

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf the Parent:

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Greenwich, CT 06830

Appearing on behalf of the Board:

Attorney Abby Wadler  
Assistant Town Attorney  
Town of Greenwich  
101 Field Point Road  
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Appearing before:

Attorney Brette Fitton  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the District violate its child find duty under the Individuals with Disabilities Education Act (“IDEA”) and Regulations of Connecticut State Agencies §10-76d-7(c) by failing to refer Student for special education in the Spring of 2014? If the District erred by failing to refer Student for special education was the Student denied a Free Appropriate Public Education (“FAPE”) as a result?
2. Did the District err when it found Student was not eligible for special education at the Planning and Placement Team (“PPT”) meeting held on September 29, 2014? If the District erred by not finding Student eligible, was the Student denied a FAPE as a result?
3. Did the District err when it found Student was not eligible for special education at the PPT meeting held on December 10, 2014? If the District erred by not finding Student eligible for special education, was the Student denied a FAPE as a result?
4. Did the District err by not finding the Student eligible for Special Education and not designing and offering an Individualized Education Program (“IEP”) for Student for the 2015-2016 school year?
5. Does the Spire School offer an appropriate program for Student under the IDEA?
6. If Spire School offers an appropriate program for Student:
  - a. Are Parents entitled to reimbursement of tuition and transportation costs associated with Parents’ unilateral placement of Student at Spire School for the 2014-2015 school year under the IDEA?
  - b. Should Student be placed at the Spire School at public expense for the 2015-2016 school year under the IDEA?
7. Did the District’s proposed program developed pursuant to Section 504 of the Rehabilitation Act (“Section 504”) and proposed on April 10, 2014 provide Student with

- a FAPE as defined by Section 504?
8. Did the District commit a procedural violation of Section 504 by failing to evaluate Student after receiving a letter from Dr. Fryer, dated April 9, 2014 which referred to a disability? If so, did such procedural violation result in a denial of Student's right to a FAPE under Section 504?
  9. Did the District violate Section 504 by failing to amend the Student's plan in response to an escalation in Student's difficulties? If so, did such violation result in a denial of Student's right to a FAPE under Section 504?
  10. Are Parents entitled to reimbursement of tuition and transportation costs associated with Parents' unilateral placement of Student at Spire School for the 2014-2015 school year under Section 504?
  11. Should Student be placed at the Spire School at public expense for the 2015-2016 school year under Section 504?

### **PROCEDURAL HISTORY:**

On July 22, 2015, the Board received a request for a due process hearing filed by Attorney for the Parent. The undersigned Hearing Officer was appointed on July 23, 2015. During the prehearing conference held on August 3, 2015, hearing dates of October 2, 2015 and October 7, 2015 were set and the deadline for mailing the final decision and order was established as October 5, 2015. Attorney for the Student made an oral request during the prehearing conference for an extension of the deadline in order to accommodate the agreed upon hearing date schedule. The extension request was granted with a new mailing deadline of November 4, 2015. On September 1, 2015, Attorney for the Student requested a postponement of the October 2, 2015 hearing date and proposed an additional hearing date of October 13, 2015, in order to allow the parties to engage in mediation. A subsequent discussion between the parties resulted in a request to postpone both original hearing dates and utilize October 13, 2015 as the first hearing date. The requests to postpone the hearing dates of October 2, 2015 and October 7, 2015 were granted and the hearing began on October 13, 2015. During the hearing, additional hearing dates were agreed upon and the Attorney for the Student requested extensions of the mailing deadline to accommodate the hearing date schedule. These requests were granted and a new deadline of December 4, 2015 was established. On November 24, 2015, another extension request was made to accommodate the hearing dates in December. This request was granted and resulted in a mailing deadline of January 4, 2015. During the last day of hearing on December 18, 2015, a request for an extension of the deadline for mailing the final decision and order was requested on the record in order to accommodate the briefing schedule. The revised deadline was established as February 2, 2015. A final request for extension was granted on January 25, 2016. There was no objection from the Board to this request. The final deadline for the mailing of the final decision and order was established as March 3, 2015.

On August 5, 2015, Attorney for the Board filed a Motion to Dismiss, specifically seeking to dismiss issues 7-11, pertaining to claims arising pursuant to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504"). On August 17, 2015, Attorney for the Student filed an Objection to the Motion to Dismiss. The Board's Motion to Dismiss was denied on October 6, 2015. On September 25, 2015, Attorney for the Parent filed a Motion for Order Permitting Acoustic Testing at Greenwich High School. On October 2nd 2015, the Board filed an objection

to the Parent's motion for acoustic testing. Parent's Motion for Order Permitting Acoustic Testing at Greenwich High School was denied on October 6, 2015. On October 9, 2015, the Board filed a substantive written response to the due process hearing request. On October 23, 2015, Attorney for the Parents renewed its Motion for Order Permitting Acoustic Testing at Greenwich High School and on October 27, 2015 the Board filed an objection to this renewed motion. The hearing took place on October 13, 2015, November 4, 2015, November 24, 2015, December 4, 2015, December 8, 2015, December 15, 2015, and December 18, 2015.

The Parent's witnesses were the Father; Barbara Gong, Greenwich High School Guidance Counselor ("Guidance Counselor"); Ms. Dana Tulotta (*aka* Ms. Dana Fesko) Greenwich High School Folsom House Administrator ("GHS House Administrator"); Ms. Anne Drake, GHS Advanced Placement Language and Composition teacher; Mr. Robert Brown, GHS Algebra II - Honors teacher; Mr. Mark Epstein GHS AP US History teacher; and Ms. Allison Tables, Spire School Head Life Coach ("Spire School Life Coach").

The Board's witnesses were Ms. Mary Ann O'Connor, GHS School Nurse ("School Nurse"); Ms. Lisa Strizver, Greenwich School District Evaluation Team School Psychologist; Laura Boyd, Greenwich School District Evaluation Team Special Education Teacher; and Ms. Judith Nedell, Greenwich School District Coordinator for Guidance and School Counseling.

Parent's Request for a Due Process Hearing dated July 22, 2015, was entered as Hearing Officer Exhibit 1. (HO-1) The parties submitted a joint stipulation of facts, dated October 8, 2014. (Joint Stipulation)

The Parent submitted exhibits P-1 through P-86. Objections to 34, 48, and 70 were overruled. All Parent exhibits were admitted as full exhibits. The Board submitted exhibits B-1 to B-24. Pages 1-3 of Board exhibit 3 were admitted. The rest of the exhibit was excluded. Objections to Board exhibits 12 and 18 were overruled.

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

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, *see SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

### **SUMMARY:**

This case involves a child who was enrolled for the first time in the Greenwich Public School District during the 2013-2014 academic year for her sophomore year. In the second semester of tenth grade, Student experienced the sudden onset of debilitating migraine headaches. Student's headaches were so severe that she was hospitalized for inpatient treatments on multiple occasions in 2014. As a result of her severe migraine headaches, Student had extensive absences both from individual classes, on those days she was able to make it into school, and for entire days, when she was not well enough to attend school at all. While Student achieved academic success during her first semester, the absences due to her illness in the semester that followed

negatively impacted Student's academic achievement. Greenwich Public School District violated its child find obligations when it failed to identify Student as a student who should be referred for special education, and erred when it determined Student did not qualify for special education under the category of Other Health Impairment.

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

1. Student is 18 years of age and has given her Father an educational power of attorney to exercise her educational rights. (Joint Stipulation)
2. Student attended a private elementary school, Greenwich Country Day School ("GCDS") through the end of ninth grade, which is the highest grade offered by that school. (Testimony of Father, 12/4/2015; Joint Stipulation) Student received mostly B grades while attending GCDS, and in her last year made the honor roll twice. (B-2, p. 2, P-73, P-74)
3. While attending Greenwich Country Day School Student did not suffer from migraine headaches. (Testimony of Father, 12/4/2015). Student did at one point suffer from a virus which caused her to be absent from GCDS for a period of 20 days. (B-19, p. 199) GCDS also reported some absences relating to Parents' divorce. (Testimony of Guidance Counselor, 11/4/2015).
4. Parents enrolled Student in Greenwich High School ("GHS") for her sophomore year in August of 2013. (Testimony of Father, 12/4/2015)
5. Greenwich High School has approximately 2700 students. (Testimony of GHS House Administrator, 11/24/2015) GHS has a bell system to signal the transitions between classes. This bell system has to be loud enough so that the students passing in the hall and in the student center can hear it over the conversations of hundreds of students. Father's testimony regarding the layout and physical environment of GHS were not credited. This Hearing Officer found Father's expressions of shock and dismay in discovering that the hallways of a high school with 2700 students would be loud and full of students during class transition time to be disingenuous. Father's hyperbolic testimony about "sirens" and "Grand Central Station" suggested a belief that the architect of the Greenwich High School was expected to have known that Father's child would enroll there at some point decades after construction and be afflicted with migraines and that the architect's failure to design a the building contemplating that eventuality was a personal affront. GHS is a large school with a lot of high school students moving throughout the building during the day. The Hearing Officer takes administrative notice that most teenagers are not by nature quiet and retiring creatures and that when congregating in hallways and at lunch, the noises teenagers emit tend to increase exponentially.

6. Student's cumulative grade point average ("GPA") after the first quarter of the 2013-2014 school year was a 3.4, while her GPA for the marking period was 3.49. (P-3) Student received Cs in her Advanced Placement courses of Language and Composition and US History, a C+ in Honors Algebra, an A+ in Chemistry, a B+ in Italian and As in the rest of her courses. (Id.)
7. On November 15, 2013, Student was chosen as "Student of the Marking Period" by the GHS Science department, for her consistent effort, strong work ethic and positive attitude toward learning. (P-4)
8. In the second quarter of her sophomore year, Student made the honor roll and her cumulative grade point average ("GPA") year was a 3.47, while her GPA for the marking period was a 3.8. (P-6, P-73) Student had raised her grades in her Advanced Placement courses of Language and Composition and US History to a B-. She again earned an A+ in Chemistry and a B+ in Italian. Student received a C in Honors Algebra and As in the rest of her courses. (P-6)
9. The AP US History Course at GHS is broken into two parts with a final grade assigned for each semester. (P-6) Student received a C+ as a final grade for the AP US History I. (P-6)
10. Student took the PSAT during her sophomore year and scored in the 99th percentile for critical reading, the 93rd percentile for mathematics and the 79th percentile for writing skills. (P-1(b), p.2)
11. Upon enrolling in GHS, Student was assigned to a Guidance Counselor, as one of the Guidance Counselor's caseload of around 170 students. (Testimony of Guidance Counselor)
12. At the time of the hearing the Guidance Counselor had been employed by the District for 8 years and had participated in numerous PPT meetings, although she could not provide an exact number. (Testimony of Guidance Counselor) The Guidance Counselor had also participated in around 30 Section 504 meetings. (Id.)
13. The Guidance Counselor took a course in education law during her graduate program and a portion of this course covered special education law. (Testimony of Guidance Counselor)
14. Student did not have many absences during her first semester at GHS. (Testimony of Guidance Counselor, 11/4/2015; P-6, p. 1, B-17, p.2)
15. GHS employs three full time nurses, who provide medical care in the GHS Health Office. (Testimony of School Nurse, 12/18/2015) Students who present with general headaches at the Health Office are assessed to determine the cause of the headache, whether it is due to stress, illness or concussion. (Id.)
16. Once the Health Office is aware that a student suffers from migraines, the Health Office staff usually follows a protocol of administering medications, if they have been prescribed, and providing a dark and quiet area to rest until the medication takes effect and the migraine resolves. In the event the migraine does not resolve, the nurse will discuss the next steps with the Student or call the Student's Parent. (Testimony of School Nurse, 12/18/2015)
17. Student went to the Health Office only once for a headache between the start of school in August of 2013 and December 12, 2013. (B-18, p. 5)
18. On December 13, 2013, Student visited the Health Office during the school day as a result of a headache. (B-18, p. 5)
19. Father testified that the Student's medical condition of chronic migraine headaches began

- abruptly in January of 2014. (Testimony of Father, 12/4/2015; P-15, P-83) This testimony was contradicted by his email dated March 2015 in which he stated that the migraine headaches started on February 19, 2014. (B-19, p. 199)
20. Beginning in February 2014, Student's visits to the GHS Health Office as a result of her headaches during school increased significantly. (B-18 pp. 5-7) Student was absent due to illness 25 times in the period between January 2, 2014 and June 2, 2014. (B-17)
  21. When Student came to the Health Office she appeared uncomfortable; the protocol followed, including the administration of medication, did not assist her in feeling better. (Testimony of School Nurse, 12/18/2015; B-18 p. 8)
  22. On March 12, 2014, an interim report of Student's progress for the third marking period was generated. (P-11) At the time of the interim report, Student's grades in both of her AP courses had declined to a C-. (Id.) Student's AP Language and Composition teacher noted Student was missing assignments. Student's Honors Algebra 2, AP US History, and Art teacher selected "Frequent absence/tardiness is affecting learning" as a comment to include in the comment section. (Id.) At the time of the interim report, Student was receiving an incomplete in Honors Algebra 2 and her Art teacher indicated she was in danger of failing and losing credit due to frequent absences. (Id.)
  23. On March 13, 2014, a letter was sent to Parents by the GHS House Administrator notifying them that as of March 7, 2014, Student had "...accumulated a significant number of absences and/or tardies in one or more of her classes." (P-76, p. 1) The letter also indicated that according to the GHS school attendance policy, both excused and unexcused absences count toward loss of credit. (Id.) Student was five absences away from loss of credit in Chemistry and AP US History, four absences away from loss of credit in Honors Algebra 2 and Italian, seven absences away from loss of credit in AP Language and Composition, and had met the threshold for loss of credit in her Lettering and Layout Art class and would lose credit if she was absent one more time. (Id.) This document is generated automatically by the computerized attendance system and was issued in accordance with the GHS attendance policy. (Testimony of GHS Administrator, 11/24/2015, p.12)
  24. On March 15, 2014, Student's Math teacher reached out to Parents regarding Student's self-report of migraines and requesting further information in order to assist Student. (B-19, p. 200)
  25. On March 15, 2014, in response to the email from Student's Math teacher, Mother sent an email to Student's teachers, Guidance Counselor, and GHS Administrator indicating the focus was on identifying triggers and refining treatment for Student. (B-19, p. 200) Mother also indicated she was unaware the teachers had not been informed of the reason for Student's absences, and let staff know that the school nurses had been informed about Student's condition. (Id.)
  26. On March 15, 2014, Father also sent an email to GHS staff, in response to the Math teacher's email. (B-19, p.199) In this email he informed staff that Student's migraines began on February 19, 2014 and had persisted since then. (Id.) Father informed staff that Student was diagnosed with migraines by a pediatric neurology practice on February 24th, 2014 and had been seen again on March 6, 2014 and was scheduled to see the doctor again on April 9, 2014. (Id.) Father indicated that make up tests and quizzes should be scheduled directly with Student. (Id.)

27. Father notified GHS staff that student's medical condition had not improved and noted her continued absences on March 26, 2014. (B-19, p. 195) Father specifically requested that staff let Parents know what should be done in regard to making up lost work and stated Parents were open to all suggestions, including tutoring. (Id.)
28. On March 26, 2014, the Guidance Counselor sent an email to Student's teachers, informing them that Student's medical issues had not improved and that it was impacting her academics. (B-19, p.196) The Guidance Counselor indicated that she was inviting staff to a meeting with parents (referred to in the GHS vernacular as a "staffing") on March 31, 2014 to discuss how to handle Student's workload. (Id.) The Guidance Counselor indicated in this email that a medical Section 504 accommodation plan might be needed if Student's migraines did not improve. (Id.)
29. On March 31, 2014, a "staffing" meeting was held with Parents, Guidance Counselor, the Art teacher and the AP US History teacher, who suggested that Student attend morning sessions that he holds for all students in order to go over information that students need to review. (P-13) Student's Art teacher indicated that she would provide materials for Student to complete her projects at home because she was quite behind in class. (Id.)
30. Suggestions of teachers for assisting Student provided before and after the Staffing meeting included having the Student take an incomplete in Art to give her a month to make up work, and to allow student to take home tests and waive all homework grades (representing 5% of grade) in Math. (B-9 , p. 185, and p. 195)
31. On April 2, 2014, the Guidance Counselor notified teachers via email that Student was being admitted to the hospital in two days in order to receive medical treatment and indicated that Student was too ill to attend school. (B-19, p. 196) In response to this email, Student's AP US History teacher expressed his concern that Student was missing major units of study. (Id.)
32. On April 4, 2014, Student's Pediatric Neurologist, Dr. Robert Fryer, wrote a letter addressed "To Whom It May Concern" regarding Student, which was emailed to the Guidance Counselor on the same day. (P-83, B-19, p. 176) In this letter Dr. Fryer indicated he had been following Student for the past several weeks and that Student suffers from migraines which started abruptly in January of 2014. (Id.) He also indicated that the Student was currently in the hospital for an intravenous medication protocol. The date the migraines began contained in the pediatric neurologist's letter was contradicted by Father's email to school, which predated the pediatric neurologist's letter, and is deemed by the Hearing Officer to be an error by the pediatric neurologist based on inaccurate reporting to the pediatric neurologist by Father. (B-19, p. 199)
33. In the April 4, 2014 letter, the Dr. Fryer requested that Student's recent absences, beginning January 4, 2014, be excused and that Student be evaluated for a Section 504 plan because future absences due to her medical condition were likely. (Id.) The doctor also predicted that Student could miss potentially as much as two weeks of school. (Id.)
34. On April 6, 2014, Mother reached out to Guidance Counselor to ask if anything else was needed for the 504 plan. (B-19, p. 176) Mother asked in this communication if Parents should be looking into getting tutors for Student and asking about having another meeting. (Id.)
35. On April 7, 2014, Guidance Counselor sent an email to Parents indicating that the letter from the pediatric neurologist did not contain a recommendation that Student be given

- extra time for assignments or assessments. (B-19, p. 176) She went on to express her concern that failure to contain this recommendation might result in Student not receiving accommodations from the College Board. (Id.)
36. The Guidance Counselor and Mother also met in person on April 7, 2014 and Guidance Counselor suggested that the letter include that Student needs extra time to complete assignments and assessments and a recommendation to break down the requirements for her standardized or timed test so that they could be taken at a minimum over a longer time period and/or over multiple days. (B-19, p. 178)
  37. On April 7, 2014, Dr. Fryer's office asked Parents to provide the language Parents were seeking be added to the April 4, 2014 letter. (B-19, pp. 177-178)
  38. On April 9, 2014, Dr. Fryer drafted a revised letter containing the following additional information: "In order to prevent [Student] from falling further behind after missing so many weeks of school, the 504 plan should include accommodations such as extra time on tests, quizzes and homework assignments. I would also like to request that she be given extended time on the standardized tests such as the AP exams (normal time + 50%), or that the tests be given over multiple days." (P-15;B-18 p. 43)
  39. On April 10, 2014, Mother forwarded Dr. Fryer's April 9, 2014 revised letter to Guidance Counselor, stating "Hopefully this suffices to get that 504 plan moving". (B-19, p. 179) Later that day Guidance Counselor developed a Section 504 accommodation plan and sent it to Parents via email with the request that they sign and return it to her so that she could send it to the teachers and to College Board with the doctor's note. (Joint Stipulation, B-19, p.179) Both Parents signed and returned the document that day. (B-19, P.179)
  40. The April 10, 2014 Section 504 accommodation plan for Student indicates that Student's disability of chronic major headaches substantially limited Student's major life activities of learning and caring for one's self. (B-18 p. 16) The Guidance Counselor, Student's AP US History Teacher, Parents and Student are listed as members of the Section 504 Multidisciplinary Team. (Id.) The Section 504 accommodation plan also notes Student is unable to perform any cognitive functions without difficulty and that the finding of a limitation is based on the note from Student's pediatric neurologist. (Id.) Accommodations for Student under this plan included a modified workload as Student managed headaches, extra time to complete assignments when Student is absent, waiver of the attendance policy and extended time of time and a half for Student when completing tests and quizzes. (Id.) Both Parents signed this plan on April 10, 2014. (Id.) The accommodation plan does not include any special education services or counseling and these accommodations were not discussed or offered by the Guidance Counselor. (Joint Stipulation)
  41. Student was not evaluated pursuant to Section 504 of the Rehabilitation Act at any time during her enrollment in the District, nor was she referred to Special Education during the 2014-2015 school year. (Joint Stipulation)
  42. On April 21, 2014, Student began to see Dr. Silverman, a psychologist, for counseling. (B-19, p.181) Father informed the school and authorized communication between counselor and school. (Id.) Student continued to see Dr. Silverman through June of 2014 and resumed upon her return from camp in the first week of August. (Testimony of Father, 12/8/2015, p. 9) Although Father claimed Guidance Counselor only made one effort to reach Dr. Silverman (Testimony of Father, 12/8/2015), the record reflects that Dr. Silverman and Guidance Counselor had difficulty connecting by phone and that Dr. Silverman did not



- respond to a detailed email sent by Guidance Counselor on September 10, 2014. (Testimony of Guidance Counselor, 11/4/2015;B-19, p.92A and p.92B)
43. On April 22, 2014, Mother informed the Guidance Counselor and AP teachers that Parents had hired a tutor from GCDS to help Student catch up on missed work and prepare for the College Board exam. B-19, p. 101)
  44. As of April 24, 2015, Student's absences had resulted in her not being in a position to receive credit for AP US History - (Second Semester Course) or AP Language and Composition. (B-19, p. 183) Student's AP Language and Composition teacher proposed that Student take an incomplete for the second semester, so that she could complete work over the summer and not have to repeat the course. (B-19, p.184) Neither AP teacher recommended Student take the AP exams. (B-19, p. 182)
  45. At some point prior to April 25, 2014, Student was placed on a special circumstance attendance list which exempted her from application of the GHS attendance policy. (B-19, p. 183)
  46. On April 25, 2014, the Guidance Counselor again noted that student's absences are affecting her academically and will continue to do so. (B-19, p. 183)
  47. On April 25, 2014, Mother met with GHS House Administrator, who suggested to Mother other accommodations for Student including arranging Student's schedule so that she starts later in the day or potentially enrollment in the CLP program, in the event pain from noise in the Student Center and the class changing bells continues to be intolerable. (B-19, p. 172) Mother informed GHS staff by email that Parents were looking into programs offered by the Greenwich Education Group, which offers a range of private educational programs and services and were likely to choose intensive tutoring focusing on preparation for the AP exams. (Id.)
  48. On April 25, 2014, AP US History teacher informed Mother that he is not entirely sure of how she can get caught up in time to take the AP Exam and indicated that she will be at a significant disadvantage if she takes the test in the 2013-2014 school year instead of the following year. (B-19, p. 173) Parents chose to have Student go forward and take the test anyway. (B-19, p. 172A)
  49. During the hearing the AP US History teacher indicated that he had given Student a grade of A as a message of encouragement to Student and that this grade did not accurately reflect Student's achievement. (Testimony of AP US History teacher, December 4, 2015)
  50. All three teachers testified that missing classroom instruction negatively impacted Student's academic performance. (Testimony of AP US History, 12/4/2015, GHS Honors Algebra II teacher, 12/4/2015, AP Language and Composition teacher, 12/4/2015).
  51. As of April 29, 2014, Student had missed three major units of study in AP US History. (B-19, 174)
  52. On April 30, 2014, Father informed Guidance Counselor and AP teachers, that Student might be entering the hospital again that week and that he would keep staff informed. (B-19-p. 174)
  53. On May 13, 2014, Guidance Counselor expressed concern to Parents regarding the amount of absences Student has accumulated after talking to the school nurse. (B-19, p.158) The Guidance Counselor stated that Student is missing valuable class time and that the Guidance Counselor is unsure that working with the tutor would be effective, as she is

- unsure of Student's level of concentration given her difficulty sustaining attention and focus in class. (B-19 p. 158)
54. On May 14, 2014, Mother sent an email to guidance counselor stating Parents are ready for the next step and want a more tangible handle on what needs to be done and what can be done before the end of the year and whether outside help is necessary or recommended. (B-19, p.160)
  55. On May 15, 2014 Father again repeated his offer to arrange for tutoring in any subject if that was needed for Student to successfully complete her coursework. (B-19, p. 163) Guidance Counselor responded that when she has information from all of the teachers and speaks to administrators she will arrange a meeting about Student and how to proceed going forward. (Id.)
  56. As of May 19, 2014, Student had missed the last four major unit exams in AP US History. (B-19, p. 155)
  57. On May 20th 2014 the AP Language and Composition teacher indicated she was changing the third marking period grade from an incomplete to a C- indicating that Student had really received a D. (B-19, p, 165) She also indicated that Student was receiving an F for her progress report because it appeared she was not attempting to make up work. (B-19, p.165)
  58. On May 21, 2014, Father reported Parents are continuing to seek the trigger for Student's migraines but that the noise at the high school has not been bothering Student as much. (B-19, p. 156)
  59. On May 22, 2014, Guidance Counselor reported to Parents about Student's progress in her courses. (B-19, p.153) As of this, Student was caught up in Chemistry and had one makeup test in Math outstanding. The Guidance Counselor had not yet received information from the Social Studies department head about Student repeating the second semester. (Id.) The AP English teacher also indicated it was premature to make a decision about whether or not Student would need to have work extend past the school year. (Id.)
  60. Student's attendance in May and June of 2014 showed improvement. In May she was absent for two days and in June only once. (B-17, p.1)
  61. As of June 10, 2014, Student was on track to receive credit for all of her courses except AP US History Second semester. The department head for Social Studies had not made a determination of how Student's failure to complete work for the second semester of AP US History would be addressed in Student's junior year. (B-19, pp. 132-134, 140)
  62. Beginning in late August 2014, Student's chronic migraine headaches became and remained at a moderate to severe level. (B-18, p.11) On the first day of school, August 26, 2015, Student had a severe migraine and was unable to attend school. (Testimony of Father, 12/8/2015, B-19, pp. 121-124.)
  63. On Friday August 29, 2014, Guidance counselor emailed the school nurse to relay her concern that Student's pattern of absences would be repeated this year. (B-19, p. 121)
  64. On September 2, 2014, Student was admitted to the hospital again in order to receive an intravenous treatment, which failed to abort her headaches and made them worse. (Testimony of Father, 12/8/2015, p. 13; B-18, p.11) Student was discharged on September 4, 2014. (Testimony of Father, 12/8/2015, p.18)

65. The Guidance Counselor requested and received a release for school to speak to Student's physician. (B-19, p. 115) Student was added to a list of Students to be discussed at a meeting held weekly to discuss students of concern. (Id.)
66. The School Nurse spoke with Student's doctor on Thursday, September 4, 2014. (Testimony of School Nurse, 12/18/2014; B-18, pp. 8-9) During this conversation, Student's doctor informed the School Nurse that Student was currently in the hospital receiving intravenous medication and that he believed Student would be able to return to school the following Monday. (Id.) Student's doctor also indicated that Student should be allowed to rest when needed in nurse's office, might need medications at school to be taken as needed and that he would be speaking with Parents regarding lightening Student's workload to reduce stress. (Id.)
67. On September 4, 2014, after her phone conversation with Student's Doctor, the School Nurse faxed a blank GHS Authorization for the Administration of Medicines by School Personnel to his office in the event new medications were prescribed along with an invitation to send a list of any accommodations Student might need. (Testimony of School Nurse, 12/18/2014; B-18 pp. 8-9)
68. The following day, September 5, 2014, the School Nurse attended an informal meeting with Mother and Student's Guidance Counselor during which a follow up meeting was planned for September 9, 2014 to address Student's course load and accommodations. (Testimony of School Nurse, 12/18/2014; B-18 pp. 8-9)
69. The Guidance Counselor scheduled a meeting for September 9, 2014 in order to discuss a plan on how to proceed and invited Parents and the nurse to attend. (B-19, p.102) It is notable that Father strenuously objected to Mother's presence at the meeting asserting (despite several documents and email correspondence submitted during the hearing which proved to the contrary) that Mother was incapable of being on the "same page". (B-19, p. 103) Father's position on attending a joint parent meeting because he claimed "...it takes much longer for [Mother] to absorb the information in a meeting, wrecking the process for me." was unreasonable and an indication of the lack of regard Father has for Mother. (B-19, p.104) Father's disregard for the mother of his child was evident throughout the hearing and documented in the exhibits. Father didn't feel that Mother's input on the behavior ratings scale was necessary and that his opinion alone should suffice. (B-19, p. 44) The evidence indicates the disdain and anger towards Mother is an ongoing issue, in fact Mother felt that in order to manage Father's emotions at the September 9, 2014 meeting, she would have to remain silent. (B-19, p.105) When a letter addressed to Mother went to Father's home, Father went so far as to tell GHS staff that he was the lead on this matter and all communications should be directed to him, with a copy to [Mother] *if needed. (emphasis added)*. (B-19, p. 43) Father's statements and the exhibits indicate that Student, when living with her Father, was experiencing the stress of living with someone who has a lot of animosity towards her Mother.
70. Student has been exposed to the stress of coming from a divorced home over the years. (Testimony Spire School Life Coach, 12/15/2015; B-19, p.105)
71. The school nurse notes of the September 9, 2014 meeting indicate there was discussion at this meeting of Student's migraine pain and her medication. (B-18, p.8) Acupuncture and meditation were discussed as complementary approaches to her medical treatment. (Id.) At this meeting Student's headache triggers were reported as noise, stress and the high altitude

- at camp. (Id.) The nurse referred Parent to doctor for further suggestions. (Id.) Homebound tutoring was suggested at this meeting, as was the Greenwich Alternative High School. (Id.)
72. Father testified that he viewed an Assessment and Achievement Report around the time Parents were trying to figure out what to do about Student on the 10th of September, 2014. (Testimony of Father, 12/8/2015, pp. 21-22; P-70) This was not possible because the document was not generated until September 10, 2015. (Id.) Father also indicated that at the meeting he had with Guidance Counselor on September 9, 2015, the Guidance Counselor had not recommended the Greenwich Alternative High School program so he thought GAHS was not appropriate for Student. (Testimony of Father 12/8/2015, p.20-p.21) This statement is controverted by Father's rejection of the program in his email to GHS staff on September 11, 2015. (P-28, p. 23) If the program was not discussed as an option to be explored, there was no need for Father to reject it.
  73. On September 10, 2014, Guidance Counselor met with Student and adjusted her schedule so that she would have no early classes as Parents had expressed that mornings were more difficult for her. (B-19, p. 98) Leading up to the meetings in September, the Guidance Counselor expressed concern about Student's enrollment in AP classes, feeling those classes were too challenging. (Testimony of Guidance Counselor)
  74. On September 11, 2014, Guidance Counselor informed Parents she would be introducing Student to the GHS school psychologist the following day so that she could provide additional support to Student. (B-19, p 84)
  75. On September 11, 2014, Father wrote an email to Guidance Counselor in which he notified her that Student was undergoing an evaluation by a neuropsychologist. (B-19, p. 83). Further, he indicated Parents were rejecting home tutoring based on input from the neuropsychologist and psychologist. (Testimony of Father 12/8/15, p. 30; B-19, p.84) Father also indicated he was rejecting the alternative high school because of the "stigma of having to participate in an alternative program along with individuals who in some cases cannot function in a normal school environment" and rejecting the self-contained program at GHS because it lacked the level of academics Parents felt Student could achieve. (Testimony of Father 12/8/15, B-19, p.84). Father also indicated that a schedule requiring Student to wake up before 9:00 AM made her headaches worse. (Id.) Father indicated in this email that Parents were exploring alternatives for Student and that she would not be in school for rest of the week and the following week. (B-19, p. 83)
  76. Student never returned to take classes at GHS.
  77. On September 16, 2014, Father gave notice to the Board of Parents' intent to unilaterally place Student at the Spire School. (Joint Stipulation, B-19, p.84)
  78. On September 18, 2014, the GHS House Administrator sent separate letters identical in content to both Parents in which she acknowledged receipt of the notice to unilaterally place Student and offered to hold a Planning and Placement Team Meeting. (B-19, pp. 81-82)
  79. A PPT meeting was scheduled for and held on September 29, 2014. (B-2, p. 1) The stated purpose of the PPT meeting was to "respond to unilateral placement". (Joint Stipulation, B-2 p.1) Both Parents attended this meeting as did a regular education teacher, a special education teacher, a GHS School Psychologist, the Guidance Counselor, a school nurse, the

- District's Program Coordinator, the Family's Advocate and the GHS House Administrator. (Id.)
80. On September 28, 2014, GHS received a letter from clinical psychologist Dr. Randall Weeks, whom Parents had retained to do a neuropsychological evaluation regarding Student's headaches. (Joint Stipulation, P-38) This letter contained a statement that patients with migraine headaches tend to be hypersensitive to sensory stimulation from their environment and identified sounds as potential irritants and/or triggering factors for pain. (P-38) The clinical psychologist also indicated Student's reported noise as "problematic for her with respect to her head pain." (Id.)
  81. At some point between September 30, 2015 and October 19, 2014, Dr. Weeks generated a 5 page neuropsychological evaluation in letter form which he sent to Student's pediatric neurologist, and which was copied to Student's Spire School Life Coach and Therapist, Dr. Silverman. (P-39) The date on the letter is September 29, 2015, but the report contains reference to a meeting on September 30, 2014 so the date on the letter cannot be relied upon. (P-39, p.4) Dr. Weeks administered the Rey Auditory Learning Test on which Student scored in the 43rd percentile on the Distractor Task test, in the 54th percentile on the Immediate Recall test and in the 92nd percentile on the Memory test. (P.39, p.3) Her scores on the Rey Auditory Learning Test were described as quite good. (Id.) The Stroop Neuropsychological Screening Test indicated adequate abilities. (Id.)
  82. Dr. Weeks also administered the WAIS-IV. Student's composite score put her in the high average to superior range in all areas with the exception of Student's processing speed which was in the 50th percentile or average range. (P-39, p.3) Dr. Weeks speculated that the relative weakness in processing could be the result of her head pain and fatigue as these areas were tested at the end of a three hour session.(Id.)
  83. Student's score on the Wechsler Memory Scale-IV administered by Dr. Weeks was in the 91st percentile in auditory memory, reflected excellent abilities in auditory and verbal memory and reflected no evidence of impairment or cognitive dysfunction. (P-39, p. 3)
  84. Dr. Weeks also administered the Beck Depression Inventory-II test which placed Student in the mild level of subjective depression which was a reflection of how Student felt when she had headaches. (P-39, p.3) Student at the time of the test was also experiencing mild hopelessness, which was a reflection of how Student felt as a result of her migraine headaches. (P-39, pp.3-4)
  85. Student's score on the Thematic Apperception Test to evaluate the flow of her verbal skills and to examine the quality of Student's abilities to organize and maintain ideas indicated no problems in such abilities. (P-39, p. 4)
  86. In his summary, Dr. Weeks stated "Basically, there were no areas of significant decline/impairment regarding [Student's] current cognitive status." (P-39, p.4) Recommendations made by Dr. Weeks were for extended time and soft deadlines as well as Student monitoring of study efficiency with frequent breaks as necessary to maximize learning and retention.
  87. When the Family Advocate informed the PPT on September 29, 2014 that a neuropsychological evaluation had been completed by a doctor at the New England Institute for Neurology and Headache, a copy of the report was requested by the administrator. (B-2 p.2.) Father indicated the report had not yet been finalized. (Id.) The

- PPT requested that evaluation be provided when it was completed. (Id.) The evaluation was not received by the District until October 19, 2014. (P-39)
88. Consent forms permitting staff to speak with the clinical psychologist who conducted the neuropsychological evaluation and consent to evaluate forms were given to Parents at the PPT meeting, which Parents chose not to sign at that time. (B-2, p.2) Father and Mother subsequently gave their consent to evaluate on October 12, 2014 and October 13, 2014 respectively. (B-2 pp. 10-11)
  89. The PPT determined that the Student was not eligible for special education at the September 29, 2014 meeting and refused Parents' request for specialized instruction, basing these decisions on the existence of Student's "active 504 plan", as well as the letter from Student's pediatric neurologist dated 9/4/2014 and a review of records on 9/29/2014. (B-2, p-6)
  90. Although the PPT declined to find the Student eligible for special education, there were discussions of about what the District was doing and could do in addition to address the needs of the Student in the regular education setting. (B-2 p. 2) The Guidance Counselor reviewed the 504 plan from the prior academic year (2013-2014) and discussed a proposal to have Student start school at 9:30 a.m. instead of the normal start time. (B-2 p. 13) It was noted that the late start time would not apply to two blocks of Precalculus and that if Student was not able to make Precalculus on those days, there was a plan in place to provide Student with the ability to make up work in the math learning center. (B-2 p. 2) Parents stated their objection to homebound instruction at this meeting, believing it would be too isolating. (Id.) The school nurse had previously heard from Dr. Fryer that homebound instruction was not recommended. (B-19, p.92B)
  91. The agenda for the September 29, 2014 PPT meeting which was created by the GHS House Administrator specifically contemplated discussion of Student's current 504 plan and potential addition of accommodations to that plan. (B-19, p. 70)
  92. Although no documentation was submitted during the hearing to indicate that an invitation was sent to Parents for a 504 meeting on 12/10/2014, Staff discussed adding accommodations to Student's 504 plan including the addition of counseling 1 time per week to focus on coping skills and managing stress and having Student wear ear buds or an alternate noise reduction device such as noise cancelling headphones during passing time and at the start of class to block out the sound of the school bell. (B-2 p. 2; B -19, 70) The team also discussed permitting Student to leave class early to avoid the noise in the halls when the student body transitions to the next class and alternatives to eating lunch in the student center. (B-2, p. 2)
  93. At some point a second Section 504 student accommodation plan was drafted by Student's Guidance Counselor which contained a yearly review date of September 29, 2014. (B-3 pp. 1-2) The document entered into evidence at the hearing was not signed by either Parent and listed all of the attendees at the 9/29/2014 PPT as members of the Section 504 Multidisciplinary Team. (B-3 p. 2) The recommendations in the Section 504 accommodation plan were changed to include counseling one time per week to focus on coping skills and managing stress, earbuds/alternate noise reduction device during passing time in hallway and at the start of class to reduce noise level, permitting Student to leave class early to avoid noses during passing time, alternate setting for lunch and a modified schedule with a later start time. (B-3, p. 1)

94. While Father testified at the hearing that Student was experiencing the stress of not being in school and the stress of anticipating the noise at GHS, there was no evidence presented that anticipating the noise and not being in school were stressors that were discussed with GHS staff, although there was evidence that stress in general had been presented. (Testimony of Father, 12/8/2015, p. 14)
95. The District staff decided at the September 29, 2014, PPT meeting to conduct a multidisciplinary evaluation of Student based on the letter from Student's pediatric neurologist dated September 4, 2014 and a review of records. (B-2 p. 4)
96. Father signed the consent form allowing the school to obtain the neuropsychological evaluation on October 8, 2014 and emailed to the GHS House Administrator. B-19, p. 65.
97. The contract for Student's enrollment in the Spire School was executed by Father on October 10, 2014, Mother on October 13, 2014 and the Spire School administrator on October 14, 2014. (P-84, p.4)
98. The neuropsychological evaluation from Dr. Weeks was received by GHS on October 19, 2014. (Joint Stipulation, B-19, p. 68)
99. Attendance was a challenge for Student initially at the Spire School. Student was supposed to start classes at the Spire School on October 20, 2014, but did not actually attend until October 23, 2014. (B-19) Student attended 17 out of 30 school days in the period between October 20, 2014 through December 4, 2015. (Id.)
100. On October 22, 2014, Dr. Fryer generated a third letter with an update on Student's current condition. (B-18) This letter was received by GHS on October 28, 2014. (Joint Stipulation) The letter explicitly identified noise at all levels as a trigger for Student which had the potential to cause Student's headaches to escalate in severity within minutes. (B-18, p. 11) Dr. Fryer included in his letter recommendations that Student be placed in a program with flexible scheduling and with the least amount of noise and stress. (Id.) The doctor also specified that class size should be limited to 6 students and that the environment be quiet and free from loud or sudden noise. (Id.)
101. Earbuds were not recommended by Dr. Fryer in his October 22, 2014 letter because they did not serve to protect a student from loud and piercing noises which can enter through the tissue and bone surrounding the ear canal. (B-18, p.11) Similarly, noise cancelling headphones remove background noise and do not shield the wearer from sudden noises. (Id.)
102. The District's Initial Multidisciplinary evaluation of Student was conducted over four different days in late November and early December 2014 and the Initial Multidisciplinary Evaluation written report was issued on December 9, 2014. (Testimony of District Evaluation Team School Psychologist, 12/18/2015; B-5)
103. The District's Evaluation of Student also included an observation of Student in her Precalculus class at the Spire School, which was conducted on December 4, 2016. (Testimony of District Evaluation Team Special Education Teacher; B-5A, B-19)
104. At the time the PPT meeting was held on December 10, 2015, Student's attendance at the Spire School since enrollment had been inconsistent. (Testimony of District Evaluation Team Special Education Teacher; B-5) Student had attended only 14 of the 31 school days that had occurred since her enrollment. (B-5) On some of the 14 days she was able to attend, she arrived late or left early which interfered with her ability to take advantage of counseling sessions. (B-5)

105. The cognitive and achievement portions of the Initial Multidisciplinary Evaluation were conducted by the Evaluation Team School Psychologist. (Testimony, Evaluation Team School Psychologist; B-5) Student was observed by Evaluation Team Special Education Teacher. (Id.) The GHS School Psychologist completed a developmental questionnaire based on information received from Parents.
106. Student's cognitive skills are in high average range with some areas within the normal range. (Testimony of Evaluation Team School Psychologist; B-5 pp. 4-7) Relative weaknesses were identified in fluency and some visual processing tasks, which, in contrast to Student's other scores, were in the lower end of the average range. (Id.)
107. Curiously, the results of the Behavioral Assessment System for Children, Second Edition ("BASC-2") tests completed by Parents revealed that Mother had concerns about Student's functioning in several areas, including somatization, while Father rated Student as within normal limits across all areas of social emotional and behavioral functioning except Student's ability to wake up in a timely manner. (B-5 p. 13) The Hearing Officer credits Mother's input on this instrument as it is more consistent with the evidence presented at the hearing.
108. Student's self-report on the BASC-2 indicated that she was in the clinically significant area of Somatization. Notably, Student also indicated that she sometimes feels her life is getting worse and worse, that no one understands her, and that she experiences feelings of sadness. (B-5 p. 13) Student identified these feelings as resulting from her migraine headaches. (Id.)
109. The Initial Multidisciplinary Evaluation did not include any information from classroom teachers who had Student in their classroom in the 2013-2014 school year. Testimony of District Evaluation School Psychologist) Student's absences and Student's failure to complete classwork were not mentioned in the Initial Multidisciplinary Evaluation. (Id.)
110. On December 10, 2014, another PPT Meeting was held. (Joint Stipulation, B-1 p. 2) In attendance at this meeting were Father, the Family Advocate, the Greenwich District Evaluation Team School Psychologist, the GHS administrator, the special education teacher who had conducted the observation at the Spire School, the GHS school psychologist, the Guidance Counselor, the School nurse, and the Greenwich School District Director of Programs. (Id.) Father waived the attendance of a regular education teacher. The purpose of this meeting was to review the evaluations and determine eligibility. (Id.)
111. The PPT reviewed both the District's Initial Multidisciplinary Evaluation and the neuropsychological evaluation that had been completed since the last PPT meeting on 9/29/2014 and provided to the District. (B-1 p. 3)
112. Disability categories considered for Student when making the eligibility determination were Specific Learning Disability and Other Health Impairment ("OHI"). (Testimony of District Evaluation School Psychologist) The PPT determined the Student was not eligible for special education under either category and based this decision on classroom observation in Student's unilateral placement and on the District's Initial Multidisciplinary Evaluation. (B-1 p. 5) Father disagreed with this decision. (Joint Stipulation)
113. As part of the eligibility determination, the GHS House Administrator led the team through a GHS document called an Other Health Impairment Checklist and discussed whether or not Student's migraines impacted her social and emotional functioning. (Testimony of GHS House Administrator, 12/4/2014, Guidance Counselor, 11/4/2014; B-1 p.3) Neither



- the GHS House Administrator had strong recollections of what took place relative to reviewing this checklist at the meeting. (Id.)
114. While the OHI form was discussed at the meeting, there is no record of it actually being filled out. The Board did not provide a completed form in response to the records request or at the hearing. (Testimony of Father, 12/8/2015) The blank form itself was provided upon request of the Hearing Officer. (P-80)
  115. The PPT discussed the option of Student attending Greenwich Alternative High School during the December 10, 2014 PPT meeting because they felt the program offered by GAHS could address the recommendations made by Student's pediatric neurologist for a smaller class setting and flexible start times. (Testimony of District Evaluation Team School Psychologist, 12/18/2014) (Id.) The Greenwich Alternative High School program has small class sizes, students can start later in the day, there are no bells at all; they go to Chelsea Piers, they have access to online learning and students can take AP classes. There is a full time counselor and a full time social worker at the school, as well as an opportunity for Student to earn credits she may not be earning in her unilateral placement. (B-1 p. 4) Students often attend for a semester or longer and earn a GHS diploma. (Id.)
  116. Student's transition schedule for her junior year at SPIRE schedule provided for her classes to start at 9:00 a.m., with all but one of those classes being a study hall. (B-19, pp. 10-11) Also Student met one on one with instructors until she was up to speed in a course before joining her classes. (Testimony Spire School Life Coach, 12/15/2015; B-19, p.105) This approach allowed Student to transition successfully into classes with other Students.(Id.)
  117. Father reported at the December 10, 2014 PPT meeting that Student is not bothered by the chime system at the Spire School and that she uses noise cancelling headphones in a quiet room. (B-1 p. 3) Father also reported that Student spent four weeks in the summer riding horses in Wyoming and that she played volleyball and had also climbed the wall at Chelsea Piers (Testimony of Father (12/8/2015 pp. 7-8); B-1 p. 3). While in Wyoming, Student had one major migraine and three to four lesser migraines. (Testimony of Father, 12/8/2015, p. 8)
  118. Although the PPT indicated that Student's evaluation and educational performance demonstrated that Student did not require specialized instruction, District staff did note that Student would benefit from having extended time and counseling which they noted was to be provided to Student under Student's Section 504 plan. (B-1 pp. 3 and 5)
  119. The Greenwich School District Director of Programs suggested Parents consider enrolling Student at the Greenwich Alternative High School and offered to arrange for Student and Parents to visit. (B-1 p. 3) A visit was later arranged for Father on January 23, 2015. (B-19 p.2)
  120. The circumstances regarding the procedure administration followed when withdrawing Student from GHS are not entirely clear. A Student Withdrawal Form was signed by the GHS Administrator on 1/8/15. (B-16 pp. 1-2) The date of withdrawal on the form was noted as 9/15/2014 and in place of Parent's Signature there was a note indicating that Parent never returned the withdrawal papers. (Id.) The listed date of withdrawal is one day before Father gave notice to GHS of his intent to unilaterally place Student at the Spire School. (Joint Stipulation) The GHS administrator could only speculate as to why 9/15/2014 was listed by her assistant, but with no other corroborating evidence her speculation was not credited.

121. The Spire School is a therapeutic day school serving students who have depression, anxiety, school avoidance, and various other mental health struggles. (Testimony of Spire School Life Coach, 12/15/2015) Given that the student body and class size at the Spire School is far smaller than that at GHS the level of ambient noise is lower at the Spire School than it is at GHS.
122. The bell system at the Spire School is lower in volume than at GHS. (Testimony of District Evaluation Team Special Education Teacher, 12/18/2015)
123. Per Greenwich School District Coordinator for Guidance and School Counseling, anyone with training would be qualified to lead a 504 meeting. (Testimony of Greenwich School District Coordinator for Guidance and School Counseling, 12/15/2015)
124. While the Greenwich School District Coordinator for Guidance and School Counseling indicated that the practice in the District was for the Guidance Secretary to send out an invitation to the meeting with a copy of the procedural safeguards, she could not confirm that any invitations for 504 meetings were sent out by the Guidance Secretary to the Parents in the instant matter, nor could she confirm that that procedural safeguards were sent. (Testimony of Greenwich School District Coordinator for Guidance and School Counseling, 12/15/2015)
125. 504 procedural safeguards are available on the District's website. (Testimony of Greenwich School District Coordinator for Guidance and School Counseling)
126. At the time of the hearing, the Spire School has recently been approved by the State of Connecticut as a special education school, but it was not approved at the time Student was enrolled. (Testimony of Spire School Life Coach, 12/15/2015) The focus of the school remains therapeutic and is not geared toward children with severe learning disabilities. (Testimony of Spire School Life Coach, 12/15/2015)
127. Spire School's Head Life Coach holds a Master's Degree in Counseling Psychology and holds a State of Connecticut certification as a school counselor, is a National Certified Counselor and is a Licensed Professional Counselor in the State of Connecticut. (Testimony Spire School Life Coach, 12/15/2015; P-85, p.1)
128. Student receives counseling from, and her case is managed by, Spire School's Head Life Coach, who has Student assigned to her typical caseload of 7 students. (Testimony of Spire School Life Coach, 12/15/2015) Student has been assigned to the caseload of the Head Life Coach since enrolling in October of 2014. (Id.)
129. Instruction at the Spire School is delivered in small classes of 3-5 students, with occasional one to one instruction as a result of the overall school scheduling for all students. (Testimony of Spire School Life Coach, 12/15/2015)
130. Student's final grades for the 2014-2015 school year were in the B range or higher. With the exception of a B+ in AP Environmental Science and a Pass in Health, Student received grades of A- or higher in all of her Spire School classes. (P-71) Student received an A in German but she had to finish work over the summer to complete the course. (Id.)
131. Student is presently enrolled in three of Spire School's advanced college preparatory classes (Advanced Placement Calculus, Advanced Placement Physics and Advanced Placement English Literature and Composition) with the remainder of her courses falling into the school's standard college preparatory track. (P-82) Student's grades for the first quarter of the 2015-2016 school year are all A's with the exception of a Pass grade in Yoga and a B+ in German II. (Id.)

132. Student was tardy for 20 of the 45 school days in the first quarter of the 2015-2016 and was absent 3 days. (P-82) Difficulty at the beginning of senior year was anticipated by Student's Life Coach and is being addressed by the program. (Testimony Spire School Life Coach, 12/15/2015)
133. No Individualized Education Program was proposed by District for the 2015-2016 school year. (Joint Stipulation).

**CONCLUSIONS OF LAW AND DISCUSSION:**

1. Denial of Student's Renewed Motion for Acoustic Testing at Greenwich High School  
 On September 25, 2015, Attorney for the Student filed a Motion for Order Permitting Acoustic Testing at Greenwich High School in which an order was sought allowing an acoustic testing facility to come onto the high school property and install acoustic measuring devices at various locations throughout the campus. Similar testing at Student's unilateral placement was also to be arranged. On October 2, 2015, the Board filed an Objection of the Greenwich Board of Education to [Student's] Motion for Order Permitting Acoustic Testing at Greenwich High School. This Motion was denied on October 6, 2015 in a written decision. After the Board filed their written response to Student's Due Process Hearing Request on October 9, 2015, Attorney for the Student filed a Renewed Motion for Order Permitting Acoustic Testing at Greenwich High School. This motion was denied on November 4, 2015 on the record with an indication from the Hearing Officer that basis for her denial would be included in the final decision. While Attorney for the Student cited no legal authority in support of her initial motion for acoustic testing, it would appear that a hearing officer would be authorized to issue such an order pursuant to R.C.S.A. §10-76h-15 (h), which provides that a hearing officer may require additional evidence on any relevant matter. Substantively, Student's request for acoustic testing was grounded in a concern that a Board witness might testify that Student's unilateral placement was not significantly quieter than the public high school and that such testimony would be subjective. In the decision on the initial motion, it was held that if and when such testimony occurs, Attorney for the Student would be afforded the opportunity to cross examine that Board witness. As noted by the Board in its objection, a hearing officer is also authorized to take administrative notice of the size of the student body and the classroom student count in each school and take notice of the fact that the differences in each may result in a louder or quieter environment. R.C.S.A. §10-76h-15(f). In denying the initial motion it was held that the availability of administrative notice and cross-examination were sufficient to address Student's substantive concerns. Further, the Hearing Officer indicated that pursuant to R.C.S.A. §10-76h-15 (h), the ruling denying Student's Motion for Order Permitting Acoustic Testing at Greenwich High School had no impact on the ability of the Hearing Officer to require additional evidence on acoustics or any other matter during the pendency of the hearing, were she to find that to be necessary. Student renewed her motion for acoustic testing on October 23, 2015, citing the Board's statement in its response to Student's due process hearing request "...that there is no evidence that the class period bells are at 'very high decibel'" and claiming that inclusion of this statement put the objective level of noise in controversy. The Board filed an objection to the renewed motion on October 27, 2015. On November 4, 2015, Student's Renewed Motion for Order Permitting Acoustic Testing at Greenwich High School was denied on the same basis as the original motion, specifically that the availability of cross-examination and administrative notice of the differences in actual and proposed educational environments were sufficient to

address the concerns raised by Parent. In addition, the Hearing Officer found persuasive the Board's argument that the exact decibel level of environments at either GHS or Student's unilateral placement was not information that either side had at either of Student's PPT meetings and so did not inform the decisions which are at the center of the dispute between the parties. If the Hearing Officer had determined a precise decibel level was required for an adjudication of the issues before her, she retained the authority during the pendency of the hearing to request it.

2. Child Find Violation. Under the IDEA, a request for an initial evaluation to determine whether a child is a student with a disability may be initiated either by the Parent or the District. 34 CFR §300.301(b). While the legislation and regulations contemplate that a Parent may bring a child's potential disability to the attention of a District, the District has an independent, affirmative and ongoing obligation, referred to generally and hereinafter as the "child find" obligation, to identify students with disabilities. 20 USC §§1401 (3); 1412(a)(3); 34 CFR § 300.111; and R.C.S.A. §10-76d-7(c). The District's child find duty is triggered when the local education agency ("LEA") has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. *Regional School District No. 9 Board of Education v. Mr. and Mrs. M., as Parents and Next Friends of M.M. a Minor Child* 53 IDELR 8; 109 LRP 51058 (2009) U.S. District Court, Connecticut; citing *New Paltz Central Sch. Dist. v. St. Pierre*, 307 F. Supp. 2d 394, 400 (N.D.N.Y. 2004). It is important to note that *Regional School District No. 9 Board of Education v. Mr. and Mrs. M* does not set forth a conjunctive test requiring that the District must have reason to suspect both a disability *and* reason to believe Student requires special education before the child find obligation to refer is triggered. Rather, the Court in *Regional School District No. 9 Board of Education v. Mr. and Mrs. M* explicitly found that the suspicion of a disability stands alone as the sole factor required in order to trigger the District's child find obligation to evaluate a Student, stating "...the issue is not whether the Board should have known that the Student qualified for special education services, but rather whether the Board should have convened a PPT to begin to evaluate that possibility. (Id.) To answer the latter question in the present case requires an analysis of what the District knew about Student and when.

Information on Student's medical condition was reported to school by Parents through email correspondence beginning in February of 2014 and additional information about Student's status was provided by Parents on an ongoing basis through subsequent emails and informal meetings at school between Mother and GHS staff that occurred when Mother was in the school volunteering or serving as a substitute teacher. (Findings of Fact 20, 25 and 36) Documentation of Student's disability was first provided to the District by Student's pediatric neurologist, Dr. Fryer, on April 4, 2015, with a revised letter sent by the same physician on April 9, 2014. (Findings of Fact 32 and 38) At this point the District was on actual notice that Student had a disabling medical condition and that additional absences were anticipated as a result of her disability. At the time Dr. Fryer's April 4, 2014 was received, the District had already notified the Parents through the attendance policy warning letter that if Student's absences were to continue Student was at risk for loss of credit in all of her courses. (Finding of Fact 23)

Courts have held that child find does not require that schools conduct a formal evaluation of every struggling student (see *J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011) and also that a school's failure to diagnose a disability at the earliest possible moment is not per se actionable, especially in cases where a disability is difficult to diagnose or

is the subject of controversy among experts (See *A.P. ex rel. Powers v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d 221, 226 (D. Conn. 2008)). In the present case, however, Student was not a child attending school every day experiencing general academic struggles for reasons yet to be determined. Student had a specific, disabling medical condition which according to documents generated by the District was significantly impacting her ability to attend classes and complete work during the second semester of the 2013-2014 school year. (Findings of Fact 23 and 40)

It is unclear from the record whether Student was legitimately able to sufficiently make up work to receive passing grades by the end of the 2013-2014 year, or whether, as at least one teacher testified, she was given a sympathetic pass on sub-par work. (Finding of Fact 49) However to find that there was a negative impact on Student, the Hearing Officer need only look to the undisputed fact that Student was unable to complete the second half of AP US History in the 2013-2014 year and had to take an incomplete. (Finding of Fact 44).

Thus, to the extent there was documentation of Student's limited strength, limited vitality and heightened alertness to environmental stimuli from chronic migraines that impacted Student's ability to receive direct instruction on a regular basis and complete coursework in a timely manner, a referral for special education to begin to evaluate whether she needed interventions was warranted. This was true even if GHS staff at the time believed that Student did not need specialized instruction or believed that the effect of Student's absences could be remediated through 504 accommodations. The existence of evidence that might establish that a Student does not qualify for special education and related services does not relieve the District from its obligation to evaluate a Student who the District suspects has a disability (*Regional School District No. 9 Board of Education v. Mr. and Mrs. M., as Parents and Next Friends of M.M. a Minor Child*) Further, there is no carve out exempting Districts from its child find obligations under child find because a Student has Section 504 accommodation plan. 34 CFR §300.111

Having found that the District should have referred Student for an initial PPT meeting under child find, the next question that must be answered is at what point between February 2014, when Student's migraines began, and September 26, 2015, when Father gave notice of his intent to unilaterally place Student would it have been reasonable to expect the District to make the referral. Courts have inferred a requirement that Districts identify disabled children within a reasonable time after school staff is on notice of behavior that is likely to indicate a disability. *W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir. 1995), *abrogated on other grounds by A.W. v. Jersey City Pub. Schs.*, 486 F.3d 791 (3d Cir. 2007).

Where the onset of a medical condition is sudden and treatment protocols are in a state of flux with varying levels of success, some delay in a referral may be reasonable. *D.K., et al. v. Abington School District*, 696 F.3d 233 (3rd Circuit 2012). Student's medical condition like that of the Student in *D.K.* was newly diagnosed and the causes and triggers were in the process of being identified, different treatment protocols were being implemented, and the results of the treatments were unknown. There was a possibility that Student's medical condition might have improved during the four months that remained of the 2013-2014 school year after her diagnosis. Indeed, her attendance in May and June of 2014 showed improvement. (Finding of Fact 60)

A delay becomes unreasonable when a student is unable to attend school at all for significant stretches of time. It is even more unreasonable when those absences occur during the critical beginning of the school year. GHS was aware at the beginning of the 2014-2015 school year that Student's disability had the potential to make her unavailable for instruction in school

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for entire weeks based on her attendance history the prior year (Finding of Fact 23) When a child with Student's medical diagnosis and attendance history fails to attend a single class for the first 7 days of school, it is not the time to adjust the level of difficulty of courses in the hope that when Student does show up she will not be overwhelmed or adjust accommodations, which can not be implemented because the Student isn't physically present to be accommodated, it is time to refer the Student.

A review of the R.C.S.A. reveals that a prompt referral to a PPT is required of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance. R.S.C.A. §10-76d-7 Given that as of March 7, 2014, Student was at or more than halfway to the number of absences that would result in a loss of credit with an attendant appeal opportunity and that after this notice letter was issued Student went on to miss seven full days of instruction in March and another seven days of instruction in April, it is reasonable to find that the Student's attendance was unsatisfactory. (Findings of Fact 23 and 60) The response of GHS after the absences continued and the loss of credit threshold was met in each of these courses was to place the Student on a special exemption list in April, 2014. (Finding of Fact 45) The Hearing Officer finds that under the facts of this case a prompt referral to a PPT was required under §10-76d-7 when the Student's absences continued in March and April of 2014.

Of note is the holding in *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (U.S. 2009), in which the Supreme Court determined that parents may be entitled to tuition reimbursement even when their children had never received special education from their LEAs. The Supreme Court determined that 20 U.S.C. § 1412(a)(10)(C)(i) created a safe harbor for schools by explicitly barring reimbursement, but only when the district made a FAPE available by "correctly identifying a child as having a disability and proposing an IEP adequate to meet the child's needs." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 241 (U.S. 2009). As such the Supreme Court looked not only at whether there was the provision of an appropriate IEP, but to the identification process as well to determine whether FAPE was on the table in a tuition reimbursement case.

Child find violations have been interpreted by the Courts to be procedural in nature. "Procedural flaws alone do not automatically require a court to find that a board denied a student a FAPE. Procedural flaws that result in the loss of an educational opportunity, or that seriously infringe the parents' opportunity to participate in the IEP formulation process, however, 'clearly result in the denial of a FAPE.'" *A.E.*, 463 F. Supp. 2d at 216, quoting *W.A. v. Pascarella*, 153 F. Supp. 2d 144, 153 (D. Conn. 2001). Relief is warranted only if procedural inadequacies "(I) impeded the child's right to a [FAPE]; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of [a FAPE] to the parents' child; or (III) caused a deprivation of educational benefits." 20 U.S.C. § 1415(f)(3)(E)(ii). *M.A. et al. v. Torrington Board of Education*, 980 F. Supp. 2d 245, 62 IDELR 28. In order to establish a procedural violation of the child find obligation, the school officials must have "overlooked clear signs of disability," be "negligent in failing to order testing," or have "no rational justification for not deciding to evaluate." *Bd. of Educ. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007) *A.P. v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d 221, 225 (D. Conn. 2008). While arguably the District acknowledged Student's disability when the Guidance Counselor drafted a 504 accommodation plan, it was clearly negligent in failing to order any evaluations of Student to determine whether Student needed specialized instruction or related services.

3. September 29, 2014 Eligibility Determination Was Not Error. While District should have referred prior to the September 29, 2014, it did not err when it determined the Student was not eligible for Special Education at the September 29, 2014 PPT meeting. The District convened the PPT meeting in response to Father's notice of unilateral placement. Pursuant to 34 CFR 300.301(a), the District was required to conduct a full and initial evaluation, *before* the initial provision of special education and related services. (emphasis added). The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. 34 CFR §300.301 (c) (1)(i) The evaluation must consist of procedures to determine if the child is a child with a disability under 300.8 and to determine the educational needs of the child. 34 CFR §300.301 (c) (3) (i-ii).

4. December 10, 2014 Eligibility Determination Was Error. No evidence was presented at the hearing that anyone in the District gave any consideration to the possibility that any of the disability categories under IDEA might apply to Student given her diagnosis, until *after* Father gave notice of his intent to unilaterally place Student at Spire School. The information the School had regarding Student's diagnosis and absenteeism supported an inquiry into the category of Other Health Impairment. Under the IDEA, Other Health Impairment is defined as having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that: (a) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (b) Adversely affects a child's educational performance. 34 C.F.R. §300.8(c)(9)

The list of conditions set forth under the definition of OHI is not exhaustive. Letter to Sterner, 30 IDELR 266 (1988) If the Student's condition results in limited strength, vitality or alertness and the Student's educational performance is adversely affected then the Student meet the criteria for the Disability of OHI. (Id.)

Chronic and debilitating migraines have qualified other students for special education under the disability category of OHI. The analysis conducted by the SRO in *Board of Education of the Wappingers Falls Central School District New York, State Educational Agency* 39 IDELR 116, 103 LRP 25882 (April 14, 2003) while not binding, is instructive. In *Wappingers Falls*, a pediatric neurologist reported to the District that student suffered from migraines which lasted for several hours to an entire day and that she experienced sensitivity to light, nausea and weakness. As in the instant case, the student took preventative medication, which was not always effective, and as a result she ended up in the hospital taking intravenous medication on more than one occasion. The SRO in *Wappingers Falls* found that student's chronic migraines limited her strength and vitality and alertness in the educational environment, and as such she met the first criteria of the statutory definition of OHI. (Id.) In the present case, the September 9, 2014 letter from Student's pediatric neurologist documents Student's diagnosis of chronic migraine headaches and hospitalization for same. (P-15) Student had a heightened alertness to stimulation in the environment and noise in particular caused Student's headaches to worsen. The SRO in *Wappinger Falls* went on to find that student met the second criteria for OHI, that her educational performance must be adversely impacted to the extent he required special services and programs. (Id.) The basis for this finding was that her migraines and resulting absenteeism began to interfere with student's ability to keep up with her coursework. Id. The

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SRO also noted that student's section 504 committee had acknowledged in the student's accommodation plan that her ability to learn was affected by the headaches, noting that her absences from school caused a decrease in academic performance. In the present case, Student's April 10, 2014 504 accommodation plan noted that "Student was unable to perform any cognitive functions without difficulty." (P-17) As learning is by definition a cognitive function, the April 10, 2014 504 accommodation plan is an acknowledgement by the District that Student's ability to learn was negatively impacted by her disability. Student's failure to complete the course requirements for AP US History and Student's inability to begin the 2014-2015 school year due to her medical condition confirmed the adverse impact finding.

Having found that Student meets the criteria for the disability of OHI as defined by 20 USC § 1401(3); 1401(30); 34 CFR 300.8 § (c)(9), the final step in deciding whether or not Student should have been identified as a child with a disability under 34 CFR § 300.8 is determining whether or not the child by reason of her disability needs special education and related services. 34 CFR §300.8(a)(1) "Special education" means specially designed instruction, provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability, including: 1) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and 2) instruction in physical education. 20 USC §1401(29); 34 CFR § 300.39(a)(1) "Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction -- (i) to address the child's unique needs resulting from the disability; and (ii) ensuring the child's access to the general curriculum so that the child can meet the educational standards that apply to all children within the jurisdiction of the public agency. 34 CFR §300.39(b)(3)

The District's central argument is that Student did not and does not now need specialized instruction, and thus does not qualify as a child with a disability under the IDEA 20 USC § 1401(3)(a)(i) and (ii); 34 CFR §300.8(a)(1). Student's academic achievement both in private elementary school and in her first semester at GHS ranged from satisfactory to exemplary. Neither the private neuropsychological evaluation by Dr. Weeks nor the District's evaluation show significant deficits in Student's academic achievement. While Student's aptitude for the AP college level coursework was an area of dispute between the AP teachers, who felt Student's work was mediocre, and Father, who felt Student was up to the challenge, the evidence presented at hearing indicated that, but for the intervening sudden onset of chronic migraines, Student would have progressed successfully through the regular education curriculum of GHS.

While Student's achievement testing indicated that content would likely not need to be modified, the delivery and methodology of instruction during Student's absences would need to be. While eschewed by Parents at the PPT meetings, homebound tutoring would have been an option for addressing Student's educational needs resulting from missed instruction. The definition of special education includes "instruction conducted...in the home." 20 USC §1401 (25)(A) 34 CFR §300.39 (a)(1)(i). While the District offered make-up sessions in the learning center or in meetings with teachers during their regular office hours, these offers were in essence offers of assistance to Student in the event she had difficulty teaching herself what she had missed in the way of direct instruction. (Finding of Fact 90) When a Student misses so much direct instruction in curriculum content as a result of her disability that she is unable to complete the course and as a result receives an incomplete, the existing accommodations and interventions, whether they be general education or 504 are inadequate. The District erred when it found the Student ineligible on December 10, 2014.



5. Analysis of Unilateral Placement and Tuition Reimbursement. A District must provide all children with disabilities with a "free appropriate public education." 20 U.S.C. § 1412(a)(1)(A). When a District fails to give a disabled child a FAPE education, the child's parent may remove the child to an appropriate private school and then seek retroactive tuition reimbursement from the state, but Parents who do so without the consent of school officials, do so at their own financial risk. *Florence County School Dist. Four v. Carter By and Through Carter*, 510 U.S. 7, 15, 126 L. Ed. 2d 284 (1993). Those parents are entitled to reimbursement only if the public placement violated IDEA and that the private school placement was proper under the Act. *Id.*

In the present case, the educational program offered to Student, a modified schedule with accommodations, was not appropriate and denied Student a Free Appropriate Public Education because it failed to provide an adequate means for Student to recoup missed instruction and failed to provide a plan which would enable Student to attend school in the first place.

Reimbursement for the cost of tuition in a unilateral placement is authorized by the IDEA if the Hearing Officer finds that the District did not make FAPE available to the child in a timely manner and that the private placement is appropriate. 34 CFR §300.148(c). The unilateral placement may be found appropriate even if the hearing officer finds that it does not meet the State standards that apply to education provided by the State Educational Authority. (*Id.*)

Denial or reduction of reimbursement is permissible if one of the following conditions are met: (1)(i) At the most recent PPT meeting the parents attended prior to the removal of the child from the public school, the parents did not inform the PPT they were rejecting the placement proposed by the District to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; (ii) or at least ten business days prior to the removal of the child from the public school the parents did not give written notice to the district that they were rejecting the placement proposed by the District and stating their concerns and intent to enroll the child in a private school at public expense. 34 CFR §300.148(d)(1)(ii). Since Father tendered his notice of unilateral placement, which contained the requisite information, on September 16, 2014, and the Student's enrollment contract was not executed until October 14, 2014, Father's notice is deemed sufficient and timely and thus not a limiting factor when considering reimbursement.

Denial or reduction of reimbursement is also permissible if the Parent does not make the Student available for an evaluation by the District after notice of unilateral placement is given. 34 CFR §300.148(d)(2). Student was made available for the District's evaluation as evidenced by the existence of the District's evaluation and as such there is no basis for limiting reimbursement on this basis. (Finding of Fact 102) Finally, reduction or limitation on reimbursement is available if the Parents took unreasonable actions. 4 CFR §300.148(d)(3) Parents repeatedly reached out to the District during the 2013-2014 school year for input on how they could assist Student. (Findings of Fact 27 and 55) It was not until Student was so ill that she couldn't make it through the front doors of GHS for the first weeks of school, that Parents gave notice of their intent to unilaterally place child. This action was not unreasonable given their child was not able to receive an education at the time under the existing program. Had the Student been evaluated and identified, the evidence suggests that Greenwich Alternative High School has the components Student needs. However, since that program was only a vague suggestion and not a proposed placement, the placement analyzed for the purposes of tuition reimbursement is that of the modified schedule at GHS.

The Spire School is an appropriate program for Student. The therapeutic nature of the program and the one to one transition instruction has resulted in the Student being able to transition back into a classroom environment and the small school and class size results in reduced noise, one of Student's migraine triggers/exacerbating factors.

6. Dismissal of 504 Claims. On August 5, 2015, the Board filed a motion to dismiss issues 7-11, in denying the Motion to Dismiss the Hearing Officer found "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." *Walson v. Ballou Stoll Bader and Nadler, P.C.*, 121 Conn. App. 366 (2010). In support of its Motion to Dismiss, the Board claims that Student, who has been identified as a child with a disability under Section 504 of the Rehabilitation Act ("Section 504") has administrative remedies available to her under both Section 504 and through the Office of Civil Rights which she has not pursued. The Board asserts that having not pursued administrative remedies in these alternate forums, Student is barred from seeking relief in an IDEA due process hearing. The Board also claims that the disputed issues are being brought in an improper forum. The Board's claim is grounded in the differences between the legislative purposes of the IDEA and 504 and distinctions between the substantive and procedural protections of each statute. While there is no dispute that Section 504 and the IDEA are sourced in different federal statutes, the Second Circuit has recognized a nexus between the two, specifically as it pertains to the type of relief being sought and application of the IDEA's exhaustion doctrine. *Polera v. Board of Education*, 288 F.3d 478 (2d Circuit 2002). "... [T]he IDEA's exhaustion requirement applies equally to relief available under other statutes, such as the ADA, Section 504, and § 1983, if the relief sought under those statutes would also be available under the IDEA. Thus, if the IDEA is applicable ... it forecloses the relief appellants seek under those statutes." *Id.* at Footnote 2. The foreclosure of relief suggests that the administrative process under the IDEA may in some instances be the only forum in which relief is available. "The IDEA is intended to remedy precisely the sort of claim made by *Polera*: that a school district failed to provide her with appropriate educational services." In determining whether the Parents were required to exhaust administrative remedies prior to bringing a lawsuit, the Court in *Polera* applied a threshold analysis of whether or not the claims made under the ADA and the Rehabilitation Act sought "relief that is also available under [the IDEA]." 20 U.S.C. § 1415(1). *Id.* The Second Circuit Court went on to find that the reimbursement of expenses as a remedy is a form of relief contemplated by the IDEA, as are various forms of equitable relief. *Id.* It is clear that the relief sought in Student's Issues 9 and 10 above involves the reimbursement for past and future expenses and as such is a remedy contemplated under the IDEA. The IDEA exhaustion doctrine is set forth in 20 U.S.C. 1415(l) which provides: "Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, [42 U.S.C.A § 12101 et seq.] title V of the Rehabilitation Act of 1973 [29 U.S.C.A. § 791 et seq.] or other Federal laws protecting the rights of children with disabilities except that before the filing of a civil action under such law seeking relief that is also available under the subchapter, the procedures under subsection (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter." 20 U.S.C. § 1415(l) Complainants seeking redress must overcome the exhaustion hurdle not only if they wish to file a suit under the IDEA, as Parents are seeking to do in the present case in Issues 1-6, "but also... whenever they assert claims for relief under the IDEA regardless of the statutory basis of their complaint." *Cave v.*

*East Meadow Union Free School District*, 514 F.3d 240 (2d Circuit 2008). While the Second Circuit in *Polera* held that one cannot circumvent the IDEA exhaustion requirement by filing 504 and ADA claims directly in United States District Court, *Polera* and *Cave* are silent on whether a Parent must exhaust administrative remedies offered under a different statute prior to or in lieu of pursuing such claims in an IDEA due process hearing. In the present case where the remedy of reimbursement sought for the claimed violation is available under the IDEA, *Polera* and *Cave* provide a sufficient basis to overcome the Board's Motion to Dismiss on the basis of lack of jurisdiction. In the absence of authority requiring what would be in effect, the pre-exhaustion exhaustion requirement proposed by the Board, this Hearing Officer finds that *Polera* and *Cave* provide that claims for which a remedy is available under the IDEA may be considered, but does not accept the position of the Student that consideration and adjudication is mandated for reasons set forth below and acknowledges that claims seeking relief not available under the IDEA would be dismissed for lack of jurisdiction. While the Board cites Circular Letter: C-13, Series 2008-09 Reissue in support of its claim that the Hearing Officer lacks jurisdiction, that same Letter also provides that a Hearing Officer may address Section 504 claims, "...only as necessary to resolve the claims under the IDEA." Circular Letter C-13, Mark McQuillan, Series 2008-2009 Reissue (May 20, 2009). Therefore, at a minimum a Hearing Officer has the jurisdiction to engage in an analysis of whether the resolution of any non-IDEA issues is necessary in order to decide any of the IDEA issues presented in a given case. Whether or not the relief sought in Issues 10 and 11 above should be granted will depend an analysis and adjudication of Issues 7, 8, and 9. An analysis and adjudication of Issues 7, 8 and 9 may be required in order to resolve the IDEA claims set forth in claims 1-6, as all issues are based in a claims that the Student was denied a Free Appropriate Public Education. At the time the motion to dismiss was filed, the Hearing Officer found that given that a colorable claim has been made that the relief being sought for the claimed violations would be available under the IDEA, dismissal of Student's claims before the hearing was premature. This brings us to the consideration of whether, after hearing the evidence, it was necessary to decide any of the 504 issues in order to decide the IDEA issues. Having found that there was a violation of child find and a denial of FAPE, entitling Student to relief under the IDEA, analysis of the Section 504 issues presented in Parent's request for a due process hearing was not required. Student may pursue such claims through the dispute resolution procedures offered under Section 504 and if aggrieved by any portion of this decision will have exhausted her administrative remedies. Thus, issues 7-11 are dismissed.

**FINAL DECISION AND ORDER:**

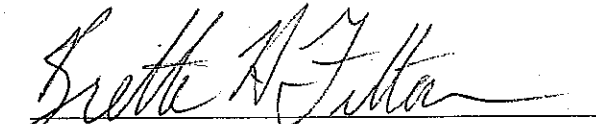
1. The District violated its child-find duty under the Individuals with Disabilities Education Act ("IDEA") and Regulations of Connecticut State Agencies §10-76d-7(c) by failing to refer Student for Special Education in the Spring of 2014 and as a result of the failure of the District to refer Student for special education Student was denied a FAPE.
2. The District did not err when it found Student was not eligible for Special Education at the Planning and Placement Team ("PPT") meeting held on September 29, 2014, but instead planned an evaluation of Student to be reviewed by the PPT at a second PPT meeting.

3. The District erred when it found Student was not eligible for Special Education at the PPT meeting held on December 10, 2014 and under the category of OHI and Student was denied a FAPE as a result.
4. The District erred when it determined that the Student was not eligible for Special Education and as a result of this determination did not design or offer an Individualized Education Program for Student for the 2015-2016 school year.
5. The Spire School, in which the Student was unilaterally enrolled by Parents, offers an appropriate program for Student.
6. Parents are entitled to reimbursement of tuition only associated with Parents' unilateral placement of Student at Spire School for the 2014-2015 school year.
7. Issues 7 through 11 are dismissed.
8. The District is hereby ordered to reimburse Parents for tuition only at the Spire School for the 2014-2015 school year and to hold a PPT meeting to determine the appropriate program for Student for the 2015-2016 school year.

It is FURTHER ORDERED that any claim not specifically addressed in this order is DENIED and DISMISSED.

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).

  
Hearing Officer Signature

Brette H. Fitton  
Hearing Officer      Name in Print