 1204 (3d Cir. 1993). GPS complied with its IDEA obligations to give first consideration to placement in a regular CMS classroom. See *Findings of Fact Nos. 12, 13, 14 and 15*.
10. A diagnostic placement is a method of evaluation, not an educational placement. See *West Hartford Board of Education, OCR 01-86-1016*, 352 IDELR 300 (1986). RCSA 10-76d-4 provides that a board of education may use trial placement for diagnostic purposes as part of the initial evaluation of a child. The diagnostic placement is a structured program, of not more than forty school days duration, the purpose of which is to assess the needs of a child who is or may

be a child with a disability, but for whom the evaluation or reevaluation is either inconclusive or data insufficient to determine the child's eligibility for special education and or develop or revise the child's individualized education program. The planning and placement team meets at least once every ten days with personnel working with the child to review progress and revise services where necessary. RCSA 10-76d-14 provides that trial placement shall be terminated as soon as a child's needs have been determined and that the PPT reconvene to determine the child's eligibility for special education and related services, as appropriate, or to review, revise or develop the child's IEP based on findings made during the diagnostic placement as well as other evaluative information regarding the child. The information provided to GPS from Summit did not contain sufficient information for GPS to develop an IEP for Student in a mainstream setting. GPS's diagnostic placement plan complied with the requirements of state regulations. *See Findings of Fact Nos. 12, 13, 14, 15 and 21.*

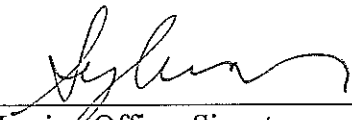
11. A receiving public agency must provide FAPE during the period of an initial evaluation. FAPE is provided by offering services comparable to those services provided in the Student's previous IEP until the receiving public agency's IEP team has completed this initial evaluation. " 'Comparable services' means services that are 'similar' or 'equivalent' to those that were described in the child's IEP from the previous public agency as determined by the child's newly-designated IEP in the new public agency." See Comment 71 Fed. Reg. 46681 (2006). GPS did provide FAPE as defined by 34 CFR §323(f) by matching services to those contained in Student's previous Summit School IEP during the period of the diagnostic placement. *See Findings of Facts 13, 14, 15 and 21.*

### **FINAL DECISION AND ORDER:**

1. The Board decision to perform diagnostic placement at CMS was appropriate.
2. The Board did not have sufficient information to develop an IEP and program for Student in the mainstream setting.
3. Since the Board provided the Student with FAPE, there is no need to address the issues related to placement or reimbursement of tuition and related expenses at Eagle Hill School.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).

  
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Hearing Officer Signature

Sylvia Ho  
Hearing Officer      Name in Print