

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District Z¹

Appearing for Mr. & Mrs. X: Courtney Spencer, Esq.
(Attorneys-in-Fact for the Student) Klebanoff & Alfano PC
433 South Main Street, Suite 102
West Hartford, CT 06110

Appearing for the Board: Craig S. Meuser, Esq.
Chinni & Meuser, LLC
30 Avon Meadow Lane
Avon, CT 06001

Appearing Before: Hearing Officer Scott P. Myers, M.A. (Clinical
Psychology), J.D.

FINAL DECISION AND ORDER

Table of Contents	
Topic	Page #
Issues Set for Hearing	3
Summary	4
Procedural Background	6
A. CTDOE 07-285	6
B. CTDOE 07-323 – General Procedural Matters	7
C. The Filing of the Board’s Answer	7
D. Matters Administratively Noticed	8
E. Mr. and Mrs. X’s Record and Witnesses	8
F. Board’s Record and Witnesses	9
G. Hearing Officer Exhibits	11
H. Appearance of the Student to Testify	11
I. Procedures Regarding Offers of Proof	12
J. Hearing Dates and Date for Mailing of Final Decision and Order	13

¹ Although neither party raised the issue, consistent with Regulations implementing the IDEIA and the Federal Educational Records Privacy Act, 34 CFR § 300.32(d), which protect dissemination of “personally identifiable” information of the child who is the subject of an IDEIA proceeding (the “Student”), the Hearing Officer has concluded that to protect the Student’s privacy interests in addition to masking the names of the Student and her family members, it is necessary to use pseudonyms to mask the identity of the local educational agency (“LEA”) at issue, and the names of teachers, certain other witnesses, certain entities and locations and one reported Court decision involving the LEA at issue. That case will be referred to herein as *Student v. RDZ*, and did not involve the Student in this case. The parties have been provided with a list that matches the pseudonym used in this Final Decision and Order with the name of each individual, entity or location and that reported case.

Table of Contents	
Topic	Page #
K. Post-Hearing Briefs	13
Findings of Fact	14
Conclusions of Law	18
A. Mr. and Mrs. X's Standing To Litigate	18
B. Burdens of Proof	20
C. Comments on Certain Witness Testimony	20
1. Testimony Offered by Mrs. X	20
a. Testimony About the Student's Experiences at RDZ-HS	21
b. Testimony About Events Occurring at Home	22
c. Testimony About Providing the Student Access to School-Based Counseling Services and Communications with Psychotherapist	23
2. Testimony Offered by Psychotherapist	24
3. Certain Testimony Offered by SpecEd Director	25
D. Issues Regarding the Statute of Limitations	26
E. Issues Related to Section 504	28
1. IDEIA/CSEL and Section 504 Compared	29
2. Relevance of Evidence Regarding Section 504	30
F. The Board's Obligation to Provide a FAPE	31
G. What Constitutes a Disability under IDEIA/CSEL	33
H. The Categories of IDEIA Impairments at Issue	34
1. Other Health Impaired ("OHI")	34
2. Serious Emotional Disturbance ("SED")	34
3. "Adversely Affects" and "Educational Performance"	35
4. Specific Learning Disability ("SLD")	36
5. "Multiple Disabilities" Classification	37
I. The Student's Current and Prior Psychiatric Conditions	37
1. ADHD (DSM-IV-TR Axis I Code 314)	38
2. RAD (DSM-IV-TR Axis I Code 313.89)	40
3. PTSD (DSM-IV-TR Axis I Code 309.81)	41
4. Other Anxiety-Based Disorders	43
a. GAD (DSM-IV-TR Axis I Code 300.02)	43
b. AD-NOS (DSM-IV-TR Axis I Code 300.00)	43
5. The Student's Prior Psychiatric Diagnoses	44
a. Dysthymic Disorder (DSM-IV-TR Axis Code I 300.4)	44
b. Adjustment Disorder, Mixed	44
J. Relationship Between Dsm-Iv-Tr Diagnoses And Ideia Eligibility	45
K. The Weight Afforded To Aspects Of Dr. Ciocca's Evaluation, Report And Testimony	46
1. Adequacy of Scope of Information on Which Dr. Ciocca Relied	46
a. Contacting Other Professionals	46
b. Obtaining School Records	47
c. Obtaining Prior Evaluations	48
d. Behavioral Observations	49

Table of Contents	
Topic	Page #
2. Certain Aspects of Dr. Ciocca's Report	50
3. Dr. Ciocca's Concern that the Student Presented a Danger to Others	53
4. Dr. Ciocca's Formulation Regarding a Residential Placement	53
L. Whether the Student is Eligible on the Basis of OHI	55
M. Whether the Student is Eligible on the Basis of an SLD In Mathematics	56
O. Whether the Student is Eligible on the Basis of an SED	58
P. The Alleged "Child Find" Violation	71
Q. Alleged Procedural Violations	74
1. February 9, 2007 IEP Team Meeting	76
2. July 25, 2007 IEP Team Meeting	76
3. The August 2007 Staff Meeting to Review Dr. Ciocca's Report (Predetermination Claim)	80
4. August 31, 2007 IEP Team Meeting	81
R. Reimbursement for Placement at KSchool	83
1. Placement at KSchool on a Residential Basis Was Not Appropriate Because the Placement is Disproportionate	85
2. Placement at KSchool Is Not Appropriate Because KSchool is Not a Clinical Program	88
3. Mr. and Mrs. X Are Not Entitled to Reimbursement for Placement at KSchool on Equitable Grounds	90
4. Reimbursement for Placement at KSchool Based on Victimization by Bullying	91
S. Reimbursement for the Ciocca Evaluation	96
1. The Statutory Standard for Reimbursement for an IEE	96
2. Determination as to Reimbursement for the Ciocca Evaluation	98
3. Board's Failure to Defend its Evaluation	99
T. Intent of Order of Reimbursement Relief	100
U. Compensatory Education Award	100
V. Orders Regarding 2008/2009 School Year	102
Final Decision and Orders	103

ISSUES SET FOR HEARING

1. Whether at the pertinent times the Student was eligible to receive special education and related services within the meaning of the IDEIA and/or CSEL and, if so, what is her exceptionality?

2. To what extent, if any, is the Board² obligated under the IDEIA and/or CSEL to fund the Student's placement at KSchool for the portion of the 2006/2007 school year that she attended KSchool?
3. To what extent, if any, is the Board obligated under the IDEIA and/or CSEL to fund the Student's placement at KSchool in the 2007/2008 school year?
4. Whether and to what extent is the Board obligated to pay the costs of the neuropsychological evaluation performed by Christina Ciocca, Psy.D.?

SUMMARY

The Hearing Officer hopes that the adults in the Student's life will counsel the Student to complete her high school education and obtain a regular high school diploma, whether at RDZ-HS (the public high school operated by the Regional District Z ("RDZ" or the "District") or at some other school, so that she can pursue her career interests in veterinary sciences. The Hearing Officer hopes that if the Student chooses to return to RDZ-HS in 2008/2009 to complete her high school education, that the adults in her life can provide her with the support she needs to enable her to successfully transition back to RDZ-HS and complete her high school career there.

The Student attended RDZ-HS for 9th and 10th grade (2004/2005 and 2005/2006 school years respectively), and for 11th grade (2006/2007 school year) until March 20, 2007, at which point Mr. and Mrs. X removed her from RDZ-HS and unilaterally placed her at KSchool, a local college preparatory boarding school, on a residential basis. She entered KSchool as a 10th grader in March of 2007, remained there for the rest of the 2006/2007 school year and returned as an 11th grader for the 2007/2008 school year.

The Student has been diagnosed with Attention Deficit Hyperactivity Disorder (Combined Type) ("ADHD"), Reactive Attachment Disorder (Inhibited Type) ("RAD") and two anxiety-based disorders (1) Post-Traumatic Stress Disorder ("PTSD") and (2) either Generalized Anxiety Disorder ("GAD") or Anxiety Disorder Not Otherwise Specified ("AD-NOS"). There is no dispute that the Student has had these diagnoses at all points in time while she was attending RDZ-HS and continues to have them.³ There is also no dispute at all times since she started attending RDZ-HS the Student has been identified as eligible under the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) ("Section 504") and been provided with "special education" within the meaning of Section 504 at RDZ-HS in the form of accommodations in her mainstream, regular education program and a Title 1 support class.

² Unless stated otherwise or unless otherwise apparent from the context, as used herein the term "Board" is defined to mean the board of education at issue (*i.e.*, the LEA which is responsible for the school district at issue), and the term "District" is defined to refer to the school district operated by the Board and the district staff.

³ At all pertinent times, the diagnosis of PTSD was "by history" or non-acute.

At an IEP team meeting on August 31, 2007, the District determined that the Student was not eligible for special education and related services within the meaning of the Individuals with Disabilities Education Improvement Act (the "IDEIA")⁴ or Connecticut's special education laws ("CSEL"),⁵ and their related regulations, and declined to pay for the costs of the Student's unilateral placement at KSchool for the portion of the 2006/2007 school year she attended KSchool and for the 2007/2008 school year. The District also declined to pay for the costs of a neuropsychological evaluation of the Student arranged by Mr. and Mrs. X and performed by Dr. Ciocca in the spring of 2007 after the Student began attending KSchool (the "Ciocca evaluation").

The Hearing Officer finds:

(1) That the Student is eligible for special education and related services under the IDEIA/CSEL under a classification of Other Health Impaired ("OHI") reflecting her ADHD and its related executive dysfunction which, with respect to math, is now adversely affecting her educational performance and for which she needs special education and related services.

(2) That the Student is not eligible under IDEIA/CSEL under the classification of Serious Emotional Disturbance ("SED"), Specific Learning Disability ("SLD") or Multiple Disabilities.

(3) That KSchool is not an appropriate placement for the Student under the IDEIA's standard for reimbursement for the costs of a unilateral placement and that the Board is not obligated to pay for any portion of the costs of the Student's attendance at KSchool in the 2006/2007 school year and any portion of the costs of the Student's attendance at KSchool in the 2007/2008 except as provided in Paragraph (5) below.

(4) That the District at the August 31, 2007 IEP team meeting erred in its eligibility determination, thereby denying the Student a FAPE starting with the 2007/2008 school year by failing to develop an IEP for her.

(5) That, in the circumstances, relief for that denial of FAPE in the form of reimbursement for the cost of the Support Unit class at KSchool for the 2007/2008 school year, to be determined as set forth herein, is appropriate and notwithstanding the finding

⁴ The term "IDEIA" refers to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (the "IDEA"), as amended effective July 1, 2005 by the Individuals with Disabilities Education Improvement Act of 2004. The IDEIA's implementing regulations are codified at 34 C.F.R. §§ 300.1 *et seq.* (the "IDEIA Regulations"). References to the IDEA in cases decided under the IDEA whose principles remain applicable to matters decided under the IDEIA have been left in place and are to be understood to be references to the IDEIA.

⁵ The term "CSEL" refers to Connecticut's special education laws, codified as Conn. Gen. Stat. §§ 10-76, *et seq.* The related regulations are codified at Reg. Conn. State Agencies §§ 10-4-1 and 10-76-1, *et seq.* ("Conn. Regulations").

that KSchool was not an appropriate placement under the IDEIA's standard for reimbursement for a unilateral placement.

(6) That as a result of the incorrect eligibility determination at the August 31, 2007 IEP team meeting, an element of the FAPE denied the Student was the development of transition-related services; and that in the circumstances, relief for that denial of FAPE in the 2007/2008 school year in the form of an award of compensatory education as defined herein is also appropriate.

(7) That Mr. and Mrs. X are not entitled to reimbursement for the costs of the Ciocca evaluation.

Although issues regarding the 2008/2009 school year were not presented for resolution in this matter, to assure that the Student's educational progress is not impeded further should she return to RDZ-HS because of disagreements between Mr. and Mrs. X and the District regarding her IEP arising from recommendations made by Psychotherapist, Dr. Ciocca and Dr. Sahani in this eligibility case, the Hearing Officer will enter certain orders regarding programming at RDZ-HS for the Student should she return to RDZ-HS in the 2008/2009 school year.

PROCEDURAL BACKGROUND

A. CTDOE 07-285

For all practical purposes, this matter was commenced by Mr. and Mrs. X by request dated September 7, 2007.⁶ The resulting proceeding was CTDOE 07-285. The undersigned was appointed Hearing Officer in CTDOE 07-285 on September 11, 2007.

A telephonic PHC was convened in CTDOE 07-285 on October 2, 2007. By Final Decision and Order dated October 22, 2007,⁷ the Hearing Officer granted the Board's motion to dismiss on the basis that Mr. and Mrs. X lacked standing to commence a proceeding to obtain the relief sought in the September 7, 2007 request.⁸

Prior to the dismissal of CTDOE 07-285, an initial scheduling order had been issued on October 5, 2007. That order defined dates for the submission of each party's

⁶ A copy of that request is marked as Hearing Officer exhibit ("HO") HO1 in this proceeding.

⁷ See CTDOE 07-285, Notice (October 17, 2007); Final Decision and Order (October 22, 2007), reissued on December 4, 2007 to remove potentially personally identifiable information.

⁸ As explained more fully in the Final Decision and Order in CTDOE07-285: (1) The Student had turned 18 years of age in May 2007. (2) Mr. and Mrs. X have not been appointed by the Court as either her conservator or guardian. (3) By a letter to the District dated on her 18th birthday (HO6), the Student had attempted to appoint Mr. and Mrs. X as her representatives regarding educational matters. (4) The Student's letter was legally insufficient for that purpose under Connecticut law and the resulting jurisdictional deficiency was not waivable or correctible.

record, witness list, pleadings related to the objection of Mr. and Mrs. X to the Board's plan to call the Student to testify, refined statements of the issues, and dates for hearing (November 8, 15, 20 and 30, 2007) and for mailing of the Final Decision and Order (December 4, 2007). The Board did not assert a sufficiency challenge or file an answer in CTDOE 07-285, and by agreement of the parties no resolution session had convened.

B. CTDOE 07-323 – General Procedural Matters

Mr. and Mrs. X commenced CTDOE 07-323 on behalf of the Student by filing a request for due process dated October 18, 2007.⁹ In support of that request, Mr. and Mrs. X submitted a power of attorney (“POA”) that they represented had been executed by the Student on October 16, 2007 (HO5) authorizing them to act as her attorneys-in-fact with respect to all matters concerning her education. The Hearing Officer found in CTDOE 07-285 that the POA satisfied the requirements of the Connecticut Statutory Short Form Power of Attorney Act, Conn. Gen. Stat. §§ 1-42 – 1-56 for form. Based on the strength of their representation that the Student had executed the POA, the Hearing Officer concluded that Mr. and Mrs. X had attained standing to commence a proceeding on the Student's behalf seeking the relief outlined in the October 18, 2007 request for due process.

The undersigned was appointed as the Hearing Officer in CTDOE 07-323 on October 19, 2007. After CTDOE 07-285 was dismissed, the parties on October 18-19, 2007 exchanged e-mails with the Hearing Officer indicating an agreement to proceed in CTDOE 07-323 on the schedule outlined in the October 5 scheduling order issued in CTDOE 07-285. By agreement of the parties, a telephonic PHC was convened on October 24, 2007 in CTDOE 07-323.

At that PHC, the Board advised that it would not assert a sufficiency challenge to the October 18, 2007 request for due process and was waiving the requirement that a resolution session be convened. Mr. and Mrs. X concurred that a resolution session would not serve any useful purpose. An initial scheduling order issued on October 26, 2007 (the “October 26 Order”) defined the procedures in CTDOE 07-323 in light of the agreements reached at the PHC and events that had already transpired in CTDOE 07-285.

C. The Filing of the Board's Answer

The Board did not file its answer in CTDOE 07-285 and, in a discussion of the issues at the October 24, 2007 PHC in CTDOE 07-323, asserted that because prior written notice (“PWN”) regarding the issues in dispute had been provided, the Board was not required to file an answer. Mr. and Mrs. X disagreed. The Hearing Officer concluded that the IDEIA, 20 U.S.C. § 1415(c)(2)(B)(i)-(ii), and the IDEIA Regulations, 34 CFR § 300.508(e)-(f), define the Board's obligation to file an answer both where PWN has and has not been provided. Accordingly, the Board was directed in the October

⁹ A copy of that request is marked as HO2.

26 Order to file an answer on or by October 31, 2007 to the October 18, 2007 request for due process. The Board's answer, filed on November 2, 2007 was marked exhibit HO4.

D. Matters Administratively Noticed

The parties were notified in the October 26 Order that the Hearing Officer would take administrative notice in CTDOE 07-323 of all pleadings and filings submitted to that date in CTDOE 07-285 and of the Final Decision and Order issued in that case.

By supplemental notice and orders dated November 2, 2007 (the "November 2 Order"), the Hearing Officer further advised the parties that administrative notice would be taken of excerpts of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th Edition Text Revision) ("DSM-IV-TR") which describe the multi-axial diagnostic system, including the Global Assessment of Functioning ("GAF") scale, as well as the following diagnoses: ADHD, RAD, PTSD, GAD, AD-NOS, Dysthymic Disorder and Mathematics Learning Disorder.¹⁰

E. Mr. and Mrs. X's Record and Witnesses

Mr. and Mrs. X submitted ultimately as their documentary record documents marked as exhibits P1 through P49 inclusive.

On October 22, 2007, Mr. and Mrs. X. submitted documents marked as exhibits P1-P45 inclusive. The Board objected to exhibits P1-P3 and P5-P20 on relevance grounds. The Board objected to exhibit P4 (the report of a psychiatric consultation dated May 19, 2004 performed by James Black, M.D.) on the ground that Mr. and Mrs. X did not identify Dr. Black as a witness. At the November 8, 2007 hearing, the Board's objections to exhibits P1-P20 were overruled and exhibits P1-P45 were admitted into the record.¹¹

On December 20, 2007, Mr. and Mrs. X offered exhibit P46 (a document entitled "Report of the Visiting Committee for [RDZ-HS] – [Date], 2007," prepared by the New England Association of Schools and Colleges, Commission on Public Secondary Schools, and hereafter referred to as the "NAESB Report"). The Board's objections to admission of P46 were sustained, and it was marked for identification only.¹²

Exhibit P47 was admitted into the record on December 14, 2007. Mr. and Mrs. X offered exhibit P48 (October 2006 e-mail exchange between Mrs. X and the Student's

¹⁰ A copy of these administratively noticed materials was marked as exhibit HO3 at the November 8, 2007 hearing and provided to the parties.

¹¹ The parties were advised in the October 26 scheduling order that each document admitted into the record would be treated for evidentiary purposes as a business record of the entity which created it.

¹² See 12/20 Tr. at 96-110.

11th grade math teacher (“MathTeacher11”) into evidence on December 20, 2007. The Board’s objection was sustained and this document was marked for identification only. At hearing on January 11, 2008, Mr. and Mrs. X offered what was marked as exhibit P49 (e-mail exchanges between Mrs. X and the Student’s 10th and 11th grade Title 1 teacher (“Title1Teacher10/11”) and/or MathTeacher11 regarding various events in the period November 2005 through February 2007).¹³ The Board’s objection to P49 on the basis that it was being submitted after the conclusion of Mr. and Mrs. X’s case-in-chief was overruled. The Board’s relevance objections to P49 pages 2, 3, 4, 5, 8, 9, 11, 15, 16, 17 and 18 were overruled, and that were admitted into evidence. The remaining pages of P49 are marked for identification only.

Mr. and Mrs. X reported that Dr. Ciocca would not be available to testify on any of the scheduled hearing dates prior to the December 14, 2007 date and proposed that she be taken out of turn. The Board objected to beginning its case-in-chief prior to completion of Mr. and Mrs. X’s case-in-chief. Mr. and Mrs. X’s case-in-chief was completed on December 14, 2007 with the testimony of Dr. Ciocca.

Mr. and Mrs. X called the following witnesses to testify in their case-in-chief:

Pseudonym	Relationship to Student	Testified on
Mrs. X	Referred to as the Student’s “mother” at hearing.	11/8, 11/20, 11/30, 2/8 ¹⁴
Psychotherapist	A licensed clinical psychologist who has been treating the Student over the past 9.5 years.	11/20
KSchool(06/07Advisor)	KSchool’s Director of Studies; Student’s advisor 3/07-6/07.	11/20
KSchool(07/08Advisor/Dormparent)	The Student’s KSchool advisor and dorm parent for 2007/2008	11/30
Christina Ciocca, Psy.D.	Performed a neuropsychological evaluation of the Student in 2007	12/14

F. The Board’s Record and Witnesses

The Board submitted ultimately as its documentary record documents marked as exhibits B1 through B39 inclusive.

¹³ The exhibit as submitted was labeled P47. The Hearing Officer directed that it be relabeled as P49. (1/11 Tr. at 3-21)

¹⁴ Mr. and Mrs. X requested and were given an opportunity to present on February 8, 2008 “rebuttal” testimony of Mrs. X regarding the e-mail exchange that is the subject of B37.

On October 16, 2007, the Board submitted documents marked as exhibits B1-B35. No objections to those documents were asserted and they were all admitted into the record as full exhibits at the November 8, 2007 hearing. On December 12, 2007, as provided in the October 26, 2007 initial scheduling order, the Board submitted pre-filed written testimony of the Student's RDZ-HS junior varsity basketball team coach ("JVTeamCoach10"), which was marked as exhibit B36 for identification only, and then became a full exhibit when JVTeamCoach10 appeared to testify on January 23, 2008. After the conclusion of Mr. and Mrs. X's case-in-chief, and during the examination of Title1Teacher10/11 on December 20, 2007, the Board relied on a document that was marked as exhibit B37 at the direction of the Hearing Officer. B37 is an e-mail exchange between Mrs. X and Title1Teacher10/11 on September 13, 2006. The Board did not seek to admit the document into evidence but rather used it to refresh Title1Teacher10/11's recollection about an event. Through testimony, excerpts of the document were read into the record and the document became the subject of much oral argument. The Hearing Officer directed that it be marked as an additional Board exhibit to assure that the Hearing Officer had the complete context of the excerpts of the document that had been described in testimony and in oral argument. Exhibit B38 was admitted into the record at the January 11, 2008 hearing absent objection.

On January 17, 2008, the Board advised that it was supplementing its witness list to add James Black, M.D., who had performed a psychiatric evaluation of the Student in 2004 as part of a prior IDEIA-eligibility determination. Mr. and Mrs. X objected to the addition of Dr. Black as a witness on the basis that the Board had disclosed him less than five days in advance of his scheduled date for testimony. That objection was overruled.¹⁵ Dr. Black's curriculum vitae, marked as exhibit B39, was admitted into the record at the February 8, 2008 hearing absent objection.

The Board called the following witnesses to testify in its case-in-chief:

Pseudonym	Relationship to Student	Testified on
AssistantPrincipal	Assistant principal at RDZ-HS while the Student attended	12/20
XCountryCoach9/10/11	Student's 9 th , 10 th and 11 th grade cross-country team coach at RDZ-HS	12/20
Title1Teacher10/11	Student's 10 th and 11 th grade Title 1 teacher at RDZ-HS	12/20; 1/11/08
MathDeptChair	Chair of the RDZ-HS Math Department; witnessed the Locker Shoving Incident	1/11/08
SpecEdEvaluator	RDZ-HS special education teacher who evaluated the Student in May 2007	1/11/08; 1/23/08

¹⁵See, e.g., January 23, 2008 e-mail regarding order of witnesses.

Pseudonym	Relationship to Student	Testified on
James Black, M.D.	Psychiatrist who evaluated the Student in May 2004	1/23/08
JVTeamCoach10	Coach of the RDZ-HS junior varsity basketball team when the Student was on the team in the 10 th grade	1/23/08
SchoolPsychologist	School psychologist at RDZ-HS who evaluated the Student in May 2007	1/23/08
AgEdTeacher10/11	Student's 10 th and 11 th grade RDZ-HS Ag-Ed teacher	1/25/08
SpecEdDirector	District's Director of Special Education while the Student attended the District's schools	1/25/08; 2/8/08

The Board concluded its case-in-chief on February 8, 2008.

G. Hearing Officer Exhibits

The following materials were marked as Hearing Officer exhibits ("HOs"):

HO	Description
1	September 7, 2007 request for due process (CTDOE 07-285)
2	October 18, 2007 request for due process (CTDOE 07-323)
3	Administratively noticed excerpts of the DSM-IV-TR
4	November 2, 2007 Board's answer to the October 18, 2007 request for due process
5	October 16, 2007 Power of Attorney
6	May [DATE], 2007 Letter from the Student to SpecEdDirector
7a	February 8, 2008 letter from the Hearing Officer to Psychologist
7b	Revised February 8, 2008 letter from the Hearing Officer to Psychologist
8a	February 8, 2008 letter from the Hearing Officer to the Student
8b	Revised February 8, 2008 letter from the Hearing Officer to the Student

H. Appearance of the Student to Testify

In the pre-hearing phase of this case, the Board identified the Student as a witness it intended to call to testify in its case-in-chief. Mr. and Mrs. X objected strenuously and the parties filed written argument.¹⁶ In the November 2 Order and again at the November 8 hearing, the Hearing Officer advised that he would defer ruling on the Board's motion

¹⁶ See October 22, 2007 Opposition to Allowing [RDZ] to Call the Student as a Witness; October 30, 2007, Reply to [Mr. and Mrs. X's] Opposition to [RDZ's] Request to Present Complainant's Testimony.

to compel the appearance of the Student to testify until the completion of the case-in-chief of both parties to permit the parties an opportunity to develop an evidentiary record through witness testimony to support their respective positions about the appearance of the Student to testify. At the December 20, 2007 hearing, on the first day of the presentation of its case-in-chief, the Board withdrew its request that the Student appear to testify, thereby mooting the need to rule on the objection.¹⁷

The Hearing Officer determined, however, that there was the potential need for the Student to testify and advised the parties at the January 11, 2008 hearing that the Hearing Officer may call the Student to testify on certain discrete issues.¹⁸ Mr. and Mrs. X's objection to having the Student testify as a witness called by the Hearing Officer was briefed and overruled.¹⁹ The Student was scheduled to testify on February 13, 2008 but due to severe weather that hearing date was cancelled. The Student testified on February 25, 2008 and was the final witness to testify.²⁰ To preserve an appropriate record regarding the Student's appearance given the claims that were made regarding the impact of having to testify on the Student, Finding of Fact ("FF") 1 in Attachment A reports the Hearing Officer's observations regarding the Student and other related information.

I. Procedures Regarding Offers of Proof

To preserve the ability of a party to pursue an appeal based on claims that the Hearing Officer erred in excluding evidence that a party sought to introduce into the record, the Hearing Officer, in consultation with the parties, implemented a procedure for the submission of offers of proof.²¹ At the February 8, 2008 hearing, in accordance with the procedure, Mr. and Mrs. X advised that they would make an offer of proof regarding

¹⁷ Statement, 12/20 Hearing Tr. at 6-7.

¹⁸ See 1/11 Tr. at 25-37.

¹⁹ Mr. and Mrs. X's objection to the Hearing Officer's direction that the Student testify was the subject of the January 17, 2008 Supplemental Notice and Order, the January 25, 2008 objection filed by Mr. and Mrs. X, and the February 8, 2008 Order Regarding the Student's Testimony. That objection was overruled by order dated February 8, 2008 as discussed further at the February 8, 2008 hearing. See 2/8 Tr. at 194-205. Based on the nature and stridency of the objections asserted by Mr. and Mrs. X, the Hearing Officer directed that letters explaining the process for the Student's testimony and the topics that she would not be asked about (Exhibits HO7b and HO8b) be delivered to the Student and Psychotherapist respectively prior to her appearance to testify.

²⁰ At the January 25, 2008 hearing, February 13, 2008 was the date established to take the Student's testimony should the Hearing Officer overrule Mr. and Mrs. X's objection. Given the scheduling complexities and to avoid further delay in the mailing of the Final Decision and Order, a date for the Student's testimony was established prior to a ruling on Mr. and Mrs. X's objection. The parties were specifically advised that Mr. and Mrs. X's compliance with the Hearing Officer's directives regarding scheduling of the Student's testimony was without prejudice to their objections. The cooperation of Ms. Spencer and Mr. and Mrs. X in that regard was greatly appreciated.

²¹ See, e.g., 12/20 Tr. at 106-110; 1/11 Tr. at 21, 282-290; 2/8 Tr. at 31-35, 189-190; 1/17/08 Supplemental Notice and Orders.

the NAESB Report (marked P46 for identification only). Their offer of proof was assigned exhibit number P50 for identification and was to be submitted by Mr. and Mrs. X with their post-hearing reply brief. Mr. and Mrs. X did not submit any offer of proof with their post-hearing reply brief. The Hearing Officer has not considered exhibit P46 in reaching this Final Decision and Order.

J. Hearing Dates and Date for Mailing of Final Decision and Order

At the October 24, 2007 PHC, the parties attempted to retain in CTDOE 07-323 as much of the schedule established in CTDOE 07-285 as was possible. That schedule contemplated hearing dates for November 8, 15, 20 and 30, 2007 with mailing of the Final Decision and Order on December 4, 2007. That schedule could not be maintained, however. At the PHC in CTDOE07-323 hearing dates of November 8, 20 and 30 and December 14, 2007 were established, with the date of the mailing of the Final Decision and Order set at December 31, 2007. That schedule could also not be maintained, and due in part to weather-related cancellations of hearing dates, and availability of witnesses, counsel for the parties and the Hearing Officer, hearing ultimately convened on November 8, 20 and 30, 2007; December 14 and 20, 2007; January 11, 23 and 25, 2008; and February 8 and 25, 2008.

The parties requested an opportunity to submit post-hearing briefs and each party was allowed to submit an initial post-hearing brief and a reply brief. A briefing schedule was established at the February 8, 2008 hearing, and based on that schedule and the anticipated completion of the hearing on February 13, 2008, the date for mailing of the Final Decision and Order was extended from February 28, 2008 to March 28, 2008. The anticipated last day of hearing on February 13, 2008 was cancelled due to weather and rescheduled to February 25, 2008. At an off-the-record conference after the February 25, 2008 hearing, the briefing schedule was extended so that initial briefs were due on March 14, 2008. Both parties submitted initial post-hearing briefs. The dates for submitting the reply briefs and the mailing of the Final Decision and Order were changed in response to a request from Mr. and Mrs. X that the due date for the reply briefs be extended to April 4, 2008. The date for mailing of the Final Decision and Order was extended to April 28, 2008. Each party submitted a post-hearing reply brief on April 4, 2008. By notice dated April 23, 2008, the Hearing Officer extended the date for mailing of the Final Decision and Order to May 9, 2008 to permit adequate review of the post-hearing briefs. By notice dated May 5, 2008, that date was extended again until May 13, 2008.

K. Post-Hearing Briefs

Each party submitted a total of 100 pages of argument in their post-hearing initial and reply briefs.²² The Board submitted 212 proposed findings of fact with its initial

²² Given the sharply divergent characterizations of and evidence regarding certain events, the Hearing Officer directed that parties in their post-hearing briefs cite to specific page and line numbers of transcripts when citing to a transcript. To facilitate compliance with that directive, the Hearing Officer made his electronic copies of the transcripts available to both parties.

post-hearing brief. Mr. and Mrs. X submitted 102 proposed findings of fact with their post-hearing reply brief. Mr. and Mrs. X's objections to the Board's initial post-hearing brief were overruled. The Board in its reply brief moved the Hearing Officer to strike portions of Mr. and Mrs. X's initial post-hearing brief. By issuance of this Final Decision and Order, that request is denied.

To the extent either party is seeking through post-hearing briefs to have the Hearing Officer draw a negative inference from the failure of the other party to call certain witnesses, the Hearing Officer declines to do so. *See, e.g., Student v. RDZ* (whether to draw a negative inference is left to the hearing officer's discretion).²³

Although this Final Decision and Order expressly discusses only certain factual and legal arguments asserted in the post-hearing briefs, the Hearing Officer has considered all of the legal and factual arguments asserted in those briefs. To the extent that any aspect of this Final Decision and Order is inconsistent with or contrary to a factual or legal argument asserted in a post-hearing brief but not expressly discussed herein, that argument has been rejected as lacking in merit.²⁴

FINDINGS OF FACT

The testimonial hearing spanned 10 days creating an evidentiary record consisting of more than 2,600 pages of hearing transcript and several hundred pages of documentary evidence. Attachment A hereto summarizes factual evidence relied upon in this Final Decision and Order and constitutes findings of fact ("FF"). A citation to certain evidence in Attachment A as a FF that supports a Conclusion of Law is not meant to suggest that the referenced evidence is the only evidence supporting that Conclusion of Law.²⁵ Rather, citations to specific evidence are for illustrative purposes and are not meant to exclude other admissible record evidence supporting that Conclusion, whether

²³ For example, to rebut evidence that she had appropriate relationships with District staff members, Mr. and Mrs. X seem to argue in their Reply Brief (at 3) that no Board witness corroborated that the Student actually spoke to RDZ-HS(TeacherP) as Mrs. X claims and the Board did not produce him as a witness. Similarly, the Board in its Reply Brief (at 4, 6) seems to argue that the Hearing Officer should draw negative inferences from the fact that neither the KSchool Support Unit teacher nor the KSchool(CounselingDirector) were called to testify

²⁴ The Hearing Officer made his own findings of fact rather than utilizing the proposed findings of fact proffered by the parties. To the extent a factual finding in this Final Decision and Order is inconsistent with or contrary to the corresponding finding proposed by a party, the party's proposed finding is rejected.

²⁵ A citation in the form "FF#" refers to the referenced numbered paragraph in Attachment A and is intended to be a Finding of Fact supporting the Conclusion of Law. A citation in the form "B# at #" or "P# at #" refers to that number Board or Parent exhibit respectively, at that page of the exhibit. A citation in the form "Name Date Test. at #" refers to the testimony of that witness on that page of the transcript from that hearing date.

summarized in Attachment A or not.²⁶ To the extent that any portion of this Final Decision and Order, including sections describing the procedural background, states a Finding of Fact or a Conclusion of Law, the statement should be so considered without regard to the given label of the section of this Decision in which that statement is found. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

By way of an overview, and as explained more fully in Attachment A and the Conclusions of Law, the Hearing Officer makes the following overall findings of fact on the merits:

- A. At all times since she began attending and while she was attending at RDZ-HS, the Student had the following psychiatric disorders: ADHD, RAD, PTSD (by history) and an additional anxiety disorder (either GAD or AD-NOS). (FF50, 52d,52f, 52g(1), 66a, 198e)
- B. At all times while the Student attended RDZ-HS, she attended mainstream classes. (FF87, 104, 125) Since at least middle school, the Student has had an identified weakness in math relative to her other academic areas, a weakness which was attributed largely to gaps in her knowledge due to disruptions in her home life and schooling prior to the 7th grade. Notwithstanding that weakness, she progressed from grade to grade in her math curriculum at RDZ-HS through the end of the 10th grade. Her performance in math in the 10th grade deteriorated, however, and she just barely passed her 10th grade math class. (FF84e, 48f, 47e, 140a, 87 (9th grade – Intro Algebra I withdrawn; Pre-Algebra 84 [B grade], G level class), 104 (10th grade – Algebra I, final grade 66 [D grade], A level class), 143 (11th grade, first marking period Geometry 50 (F grade), 150 (11th grade, end of first semester, Algebra I audit 66 (D grade))
- C. Prior to entering RDZ-HS, the Student had been evaluated by the District at the request of Mr. and Mrs. X and determined (1) not to have an SLD, and (2) not to be IDEIA-eligible on the basis of any of the psychiatric diagnoses identified above. (FF45, 46, 47, 62)
- D. At all times since she began attending and while she was attending RDZ-HS, the Student had been identified as Section 504-eligible on the basis of ADHD, RAD and one of her anxiety disorders, and was receiving support in the form of accommodations and Title 1 services. (FF66, 103, 126) The Student was not provided with in-school counseling services because Mr. and Mrs. X did not want the Student to receive those services. *See* discussion of factual findings supporting Conclusion of Law Section C(1)(c).
- E. Between September 2004 (when she began attending RDZ-HS) and October 2006 (the end of the first marking period of her 11th grade year), the Student was progressing in her courses, earning credits toward graduation at the same pace as her peers and completing

²⁶ Findings of Fact are based in part on an assessment of witness credibility. A Conclusion of Law or Finding of Fact that expressly or implicitly credits a version of events offered by one witness as opposed to the version offered by another reflects a conclusion as to credibility on that point.

the same curricular requirements as her peers, receiving a meaningful educational benefit from her program and developing socially and emotionally. She manifested no attendance or disciplinary problems, participated in sports teams and was fully engaged in her academic program, particularly her Ag-Ed program. (FF78b, 84k, 84m, 84o, 84s, 84v, 86g, 86h, 86i, 102, 89, 80, 81, 83d, 83e, 83h, 84i, 84j, 85b, 85d, 85e, 85g, 85i, 85j, 86a, 87, 89, 104, 105, 110, 125, 141c, 142a, 142c, 143, 144, 150, 151, 154) The Student's first marking period grade in Geometry in her 11th grade year was an "F," which means she was failing the course as of October 2006. Other than earning an "F" in the first marking period of Geometry in the 11th grade, the Student continued to progress in her courses and in earning credits between October 2006 and March 2007 when she was withdrawn from RDZ-HS and unilaterally placed in KSchool where she remained for the rest of the 2006/2007 school and was placed for the 2007/2008 school year.

- F. At an IEP team meeting in February 2007, Mr. and Mrs. X requested that the Student be identified as IDEIA-eligible. The District requested authorization to perform an evaluation to determine her IDEIA-eligibility that included an assessment of intellectual and cognitive functioning, achievement levels, and emotional issues. The District declined Mr. and Mrs. X's request for a neuropsychological evaluation pending the outcome of its evaluation. (FF153, 155, 156, 157, 158, 159, 160)
- G. Although they agreed that the Student should be evaluated to determine her IDEIA-eligibility, Mr. and Mrs. X interfered with the District's effort to complete its evaluation by refusing to authorize the District to perform all of the assessments it had requested and refusing to authorize District staff to communicate with Psychotherapist. (FF176, 178, 179, 180, 185, discussion of factual findings supporting Conclusion of Law Section C(1)(c))
- H. The Student is not IDEIA-eligible on the basis of SED Criterion B or C as alleged. At all pertinent times, she has not manifested at school to a marked degree and over a long period of time either an inability to build and maintain satisfactory interpersonal relationships with peers and teachers that adversely affects her educational performance (Criterion B) or inappropriate types of behavior or feelings under normal circumstances that adversely affects her educational performance (Criterion C). The incidents described by Mrs. X to support a claim of IDEIA-eligibility on the basis of SED do not reflect an SED. The fact that the Student manifested some peer relationship issues and features of her ADHD at school is not sufficient to satisfy the criterion for an SED. The interpersonal issues the Student experiences as described by Mrs. X, Psychotherapist and Dr. Ciocca have not been demonstrated to be "adversely affect[ing]" her "educational performance" or to be manifesting to a "marked degree" at school such that she needed special education and related services to obtain meaningful educational benefits from the mainstream program she was attending at RDZ-HS. *See* discussion of factual findings supporting Conclusion of Law Section O.
- I. The Student's difficulties in math reflect an ADHD-related executive dysfunction. *See* discussion of factual findings supporting Conclusion of Law Sections L and M.

- J. The alleged procedural errors or violations associated with the February 2007, July 2007 and August 2007 IEP team meetings did not result in any harm to the Student's educational interests, or deprive Mr. and Mrs. X or the Student of an opportunity to participate meaningfully in the IEP team process. The District did not pre-determine the Student's IDEIA-eligibility with respect to the August 31, 2007 IEP team meeting as alleged. *See* discussion of factual findings supporting Conclusion of Law Section Q.
- K. Claims regarding IEP team meetings convened prior to the February 2007 IEP team meeting are barred by the statute of limitations. *See* discussion of factual findings supporting Conclusion of Law Section D.
- L. The Student should have been identified as IDEIA-eligible under an exceptionality of OHI based on her ADHD at the August 31, 2007 IEP team meeting. The District erred at the August 31, 2007 IEP team meeting in determining the Student's IDEIA-eligibility. As a result, the District did not develop an IEP for the Student and denied her a FAPE accordingly starting with the 2007/2008 school year. *See* discussion of factual findings supporting Conclusion of Law Section L.
- M. The District did not violate its IDEIA-mandated child find obligation. *See* discussion of factual findings supporting Conclusion of Law Section P.
- N. Had the District correctly determined that the Student was IDEIA-eligible at the August 31, 2007 IEP team meeting, RDZ-HS would have been the LRE placement for the Student and placement at KSchool (whether on a residential basis or otherwise) would not have been the LRE placement for the Student for the 2007/2008 school year. Even assuming (as Mr. and Mrs. X argue) that the Student should have been found to be IDEIA-eligible at the August 31, 2007 IEP team meeting under classifications of OHI, SED and SLD given her ADHD, RAD, PTSD (by history) and another anxiety disorder, RDZ-HS would have been the LRE placement for the Student for the 2007/2008 school year and placement at KSchool (whether on a residential basis or otherwise) would not have been the LRE placement for her. *See* discussion of factual findings supporting Conclusion of Law Section R.
- O. KSchool is not an appropriate placement for purposes of IDEIA reimbursement given the issues and concerns arising from the Student's psychiatric diagnoses that Mr. and Mrs. X claim are the reason why she needs a residential placement. KSchool is not a clinical program or provider of mental health services. It is a college preparatory boarding school. *See* discussion of factual findings supporting Conclusion of Law Section R.
- P. Mr. and Mrs. X are not entitled to reimbursement for the Ciocca evaluation because, among other things, they have not satisfied the statutory criteria for reimbursement as an IEE and they prevented the District from completing the evaluation it had asked and was entitled to do. *See* discussion of factual findings supporting Conclusion of Law Section S.
- Q. The failure to identify the Student as IDEIA-eligible at the August 31, 2007 IEP team

meeting resulted in loss of access to transition and related services benefits under the IDEIA. Relief in the form of an award of compensatory education, as defined herein, is appropriate in the circumstances to remedy that denial of FAPE.

- R. Entry of an order for compensatory education at RDZ-HS in the 2008/2009 school year (or beyond) may not provide full relief to the Student for the denial of FAPE in light of the fact that the Student is an adult and has reportedly stated that she would not return to RDZ-HS to finish her education but rather would find some alternate means to complete high school.

CONCLUSIONS OF LAW

A. MR. AND MRS. X'S STANDING TO LITIGATE

Prior to the commencement of this case, the Student turned 18 years of age and reached the "age of majority" under Connecticut law. (FF2) The IDEIA leaves to each state to decide whether the parents or legal guardians of an eligible child who has turned age 18 years retains standing to commence a due process proceeding on behalf of that child.²⁷ Under Connecticut law, the right to commence due process transfers to the child when the child turns age 18 years.²⁸

Neither Mr. nor Mrs. X have been appointed as the Student's guardian or conservator. (FF2, 6) No claim has been made or evidence has been presented that the Student is "incompetent" under Connecticut law or otherwise incapable of giving informed consent with respect to matters concerning her educational interests, notwithstanding that she has various psychiatric disorders which Mr. and Mrs. X claim make her IDEIA-eligible. The Connecticut Statutory Short Form Power of Attorney Act,

²⁷ See IDEIA, 20 U.S.C. § 1415(m)(1) (State "may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law) . . . (B) all other rights accorded to parents under this part [including the right to commence due process] transfer to the child." See also IDEIA Regulation 34 C.F.R. § 300.520a. The comments to that IDEIA Regulation state in pertinent part as follows: "Whether parents may retain the ability to make educational decisions for a child who has reached the age of majority and who can provide informed consent is a matter of State laws regarding competency. That is, the child may be able to grant the parent a power of attorney or similar grant of authority to act on the child's behalf under applicable State law. We believe that the rights accorded individuals at the age of majority, beyond those addressed in the regulation, are properly matters for States to control." Federal Register, Vol. 71, No. 156 (August 14, 2006) at p 46713.

²⁸ See Conn. Regulation § 10-76a-1(13) ("[t]he rights of a parent [as that term is defined in the Regulation] shall transfer to a student who has reached the age of eighteen years"). In April 2005, Mr. and Mrs. X were appointed the Student's legal guardians. (FF91) IDEIA Regulation, 34 C.F.R. § 300.520(a)(3) and CSEL, Conn. Gen. Stat. § 10-76d(8), require that the District notify the Student of the transfer to the Student of her rights under the IDEIA/CSEL when she turned age 18 years. The Board contends that that notice was provided. See, e.g., 10/10/07 Motion to Dismiss. Mr. and Mrs. X do not contend that the required notification was not given.

Conn. Gen. Stat. §§ 1-42 through 1-56, empowers the Student (as principal and a legally competent adult) to appoint Mr. and Mrs. X (as her agents) to commence and litigate a proceeding on her behalf to vindicate her rights under the IDEIA and CSEL. In CTDOE 07-285, Mr. and Mrs. X submitted the POA (HO5) which they represented had been executed by the Student.²⁹ The POA, on its face, indicates that the Student executed the document on October 16, 2007 (which is after her 18th birthday), that her signature was acknowledged by a notary, and that she appoints Mr. and Mrs. X as her attorneys-in-fact for “Claims and Litigation,” matters related to her education and “all other matters.”³⁰ In CTDOE 07-285, the Hearing Officer found that the POA included the statutorily required notices, language and acknowledgement of signature; and otherwise complies with Conn. Gen. Stat. § 1-43, which defines the requirements for an instrument to constitute a form of statutory short form power of attorney. *See* Final Decision and Order, CTDOE 07-285.

Based on the strength of the representation that the Student had executed the POA, the Hearing Officer concluded that Mr. and Mrs. X had standing to commence CTDOE 07-323 and seek the relief outlined in the October 18, 2007 request. (HO2) As the hearing in CTDOE 07-323 unfolded, however, the Hearing Officer determined that it was necessary to call the Student to testify to verify that she had in fact executed the POA and had done so knowingly, voluntarily and on an informed basis. Based on her testimony on February 25, 2008, the Hearing Officer finds that the Student executed the POA knowingly, voluntarily and on an informed basis. The Student verified that she had executed the POA, that she understood Ms. Spencer to be her attorney in this matter, that

²⁹ *See*, 10/16/07 Motion in Opposition to Defendant’s Motion to Dismiss.

³⁰ The Power of Attorney Act provides, in pertinent part at Conn. Gen. Stat § 1-51, that:

In a statutory short form power of attorney, the language conferring general authority with respect to claims and litigation shall be construed to mean that the principal authorizes the agent: (1) To assert and proceed before any court, administrative board . . . or other tribunal any cause of action, claim, counterclaim, offset or defense, which the principal has, or claims to have, against any individual . . . government . . . or instrumentality, including but not limited to, power to sue for the recovery of . . . any other thing of value, for the recovery of damages sustained by the principal in any manner, . . . for an injunction, for specific performance, or for any other relief . . . [and] (4) in connection with any action or proceeding, at law or otherwise, to perform any act which the principal might perform, including, but not limited to . . . generally bind the principal in the conduct of any litigation or controversy as seems desirable to the agent; (5) to submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal [and]. (6) . . . to receive and execute . . . deliver any consent, waiver, release . . . or other instrument [in connection with the settlement of a claim] . . .

See, e.g., Clark v. Visiting Nurs. Serv., 2001 Conn. Super. LEXIS 434 (Conn. Super. Ct. Feb. 9. 2001) (power of attorney executed in accordance with the Power of Attorney Act which included a “Claims and Litigation” clause gives agent standing to commence personal injury litigation on behalf of principal); *Morenz v. Wilson-Coker*, 321 F. Supp.2d 398 (D. Conn. 2004), *affirmed* 415 F.3d 230 (2d. Cir. 2005) (“all other matters” clause is a “catch-all to permit an agent ‘to act as an alter ego of the principal with respect to any matters and affairs not [otherwise] enumerated’” in the statute); *Long v. DeLarosa*, 1995 Conn. Super. LEXIS 314 (Jan. 30, 1995) (litigation was commenced by agent in her own name on behalf of principal as principal’s attorney in fact pursuant to the Power of Attorney Act).

Ms. Spencer had explained to her the nature of this due process case, that she understood the legal effect of executing the POA and that she executed the POA authorizing Mr. and Mrs. X to represent her interests in this proceeding because she did not want to do anything “stupid” with respect to her education. (FF2, FF2a-2e) Accordingly, by virtue of the POA, Mr. and Mrs. X have standing to commence an action on behalf of the Student under the IDEIA and the CSEL to secure the relief identified in the September 7, 2007 (HO1) and October 18, 2007 (HO2) requests for due process, and to bind the Student to the outcome. (FF3)

B. BURDENS OF PROOF

For purposes of the IDEIA, the burden of proof is on the party commencing the due process proceeding unless the state provides for a different allocation of that burden.³¹ Under Connecticut law, Mr. and Mrs. X have the initial burden of production regarding the threshold issue in this case – the Student’s eligibility under IDEIA and CSEL.³² Assuming that they meet that burden, the Board must then demonstrate by a preponderance of the evidence that its eligibility determinations were correct. The same allocation of burdens applies to the issue of entitlement to reimbursement for Dr. Ciocca’s evaluation.

Since the placement at KSchool was unilateral, under Connecticut law³³ Mr. and Mrs. X bear the burden of proving the “appropriateness” of that placement and have that burden even if the District failed to offer a FAPE.³⁴

C. COMMENTS ON CERTAIN WITNESS TESTIMONY

This Section discusses certain evidentiary issues regarding the testimony of Mrs. X, Psychotherapist and SpecEdDirector.

1. Testimony Offered by Mrs. X

³¹ See *Schaffer ex rel Shaffer v. Weast*, 126 S.Ct. 528, 537 (2005).

³² Conn. Regulation, § 10-76h-14(a), provides, in pertinent part, that: “The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the [LEA] has the burden of proving [by a preponderance of the evidence] the appropriateness of the child’s program or placement, or of the program or placement proposed by the [LEA].” To meet their burden of production, Mr. and Mrs. X must come forward with evidence in support of their claim that, if not rebutted by the District, is sufficient to permit a finding in their favor. See, e.g., *Student v. RDZ*.

³³ See Conn. Regulation § 10-76h-14(c), which provides that: “Notwithstanding [the allocation of the burden of proof set forth in Conn. Regulation § 10-76h-14(a)] upon a finding that [an LEA’s] proposed placement or program is not appropriate, any party seeking reimbursement for a unilateral placement or program shall prove the appropriateness of such placement or program by a preponderance of the evidence.”

³⁴ See, e.g., *Frank G. V Bd. of Educ. of Hyde Park*, 459 F.3d 356 (2d Cir 2006).

a. Testimony About the Student's Experience at RDZ-HS

To support their claims for relief, Mrs. X testified at length about the Student's behavior and experiences at RDZ-HS, the Student's reactions to those experiences and RDZ's alleged failure to provide the Student with the support she needed.³⁵ Although the parties agree on the basic facts of some of the events described by Mrs. X, their positions on the impact of these events on the Student and/or the significance of these events diverge sharply.

Mrs. X was not a direct participant in or observer of the events occurring at RDZ-HS about which she testified. Rather, she was testifying about those events based on what she was told either by the Student or an RDZ-HS staff member who was directly involved in the event.³⁶ Under the relaxed evidentiary rules governing administrative proceedings, Mrs. X's testimony is not inadmissible for purposes of establishing the truth of the matter asserted (*i.e.*, her testimony is not prohibited hearsay). However, the fact that Mrs. X's testimony may be admissible says nothing about the weight her testimony should be accorded.

Mrs. X acknowledged that in testifying about these events she was reporting what the Student reported to her and that she did not know whether the Student's report was or was not accurate in the sense that an objective observer would agree with the Student's description of the event. (FF11) Cognitive distortions, misperceptions and emotional sensitivities are features of the Student's psychiatric disorders. (FF52f, 52g5, 52g6, 58, 251b) Accordingly, some of the divergence in the description of these events as presented by Mrs. X and as presented by RDZ staff who were direct participants and who testified about them *may* reflect the way that the Student reported the event to Mrs. X.³⁷ The Student's perception of these events is potentially relevant to IDEIA-eligibility issues in this case. On the other hand, Mrs. X's perceptions of these events has little to no relevance to a determination of the Student's IDEIA-eligibility.

³⁵ In particular, Mrs. X testified about events referred to (and discussed more fully elsewhere) herein as the Raggie Incident, the Chocolate Chip the Chick Incident, the Window Writing Incident, the Glass Punching Incident, and the Locker Shoving Incident. She also testified about an "altercation" between the Student and her guidance counselor, an "altercation" between the Student and her 11th grade English teacher, and ongoing peer difficulties which she described as taunting, teasing and bullying. Mrs. X's testimony was also being offered as parent not expert testimony, and she was not testifying as to the "clinical significance" of these events. (FF10)

³⁶ Mrs. X claims that she also received information from peers of the Student who would visit the home. (FF135)

³⁷ Nothing in this Final Decision and Order is intended to suggest or should be taken to suggest that the way the Student described an event to Mrs. X, Psychotherapist or Dr. Ciocca is wrong or inaccurate or that she was lying. The Student's description of an event reflects her experience of the event as *she* perceives it.

Considering all of the evidence and witness demeanor, the Hearing Officer concludes that some of the differences in the testimony regarding these events offered by Mrs. X in comparison to testimony regarding these events offered by Staff witnesses who participated directly in the event, as well as some of Mrs. X's testimony about the significance and impact of those events on the Student, reflects *Mrs. X's* own gloss, embellishment or perspective based on her own feelings and in her capacity as a zealous advocate for the Student, and her testimony about these events must be understood in that context.³⁸

b. Testimony About Events Occurring at Home

Mrs. X was the only witness to testify who was situated to describe first hand the Student's day-to-day conduct and behavior at home that could impact her educational performance. Mrs. X testified briefly that in the Fall of 2006 the Student showed an increase in ADHD-related symptoms at home that impacted her ability to complete homework. (FF145a, 145c)

Mrs. X's description of the Student and her presentation varies significantly from the description of the Student and her presentation offered by RDZ-HS staff who testified. To the extent it has been argued that that divergence in description suggests or raises an issue with the credibility of Mrs. X's testimony, the Hearing Officer comments as follows. The record demonstrates that throughout the time she has attended RDZ schools, the Student's presentation of ADHD symptomatology has been more pronounced in the home than at school, particularly with respect to oppositional behaviors. (FF23b, 194, 197, 216d) To the extent that the difference in perception of the Student in and out of school is relevant to an issue in this case, the Hearing Officer concludes that the difference reflects to some extent medication effects. Throughout the time the Student attended RDZ, and including RDZ-HS, her ADHD was being medically managed with Concerta, which the Student took once daily in the morning. (FF28, 35, 111e, 198h, 237) Concerta is a time-release medication that, if taken in the morning before school, would have its greatest clinical effect over the course of the school day with decreasing clinical efficacy starting sometime in the early evening as therapeutic dosage levels in the body diminish. Accordingly, at home in the evenings the Student's ADHD was no longer controlled by her medication. In contrast, Staff interacted with the

³⁸ In contrast to Mrs. X, the Student was a direct participant in the events described by Mrs. X and was therefore better situated than Mrs. X to testify about them. Mr. and Mrs. X chose, however, not to call the Student to testify. In determining the weight to be accorded to Mrs. X's testimony in this case, the Hearing Officer is not establishing or applying a rule that the child who is the subject of the proceeding must appear to testify or that parent testimony about the child's experience automatically has less weight if the parent was not a not direct observer of the events. Each case, child and claim is unique. The Student is a legally competent adult who is capable of testifying. Mr. and Mrs. X are bound by their tactical decision not to call the Student as a witness and instead to present their case through other witnesses who may not have been as well situated as the Student to present the evidence needed to substantiate the claims they are asserting. The Hearing Officer is also not drawing a negative inference from the fact that the Student was not called by Mr. and Mrs. X to testify or that they vigorously resisted having her testify, and nothing in this Final Decision and Order should be taken to reflect application of a rule that the child who is the subject of the hearing must appear to testify in order for the family to satisfy its evidentiary burden.

Student in a structured environment at a time when the Student's medication was most effective.³⁹ The fact that the Student's ADHD medication was not clinically effective at home may explain the sometimes marked difference between Mrs. X's observations of and experiences with the Student and those of the District staff.⁴⁰

c. Testimony About Providing the Student Access to School-Based Counseling Services and Communications with Psychotherapist

While at RDZ-HS, the Student was not provided in-school counseling services. The parties disagree as to why and both that disagreement and the fact that the Student was not receiving such services may be relevant to a determination on the issue of relief.

Psychotherapist attended the October 2004 IEP team meeting at the start of the Student's 9th grade year. (FF62) However, there was no contact between Psychotherapist and District staff after that meeting and throughout the remainder of the time the Student attended RDZ-HS. The parties disagree over whether the lack of communication between RDZ-HS and Psychotherapist while the Student attended RDZ-HS resulted from Mr. and Mrs. X's failure to authorize RDZ-HS staff to communicate with Psychotherapist. A finding on that issue may also be relevant to the determination regarding relief in this case.

These two issues are related. The evidence as a whole indicates that Mrs. X did not want the Student to have in-school counseling services but rather that she preferred to have the Student's emotional and social issues addressed in counseling with Psychotherapist and preferred to act as and established herself as the conduit between the school and Psychotherapist with respect to events of significance occurring at school. *See, e.g.,* FF76, FF84u; FF198h-199 (discussion of concept of enmeshment).

SchoolPsychologist testified that in connection with the April 2004 and October 2004 Section 504 meetings (right before or at the time the Student entered 9th grade) and the Raggie Incident (which occurred at some point when the Student was in the 9th grade), Staff discussed with Mrs. X providing school-based counseling services to the Student. SchoolPsychologist claims that District staff did not feel there was a need for that service based on the Student's presentation at school but offered it anyway, and that Mrs. X declined the service. Mrs. X claims that no such conversation occurred and supports that claim by pointing to the absence of any written record of that conversation

³⁹ Even when her medication was having a therapeutic effect during the day, however, Staff were still reporting manifestations of ADHD symptomatology. *See, e.g.,* FF194.

⁴⁰ The testimony of KSchool(07/08Advisor/DormParent) corroborates this conclusion. KSchool(07/08Advisor/DormParent) reported that in the evenings she would sometimes find the Student to be overwhelmed, frustrated, agitated and unable to start her homework particularly math without encouragement. (FF263)

or direction. *See, e.g.*, FF75a, 75b, 96b. The Hearing Officer finds SchoolPsychologist's testimony to be more credible on this point.⁴¹

The Hearing Officer does not find credible Mrs. X's claims that she gave District staff the necessary releases to allow them to communicate with Psychotherapist while the Student attended RDZ-HS, and further finds that Mr. and Mrs. X effectively precluded District staff from communicating with Psychotherapist by refusing or failing to provide the release necessary for Staff to do so when Staff requested such a release.⁴²

2. Testimony Offered by Psychotherapist

Mr. and Mrs. X sought to corroborate Mrs. X's testimony about the Student's experiences at RDZ-HS and the impact of those experiences on the Student through the testimony of Psychotherapist (the Student's treating psychologist of 9.5 years). Like Mrs. X, Psychotherapist was not a direct participant in or observer of the events occurring at RDZ-HS about which Mrs. X testified. Rather, Psychotherapist was reporting what both the Student and Mrs. X reported to her. Accordingly, to some extent the consistency in testimony between Mrs. X and Psychotherapist about the Student's experiences at RDZ-HS reflects that Mrs. X was consistent in *her* description of the event as she relayed it to Psychotherapist. The fact that Psychotherapist corroborated Mrs. X's version of the events by providing similar testimony does not give Mrs. X's testimony about the event any more weight than it had originally.

In addition, the unique context of the relationship of the Student to Psychotherapist cannot be overlooked in evaluating Psychotherapist's testimony about the Student. Psychotherapist is the Student's treating psychologist and has been working with the Student for close to a decade in a therapist-patient relationship. (FF251a) The purpose of the Student's contacts with Psychotherapist is to process and work through the residue of her past traumas and the difficulties she is having in handling current experiences and interactions, social relationships, academic expectations, family matters and the whole host of other issues that a teenager faces in today's society. Through

⁴¹ Among other things, on re-direct Mrs. X stated that she could not recall whether she had ever told anybody at RDZ-HS that she did not want the Student to receive school-based counseling. (Mrs. X 11/30 Test. at 152)

⁴² When asked on direct about authorizing communication between Psychotherapist and District staff, Mrs. X stated that she had given Psychotherapist "carte blanche" to communicate with anybody Psychotherapist wanted to speak with. (FF139, 180) Giving Psychotherapist permission to speak with District staff is not the same as giving District staff permission to speak with Psychotherapist. The evidence indicates that in October of 2006 (apparently in connection with the Student's first marking period Geometry grade), Mrs. X asked Title I Teacher 10/11 to contact Psychotherapist. Mrs. X did not, however, provide a release authorizing her to do so in response to a request that Mrs. X provide the release. (FF133-134) SpecEdDirector testified that Mrs. X never returned the release authorizing District staff to communicate with Psychotherapist as part of the evaluation the District proposed to do in 2007. Mrs. X claims that she did fax the release back to the District in March of 2007. SpecEdDirector claims that no such release was received. (FF164, 180) Mrs. X did not provide any documentation or proof that she had returned the executed release back to the District, whether by fax or otherwise.

processing these matters with a neutral nonjudgmental third party uninvolved in the event, the patient is expected over time to achieve more effective methods of coping with and responding to the life experiences she finds problematic. The grist for the mill of that kind of psychotherapy is talking about the life experiences that the patient finds difficult, including but not limited to the patient's perceptions of those events and/or emotional sensitivities and reactions, and how those perceptions, sensitivities and reactions interfere with the patient's ability to function in various areas of his or her life. Psychotherapist's testimony presents a view of the Student in her role as a patient in a therapeutic relationship.

Finally, at hearing, the Student's counsel stated that Psychotherapist was not being offered to testify about educational matters. (FF251, 11/20 Tr. at 40-42, 132)⁴³ Rather, Mr. and Mrs. X presented Psychotherapist to testify as a clinician regarding the emotional and psychological supports the Student needed.⁴⁴

3. Certain Testimony Offered by SpecEdDirector

Gurender Singh Sahani, M.D. was retained by the District to perform a psychiatric evaluation of the Student in May 2007 as part of the eligibility determination. His report was considered at the August 31, 2007 IEP team meeting in determining the Student's IDEIA-eligibility and was admitted into the record as exhibit B16. Although the Board identified Dr. Sahani as a witness it intended to call, Dr. Sahani did not appear to testify.

Dr. Sahani did not attend the August 31, 2007 IEP team meeting. SpecEdDirector testified that she had spoken with Dr. Sahani in connection with that meeting and (1) confirmed with Dr. Sahani that Dr. Sahani was not recommending a residential placement; and (2) clarified with Dr. Sahani that the supports that Dr. Sahani concluded that the Student needed at RDZ-HS were the supports she was already receiving under

⁴³ Although Psychotherapist was not offered in this case to testify about educational issues, she apparently has done so before. *See, e.g., Student v. RDZ* (Psychotherapist was called as an expert on behalf of the parents; the hearing officer in that case found persuasive the testimony of Psychotherapist that, notwithstanding some reservations, the goals and objectives in the IEP at issue were reasonable and appropriate overall and would provide the child with an educational benefit). The child at issue in *Student v. RDZ* is not the Student in this case.

⁴⁴ In their Reply Brief (at 19), however, Mr. and Mrs. X argue that in testifying about implementation of a structured daily check-in system should the Student return to RDZ-HS, Psychotherapist was recommending special education. As described by Psychotherapist, the daily check-in would more properly be considered a Section 504 accommodation or perhaps a related service, rather than special education. Without regard, however, to whether the daily check-in is special education (*i.e.*, specialized instruction) or simply a "related service" or an "accommodation," Mr. and Mrs. X cannot have it both ways – Psychotherapist was not offered to testify about educational matters and her testimony about the check-in is considered to be a clinical recommendation to address a clinical issue.

her Section 504 plan.⁴⁵ SpecEdDirector did not relay to the IEP team at the August 31, 2007 meeting that she had had those conversations, and appeared to be presenting that information for the first time in this hearing. Although SpecEdDirector's testimony is not necessarily inadmissible in this hearing as to the truth of the matters asserted (*i.e.*, Dr. Sahani's confirmation and clarification of what he was recommending), the Hearing Officer in this Final Decision and Order has assigned no weight to SpecEdDirector's testimony on these points to the extent it was offered to establish the truth of the matters asserted because: (1) an adequate explanation for why Dr. Sahani did not appear to testify about his own report was not provided, and (2) SpecEdDirector did not relay this information to the IEP team meeting but rather appeared to be presenting this information for the first time at this hearing. (2/8 Tr. at 125-126)⁴⁶

D. ISSUES REGARDING THE STATUTE OF LIMITATIONS

Under Connecticut law, the period during which claims under IDEIA or CSEL must be asserted or be deemed barred as untimely is defined by CSEL, Conn. Gen. Stat. § 10-76h(a)(4), which provides that:

A party shall have two years to request a hearing from the time the [LEA] proposed or refused to initiate or change the identification, evaluation or educational placement or the provision of a [FAPE] to such child or pupil, provided if the parent, guardian, pupil or surrogate parents is not given notice of the procedural safeguards, in accordance with the [Conn. Regulations], including notice of the limitations contained in this section, such two-year limitation shall be calculated from the time notice of the safeguards is properly given.

The Student's IDEIA eligibility was considered at IEP team meetings convened in April, June, September and October 1998, and February, April and October 2004. (FF13, 14a-14g, 16, 17, 20, 21, 23, 42a-42d, 43, 45, 46, 47a-47g, 62, 63)⁴⁷ RDZ-HS was not the nexus LEA during that period. At each of these meetings, the Student was determined to not be IDEIA-eligible. Documentary evidence in the record indicates that an IEP team meeting may have convened in June 2002 following an IDEIA referral in May 2002. (FF32a-32e, 33) However, no documents from that referral or meeting were included in the record and no specific testimony was offered regarding any such meeting, if in fact it occurred. An IEP was also convened in June 2005 (after RDZ became nexus). However,

⁴⁵ See, e.g., SpecEdDirector 2/8 Test. at 108; 116-120; SpecEdDirector 1/25 Test. at 243-245.

⁴⁶ These comments about this aspect of SpecEdDirector's testimony do not reflect any credibility determination whatsoever regarding SpecEdDirector's testimony or Dr. Sahani's report. The Hearing Officer has no reason to believe that SpecEdDirector did not have those conversations with Dr. Sahani.

⁴⁷ The CityA-BOE rather than RDZ was the nexus LEA at the February, April and October 2004 meetings (FF43, 47, 62, 91), oversaw those meetings and as a technical matter was responsible for the eligibility determinations made at those meetings.

that IEP team meeting was not asked to make and did not make an IDEIA or Section 504 eligibility determination. (FF97-101)⁴⁸

IDEIA claims accrue when the parents know or have reason to know of the injury or event that is the basis for their claim.⁴⁹ Mrs. X testified that she disagreed with the eligibility determinations when they were made at the 1998 and 2004 IEP team meetings. (FF18, 25, 44, 48, 64) Mr. and Mrs. X therefore recognized that the Student's educational interests were potentially being harmed at the time of each decision. Mr. and Mrs. X did not, however, commence due process to challenge those determinations. The documentary record indicates that Mrs. X participated in each meeting, that Mr. and Mrs. X were timely provided with the Safeguards in connection with each meeting, and that at some of these meetings they were supported by an "education surrogate" appointed by the Department of Children and Families ("DCF") to represent the interests of the Student. Mr. and Mrs. X make no claim and have presented no evidence to substantiate any such claim that they did not timely receive the Safeguards in connection with these PPT meetings or were otherwise unaware of the actions taken or not taken at these meetings. Accordingly, Mr. and Mrs. X are barred by the SOL from seeking relief for any purported denial of FAPE associated these IEP team meetings, including but not limited to claims alleging that RDZ violated the Student's procedural or substantive rights by failing to identify her as IDEIA-eligible.

As explained several times at hearing,⁵⁰ although Mr. and Mrs. X are barred by the SOL from obtaining relief for alleged denials of FAPE associated with the eligibility determinations at IEP team meetings predating February 2007, information regarding the Student's circumstances at the time and the issues raised and determinations made at those IEP team meetings are potentially relevant to issues presented for resolution in this case, and evidence was admitted into the record for that purpose.⁵¹

⁴⁸ The focus of that meeting was complaints by Mrs. X regarding implementation of the Student's Section 504 plan and concerns about the Student's courses for the 10th grade. Mrs. X did not request an eligibility determination at that IEP team meeting and the documentation does not reflect that any eligibility determination was made. The documents associated with this IEP team meeting do not indicate that the CTDOE written procedural safeguards document (the "Safeguards") were provided but no claim has been made that they were not provided and no claim regarding an IDEIA violation following this IEP team meeting has been expressly or specifically asserted.

⁴⁹ See, e.g., *Student v. RDZ* (although parents chose not to attend the IEP team meeting, they were aware that the IEP team would review the evaluation at issue and then timely received the minutes of the meeting and the IEP which reflected that the evaluation had only focused on cognitive and achievement areas; accordingly, the parents knew or had reason to know of the essential aspects of the evaluation and its impact on the child's IEP for that year; claim regarding that IEP is time barred); *K.P. v. Juzwic*, 891 F. Supp. 703, 716 (D. Conn. 1995) (federal law governs question of when a federal claim accrues notwithstanding that a state SOL governs entitlement to relief; parents must be in possession of "critical facts" which indicate that the child has been hurt and the defendants are responsible for this injury).

⁵⁰ See, e.g., 1/25 Tr. at 192-193.

⁵¹ Mr. and Mrs. X argue for the first time in their Reply Brief (at 30) that prior to retaining counsel in November 2006, they had somehow been misled about the difference between IDEIA and Section 504 by the District. That argument appears to be an attempt to avoid the impact of the application of the SOL

E. ISSUES RELATED TO SECTION 504

At all times when the Student was attending RDZ-HS she was identified as Section 504-eligible and was receiving “special education” and “related services” within the meaning of Section 504. (FF47g, 50, 65, 66, 67, 111d, 126) Mr. and Mrs. X have been dissatisfied with the Student’s Section 504 plan and its implementation at RDZ-HS. (FF111d, 156, 158, 216b, 225, 233) In their September and October 2007 requests for due process (HO1; HO2), Mr. and Mrs. X identified Section 504 as a statute under which they were seeking relief. This Hearing Officer has no jurisdiction to adjudicate Section 504 issues, however, and Mr. and Mrs. X ultimately asserted no arguments for relief under Section 504 in their post-hearing briefs.⁵²

The Hearing Officer’s lack of jurisdiction to decide Section 504 claims does not in this case make evidence regarding Section 504 issues irrelevant to claims over which the Hearing Officer does have jurisdiction. The basis for the Student’s eligibility under Section 504 and the features of her Section 504 plan are undisputed facts in this case and provide a backdrop against which the Student’s difficulties at RDZ-HS may be understood in the context of the IDEIA and CSEL claims asserted that have been asserted in this case. For this reason, the Hearing Officer allowed evidence regarding Section 504 issues into the record, most over the objection of RDZ.⁵³ The relevance of that evidence to the IDEIA- and CSEL-eligibility issues in this case is discussed below.

on their claim for reimbursement of the Student’s unilateral placement at KSchool particularly for the 2006/2007 school year. Confusion about the difference between IDEIA and Section 504 is not dispositive of the application of the SOL to an IDEIA claim. Mr. and Mrs. X were provided with the Safeguards on multiple occasions prior to November 2006 (at which point the SOL had run on the October 2004 IEP team outcome, the last of the IDEIA-eligibility determination IEP team meetings predating the events in this case). Based on their claim that they disagreed with the 1998 and 2004 eligibility determinations when those determinations were made, they knew or should have known that an incorrect IDEIA-eligibility determination had the potential to harm the Student’s educational interests and knew or should have known of the right to seek due process.

⁵² In Connecticut, the hearing processes for IDEIA/CSEL claims and for Section 504 claims are distinct and separate. *See, e.g.*, CTDOE Circular Letter C-9 (November 3, 2000). This Hearing Officer’s authority is pursuant to the IDEIA, 20 U.S.C. § 1415(b)(6), and CSEL, Conn. Gen. Stat. § 10-76h(d)(1), and their related regulations, and is limited to resolving due process complaints arising under those statutes, specifically “any matter relating to the identification, evaluation, or educational placement of [a] child [eligible to receive special education and related services under the IDEIA or CSEL], or the provision of a [FAPE] to such child.” The Hearing Officer may address a denial of FAPE by “confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of a FAPE to the child, determining the appropriateness of a unilateral placement or prescribing alternative special education programs for the child.”

⁵³ As the parties were advised several times at hearing, that evidence was not being admitted for purposes of resolving any dispute concerning Section 504. *See, e.g.*, 11/8 Tr. at 197-198. To moot any controversy or ambiguity raised by the admission into the record of evidence regarding Section 504 issues and the discussion of Section 504 issues in this Final Decision and Order, nothing in this Final Decision and Order should be construed to reflect any finding of fact, conclusion of law or determination whatsoever regarding the merits of any issues arising under Section 504 that are or may be the subject of a claim for relief under Section 504 by Mr. and Mrs. X or the Student, including but not limited to: (1) whether the

1. IDEIA/CSEL and Section 504 Compared

Whereas, the IDEIA defines “an affirmative duty to provide an appropriate education to disabled students,” Section 504 is a “negative prohibition against disability discrimination in federally funded programs.”⁵⁴ Both the IDEIA/CSEL and Section 504 mandate the provision of a FAPE to an eligible student with a qualifying impairment.⁵⁵ However, consistent with the differences in the purpose of the two statutes, what constitutes FAPE under each statute is different. Each statute also has its own unique criteria for determining eligibility. For that reason, a child can be Section 504-eligible without also being IDEIA-eligible.⁵⁶ A child eligible under both IDEIA and Section 504 must be provided a FAPE compliant with the requirements of the IDEIA.⁵⁷

A child of primary or secondary school age is disabled within the meaning of Section 504 for purposes of entitlement to school-based accommodations if he or she has a physical or mental impairment that substantially limits a “major life activity,” defined as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.” 34 CFR § 104.3(j)(2)(ii). To be eligible for Section 504 accommodations at school, the disability must interfere with a major life activity that the child must perform to function as a student.⁵⁸ In making a

Board correctly identified the Student’s exceptionality for purposes of Section 504; (2) whether the Board denied the Student a FAPE within the meaning of Section 504 or violated her procedural rights under Section 504; (3) the adequacy of the Student’s Section 504 plan or its implementation; and (4) whether the Student is entitled to relief under Section 504. The relief awarded in this Final Decision and Order is awarded for a denial of FAPE under the IDEIA/CSEL, not under Section 504.

⁵⁴ See, e.g., *W.B. v. Matula*, 21 IDELR 411 (3d Cir. 1995), *abrogated on other grounds by*, *A.W. v. Jersey City Pub. Schs.*, 47 IDELR 282 (3d Cir. 2007).

⁵⁵ As to Section 504, *see generally* 34 CFR §104.33(a); 34 CFR § 104.3(k)(2). As to the IDEIA, *see* Conclusion of Law Section G.

⁵⁶ See, e.g., *R.B. v. NAPA Valley Unified School Dist.*, 48 IDELR 60 (9th Cir. 2007), *affirming*, *RB v. NAPA Valley Unified Sch. Dist.*, 43 IDELR 188 (N.D. Ca. 2005) (rejecting arguments that the fact that the child had a Section 504 plan focusing on behavioral issues establishes that her behavioral problems adversely effected educational performance; Section 504 eligibility does not “automatically” make the child IDEIA-eligible given the differences in eligibility criteria between the two statutes); *West Chester Area School District*, 35 IDELR 235 (SEA PA 2001) (definition of “disability” under Section 504 is broader than under IDEIA). As a general rule, however, a child who is IDEIA-eligible would also be Section 504-eligible. See, e.g., *Letter to Veir*, 20 IDELR 864 (OCR 1993) (OCR “cannot conceive of any situation in which [IDEA-eligible] children would not also be entitled to the protection extended by Section 504.”).

⁵⁷ See, e.g., *Yankton Sch. Dist. v. Shramm*, 93 F.3d 1369 (8th Cir. 1996) (an LEA has no flexibility to opt to provide services and accommodations under Section 504 when the student is eligible under both the IDEIA and Section 504, but rather must provide services under IDEIA).

⁵⁸ See, e.g., *Weixel v. Bd. of Educ. of City of New York*, 102 LRP 9014 (2d Cir. 2002) (claimant need not demonstrate that he/she cannot learn to be Section 504-eligible, but must demonstrate a condition that is impacting the ability to perform the “basic tasks of being a student”); *West Chester Area School*

Section 504-eligibility determination, the “substantial limitation” criteria considers the mitigating effects of treatment for the disability, such as medication to manage ADHD.⁵⁹

As to what constitutes a FAPE under each statute, for purposes of Section 504 FAPE is defined as the provision of regular or special education and related aids and services that: (1) Are designed to meet individual educational needs of handicapped students as adequately as the needs of non-handicapped students are met; and (2) Are based upon adherence to procedures that satisfy Section 504 requirements regarding educational setting (34 CFR § 104.34), evaluation and placement (34 CFR § 104.35) and procedural safeguards (34 CFR § 104.36). *See generally* Section 504 Regulation, 34 CFR § 104.33(b)(1)(i).

“Special education” and “related aids and services” under Section 504 are typically referred to as “accommodations.” An “accommodation” is a form of support which does not fundamentally alter the performance standards of the class or specific tasks students taking the class must perform, but instead changes some aspect of how the child satisfies that performance standard (*e.g.*, being allowed extra time to complete a test being taken by the rest of the class). Accommodations are designed to permit the Section 504-eligible child to access the LEA’s mainstream curricular and extra-curricular offerings.

The final pertinent difference between the two statutes concerns documentation requirements. Each Section 504-eligible child must have a written document (referred to as a “Section 504 plan”) which defines the child’s disabling condition, states how that condition impacts the child’s educational performance, and defines the supports (*i.e.*, accommodations and services) that the child will be provided to enable him/her to access the LEA’s curricular and extracurricular offerings. A Section 504 plan can but is not required to take the form of an Individualized Education Plan (“IEP”), which is the document created for each IDEA-eligible child. Among other things, an IEP defines measurable goals and objectives and the child’s progress toward achieving those goals and objectives. The requirements for an IEP are discussed subsequently herein.

2. Relevance of Evidence Regarding Section 504

There is no dispute that at all points since the end of the 8th grade, and throughout the entire time she attended RDZ-HS, the Student was identified as Section 504-eligible

District, 35 IDELR 235 (SEA PA 2001) (under Section 504, “major life activity” of “learning” involves components such as written expression, math reasoning, reading decoding, among “many other academic areas”).

⁵⁹ If a person is taking measures to correct for or mitigate a physical or mental impairment, the effects of those measures, both positive and negative, must be considered in determining whether the person is substantially limited in a major life activity and thus disabled within the meaning of Section 504. *See, e.g., Manz v. Gaffney, et al.*, 2003 U.S. App. LEXIS 3361, at *4 (2nd Cir. 2003) (the respondent was not disabled within the meaning of the ADA because he used corrective devices that improved his vision to 20/20)..

on the basis of ADHD, RAD, and an anxiety-based disorder. (FF50, 66a, 67) Having identified her as Section 504-eligible, RDZ acknowledges that one or more of these disorders substantially limit the major life activity of learning for the Student. Mr. and Mrs. X contend that the Student is eligible under IDEIA and CSEL on the basis of one or more of these disorders.

While she attended RDZ-HS, the Student was completing a mainstream education program albeit with the support of the “accommodations” and services under her Section 504 plan. Although she was deemed Section 504 eligible based on ADHD, RAD and an anxiety-based disorder, the Student’s Section 504 plan addressed only the ADHD-related impacts on her educational performance particularly related to organization and homework completion. Her Section 504 plan provided, among other things, for preferential seating and extra time on tests if needed, and for Title 1 services provided in the form of a structured or resource study hall one period per day, four days per week in which she effectively received support and instruction in organizational skills with respect to homework completion and management of multi-step projects. (FF66c; 73; 84a, 84b) That support enabled the Student to succeed at RDZ-HS but also mitigated the adverse effects on her educational performance of her ADHD.⁶⁰

The Student’s Section 504 plan did not contain features that addressed manifestations at school of symptoms of her anxiety disorders such as for example a positive behavioral support structure or a behavior management plan.

The Student’s Section 504 plan did not take the form of an IEP and therefore did not include any measurable goals or objectives as would be found in an IEP under the IDEIA. Accordingly, there is no way to track if the Student was progressing in addressing the issues for which she required the plan (*i.e.*, ADHD) other than her grades and performance at school.

F. THE BOARD’S OBLIGATION TO PROVIDE A FAPE

As of the last day of hearing, the Student was under age 21 years of age, had not yet been awarded a regular high school diploma and was residing in a town that is part of RDZ. (FF2, 4, 5, 7) Accordingly, *if* the Student is also a “child with a disability” within the meaning of the IDEIA and CSEL, then RDZ is the local educational agency (“LEA”) obligated under the IDEIA and CSEL to provide her with a “free appropriate public

⁶⁰ Nothing in this Final Decision and Order is intended to establish or should be interpreted to establish a rule or reflect a conclusion that a child cannot be identified as IDEIA-eligible unless the child has previously been identified as Section 504-eligible and the Section 504 accommodations implemented have proved unsuccessful to address the impacts on the child’s educational performance of the child’s impairments. Rather, the statement in the passage above reflects the circumstances of this case: At all points while she attended RDZ-HS, the Student was identified as Section 504-eligible and getting support through Section 504.

education” (“FAPE”) designed to meet her specialized needs and delivered in the least restrictive environment (“LRE”).⁶¹

Under the IDEIA and CSEL, FAPE is “special education” and “related services” provided by or on behalf of the LEA at its expense that meets Connecticut’s educational standards and approximates the grade levels used in Connecticut’s regular education, and is provided in conformity with the eligible child’s IEP.⁶² Both the IDEIA, 20 U.S.C. § 1401(29), and the CSEL, Conn. Gen. Stat. § 10-76a(4), define “special education” to mean, in pertinent part “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.” Both the IDEIA, 20 U.S.C. § 1401(26), and the CSEL, Conn. Gen. Stat. § 10-76a (7), define “related services” to include, among other things, transportation and psychological, social work or counseling services “as may be required to assist a child with a disability to benefit from special education.” An IEP is a written document defining the IDEIA-eligible child’s then-current educational status. The IEP establishes measurable annual goals and objectives, and details the special education, related services, accommodations and other aids that the child will be provided to enable him/her to meet those goals and objectives.⁶³ The IEP is developed in a collaborative process involving, minimally, the LEA staff and the child’s parents or legal representatives (collectively, an “IEP team,” “Planning and Placement Team” or “PPT”). The IEP is reviewed at least once annually to determine, among other things, the child’s progress on meeting his/her goals and objectives, and whether the goals and objectives should be modified to reflect that progress or lack of progress.

⁶¹ See, e.g., IDEIA Regulation, 34 CFR § 300.101(c)(1) (“Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”); CSEL, Conn. Gen. Stat. § 10-76d(8) (“Each board shall have in effect at the beginning of each school year an educational program for each child who has been identified as eligible for special education.”). If the Student is IDEIA-eligible, under Connecticut law she would as a general matter be entitled to a FAPE until the earlier of the point at which she is properly awarded a regular high school diploma or the end of the school year in which she turns 21 years of age. See generally IDEA, 20 U.S.C. § 1412(a)(1)(A)-(B); IDEA Regulations 34 C.F.R. §§ 300.121, 300.122(a)(3)(i)-(ii); Conn. Gen. Stat. § 10-76d(b); Conn. Regulation § 10-76d-1(a)(7).

⁶² See, e.g., IDEIA, 20 U.S.C. § 1401(9).

⁶³ More specifically, the IEP is a written program of instruction for an eligible child which: (1) defines the services to be provided to the Student based on the Student’s particular and unique needs; (2) is the document upon which placement decisions are to be based; and (3) is to be reviewed at least once annually and more often as the child’s circumstances may warrant. A properly formulated IEP should state: (1) the child’s present level of educational performance; (2) the annual goals for the child, including short-term instructional objectives and benchmarks for performance; (3) the specific educational services and supplementary aids to be provided to the child, and the extent to which the child will be able to participate in regular educational programs; (4) the transition services needed for a child as he or she begins to leave a school setting; (5) the projected initiation date, location and duration for proposed services; and (6) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *M.S. v. Yonkers*, 231 F. 3d 96 (2nd Cir. 2000); IDEIA, 20 U.S.C. § 1414(d)(1); IDEIA Regulation, 34 CFR § 300.320.

G. WHAT CONSTITUTES A DISABILITY UNDER IDEIA/CSEL

RDZ is required to provide the Student with a FAPE under the CSEL if she is a child “requiring special education,” defined by the CSEL, Conn. Gen. Stat. § 10-76a (5)(A), to mean a child who meets the eligibility criteria under the IDEIA.⁶⁴ Under the IDEIA, RDZ is required to provide the Student with a FAPE if she is a “child with a disability,” which is defined at IDEIA, 20 U.S.C. § 1401(3)(A), to mean a child:

- i. who has one or more categories of impairments defined at IDEIA Regulations, 34 CFR § 300.8(c)(1)-(13); *and*
- ii. who “by reason thereof, needs special education and related services” as those terms are defined in the IDEIA.

The IDEIA provides further that a child is not a “child with a disability” even if the child has one or more qualifying impairments if the “academic problems” the child is manifesting “result from lack of instruction in reading or math.” IDEIA, 20 U.S.C. § 1401(3)(A)(iii).

The IDEIA’s definition of “child with a disability” requires that: (1) the child have a qualifying impairment; and (2) “by reason of” that qualifying impairment “needs” special education and related services. The determination of whether a child “needs” special education and related services is made with consideration of the purpose of the IDEIA, which is to “open the door of public education to [disabled] children on appropriate terms” and in a meaningful manner to enable them to become productive members of society.⁶⁵ In the context of determining IDEIA-eligibility, whether a child

⁶⁴ No claim has been made that the Student qualifies under the eligibility criteria stated in the CSEL, at Conn. Gen. Stat. § 10-76a (5)(B) (“[any exceptional child who] has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in regular school programs but which may be provided through special education as part of the public school program”).

⁶⁵ See, e.g., *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 192 (1982). Consistent with the purpose of the IDEIA, the test for determining whether an IDEIA-eligible child is being provided a FAPE is whether the child’s IEP is “reasonably calculated” to provide the child with “meaningful” educational benefits. An IEP is reasonably calculated to enable an eligible child to receive educational benefits within the meaning of *Rowley* if it is “likely” to produce progress rather than regression; *M.S. v. Bd. of Educ. of the City School Dist. of the City of Yonkers*, 231 F.3d 96, 103 (2nd Cir. 2000); and if the benefit to be provided is “meaningful.” See, e.g., *Walczak v. Florida Union Free Sch. Dis.*, 142 F.3d 119, 122, 130 (2d Cir. 1998) (the “door of public education” must be opened for child with a disability in a “meaningful way”); *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1121 (2d Cir. 1997) (requirements of FAPE under the IDEA are not satisfied if an IEP affords the opportunity for only “trivial advancement”); *Hall v. Vance Cty. Bd. of Educ.*, 774 F.2d 629, 630 (4th Cir. 1985) (same); *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988) (Congress envisioned that significant learning would transpire “so that citizens who would otherwise become burdens on the state would be transformed into productive members of society”). Neither the IDEIA nor CSEL require that the LEA provide a program which maximizes an eligible child’s educational potential. *Rowley*, 458 U.S. at 192 (purpose of the IDEIA is to “open the door of public education to [disabled] children on appropriate terms [rather than] guarantee any particular level of the education once inside”); *Lunceford v. District of Columbia Board of Educ.*, 745

with a qualifying impairment “needs” special education and related services depends on whether the child is receiving a meaningful educational benefit in the mainstream environment, whether with or without accommodations and notwithstanding that the child is not receiving “special education” or “related services” under the IDEIA.⁶⁶

H. THE CATEGORIES OF IDEIA IMPAIRMENTS AT ISSUE

Mr. and Mrs. X argue that the Student should be classified as eligible under the IDEIA on the basis of one or more of the following qualifying impairments: OHI, SED, SLD and Multiple Disabilities.⁶⁷ The features of each of category of qualifying impairment are discussed below.

1. Other Health Impaired (“OHI”)

To be classified as OHI under the IDEIA, the Student must have “limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment” as a result of a “chronic or acute health problem[...]” such as ADHD. The condition must also “adversely affect[...]” the Student’s “educational performance.” IDEIA Regulation, 34 CFR § 300.308(c)(9).⁶⁸

2. Serious Emotional Disturbance (“SED”)

F.2d 1577, 1583 (D.C. Cir. 1984) (IDEA “does not [require the LEA to provide] the best education money can buy”); *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989) (IDEA does not require the LEA to provide an education “that might be thought desirable by ‘loving parents’”); *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) (“proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the [IDEA].”); *T.F. v. Special Sch. Dist. of St. Louis Cty, et al.*, 106 LRP 33568 (8th Cir. 2006) (that proposed IEP does not satisfy the child’s parents is not dispositive; test is whether the LEA’s proposal provides an “individualized” FAPE in the LRE within the meaning of the IDEA).

⁶⁶ See, e.g., *Hood v. Encinitas Union School Dist., et al.*, 47 IDELR 213 (9th Cir. Apr. 9, 2007) (“Just as courts look to the ability of the disabled child to benefit from the services provided to determine if that child is receiving an adequate special education, it is appropriate for courts to determine if a child classified as non-disabled ... is receiving adequate accommodations in the general classroom – and thus is not entitled to special education services – using the [Rowley] benefit standard.”).

⁶⁷ In both the September 7, 2007 (HO1) and October 18, 2007 (HO2) requests for due process, Mr. and Mrs. X claim that the Student is IDEIA-eligible but do not identify the qualifying impairment that they contend the Student has or that the Hearing Officer should find. At the PHC in CTDOE 07-285, Ms. Spencer identified the qualifying impairment at issue as OHI or SED. She did not mention either SLD or Multiple Disabilities.

⁶⁸ See, e.g., *Letter to Cohen*, 20 IDELR 73 (OSEP 1993) (the “limited alertness” criterion is satisfied if the child’s heightened alertness to environmental stimuli results in limited alertness with respect to educational performance).

To be classified as SED under the IDEIA, the Student must (1) manifest one or more of the following characteristics (2) "over a long period of time and [3] to a marked degree that [4] adversely affects [her] educational performance:"

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

See IDEIA Regulations, 34 CFR § 300.8(c)(4)(i).⁶⁹ Mr. and Mrs. X claim that the Student is IDEIA-eligible on the basis of an SED Criterion B (inability to build or maintain satisfactory interpersonal relationships with peers and teachers) and/or Criterion C (manifests inappropriate types of behavior or feelings under normal circumstances). See Student Initial Brief at 13.

The IDEIA does not define the terms "for a long period of time" and "to a marked degree" as used in the SED definition. OSEP has interpreted the term "for a long period of time" to mean a period of at least 2 months during which preliminary interventions to address the presenting issues have proved ineffective and has interpreted the term "to a marked degree" to indicate degree of acuity or pervasiveness, and to refer to the frequency, duration or intensity of the behavior in comparison to manifestations of that behavior by peers. See, e.g., *Letter to Anonymous*, 213 IDELR 247 (OSEP 1989).

3. "Adversely Affects" and "Educational Performance"

The criteria for IDEIA-eligibility on the basis of both an OHI and an SED require findings that the impairment(s) at issue "adversely affects" the child's "educational performance." The IDEIA does not define the terms "adversely affect" or "educational performance."

With respect to an adverse effect, the IDEIA by its terms requires that the impairment have some negative impact on the child's educational performance that is measurable, quantifiable or observable, but does not require that that impact be

⁶⁹ If the behaviors underlying the referral for eligibility reflect "social maladjustment," the child would not be eligible under an SED designation. IDEIA Regulation, 34 CFR § 300.8(c)(4)(ii).

substantial, significant or marked.⁷⁰ There must, however, be some effect for which special education and related services are required.⁷¹

What constitutes “educational performance” is determined by each state. Unlike other states, Connecticut does not have a statute or regulation defining what constitutes “educational performance.”⁷² Education can be defined narrowly to refer to the acquisition of knowledge or it can be defined more broadly to refer to both the acquisition of knowledge and the development of skills and behaviors needed to succeed in life generally and become a productive member of society.⁷³ Given the remedial purposes of the IDEIA and CSEL, a broader rather than narrower definition of “education” should be applied, and the definition must include not only academics and acquisition of knowledge but also development of the myriad skills and abilities needed to be a productive member of society. The measurement of performance will depend on the aspect of “education” at issue.

4. Specific Learning Disability (“SLD”)

IDEIA Regulation, 34 CFR § 300.308(c)(10)(i) defines an SLD as:

a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do

⁷⁰ See, e.g., *Mr. and Mrs. I. v. Maine School Admin. Dist.* 55, 480 F.3d 1 (1st Cir. 2007) (rejecting argument that the term “adversely affects” includes requirement that the adverse affect be significant, substantial or marked).

⁷¹ See, e.g., *Alvin Indep. Sch. Dist. v. A.D. by Patricia F.*, 46 IDELR 221 (S.D. Tex. 2006), *affirmed Alvin Ind. Sch. Dist.*, 503 F.3d 378 (5th Cir. 2007) (manifestations of ADHD at school, including behavioral problems resulting in disciplinary proceedings, an expulsion and placement in an alternative educational setting, were not sufficient to establish eligibility on the basis of OHI where the student’s success in the public school setting showed that special education was not needed to enable the student to make educational progress).

⁷² See, e.g., *Mr. and Mrs. I. v. Maine School Admin. Dist.* 55, 480 F.3d 1 (1st Cir. 2007) (by regulation, Maine has defined the term “educational performance” to encompass “academic areas (reading, math, communication, etc.), non-academic areas (daily life activities, mobility, etc.), extracurricular activities, progress in meeting goals established for the general curriculum, and performance on State-wide and local assessments”); *Oakland Unified Sch. Dist.*, 507 IDELR 191 (SEA CA 1985) (defining educational performance to encompass academic performance, peer interactions, participation in class activities and compliance with directions and rules); *J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60 (2d Cir. 2000) (by regulation, Vermont has defined an “adverse affect” on “educational performance” to mean functioning at a level that is “significantly below expected grade or age norms, in one or more of the basic skills” which in turn are defined to include oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning and motor skills).

⁷³ See, e.g., CTDOE 07-252, *Student v. District* (SEA CT 2007) (citing to this broader definition reflected in the CTDOE’s *State Common Core of Learning* and *The Connecticut Framework*).

mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

IDEIA Regulation, 34 CFR § 300.308(c)(10)(iii) provides further that an SLD “does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.”

5. “Multiple Disabilities” Classification

Mr. and Mrs. X contend that the Student is IDEIA-eligible as a child with Multiple Disabilities because she exhibits disabilities in the areas of “emotional, attentional [sic] and learning.” (Student Initial Brief at 50.) As defined in the IDEIA Regulation, 34 CFR § 300.8(c)(7), a child with “multiple disabilities” is a child who has

concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

I. THE STUDENT’S CURRENT AND PRIOR PSYCHIATRIC CONDITIONS

Mr. and Mrs. X claim that the Student has an SLD in mathematics. They also argue that she is IDEIA-eligible under the classification of OHI, SED and/or Multiple Disabilities on the basis that she has one or more of the following psychiatric disorders as defined in the DSM-IV-TR:

Attention Deficit Hyperactivity Disorder, Combined Type (“ADHD”);
Reactive Attachment Disorder, Inhibited Type (“RAD”);
Post-Traumatic Stress Disorder (“PTSD”); and
Generalized Anxiety Disorder (“GAD”) or Anxiety Disorder – Not Otherwise Specified (“AD-NOS”)⁷⁴

⁷⁴ The DSM-IV-TR diagnostic scheme identifies five dimensions (each one an “Axis”) on which the clinician making the diagnosis can record pertinent information. Axis I is reserved for identifying the psychiatric disorder(s) that the person has. Axis II is reserved for recording psychiatric disorders that are not Axis I Disorders, such as personality disorders. Axis III is reserved for recording information about general medical or physical conditions that a person might also have. Axis IV is reserved for identification of psychosocial and environmental issues affecting diagnosis, treatment or prognosis (*e.g.*, family support structure). Axis V of the DSM-IV-TR classification is the Global Assessment of Functioning or “GAF” scale, which reflects the clinician’s judgment of the individual’s “overall level of functioning” with respect to psychological, social and occupational functioning as applicable, including school functioning. The scale ranges from 100 (no impairment; highest level of functioning) to 0 (greatest impairment; lowest level of functioning), and is divided into ten 10 point deciles. The clinician’s rating reflects an assessment over a defined period of time of the severity of the person’s symptoms and/or the person’s level of functioning. Dr. Sahani rated the Student at 40-45 on the GAF in his May 2007 psychiatric evaluation. (FF198e) A

The Board does not dispute that the Student has ADHD, RAD, and one or more anxiety disorders (*i.e.*, PTSD and GAD or AD-NOS). To understand the relationship between these psychiatric disorders and the IDEIA's classifications of OHI, SED, SLD and Multiple Disabilities, this Section describes the DSM-IV-TR diagnostic criteria for each of the Student's psychiatric disorders and provides some additional information.

1. ADHD (DSM-IV-TR Axis I Code 314)

A diagnosis of ADHD under the DSM-IV-TR requires a finding that over at least the six month period preceding the diagnosis the Student was manifesting the characteristics of one of the types of ADHD (as defined by diagnostic Criterion A) "to a degree that is maladaptive and inconsistent with developmental level." The Student has been identified as having ADHD, Combined Type. *See, e.g.*, FF21d. That DSM-IV-TR diagnosis is made where the person is manifesting characteristics of two distinct ADHD subtypes, ADHD (Predominantly Inattentive Type) and ADHD (Predominantly Hyperactive-Impulsive Type).

A person with ADHD (Predominantly Inattentive Type) is someone who manifests the following presentation (Criterion A(1) characteristics):

- (a) often fails to give close attention to details or makes careless mistakes in schoolwork, work or other activities;
- (b) often has difficulty sustaining attention in tasks or play activities;
- (c) often does not seem to listen when spoken to directly;
- (d) often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions);
- (e) often has difficulty organizing tasks and activities;
- (f) often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework);
- (g) often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books or tools);
- (h) is often easily distracted by extraneous stimuli;

rating in the 41-50 range describes the individual as follows: "Serious Symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational or school functioning (e.g., no friends, unable to keep a job). (HO3)

- (i) Is often forgetful in daily activities.

A person with ADHD (Predominantly Hyperactive-Impulsive Type) is someone who manifests the following presentation (Criterion A(2) characteristics):

- (a) often fidgets with hands or feet or squirms in seat;
- (b) often leaves seat in classroom or in other situations in which remaining seated is expected;
- (c) often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or youths, may be limited to subjective feelings of restlessness);
- (d) often has difficulty playing or engaging in leisure activities quietly;
- (e) is often “on the go” or often acts as if “driven by a motor;”
- (f) often talks excessively;
- (g) often blurts out answers before questions have been completed;
- (h) often has difficulty awaiting turn;
- (i) often interrupts or intrudes on others (*e.g.*, butts into conversations or games).⁷⁵

The DSM-IV-TR requires that two additional findings be made to diagnose ADHD. Diagnostic Criterion C requires that “[s]ome impairment from the symptoms be present in two or more settings (*e.g.*, at school [or work] and at home).” Diagnostic Criterion D requires “clear evidence of clinically significant impairment in social, academic or occupational functioning.”⁷⁶

An ADHD diagnosis must reflect observations regarding the person’s behavior across two or more settings. For this reason, the diagnostic process for ADHD typically involves asking parents, teachers and other adults familiar with the child to complete scales on which they rate the frequency and/or severity of various behaviors or

⁷⁵ A diagnosis of ADHD Inattentive Type is made where the person’s presentation reflects six of more of the characteristics of Criterion A(1) rather than Criterion A(2) and a diagnosis of ADHD Hyperactive-Impulsive Type is made where the person’s presentation reflects six or more of the characteristics of Criterion A(2) rather than Criterion A(1).

⁷⁶ The remaining diagnostic requirements are (Criterion B) the presence before age 7 years of some hyperactive-impulsive or inattentive symptoms causing impairment and (Criterion E) that the symptoms “do not occur exclusively during the course of “certain other types of disorders and “are not better accounted for by another mental disorder.”

characteristics of the child, as they see it in the settings in which they interact with the child. The child may also be asked to rate him or herself themselves on these dimensions.

Confrontational or defiant behaviors with adults and peers at home or at school are sometimes associated with ADHD, reflecting problems with impulse control, but are not specifically a diagnostic criterion or feature of the disorder.

2. RAD (DSM-IV-TR Axis I Code 313.89)

The primary diagnostic feature of a RAD under the DSM-IV-TR is the manifestation of a “[m]arkedly disturbed and developmentally inappropriate social relatedness in most contexts” which begins before age 5 years and which is consistent with the behaviors defined under diagnostic Criterion A for one of the two subtypes of the disorder: RAD (Disinhibited Type) and RAD (Inhibited Type).

The Student has been diagnosed with RAD (Inhibited Type). (FF247c) A person with RAD (Inhibited Type) will manifest characteristics of diagnostic Criterion A(1):

persistent failure to initiate or respond in a developmentally appropriate fashion to most social interactions, as manifest by excessively inhibited, hypervigilant, or highly ambivalent and contradictory responses (*e.g.*, the child may respond to caregivers with a mixture of approach, avoidance, and resistance to comforting, or may exhibit frozen watchfulness).⁷⁷

In addition to these characteristics, the diagnosis requires several additional findings. There must be a finding (Criterion B) that the presentation reflecting Criterion A is not accounted for “solely” by developmental delay and does not meet the criteria for a diagnosis of Pervasive Developmental Disorder.⁷⁸ There must also be (Criterion C) “a history of pathogenic care as evidenced by at least one of the following: (1) persistent disregard of the child’s basic emotional needs for comfort, stimulation, and affection; (2) persistent disregard of the child’s basic physical needs; (3) repeated changes of primary caregiver that prevent formation of stable attachments (*e.g.*, frequent changes in foster

⁷⁷ In contrast, A person diagnosed with RAD (Disinhibited Type) will manifest the characteristics of diagnostic Criterion A(2):

Diffuse attachments as manifest by indiscriminate sociability with marked inability to exhibit appropriate selective attachments (*e.g.*, excessive familiarity with relative strangers or lack of selectivity in choice of attachment figures).

⁷⁸ Pervasive Developmental Disorder is an autism spectrum disorder characterized by impairments in the development of reciprocal social interaction, verbal and nonverbal communication skills and imaginative activity, coupled with markedly restricted repertoire of activities and interests that are frequently stereotyped and repetitive.

care).” Criterion D provides that the presentation of symptoms follows and is presumed to be caused by that pathogenic care.⁷⁹

The DSM-IV-TR states further that:

The course [of a RAD] appears to vary depending on individual factors in child and caregivers, the severity and duration of associated psychosocial deprivation, and the nature of intervention. Considerable improvement or remission may occur if an appropriately supportive environment is provided. Otherwise, the disorder follows a continuous course. Indiscriminate sociability may persist even after the child has developed selective attachments.⁸⁰

A person with RAD will have difficulties with interpersonal relationships. Antisocial or aggressive behaviors are not necessarily characteristics of a RAD.

3. PTSD (DSM-IV-TR Axis I Code 309.81)

PTSD is a type of anxiety disorder. Criterion A for the DSM-IV-TR diagnosis of PTSD requires that the person have been exposed to a traumatic event:

- (1) in which the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of the self or others; and
- (2) to which the person, if a child when exposed, responded by manifesting disorganized or agitated behavior.

The diagnosis then requires that following the experience of that traumatic event, the person manifest the features of diagnostic Criterion B, C and D as follows.

Criterion B: The traumatic event is persistently re-experienced in one or more of the following ways: (1) recurrent and intrusive distressing recollections of the event, including images, thoughts or perceptions; (2) recurrent distressing dreams of the event; (3) acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes (including those that occur on awakening); (4) intense psychological

⁷⁹ Dr. Ciocca identified the Student as having “Reactive Attachment Disorder/Adoption Child Syndrome.” (FF218.2) “Adoption Child Syndrome” is not a recognized DSM-IV-TR diagnosis. The Hearing Officer understands the descriptor “Adoption Child Syndrome” to be essentially a means of explaining the etiology of the Student’s RAD. Not all children who are adopted develop RAD. Children who are adopted following exposure to the circumstances in Criterion C could develop an RAD.

⁸⁰ The Hearing Officer notes that Psychotherapist testified that she had diagnosed the Student with a “residual” RAD. (FF251d) The Hearing Officer interprets that qualification to mean that when Psychotherapist made the diagnosis, the Student was no longer exhibiting acute symptoms of an RAD but rather was presenting features of the disorder at times on a chronic basis.

distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event; (5) physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

Criterion C: Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma) as indicated by three or more of the following: (1) efforts to avoid thoughts, feelings or conversations associated with the trauma; (2) efforts to avoid activities, places, or people that arouse recollections of the trauma; (3) inability to recall an important aspect of the trauma; (4) markedly diminished interest or participation in significant activities; (5) feeling of detachment or estrangement from others; (6) restricted range of affect (*e.g.*, unable to have love feelings); (7) sense of a foreshortened future (*e.g.*, does not expect to have a career, marriage, children or a normal life span).

Criterion D: Persistent symptoms of increased arousal (not present before the trauma) as indicated by two or more of the following: (1) difficulty falling or staying asleep; (2) irritability or outbursts of anger; (3) difficulty concentrating; (4) hypervigilance; (5) exaggerated startle response.

Diagnostic Criterion E requires that symptoms reflecting diagnostic Criteria B, C and D above be manifested for more than 1 month. Diagnostic Criterion F requires that the symptoms “cause[] clinically significant distress or impairment in social, occupational, or other important areas of functioning.”

A diagnosis of PTSD can be made at any point in a person’s life. The manifestations of PTSD may vary depending upon the age at which the person experienced the traumatic event and the nature of the event. The nature and severity of the PTSD symptoms can vary over time. A person has “acute” PTSD when the duration of the manifestation of the symptoms is less than 3 months. A person has “chronic” PTSD when the duration of the manifestation of the symptoms is more than 3 months.

The Student has been diagnosed as suffering from PTSD associated with the sexual and physical abuse she suffered while in the care of the Birthmother and LegalFather prior to March 1998 and the physical abuse and neglect they allege she experienced while in the care of the LegalFather from May 1999 until April 2002. (FF7)⁸¹

The Student was first given the diagnosis of PTSD in 6th grade, or more than 6 years ago. (FF52d, 251d) Dr. Sahani in his May 2007 psychiatric evaluation identified the Student as having PTSD by “history” or “report.” (FF198e, B16 at 4) That qualification to the diagnosis indicates that Dr. Sahani concluded that the Student was not experiencing an acute phase of the disorder or otherwise manifesting to a clinically

⁸¹ The Board does not dispute that the Student had these experiences as reported by Mr. and Mrs. X (FF8) and for purposes of this Final Decision and Order the Hearing Officer assumes that the Student had those experiences as alleged.

significant degree any of the overt symptoms of PTSD at the time of the diagnosis/evaluation.

PTSD is associated with increased probability of developing a GAD and differential diagnoses include Adjustment Disorder and Acute Stress Disorder, as those psychiatric disorders are defined in the DSM-IV-TR.

4. Other Anxiety-Based Disorders

Dr. Ciocca diagnosed the Student as having Generalized Anxiety Disorder (“GAD”), which is a type of anxiety-based disorder. (FF217b) Dr. Sahani diagnosed the Student as having Anxiety Disorder, Not Otherwise Specified (“AD-NOS”), which is also a type of anxiety-based disorder. (FF198e) The characteristics of both disorders are discussed below.

a. GAD (DSM-IV-TR Axis I Code 300.02)

A diagnosis of GAD under the DSM-IV-TR is made when the person

(A) experiences “[e]xcessive anxiety and worry (apprehensive expectation) occurring more days than not for at least 6 months, about a number of events or activities (such as work or school performance)” that

(B) the person finds “difficult to control” and that

(C) is associated with “three (or more) of the following six symptoms (with at least some symptoms present for more days than not for the past six months):

- (1) restlessness or feeling keyed up or on edge;
- (2) being easily fatigued;
- (3) difficulty concentrating or mind going blank;
- (4) irritability;
- (5) muscle tension;
- (6) sleep disturbance (difficulty falling or staying asleep, or restless unsatisfying sleep).

The “anxiety, worry, or physical symptoms [must] cause clinically significant distress or impairment in social, occupational, or other important areas of functioning” (Criterion D) and must not “occur exclusively during PTSD,” reflect another DSM-IV-TR Axis I diagnosis or be caused by drug abuse, medication or a general medical condition. (Criteria E and F)

b. AD-NOS (DSM-IV-TR Axis I Code 300.00)

Under the DSM-IV-TR classification, a diagnosis of AD-NOS reflects disorders in which the person presents with anxiety or phobic avoidance that is “clinically

significant” but the presentation does not meet the DSM-IV-TR diagnostic criteria for GAD, a specific Anxiety Disorder (*i.e.*, a phobia), a Mood Disorder (*i.e.*, depression) or an Adjustment Disorder.

5. The Student’s Prior Psychiatric Diagnoses

At some point well prior to entering RDZ-HS, the Student had also been diagnosed as having a Dysthymic Disorder and an Adjustment Disorder. (FF52d, 251d) The Board also does not dispute that the Student at one point had either of these conditions. She has not carried either diagnosis since entering 9th grade. Neither Dr. Ciocca nor Dr. Sahani identified her as having these conditions in 2007. The fact that she no longer carries either diagnosis is potentially relevant to the determination of IDEIA eligibility. The characteristics of these conditions are discussed below.

a. Dysthymic Disorder (DSM-IV-TR Axis Code I 300.4)

This diagnosis was apparently made at some point shortly after the time the Student began living with Mr. and Mrs. X in 1998 by Treating Psychiatrist A from Mental Health Center A, the local mental health center with which Psychotherapist was affiliated. (FF52d) The features of Dysthymic Disorder in an adolescent are as follows: Diagnostic Criterion C requires a finding that over the 1 year period preceding the diagnostic evaluation, the person has “never been without the symptoms in Criteria A or Criteria B for more than 2 months at a time.” The Criterion A symptoms are:

Depressed or irritable mood for most of the day, for more days than not, as indicated either by subjective account or observation by others.

The Criterion B symptoms are:

Presence, while depressed, of two or more of the following: (1) poor appetite or overeating; (2) insomnia or hypersomnia; (3) low energy or fatigue; (4) low self-esteem; (5) poor concentration or difficulty making decisions; (6) feelings of hopelessness.

The symptoms must be manifesting to the extent that they are causing “clinically significant distress or impairment in social, occupational or other important areas of functioning.” (Criterion H)⁸²

b. Adjustment Disorder, Mixed

⁸² Criteria D, E, F and G require that the Criteria A and B symptoms not be associated with a Mood Disorder or a Psychotic Disorder or reflect the physiological effects of a substance or a general medical condition.

Psychotherapist made a diagnosis of Adjustment Disorder initially in 1998 or 2002. (FF251d) Adjustment disorder is characterized by a psychological response to an identifiable stressor that results in the development of clinically significant emotional or behavioral symptoms, such as depressed mood, tearfulness, or feelings of hopelessness or anxiety, irritation or agitation depending on the nature of the Adjustment Disorder, with the presentation of the symptoms not sufficient to satisfy the criterion for any other psychiatric disorder under the DSM-IV-TR classification. *See, e.g., Mr. I v. Maine School Administrative District No. 55*, 480 F.3d 1, 7 n. 3 (1st Cir. 2007) (describing Adjustment Disorder with Depressed Mood)

J. RELATIONSHIP BETWEEN DSM-IV-TR DIAGNOSES AND IDEIA ELIGIBILITY

Mr. and Mrs. X argue that *because* a diagnosis of ADHD, RAD or anxiety-based disorder under the DSM-IV-TR requires evidence of “severe impairments in multiple areas of functioning, most predominantly with regard to social, attentional and academic functioning” and because the Student has been carrying these DSM-IV-TR diagnoses since at least the 6th grade, it is “clear that [the Student] is [and has been IDEIA-eligible] since entering [the RDZ school] district.” *See* Student Initial Brief at 11, 13-14.

That argument is not correct. Simply having one, two or even all of these psychiatric disorders does not, in and of itself, make the Student eligible under the IDEIA. A child can have a DSM-IV-TR diagnosis without being IDEIA-eligible.⁸³ The DSM-IV-TR is a diagnostic system for classifying psychiatric disorders used in the United States. OHI, ED, Multiple Disabilities and SLD are *legal terms* that reflect the *IDEIA*’s classification of impairments for purposes of entitlement to the benefits of that law. Entitlement to benefits under the IDEIA hinges on satisfying the criteria for eligibility under the IDEIA as defined by Congress. These *IDEIA-defined terms* do not correspond to any particular DSM-IV-TR diagnosis. ADHD, RAD, PTSD, GAD and AD-NOS are *clinical terms* that reflect the DSM-IV-TR diagnostic classification scheme as defined by mental health professionals for use in designing mental health treatments.

⁸³ *See, e.g., Avon Board of Education*, 38 IDELR 229 (SEA CT 2003) (psychiatric diagnosis of a disorder with features that include “extreme emotional reactivity, instability of interpersonal relationships,” impulsive behaviors with a “high potential for serious negative consequences,” and “an identity disturbance and a degree of irrational thinking that bordered on the psychotic” not sufficient to establish IDEIA-eligibility given presentation at school); *Canton Board of Education*, 106 LRP 10887 (SEA CT 2005) (diagnosis of psychiatric disorder by psychologist and psychiatrist is not sufficient in and of itself to establish IDEIA-eligibility); *Capistrano Unified School District*, 106 LRP 63886 (SEA CA 2006) (the definition of SED under IDEIA is more restrictive than the criteria for diagnosing an emotional disturbance, such as a Dysthymia, in a mental health setting; IDEIA requires that the psychiatric disorder have an “adverse affect” on educational performance, among other things, to satisfy the SED eligibility criteria; IDEIA-eligibility not established where symptoms of the diagnosis are not correlated to the adverse affect criteria); *Fauquier County Public Schools*, 20 IDELR 579 (SEA VA 1993) (emotional disturbance in the clinical sense is different from an SED under the IDEIA; a child may suffer from an emotional disturbance clinically but not educationally so as to be IDEIA-eligible).

These DSM-IV-TR clinical diagnostic classifications do not correspond to any particular IDEIA qualifying impairments. Accordingly, having one or more of these psychiatric disorders does not, in and of itself, establish IDEIA-eligibility.

K. THE WEIGHT AFFORDED TO ASPECTS OF DR. CIOCCA'S EVALUATION, REPORT AND TESTIMONY

A key piece of evidence on which Mr. and Mrs. X rely to support their claims for relief is Dr. Ciocca's evaluation, report and testimony. The Hearing Officer finds credible and accords due weight to those aspects of Dr. Ciocca's evaluation, report and testimony which reflect the results of her assessment of the Student's intellectual functioning, achievement levels, executive functioning, memory, attention/concentration and other related cognitive functions, and the conclusions that she reached regarding those matters. Dr. Ciocca's Report and related testimony on these points demonstrate that the Student's intellectual functioning is within the average range, that her intellectual skills are relatively evenly developed, that her achievement levels are commensurate with her intellectual abilities, that she manifests an executive dysfunction consistent with a diagnosis of ADHD, and that her difficulties in mathematics are associated with that executive dysfunction. The Hearing Officer's determination, explained more fully subsequently herein, (1) that the Student is IDEIA-eligible under a classification of OHI on the basis of ADHD and (2) that her mathematics difficulties reflect her ADHD rather than a SLD are largely premised on Dr. Ciocca's report and testimony.

For the reasons set forth below, however, the Hearing Officer finds much less credible and assigns relatively little weight to those aspects of Dr. Ciocca's evaluation, report and testimony that are offered by Mr. and Mrs. X to support their claim that the Student is IDEIA-eligible on the basis of an SED and/or an SLD and their claim that she requires a residential placement, and specifically a placement at KSchool, to obtain a meaningful educational benefit.

1. Adequacy of Scope of Information on which Dr. Ciocca Relied

a. Contacting Other Professionals

Dr. Ciocca was retained to perform a neuropsychological evaluation to identify the Student's cognitive strengths and weaknesses. (P37 at 1) Her report contains sweeping clinical and educational recommendations. Without regard to whether the applicable professional standard for a neuropsychological evaluation requires that Dr. Ciocca do so, given the sweeping nature of her recommendations, as part of her assessment Dr. Ciocca should have contacted (1) Psychotherapist (the Student's treating psychologist of 9.5 years), (2) the Student's treating physician/psychiatrist (who had prescribed her the medication she was taking to manage her psychiatric disorders), and (3) staff at RDZ-HS (who had daily contact with the Student over a long period of time and were well situated to describe her day-to-day presentation at school). Obtaining information from those sources would have helped Dr. Ciocca to put the information she was receiving from the Student and Mrs. X, her own observations and the results of the

tests she administered to the Student into perspective and enabled her to test the validity of the formulations, conclusions and recommendations regarding clinical and educational matters stated in her report. Her failure to avail herself of these available sources of information explains why Dr. Ciocca's key conclusions and recommendations in support of an SED classification and residential placement do not seem appropriate given the Student's presentation as reported by others, and diminishes the validity of her conclusions and formulations.⁸⁴

b. Obtaining School Records

Dr. Ciocca acknowledged the importance of obtaining an adequate set of records as part of the assessment process. "Any records, as I always tell anybody that provides them to me, would be helpful to the assessment process; the more the better" (Ciocca 12/14 Tr. at 135-136). Notwithstanding that statement, Dr. Ciocca failed to request that she be provided with an appropriate set of records of the Student's performance at RDZ-HS. Dr. Ciocca was given the following documents to review (FF216a):

Dr. Black's May 19, 2004 psychiatric evaluation report (P4)
RDZ-HS 11th grade "report card" for first marking period (November 9, 2006)⁸⁵
January 17, 2007 IDEIA referral form completed by SpecEdDirector (P29)
Minutes of the February 9, 2007 IEP team meeting (B3)
The RDZ-HS Principal's March 28, 2007 letter to Mr. and Mrs. X (B6)
SchoolPsychologist's April 2007 evaluation report (B15)
SpecEdEvaluator's May 2007 evaluation report (B14)
Dr. Sahani's May 2007 evaluation report (B16)

As reflected in the discussion of these items in her Report (P37 at 2-3), Dr. Ciocca did not draw any information of clinical significance from the eligibility referral form (P29), the Principal's letter (B6) or the minutes of the February 9, 2007 IEP team meeting (B3). However, these documents coupled with Mrs. X's expressed dissatisfaction with RDZ-HS and report that the Student was "being pushed through" school, would collectively

⁸⁴ See, e.g., *Williams Unified School District and Colusa County Office of Education*, 26 IDELR 1198 (SEA CA 1997) (declining to place much weight on recommendation for residential placement made by evaluator retained by the parents where evaluator relied on written and oral information provided by the parent and the student but did not contact the student's therapists or school personnel); *Alvin Ind. Sch. Dist.*, 503 F.3d 378 (5th Cir. 2007) (District Court properly found that the testimony of the child's teachers who observed the child's educational progress first hand were more reliable than the testimony of the child's physicians who based their opinions on "faulty information culled from isolated visits, select documents provided by [the parent] and statements from [the parent] about what she believed was happening at school"); *R.B. v. NAPA Valley Unified School Dist.*, 48 IDELR 60 (9th Cir. 2007), *affirming*, *RB v. NAPA Valley Unified Sch. Dist.*, 43 IDELR 188 (N.D. Ca. 2005) (in an SED eligibility determination case, affirming hearing officer's decision to discount the weight of testimony offered by an expert witness, where there was conflicting evidence on the issue that the student could not form satisfactory relationships with teachers and where the expert witness did not observe the student at school or speak to school personnel, relied "in large part" on mother's reports of school incidents and did not review grades in any detail).

⁸⁵ The November 9, 2006 "report card" reviewed by Dr. Ciocca does not appear to be included in the record. Exhibits B32 and B34 appear to be samples of progress reports.

have alerted Dr. Ciocca to the fact that a dispute was brewing between Mr. and Mrs. X and RDZ, the nature of the dispute and the potential role of her evaluation in that dispute.⁸⁶

The only actual record of the Student's performance at school reviewed by Dr. Ciocca was the Student's first semester 11th grade report card or progress report. Since Dr. Ciocca did not review the grades on that report card or progress report in the context of the Student's overall transcript, all Dr. Ciocca had was a snapshot of her performance at that time. Dr. Ciocca would have no way to know, based on that snapshot, that although the Student was failing her Geometry class, the grades she had earned to that date in the 11th grade exclusive of geometry were on average the strongest grades that the Student had attained in high school to date or that she had transitioned relatively successfully from less rigorous "G" level to more rigorous "A" level classes the prior year. (FF74, 87, 104, 105) Once again, without regard to whether the applicable professional standard for a neuropsychological evaluation required that she request a more complete set of school records, given the nature and scope of Dr. Ciocca's recommendations about educational programming and the Student's educational needs having that additional documentation would have helped Dr. Ciocca put the information Mr. and Mrs. X chose to provide her, her own observations and the results of the tests she administered to the Student into perspective and enabled Dr. Ciocca to test the validity of her formulations, conclusions and recommendations regarding educational and clinical issues.

c. Obtaining Prior Evaluations.

Dr. Ciocca also did not review the prior evaluations of the Student by E/MS(SchoolPsychologistA) and E/MS(SchoolPsychologistB). (FF216a) It is not clear from Dr. Ciocca's report or her testimony that she was even aware of the 1998 E/MS(SchoolPsychologistA) evaluations (FF14-15; P5; FF20, 21, 22; P8) which had ruled out an SLD as the explanation for the Student's academic difficulties at the time and which showed a clear distinction in the Student's manifestation of her ADHD between school and home. (FF14a-14f, 16, 17, 21a-21e) That difference in presentation was also reflected in the results of the Connors scales completed by Mrs. X as part of Dr. Ciocca's evaluation in 2007 and the ratings of the Student's 11th grade teachers on the Connors scales administered to them by SchoolPsychologist as part of his evaluation in 2007. (FF194, 216d) Dr. Ciocca's report makes clear that she was aware of the E/MS(SchoolPsychologistB) evaluation.⁸⁷ She noted in her report Dr. Black's statement in his report of the results of the intellectual and achievement tests administered by E/MS(SchoolPsychologistB). (P37 at 1-2) Dr. Black did not, however, provide the actual results of the achievement testing in his own report. (FF52c) Accordingly, the only way to determine what the actual results were was to look at

⁸⁶ Dr. Ciocca testified that she remembered Mr. and Mrs. X mentioning during the assessment that they were in the process of evaluating a special education hearing. (Ciocca 12/14 Test. at 159)

⁸⁷ That evaluation is described at FF45 and provided in P18.

E/MS(SchoolPsychologistB)'s report. Although aware of the E/MS(SchoolPsychologistB) evaluation, Dr. Ciocca chose not to request it be provided to her to see exactly what the Student's performance on the achievement and intellectual testing was and the basis for Dr. Black's statement in his report that the achievement testing done by E/MS(SchoolPsychologistB) showed "various isolated gaps in her knowledge" rather than an SLD. (FF52c)

Having not reviewed the prior reports, Dr. Ciocca had no opportunity to compare the Student's results on specific components of these evaluations with her own results as another means to test the validity of her formulations, conclusions and recommendations.

d. Behavioral Observations

In reaching her formulations, conclusions and recommendations, Dr. Ciocca relied in part on her interactions with and observations of the Student, all of which took place in a highly structured environment in a set of limited 1:1 interactions that were goal-oriented and do not reflect the Student's natural, day-to-day environment. A person's reactions to and behaviors in such an environment as observed and experienced by an evaluator provide important clinical diagnostic information. However, determining the extent to which the person manifests the behaviors and reactions seen by the evaluator in the evaluation when the person is in his/her more natural and day-to-day environments (*e.g.*, school, home, work, gym) requires additional information. It is for this reason, for example, that an evaluator might seek as part of an evaluation to observe the child in his/her natural environment (*e.g.*, school, home, community) or to speak with professionals working with the child in these settings. Since the Student had already been withdrawn from RDZ-HS, Dr. Ciocca could not observe her there. Dr. Ciocca failed, however, to avail herself of information from sources who had actually observed and interacted with the Student at RDZ-HS – the environment that Dr. Ciocca's report claims is inadequate.

Dr. Ciocca's failure to assure that she had access to important and meaningful information regarding the Student from the Student's treating psychologist and educators and had access to adequate school records, coupled with her reliance on Mrs. X as a source of information regarding the Student's circumstances, explains why some of Dr. Ciocca's recommendations simply fail to reflect the Student's circumstances when viewed with consideration to a broader information base that Dr. Ciocca failed to access. For example, Dr. Ciocca's recommendation that a behavior management plan in the form of a "token economy" be implemented for the Student to "reduce the frequency of negative, angry outbursts, inappropriate comportment for the circumstances and enhance response to authority figures" (FF218.4) seems inappropriate and unnecessary given the Student's age, the nature of her impairments, and her actual presentation and performance at RDZ-HS as reported by witnesses who did not describe the Student as having these problems. *See, e.g.*, 80, 81, 83d, 83e, 83h, 84i, 84j, 85b, 85d, 85e, 85g, 85i, 85j, 86a, 109,

110, 84v, 85k, 78b, 84k, 84m, 84o, 84s, 84v, 86g, 86i, 102, 89.⁸⁸ Similarly, no other professional involved with the Student – including Psychotherapist (who had been treating her over nearly a decade), Dr. Black in 2004, Dr. Sahani in 2007 (as reflected in his report), E/MS(SchoolPsychologistA) in 1998, E/MS(SchoolPsychologistB) in 2004, SchoolPsychologist in 2007, and Title1Teacher10/11 in 2006 and 2007 – opined that the Student required a residential placement for any reason, whether clinical or educational.

2. Certain Aspects of Dr. Ciocca's Report

Dr. Ciocca's report starts with a statement that the purpose of the evaluation was to understand the Student's relative *cognitive* strengths and weaknesses. (P37 at 1) The Hearing Officer also finds that overall Dr. Ciocca's report is written in manner which, rather than discussing the Student's relative strengths and weaknesses, highlights and suggests weaknesses and deficiencies where there do not appear to be any. This is particularly true with respect to aspects of the report pertinent to an IDEIA-eligibility determination based on SED and the need for a residential placement as follows.

1. As part of her evaluation of personality functioning, Dr. Ciocca administered the MMPI an objective personality assessment tool. A person taking the MMPI reviews a list of statements and for each statement indicates whether the statement is true or false as applied to him/her. The person's response pattern is then compared to the response patterns of individuals taking the test who have been diagnosed with various psychiatric disorders to see if the test-taker's response pattern matches the response patterns individuals with known or identified disorders. Dr. Ciocca's report indicates that the Student's MMPI profile was valid, provided "useful clinical information" and did not show the presence of any diagnosable psychiatric disorders. (FF216k) Notwithstanding that result, the report then suggests that the Student's MMPI results are suspect because of a response style which "seemed to suppress the clinical significant [sic] of her clinical scales." (FF216k) The statement regarding the "response style" appears to be based on the Student's score on one of the MMPI's built-in validity indicator scales. Since Dr. Ciocca did not report either the validity scale at issue or the Student's score on the validity scale, it is not possible from the report to make any independent determination about

⁸⁸ Psychotherapist commented that the Student was "beyond benefiting from a behavioral management plan in terms of a token economy." (FF251w) A "token economy" is a specific type of behavior modification program that is typically used with younger children and/or children with severe cognitive and behavioral disorders to extinguish problematic behaviors and encourage development of specific skills and behaviors. To the extent that Dr. Ciocca meant a "positive reinforcement" mechanism (which is also a type of behavior modification program), her use of the technical term "token economy" is inexplicable given her experience as an evaluator and her professional credentials. In an apparent attempt to shore up the credibility of Dr. Ciocca's recommendation that a token economy be implemented with the Student, Mr. and Mrs. X (Reply Brief at 6) equate the "token economy" with Psychotherapist's testimony that should the Student return to RDZ-HS in the future, she would benefit from having a regular check-in structure with adult staff members to assess her level of emotionality and anxiety over the course of the day. That type of "check-in" is not a token economy.

the merits of Dr. Ciocca's suggestion that the Student's MMPI profile is suspect given the result on the validity scale.⁸⁹ The only legitimate conclusion that can be drawn from the way the MMPI result is reported (P37 at 20) is that the Student's profile (*i.e.*, MMPI result) was valid and showed no diagnosable psychiatric disorders. *See* FF 247a.

2. As part of her evaluation of personality functioning, Dr. Ciocca also administered the House-Tree-Person test, a projective test of personality. This type of test reflects a particular theory of personality and psychopathology that focuses on unconscious emotional dynamics and conflicts. In this test, the person is asked to draw a person, a tree, a house and a family scene. The resulting drawings are then reviewed to determine the meaning of various features of the drawings. The theories underlying these types of tests posit that characteristics of the drawing such as placement of the person on the page, size of the person relative to the page, whether the person's feet are on the ground in the picture, whether certain body features are emphasized or missing have clinical significance. Dr. Ciocca's discussion of the results of this projective testing starts with an obvious statement – that the drawings “reflected greater unconscious conflict and trauma than [the Student] was willing to endorse on the surface.” (FF216l) In other words, Dr. Ciocca reports that the projective drawing tests elicited unconscious conflicts and dynamics that were not evident in the objective personality assessment administered by Dr. Ciocca (the MMPI) or concerned topics that the Student was reluctant to discuss in her clinical interview with Dr. Ciocca (who was a stranger to her). That is not surprising (or particularly significant) given the difference in the theories underlying the two tests and the way the two types of tests work. However, when the discussion of the MMPI results is read together with this description of the projective drawings, the implication is that the MMPI result (showing no significant psychiatric symptoms or diagnosable disorders) is less reliable than the results of the projective testing (which revealed unconscious conflicts). In that regard, Dr. Ciocca offered dramatic testimony that the Student's drawings were so “poignant” that she shared them with her colleagues for “learning purposes.” (FF247b) However, other than stating the obvious about the nature of projective testing, Dr. Ciocca's Report (P37 at 20-21) actually does not report the features of the Student's drawings that she found had clinical significance. Accordingly, there is nothing in Dr. Ciocca's report that would allow a reader familiar with these types of tests to assess the validity of Dr. Ciocca's

⁸⁹ The MMPI has several built-in validity indicators. Depending upon the person's score on the validity indicators, the resulting MMPI profile could be deemed to be invalid. The person's score on a validity indicator scale in and of itself can provide useful clinical information. For example, one of the validity indicators assesses the extent to which the person taking the test is intentionally and deliberately presenting themselves in a favorable light. Scores at one level on a validity scale are associated with a variety of personality characteristics that are distinct from the personality characteristics associated with scores at a different level on the scale.

conclusions regarding the outcome of the projective testing.⁹⁰

3. Pages 5 to 10 of Dr. Ciocca's Report (P37) provide a conglomeration of information obtained by Dr. Ciocca from a Neurodevelopmental Questionnaire she used as part of her clinical interview process. Dr. Ciocca interviewed both Mrs. X and the Student. Most of the information provided in this section of the report appears to have been provided by Mrs. X. Dr. Ciocca's report does not clearly state the source of the descriptors of the Student discussed in this section of the report. Rather, Dr. Ciocca's report regarding these results is worded such that it is very difficult (if not impossible) to separate those items that reflect Mrs. X's description of the Student and the Student's description of herself, and that reflect current rather than from historical information.⁹¹ Mrs. X's description of the Student and the Student's own self-description each provide useful information for diagnostic purposes and each should be reported. The usefulness of that information, however, is lost when the two descriptions are blended together and reported in the way Dr. Ciocca reported them.
4. The Hearing Officer also notes that Dr. Ciocca's testimony regarding an SLD relies in part on what her report describes as statistically significant differences between the Student's scores on various tests. *See* FF216e (P37 at 13 -comparing WAIS-III intelligence quotient and index scores to each other); and FF216j (P37 at 20- comparing WIAT-II achievement subtest and composite index scores to each other). The purpose of making a statistical comparison is to assure that the difference in scores is meaningful and does not reflect chance. The generally recognized convention in the clinical context is to report differences at the 0.01 or 0.05 level of statistical significance. Putting aside the validity for diagnostic purposes of the actual comparisons that Dr. Ciocca made (*i.e.*, achievement score to achievement score), Dr. Ciocca is reporting differences at the 0.15 level, which is a less rigorous standard than the 0.01 and 0.05 levels. Dr. Ciocca is presumably aware that the 0.15 level is less rigorous. She does not discuss in her report why she chose a less rigorous level to report significance or alert the reader in any meaningful way to the fact that she was doing so. A reader of the report not familiar with measures of statistical significance in the clinical context may not recognize the significance of reporting results at the 0.15 rather than 0.01 or 0.05 level, and may conclude that a difference at the 0.15 level is in

⁹⁰ In addition, other than the statements in her report (P37 at 20) "Projective drawings ... others intentions" and "She struggled with ... potentially harmful," the statements in the two paragraphs of the report that purport to describe the results of the projective testing appear to be overall conclusions reached by Dr. Ciocca regarding the Student and are not conclusions that can be drawn solely from looking at the drawings themselves.

⁹¹ The information reported at pages 5-10 of the evaluation report is gathered in the clinical interview portion of the assessment. The information reflects the view of the reporting parties and Dr. Ciocca makes no judgment as to its accuracy. (Ciocca 12/14 Test. at 124)

fact a statistically significance difference in the clinical context when in fact it is more likely to be due to chance.⁹²

3. Dr. Ciocca's Concern that the Student Presented a Danger to Others

No other clinical and educational professional working with the Student expressed any concerns that the Student presented a danger to others. More specifically, Psychotherapist (who has worked with the Student for 9.5 years) did not express any concerns that the Student presented a danger to others, and testified that the Student has “never threatened or acted out in a harmful or dangerous aggressive way towards any person.” (FF251g) In contrast to all of these professionals, Dr. Ciocca – based on her limited interactions with the Student and relying on an inappropriately narrow set of information in the circumstances – recommended a residential placement because of a purported concern that the Student presented a danger to others.⁹³

Dr. Ciocca's report (P37) on its face, however, is devoid of any such expressed concern which was presented for the first time at hearing. Rather Recommendation 3 of Dr. Ciocca's report (P37 at 22-23) states that the “intensity of a residential program would be most fruitful in addressing” the impacts of her psychiatric disorders on her “day to day functioning and social interactions in general” because absent that “constant structure” 24/7 “it would be relatively simply for [the Student] to revert to maladaptive behaviors.” (Recommendation 3 is reproduced in FF218.3)

At hearing, Dr. Ciocca stated that Recommendation 3 reflected her conclusion that a residential placement was “necessary” because the Student presented a risk to others and needed to be carefully supervised 24 hours/day 7 days/week to minimize the risk that she would be triggered to act out aggressively by people who may not be aware of her sensitivities. (FF249, 249a-249d) If Dr. Ciocca was concerned that the Student

⁹² See, e.g., Sattler, J., Assessment of Children's Intelligence and Special Abilities (2d Ed.) (Allyn and Bacon, Inc. Boston 1982) at 20 (“As part of statistical analysis, the results are usually analyzed to determine the extent to which the findings differ from those to be expected on the basis of chance. Conventions establish the .05 level as the minimum significance level indicating that observed differences are real. This level means that such results would occur 5 percent of the time by chance. More stringent levels of significance can be reported, such as the .01 and .001 levels.”); *Ottaviani, et al.v. State University of New York, et al.*, 875 F.2d 365, 371 (2d Cir. 1989) (“Statistical significance is a measure of the probability that a disparity is simply due to chance rather than any other identifiable factor ... Because random deviations from the norm can always occur ... statisticians do not consider slight disparities between predicted and actual results to be statistically significant ...”).

⁹³ More specifically, Dr. Ciocca testified that the features of the Student's “psychological profile” were such that in an “unsupervised environment” the Student “*might* potentially become a danger to other people” and, for example, “*could* come to school and threaten somebody.” See Ciocca 12/14 Test. at 166-67 (emphasis added). Dr. Ciocca appears to be referencing the Glass Punching Incident as evidence to support her conclusion regarding the Student's potential to act out aggressively. As the discussion of the evidence regarding that Incident indicates (see Conclusion of Law N at Claim 16), Dr. Ciocca's reliance on that Incident to support her conclusion is misplaced.

presented a risk of harm others and required a residential placement for that reason, she should have stated that conclusion and finding clearly in her report and explained the basis for that statement. She did not do so.

Moreover, presumably Dr. Ciocca would have reported such a clinically significant concern to Mr. and Mrs. X by no later than their July 25, 2007 feedback session so that they could make arrangements to assure the Student's safety during the summer of 2007 when she was not attending KSchool or any other residential program and was in the community at large. Presumably, had Dr. Ciocca reported that concern to Mr. and Mrs. X at the July 25, 2007 feedback session, they would have reported to the August 31, 2007 IEP team meeting Dr. Ciocca's concern that the Student needed a residential placement because she presented a risk of harm to others. They made no such report.

4. Dr. Ciocca's Formulation About a Residential Placement

Dr. Ciocca's statement in Recommendation 3 of her report that a residential placement "would be most fruitful" to address "maladaptive behaviors" is not by its terms, a determination that a residential placement is needed to enable the Student to achieve a meaningful benefit from her educational program. (FF218.3) In their Initial Brief at 30, Mr. and Mrs. X state that "Dr. Ciocca testified that she felt that [the Student] required residential placement so that she could receive supervision given the fact that she could be triggered to act in an inappropriate way without anyone's knowledge as a result of her inner turmoil. [*Citing Ciocca 12/14 Tr. at 90*]..."

Dr. Ciocca agreed that there was a difference between "supervision," "therapeutic interactions" and "therapy" and that a program that did not provide all three to the Student would not be "complete." She then testified that it was not necessary, however, for the Student's residential placement to provide all three components and that it would be sufficient for the placement to provide supervision with the therapy provided by an outside provider in coordination with the supervision and therapeutic interactions delivered at the residential placement. (FF249c, testimony summarized)

Dr. Ciocca's suggestion that the Student needs a residential placement because of her potential to act out and threaten other people but that the placement does not need to provide or include an integrated therapy component (*i.e.*, individual, group and/or family therapy as opposed to supervision or therapeutic interactions with adults who can model appropriate behavioral responses on an *ad hoc* basis as situations arise) to address those concerns is nonsensical and appears designed to justify the placement at KSchool, which is not a clinical treatment facility but rather is a college preparatory boarding school.⁹⁴

⁹⁴ Dr. Ciocca in her testimony (and report) failed to explain why, as suggested in Recommendation 3, a residential placement was necessary to address ADHD-related impacts on the Student's education.

L. WHETHER THE STUDENT IS ELIGIBLE ON THE BASIS OF OHI

Based on the information available at the time (primarily Dr. Ciocca's report), the Student should have been identified at the August 31, 2007 IEP team meeting as IDEIA-eligible under a classification of OHI based on her ADHD and its related executive dysfunction. At that meeting, RDZ erred in concluding that the Student was not IDEIA-eligible and denied her a FAPE by failing to provide her an IEP that would address the impacts of her ADHD on her educational performance.

Through October 2006 – notwithstanding that she was showing ADHD-related symptoms in school – the Student was progressing at the same rate as her peers in her mainstream program, earning credits toward graduation with a regular high school diploma and receiving meaningful educational benefits from her program (reflected academically in passing grades, advancement from grade to grade, advancement from less rigorous courses to more rigorous courses). *See, e.g.*, FF87, 89, 92a, 104, 105, 125, 142a, 142c, 143, 144, 150, 151. She was also growing and developing socially and emotionally and had been elected to a position of leadership in her Ag-Ed programs. *See, e.g.*, FF80, 81, 83d, e, h, i, 84i, j, k, l, 85b, c, d, e, g, i, j, 86a; 141c.⁹⁵

There is no dispute that the Student has had a longstanding weakness in math. The Student's progression in the RDZ-HS math curriculum demonstrates that she is capable of learning math, but also shows that as the math that the Student was required to complete became more complex her performance started to slide. Between 9th and 10th grades she was able to move from a less rigorous on-grade math course to a more rigorous on-grade math course (Algebra 1). She passed Algebra 1 in the 10th grade course even though she was not receiving any special education. (FF74, 87, 104) However, the Student just *barely* passed the course with a D. (FF104) By the end of the 1st marking period of 11th grade she was failing her Geometry class, an outcome that MathTeacher11 attributed to a weak foundation in Algebra I. (FF140a) Title1Teacher10/11 concurred in that assessment. (FF84e) While determinations made at various points that the Student's math weaknesses reflected gaps in her knowledge may have been correct previously, given her Title 1 support at RDZ-HS and the passage of time that explanation is no longer adequate as an explanation for her increasing math difficulties. The Hearing Officer finds credible those aspects of Dr. Ciocca's evaluation, report and testimony which detail the link between the Student's ADHD-related

⁹⁵ In her 11th grade year at RDZ-HS, the Student's first semester final exam grades and second marking period first semester grades were lower relative to her performance in her courses in the first marking period of the first semester, with the result that her overall first semester grades were dragged down. (FF150) Discussions at home regarding transferring to a private school appears to have been a factor in the Student's drop in grades. AgEdTeacher10/11 and Title1Teacher10/11 both reported that starting in December of 2006, the Student was more agitated and was manifesting more difficulties with the work at school. At this point the Student began reporting that Mr. and Mrs. X were planning to remove her from RDZ-HS and she was upset about that prospect. (FF147, 148, 149) In addition, after the February 9, 2007 IEP team meeting, Title1Teacher10/11 became aware that Mrs. X had directed the Student to list out all of the bad and negative experiences she had had at RDZ-HS. (FF162a-b)

executive dysfunctions and her math performance. (FF216f, 216h, 217a, 246a-246d) Based on that evidence, along with Title I Teacher's testimony about her work with the Student over the 10th and 11th grade years (*see, e.g.*, FF84a, b, c, r, s; 127, 133), the Hearing Officer finds that the Student is IDEIA eligible under a classification of OHI based on her ADHD and its related executive dysfunction, which are now adversely affecting her educational performance, specifically in math, and which now require special education and related services.

M. WHETHER THE STUDENT IS ELIGIBLE ON THE BASIS OF AN SLD IN MATHEMATICS

The Student is not IDEIA-eligible on the basis of an SLD in mathematics.⁹⁶ To support their claim that the Student is IDEIA-eligible on the basis of an SLD in mathematics, Mr. and Mrs. X cite to undisputed evidence that the Student's performance in math over her educational career at RDZ schools has been weak relative to her performance in other subjects.⁹⁷ That evidence does not, however, explain the cause of the Student's weaknesses in math or establish the existence of a "severe discrepancy" between educational performance and measured intellectual ability in math. The presence of that discrepancy along with the requirement that the child exhibit a disorder in one or more of the basic psychological processes as indicated by a diminished ability to listen, speak, read, write, spell or do mathematical calculation or reasoning, is required to establish an SLD in mathematics.⁹⁸ The CTDOE *Guidelines for Identifying Learning*

⁹⁶ Mr. and Mrs. X claim that the Student has "continuously exhibited a disability in the area of both written language and math since first entering the district in 1998." (Student Initial Brief at 46-47) There is no dispute that the Student has manifested difficulties with written assignments relative to her other abilities over the course of her educational career in RDZ. *See, e.g.*, FF13, 42a. Mr. and Mrs. X have not, however, offered evidence demonstrating that those difficulties reflect an SLD. Dr. Ciocca made no such diagnosis and neither the SpecEdEvaluator evaluation nor any other evaluation establish an SLD in writing.

⁹⁷ In their Initial Brief at 46-47, Mr. and Mrs. X cite to the following evidence they claim establishes an SLD in math: (1) The Student's teachers identified math weaknesses in both 1998 and 2002, referring her for an IDEIA-evaluation on both occasions in part due to that concern; (2) The Student failed Geometry in 11th grade, a result her teacher claims of a poor foundation in Algebra 1 which she passed in the 10th grade with a 66; (3) The Student "continued to fail geometry" in the 11th grade despite the fact that her teacher was working with her in Title 1 support; (4) The Student scored at the Basic Level on the CAPT when she took it in the 10th grade and did not meet Goal on math when she took it again in the 11th grade; (5) After failing in and withdrawing from geometry in the 11th grade, the Student began auditing Algebra 1 and earned the same grades in that class as she had earned the year before when she had taken it for credit; (6) On the PSAT, which she took in October 2007 (when she was no longer at RDZ-HS) she attained a score at the 15th percentile, which means that her performance was better than only 15% of her peers taking the PSAT; (7) KSchool notes that the Student has weakness in math; and (8) The Student showed weaknesses in multiplication and division on the October 2004 and May 2007 administrations of the KM-R, and showed a decline in performance in the computation factor of the KM-R.

⁹⁸ Mr. and Mrs. X did not identify an SLD as a ground for eligibility in their September or October 2007 requests for due process, or at the PHC in CTDOE 07-285 when asked expressly to identify the impairments that were being claimed. To the extent that the District was asked at the August 31, 2007

Disabilities (at 23) provides that an SLD can be concomitant with another exceptionality and that the diagnosis of SLD should only be given if the SLD is the primary problem. Dr. Ciocca's report makes clear that the primary problem underlying the Student's math weaknesses is ADHD-related executive dysfunctions. (FF217a *citing* P37 at 22)

First, Dr. Ciocca's report identifies the Student as having a "Mathematics Learning Deficit" (a term which is not used in either the DSM-IV-TR or the IDEIA). At hearing, however, she testified that when she used the term "Mathematics Learning Deficit" she meant "Mathematics Learning Disability." *See, e.g.*, Ciocca 12/14 Test. at 128-131. Presumably, Dr. Ciocca would have been familiar with the correct clinical terminology for a learning disability under at least the DSM-IV-TR classification. A reader of her report could reasonably assume that Dr. Ciocca's choice of the term "deficit" rather than "disability" or "disorder" was deliberate and was intended to convey that she did not find that the Student had a learning disability in math. At hearing, however, Dr. Ciocca testified that when she used the term "Mathematics Learning Deficit" she was really referring to a mathematics learning disability. (FF248) The Hearing Officer agrees that the label Dr. Ciocca chose to use is not necessarily dispositive of IDEIA-eligibility provided that the test results at issue support the existence of an SLD. In this regard as explained below, Dr. Ciocca's report belies her claim made at hearing that the Student has an SLD in mathematics.

Mr. and Mrs. X state (Student Initial Brief at 49) that:

[Dr. Ciocca] found that [the Student's] mathematics skills stood out as a statistically significant variance from her intellectual functioning and consequently would meet criteria for a mathematics learning disability. [*Citing* Ciocca 12/14 Test. at 64] [The Student's] math reasoning on the WIAT was 17 points lower than [the Student's] full scale IQ score. [*Citing* P37 at 12; 19] [Dr. Ciocca] attributed ***this*** to [the Student's] working memory and executive functioning deficits. [*Citing* P37 at 19]

(Emphasis added.) This claim is not quite accurate.

The first sentence of this passage correctly reports that Dr. Ciocca ***testified*** that the Student's mathematics skills stood out as a statistically significant variance from her intellectual functioning. Dr. Ciocca's report, however, actually contained no statistical analysis of variance between intellectual functioning and achievement with respect to mathematics skills (or any other skills). Rather, Dr. Ciocca's report (1) compares the Student's performance on one measure of intellectual performance to her performance on another measure of intellectual performance⁹⁹ and (2) compares the Student's

IEP team meeting to consider eligibility on the basis of an SLD in mathematics, the District properly concluded that she was not IDEIA-eligible on that basis.

⁹⁹ *See* P37 at 13. There Dr. Ciocca compared the Student's performance on various components of the WAIS-III to each other, finding that there was a statistical difference at the 0.15 level between the Student's score on the Perceptual Organization and Working Memory components and between the Working Memory and Processing Speed components.

performance on one measure of achievement to her performance on another measure of achievement.¹⁰⁰ Dr. Ciocca did not, however, perform the required analysis – comparing intellectual ability and academic achievement levels to determine if a severe discrepancy exists. Moreover, with respect to the comparisons that Dr. Ciocca did do, she reported “significance” at the less rigorous 0.15 level rather than the conventional 0.05 or 0.01 level.

The observation in the second sentence of this passage (noting a 17 point difference between the Student’s WIAT performance in math reasoning and her WAIS-III FSIQ score) does not reflect an analysis of the differences in those scores or discussion of their significance done *by Dr. Ciocca*. Dr. Ciocca in her Report did not make any comparison between the Student’s WAIS-III FSIQ and WIAT Mathematics Composite scores to determine if there was a statistically significant difference between them. Rather, that statement is a claim *by counsel* that that difference has clinical significance in determining the existence of an SLD when in fact it may not.¹⁰¹

The last sentence of the passage correctly states Dr. Ciocca’s findings that the Student’s mathematics “deficits” were linked to her ADHD-related executive dysfunctions. In her testimony Dr. Ciocca stated that working memory and executive functioning issues adversely impacted the Student’s performance on the mathematics assessments. (FF248a) In other words, Dr. Ciocca in her report used the word “deficit” rather than “disability” because the Student did not meet the criteria for an SLD.¹⁰²

N. WHETHER THE STUDENT IS ELIGIBLE ON THE BASIS OF AN SED

The Student is not eligible on the basis of an SED. Mr. and Mrs. X argue that the Student satisfies SED Criterion B (inability to build or maintain satisfactory interpersonal relationships with peers and teachers) and/or Criterion C (inappropriate types of behavior or feelings under normal circumstances). (Student Initial Brief at 13)¹⁰³ To support that

¹⁰⁰ See P37 at 20. There Dr. Ciocca compared the Student’s performance on the WIAT Reading Composite to her performance on the WIAT Mathematics Composite, and her performance on the WIAT Written Language Composite to her performance on the WIAT Mathematics Composite.

¹⁰¹ For example, the WAIS-III FSIQ consists of scores on subtests assessing both mathematic and nonmathematic skills and may therefore not be an appropriate comparison between intellectual ability and academic achievement in mathematics, which is required to establish an SLD in mathematics.

¹⁰² In addition, given that Dr. Ciocca did not observe the Student in her classes, her evaluation cannot in and of itself be the basis for a determination of IDEIA-eligibility under an SLD classification. Pursuant to IDEIA Regulation, 34 CFR § 300.310(a), an evaluation to determine if a child has an SLD must reflect, in part, an observation of the child in his/her learning environment (including the regular classroom setting) to document his/her academic performance and behavior in the areas of difficulty.

¹⁰³ They do not contend that she is eligible on the basis of SED Criterion A (an inability to learn that cannot be explained by intellectual, sensory, or health factors), Criterion D (general pervasive mood of

claim, they point first (and primarily) to the fact that she has certain psychiatric diagnoses. More specifically they note that: (1) her diagnosis of RAD requires a diagnostic finding that of “markedly disturbed and developmentally inappropriate social relatedness in most contexts that begins before age 5 years; (2) her diagnosis of GAD requires a diagnostic finding of worries that are “difficult to control and typically interfere significantly with functioning”; and (3) her diagnosis of PTSD requires in a child that the child respond to the traumatic event with “disorganized or agitated behavior” and that the child manifest “clinically significant distress of impairment in social, occupational or other important areas of functioning.” See Student Initial Brief at 13-14.

Simply having one or more of these diagnoses does not mean, however, that the Student is IDEIA-eligible on the basis of an SED. What is required is that she manifest behaviors at school reflecting Criterion B (inability to build or maintain satisfactory interpersonal relationships with peers and teachers) and/or Criterion C (inappropriate types of behavior or feelings under normal circumstances) "over a long period of time and to a marked degree that adversely affects [her] educational performance." See IDEIA Regulations, 34 CFR § 300.8(c)(4)(i). The evidence does not support their claim for SED eligibility under either Criterion.

SED-eligibility cases, particularly with respect to Criterion B, make clear that eligibility does not hinge on the manifestation of disordered behavior outside of school, turbulent parent-child relationships or the presence of one or more psychiatric disorders but rather hinges on manifestation of the behavior and characteristics of the impairment Criterion at school “over a long period of time and to a marked degree that adversely affects educational performance” such that special instruction and related services are required to permit the child to obtain a meaningful benefit from his/her education. See, e.g., *Independent Sch. Dist. No. 284 v. A.C. by C.C.*, 35 IDELR 59 (8th Cir. 2001) (“Read naturally and as a whole, the [designation of SED under the IDEIA] identify[ies] a class of children who are disabled only in the sense that their abnormal emotional conditions prevent them from choosing normal responses to normal situations.”); *Edward A.F. v. Clint Indep. Sch. Dist.*, 508 IDLR 204 (SEA TX 1986) (behaviors must “substantially negate educational opportunities” but need not be “bizarre,” “dangerous,” psychotic, delusional or sufficient to require institutionalization in a psychiatric facility);¹⁰⁴ *Williams Unified School District and Colusa County Office of Education*, 26 IDELR 1198 (SEA CA 1997)¹⁰⁵ *Farquier County Pub. Sch.*, 20 IDELR 579 (SEA VA 1993);¹⁰⁶

unhappiness or depression), or Criterion E (tendency to develop physical symptoms or fears associated with personal or school problems).

¹⁰⁴ The student in that case had been identified as having an SLD but should have been identified as SED given that his emotional disturbance and resulting behavior “substantially negated his educational opportunities to date.” Psychologists representing each party had “grave concerns” because the child’s behaviors at school “directly caused his withdrawal from the public school system, two retentions and the loss of three grade levels of performance in seven years of public education.”

¹⁰⁵ The student in that case had twice been found ineligible under IDEIA. In the 7th grade her grades dropped to “mostly” Ds, she began incurring disciplinary referrals, and was placed in a class in the

Oakland Unified Sch. Dist., 507 IDELR 191 (SEA CA 1985);¹⁰⁷ *R.B. v. NAPA Valley Unified School Dist.*, 48 IDELR 60 (9th Cir. 2007), *affirming RB v. NAPA Valley Unified Sch. Dist.*, 43 IDELR 188 (N.D. Ca. 2005).¹⁰⁸

mainstream setting for students at risk of expulsion. Her behavior at home deteriorated and, among other things, she threatened to “cut her family’s throats while they slept.” She began receiving psychotherapy and over the next few years had several different therapists. Between the 7th and 9th grades, her behavior at home gradually became more and more out of control, resulting in one incident in which after being spanked by her father, she threatened him with a butcher knife. She also made some suicidal gestures, began using drugs and was raped. An evaluation indicated above average intellectual ability, performance below intellectual ability and weaknesses in auditory memory and numerical reasoning, and she was ultimately diagnosed as having ADHD and Oppositional Defiant Disorder (“ODD”). In spite of all of these behavioral problems at home, however, her grades in the 8th grade were in the Bs and Cs and she was referred to an honors English class. She also continued to do well in her mainstream 9th grade curriculum. In 9th grade, however, she incurred disciplinary referrals and was suspended after threatening the principal. At the end of the 9th grade year, an independent evaluator retained by the parents diagnosed the student as IDEIA-eligible on the basis of ED and SLD, and diagnosed the student as having Bipolar Disorder, ODD and a Disorder of Written Expression. The hearing officer in that case found that the Student was not IDEIA-eligibility on the basis of an SED. As to Criterion C (inappropriate behaviors or feelings under normal circumstances exhibited in several situations), the hearing officer concluded, among other things, that the behaviors at issue although inappropriate because they were “more extreme than the norm” were not inappropriate when considered in context – they were discrete and limited responses to provocations to which she was particularly sensitive rather than part of a pattern of ongoing inappropriate behaviors.

¹⁰⁶ The child in that case was not IDEIA-eligible on the basis of an SED even though she exhibited rage and behavioral problems at home and was identified as asocial. The condition did not adversely effect her educational performance notwithstanding a weakness in math computations and applications reflected in a low average score on an assessment. She was making progress at school (even though she was receiving remedial instruction in math in a small group setting for part of a school year), presented as “well-adjusted” at school, effectively performed educational tasks independently, followed class rules, “substantially maintained control” and did not disrupt class.

¹⁰⁷ The child in that case was not eligible on basis of an SED where the child’s difficulties with social interactions did not “inhibit” friendships. The child exhibited some “inappropriate types of behavior or feeling under normal circumstances” but these were occasional or isolated behaviors which neither individually or collectively occurred to a marked degree such that they were adversely effecting educational performance.

¹⁰⁸ The child in that case was found not eligible on basis of SED where although she exhibited inappropriate behavior at school over an extended period of time, she had not done so to a marked degree except for a limited period during the 5th grade year, and the presentation of her symptoms did not adversely effect her educational performance. The child was diagnosed with ADHD at age 3 and with RAD and PTSD, had been expelled from three preschool programs due to behavior, was identified as IDEIA-eligible when she entered kindergarten, was subsequently exited from IDEIA-eligibility and identified as Section 504-eligible, continued to manifest behavioral problems in school in the second, third and fourth grade (banged a classmate’s head against a computer monitor for refusing to give up the computer at recess, was suspended in 3rd grade for throwing chairs and running off campus, and was suspended in 4th grade for yelling at a teacher and acting out such that she had to be “restrained by law enforcement”), was suspended twice in one month in the 5th grade for twisting a child’s arm during recess, stating that she hoped her music teacher would die, poking another student with a mechanical pencil and refusing to turn in her work. Notwithstanding these behaviors, throughout elementary school she had excelled in her classes, scored high marks on achievement tests, and frequently made the honor roll.

The evidence in this case does not demonstrate that the Student was manifesting either Criterion B or Criterion C characteristics at RDZ-HS, much less that she was manifesting them “over a long period of time” or to such a “marked degree” at RDZ-HS that they were having an “adverse affect on her educational performance.” Mr. and Mrs. X’s claims are addressed below.

1. Claim: While attending middle school at RDZ E/MS the Student was placed in “very small classes and received direct instruction, alternative programming and modifications of curriculum.” (Student Initial Brief at 15) The fact that the Student was placed in these smaller settings within the mainstream does not establish that she had an SED then, or was manifesting an SED at RDZ-HS. There is no indication that the Student was placed in these smaller settings at E/MS to address behavioral or social issues. Rather difficulties with academics prompted placement in the smaller settings. *See, e.g.*, FF142.

2. Claim: In the 9th grade, the Student’s grades in her “G” level classes ranged from 79 to 87. During the 10th grade the Student began taking “A” rather than “G” level courses and her grades dropped to a range of 66 to 76 with the exception of chemistry and Vet Science I in which she received an 83 and 82 respectively. (Student Initial Brief at 15, 17)¹⁰⁹ While it is true that the Student had a B average in 9th grade and a C average in 10th grade (FF87, 104), Mr. and Mrs. X have not established any link between the Student’s RAD, GAD and PTSD and that change in her grades, or between an SED and that change in grade average. The evidence indicates simply that the Student transitioned from less rigorous “G” level courses in the 9th grade to more rigorous “A” level courses in the 10th grade, and that she was succeeding in those 10th grade courses even though she was struggling with the more intensive rigor of those 10th grade courses. (FF74, 87, 104, 105)

3. Claim: The Student did not have a “close, healthy” relationship with Title1Teacher10/11 because Title1Teacher10/11 and the Student did not talk about things that were “bugging” the Student. (Student Initial Brief at 18) Simply because Title1Teacher10/11 and the Student did not talk about things that were bugging the Student does not mean that they did not have a “close” or “healthy” relationship as teacher and student. Moreover, Mr. and Mrs. X’s brief explains why Title1Teacher10/11 and the Student may not have talked about things that “bugged her” – Mrs. X had directed Title1Teacher10/11 to keep the Student focused on work and avoid discussions that were off task, and apparently directed the Student to do the same. (Student Initial Brief at 18) Notwithstanding that limitation, Title1Teacher10/11 testified that the Student responded positively to the morning check-in, that she and the Student chitchatted about a boy the Student thought was cute, and that the Student approached Title1Teacher10/11 to discuss how to handle a sensitive issue for her associated with a book her English class was assigned to read. *See generally* FF84. Title1Teacher10/11 was not a peer, therapist or parent but rather was a teacher.

¹⁰⁹ In other words, her grades in 10th grade ranged from 66 to 82.

4. The Student was on the cross country team in the 9th, 10th and 11th grades. Claim: The coach of that team (XCountryCoach9/10/11) described the team as a “team of misfit toys,” referring to the students on the team. (Student Initial Brief at 21) That XCountryCoach9/10/11 described the members of the team as “misfit toys” says nothing whatsoever about whether the Student exhibited any behaviors that would satisfy SED Criterion B or C.¹¹⁰ One of the more telling aspects of the lack of merit to Mr. and Mrs. X’s arguments regarding SED-eligibility is that they completely ignore XCountryCoach9/10/11’s credible testimony that the Student was able to make and maintain positive relationships with peers on the team and with XCountryCoach9/10/11, did not exhibit any inappropriate behaviors, manifested a positive coping response to things that upset her, participated appropriately on the team and matured socially and emotionally over the three years XCountryCoach9/10/11 worked with the Student on the team. *See generally* FF83.¹¹¹

5. Claim: AgEdTeacher10/11 testified that the Student was “too quick on the trigger” and that both she and Title1Teacher10/11 shared a concern about that characteristic. (Student Initial Brief at 23, citing AgEdTeacher10/11 Test. 1/25 at 36). Mr. and Mrs. X portray this as a problematic behavior. Even assuming it was occurring to a “marked degree” this behavior does not in and of itself reflect either Criterion B or C and they have not demonstrated that it was adversely affecting the Student’s academic performance, particularly given her Ag-Ed grades in 10th and 11th grades which were among her highest.¹¹² In context, this behavior is a manifestation of ADHD not inappropriate behaviors or an SED. Moreover, their claim ignores that what AgEdTeacher10/11 was reporting was that in the 10th grade the Student was a very eager participant in the class and tended to want to answer every question asked or to lead all class discussions. AgEdTeacher10/11 did not describe this behavior as disruptive or inappropriate and reported that it improved over time. (FF85j) Title1Teacher10/11 similarly reported that the

¹¹⁰ The Hearing Officer also concludes, based on observation of XCountryCoach9/10/11 during her testimony and considering her reference to “misfit toys” in context, that XCountryCoach9/10/11’s use of the term “misfit toys” was one of affection rather than denigration.

¹¹¹ Mr. and Mrs. X state in their Reply Brief (at 14) that “XCountryCoach9/10/11 did say that she thought it was mature of [the Student] to run away from practice after another student would say something to hurt her feelings or upset her” *citing* to XCountryCoach9/10/11 Test. 12/20 at 158-159. That statement mischaracterizes XCountryCoach9/10/11’s testimony. XCountryCoach9/10/11 stated that if the Student became upset at a practice she would work off the emotion by taking a lap or two around the track. XCountryCoach9/10/11 viewed this as a mature and positive way to handle the emotion and further stated clearly that taking the lap was not disruptive, did not take more than a few minutes, was initiated by the Student and did not happen that often. (FF83i) Contrary to the “spin” put on XCountryCoach9/10/11’s testimony in the Student’s Reply Brief, the Student was not “running away” from the practice in response to statements made by peers about her. XCountryCoach9/10/11’s testimony does not establish that her team mates were saying anything to deliberately “hurt her feelings” in the manner suggested by the way the Reply Brief characterizes this testimony.

¹¹² The Student earned an 82 (B grade) as her final grade in her Veterinary Sciences I class in the 10th grade (FF104), an 82 (B grade) in her Veterinary Sciences II class in the first marking period of 11th grade (FF143) and a 90 (A grade) in the second marking period of 11th grade, for an 85 (B grade) in that course in the first semester of the 11th grade (FF150).

Student tended to behave impulsively but did not indicate that the behavior was problematic in the Title 1 class or adversely affected the Student's performance in that class. (FF84r)

6. Claim: The Student's well-documented "inability to focus or attend due to her need to discuss information regardless of the appropriateness of the situation" reflects an SED. (Student Initial Brief at 40) This claim refers to the rapid talking noted by Dr. Ciocca, incessant talking noted by Mrs. X and expansive talking noted by Psychotherapist. This argument improperly conflates an ADHD characteristic with an SED criterion. To the extent this claim reflects testimony of AgEdTeacher10/11 regarding the Student's participation in her AgEd classes (FF85e, 85j), the fact that the Student in some classes was an active and impulsive participant does not mean that she was manifesting either of the SED Criteria at issue. These speech patterns were to some extent observed at RDZ-HS but do not appear to have been a particular issue for the Student at RDZ-HS. (FF84s, 85, 86b)

7. Claim: Psychotherapist "was concerned about the ways [the Student] was set up to look silly and taunted for her inability to be an effective student, or not doing well during sports games." (Student Initial Brief at 32) This is, in essence, a claim that the Student was being treated badly by peers at RDZ-HS. Even assuming the Student was being treated badly by her peers, the conduct of her peers toward the Student says nothing about whether the Student was manifesting characteristics of Criterion B or C at school.

8. Claim: The "record is also replete with evidence that [the Student] has serious social difficulties [and as] a function of her disabilities, [she] alienates her peers and is unable to keep and sustain a relationship with friends." (Student Initial Brief at 40) The fact that the Student was struggling with social relationships because of her psychiatric disorders and may not have had as large a friendship group as Mrs. X or the Student desired to have, or the fact that the Student was not able to maintain some friendships and may even have alienated some peers does not mean that she was unable to make and maintain positive relationships with peers or teachers. The evidence shows that the Student was observed over the course of her career at RDZ-HS to be interacting positively with peers in the cafeteria, in classes and on sports teams, and to be interacting positively with teachers. (FF80, 81, 83d, 83h, 83j, 84j, 84k, 85g, 85i, 86a, 117e) Among other things, for example, the Student on several occasions brought peers who were not in her Ag-Ed class to the Ag-Ed facilities to interact with the pony her Ag-Ed class was caring for. Psychotherapist testified that the Student had developed some genuine friendships with peers at RDZ-HS. (FF251m) So did XCountryCoach9/10/11. (FF83h, 83j)

9. Claim: The Student continues to manifest the same patterns of social and academic problems at KSchool that she was "observed or reported" to have manifested at RDZ-HS by Psychotherapist, Dr. Ciocca, Dr. Sahani, Dr. Black, Mrs. X and by school staff. (Student Initial Brief at 32) Psychotherapist, Dr. Ciocca, Dr. Black, Dr. Sahani and Mrs. X never observed the Student at RDZ-HS and therefore can only report what was reported to them. Mr. and Mrs. X do not identify the RDZ-HS staff who were reporting

“patterns” of social and academic problems. The evidence shows that some Staff were observing manifestations of ADHD-related difficulties. The Staff was not, however, observing or reporting patterns of “social” problems. Rather, Staff who testified were reporting what they observed on a day-to-day basis over the time she attended RDZ-HS to be positive peer interactions, as noted in subparagraph 8 above.

10. Claim: The Student did not have a “positive experience” on team sports at RDZ-HS. (Student Initial Brief at 41; Student Reply Brief at 5). As a preliminary matter, this claim mischaracterizes the facts. The Student participated on the JV basketball team in the 10th grade and on the cross-country team in grades 9, 10 and 11. No evidence was offered that the Student’s experience on the cross country team was anything other than positive. The Student would not follow the plays set by the coach while on the JVTeam and as a result she was not a starter player and lost opportunities for more court time because she played the game as she wanted to rather than as the coach directed. (FF117b) This type of behavior is not particularly unusual for a teenager and even if that behavior reflects a lack of social skills needed to play on a competitive sports team the manifestation of that skill deficit does not mean that she satisfies either SED Criterion B or C. Other aspects of the Student’s experience related to the JVTeam are discussed more fully below. Both JVTeamCoach10 and XCountryCoach9/10/11 reported that if something happened that made the Student angry or upset during team activity, she would essentially “walk it off” and then resume the activity. They further reported that the Student needed only a few minutes to work through whatever it was that had bothered her, and that her behavior was not disruptive or particularly atypical. (FF117b, 117g, 83i) This behavior and coping mechanism does not establish SED Criterion B.

11. Claim: The Student’s disciplinary records at RDZ-HS do not reflect the extent of her behavioral problems.¹¹³ Mr. and Mrs. X have the burden of production with respect to evidence that the Student was incurring disciplinary referrals and teacher detentions that were not being reported. Rather than meet that burden, they offered nothing more than idle speculation that the Student was incurring disciplinary referrals which were not being reported.¹¹⁴ Various District staff who testified reported that the Student had no central office disciplinary referrals of which they were aware. They also testified that they had not received any reports from her academic teachers that the

¹¹³ See, e.g., Student Initial Brief at 41 (“It is not clear how many times [the Student] was disciplined by her teachers as the Board only produced her [AgEd] teacher as a witness”); Student Reply Brief at 5 (neither the “Raggie Incident” nor the “Glass Punching Incident” are reflected in the Student’s disciplinary reports).

¹¹⁴ Mr. and Mrs. X have not established that either the Raggie Incident or the Glass Punching Incident were events that would warrant a disciplinary referral. AssistantPrincipal investigated the Raggie Incident and concluded that a referral to SchoolPsychologist for follow-up, rather than a disciplinary action, was appropriate. (FF95) With respect to the Locker Shoving Incident, Mrs. X testified that Principal investigated that incident, determined that the other student was the instigator and disciplined the other student involved. (FF168) Since Mr. and Mrs. X did not call Principal to testify, the only fact that can be inferred from the evidence that they did present is that Principal concluded that the Student’s conduct in both the Glass Punching and Locker Shoving Incidents did not constitute behavior which would warrant a disciplinary consequence. That is her judgment call as the responsible administrator.

Student was receiving teacher detentions or was manifesting behavioral problems in the classroom warranting a disciplinary referral response. (FF84o, 85k, 86g)¹¹⁵ The only teacher detention documented in the record (and reported by testifying witnesses) occurred in December 2006 and was given by MathTeacher11 when, in connection with the transition from taking Geometry to auditing Algebra I, the Student did not turn in several homework assignments in Geometry. (FF137)

12. Claim: The high average ratings given the Student on the “oppositional” domain of the Connors Scales by her 11th grade teachers as part of the SchoolPsychologist Evaluation evidence an SED. (Student Initial Brief at 41; Student Reply Brief at 5) The results of the Connors Scales in the SchoolPsychologist evaluation reflect clinically significant symptoms of the motor fidgetiness of ADHD rather than of oppositional or defiant behaviors that may sometimes be associated with ADHD, and do not demonstrate or establish in and of themselves the presence of either SED Criterion at issue. (FF195-196) Her ratings on the oppositional domain from her teachers reflected in the SchoolPsychologist evaluation were still within the average not at risk range.

13. Claim: The Student had “difficulties” even in the Title 1 support class. (Student Initial Brief at 41) Title1Teacher10/11’s testimony demonstrates clearly that the difficulties the Student manifested in the Title 1 class were ADHD-related (which is why she was in the Title 1 class), and that the Student was *not* presenting problematic behavioral issues in that class or characteristics of SED Criterion B or C. *See generally* FF84.

14. Claim: The “Raggie Incident” (Student Initial Brief at 6; Student Reply Brief at 5): In the 9th grade, AssistantPrincipal referred the Student to SchoolPsychologist after another student (FS1) complained that the Student had called her a “raggie,” which is a derogatory term in the RDZ-HS community concerning a person’s socioeconomic status. Mr. and Mrs. X cite this incident as an example of how the Student alienates peers with her inappropriate comments. They argue in their Initial Brief (at 6) that SchoolPsychologist testified that he advised Mrs. X that the Student understood the significance of calling another student a “raggie” within the RDZ-HS community (suggesting that her behavior was inappropriate because it was intentionally hurtful). That is not correct. SchoolPsychologist reported that based on his interview with the Student, he concluded that she had heard the comment but did not understand what it meant to call someone a “raggie” and therefore did not understand why FS1 was so upset when the Student called her a “raggie.” (FF93, 95, 96) This incident evidences a misunderstanding not an SED.

15. Claim: The “Window Writing Incident” (10th Grade) (Student Initial Brief at 15-16; Student Reply Brief at 6): According to JVTeamCoach10, while the Student was waiting to be picked up after a JVTeam practice, the Student was standing near the coach’s car. Some of the other players were writing comments in the snow on the windshield, and wrote that the Student “dances weird.” JVTeamCoach10 was not certain

¹¹⁵ Teacher detentions are administered by individual teachers primarily as a means to have students complete missing homework assignments. *See, e.g.*, FF86g; 84o.

the Student even saw the remark at the time and she did not discuss it with him until the Glass Punching Incident. (FF117c) According to Mrs. X, the other students wrote that the Student was a “loser” and the Student was very upset about this. (FF116a) Mr. and Mrs. X do not explain how this incident (or the Student’s reaction to it), even assuming it happened the way that they allege, reflects an SED. Mrs. X testified that the Student was aware of the remark when it was written on the window. Even assuming the Student saw the remark while she was waiting, she did not respond at all to the incident at school, much less respond inappropriately. The fact that she was upset about what had been written and discussed that with Mrs. X at home does not mean that she has an SED or that any distress about the remark she experienced was inappropriate.

16. Claim: The “Glass Punching Incident” (10th Grade) (Student Initial Brief at 15-16; Student Reply Brief at 5): This is a two part incident. Part A *appears* to have been an altercation between the Student and one or more peers from the JVTeam that was not actually observed by either JVTeamCoach10 or Mrs. X. Part B occurred when JVTeamCoach10 was alerted to the altercation and went to investigate.

Part A: According to JVTeamCoach10, during a JVTeam practice the Student fell on her bottom while doing a drill and several players at the sidelines laughed at her. JVTeamCoach10 testified that the players at the sidelines would have laughed at any player who fell in the manner that Student did and were not specifically harassing the Student. He also testified that the Student became angry about that event. After the practice, the Student and one of the players who had laughed at her (“Sister B”) reportedly got into a verbal altercation. JVTeamCoach10 did not observe this altercation but was told about it at the time by Sister A, who was the sister of Sister B. Sister A reported to JVTeamCoach10 that the Student was threatening to call the police and “wanted to punch” Sister B.¹¹⁶ JVTeamCoach10 found the Student in the hallway outside of the gym. The Student reported to JVTeamCoach10 that she was angry at Sister B, wanted to call the police and wanted to punch Sister B. JVTeamCoach10 also testified that Sister A had reported to him that Sister B was not even in the area when the Student was making these statements about wanting to punch Sister B. When JVTeamCoach10 arrived, Sister B was not in the area. (FF119a, b, c, d, e) **Mrs. X’s version is different. According to Mrs. X**, during the practice a girl the Student was playing “wound up on the floor and got hurt.” The girl’s sister “comes and gets in [the Student’s] face and ... threatened to hit [the Student] and [the Student] said go ahead hit me go ahead. [And then] the Student threatened if they didn’t stop doing this, that she was going to call the police ... And then they were getting – there were three girls against [the Student] ...” (FF116b) In Mrs. X’s version the Student did not threaten to punch anybody. Although their descriptions of the event varied significantly, both parties agree that if there was in fact an altercation, the altercation did not move beyond a verbal exchange between the Student and one or more of her peers and that the Student’s statements were in response

¹¹⁶ JVTeamCoach10 in his pre-filed testimony (B36) stated that the Student threatened to punch another Student. At hearing, he reported the Student’s statement to him that she “wanted to punch” another Student. The Hearing Officer sees no inconsistency in these two statements – one statement is JVTeamCoach10’s report of what the Student said to him and the other is his own description of the event. In any event, there is no dispute that the Student did not actually punch anybody during this event.

to a direct provocation (either being laughed at when she fell according to JVTeamCoach10 or being threatened by two to three other girls according to Mrs. X). The fact that the Student got into a verbal altercation with the other student in the circumstances (regardless of whose version of events should be credited) is not particularly inappropriate or extreme behavior and is not particularly unusual for a teenager's response to such a situation. Moreover, crediting Mrs. X's report of the incident the Student was not the aggressor and was responding to a provocation. To support Dr. Ciocca's claim that the Student needed a residential placement to address "maladaptive behaviors," Mr. and Mrs. X point (Student Reply Brief at 15) to this incident as an example of the risk that the Student poses to other students because she "could come to school, and for example, threaten to punch someone, which in fact happened." That statement simply mischaracterizes the facts even as reported by Mrs. X. The Student did not simply come to school and threaten to punch another student.

Part B: After being informed of the altercation, the JVTeamCoach10 went to talk with the Student. He found her standing by a window with her cell phone in her hand slapping the window sill because she was so angry. He became concerned that she might hurt herself by banging her hand on the sill and talked with her to calm her down until Mr. X came to pick her up. The JVTeamCoach10 did not express any concern that the Student was going to hurt herself by punching the glass window and denied that he restrained the Student from doing so or otherwise hurting herself. (FF118, 119b) Contrary to Mr. and Mrs. X's apparent claim (FF116b), the Student was not posturing to punch a plate glass window in front of a trophy case outside of the gym and was not restrained from doing so by the JVTeamCoach10. (FF118, 119c)¹¹⁷ Once again, the Student's agitation was a direct response to a provocation and was neither inappropriate nor extreme for a teenager.

17. Claim: The "Chocolate Chip the Chick Incident" (10th Grade) (Student Initial Brief at 16-17): The Student's 10th grade veterinary science class raised chicks as a project. The Student became attached to her chick, which she named Chocolate Chip. One day she was told by another student in the class that Chocolate Chip had died. According to Mrs. X, the Student was the victim of a "vicious" prank perpetrated by her classmates who kept the secret from her all day that Chocolate Chip was not dead. (FF113) According to AgEdTeacher10/11, the student who was the perpetrator of this "joke" was himself disabled, several of the Student's classmates were supporting the Student through the process, AgEdTeacher10/11 quickly established with the class that Chocolate Chip was accounted for and fine, and the class resumed with the Student participating. AgEdTeacher10/11 processed the event with the Student afterward, reported that the Student understood the other student's limitations, and opined that the Student was appropriately upset about the incident. (FF114) AgEdTeacher10/11 did not

¹¹⁷ During cross-examination of JVTeamCoach10, it was Ms. Spencer who suggested through a question asked to JVTeamCoach10 that the Student was at risk of punching the plate glass in front of the trophy case outside the gym. That is not what happened according to the coach. (JVTeamCoach10 1/23 Tr. at 238-245)

report any behaviors or reactions by the Student to this incident that were inappropriate or extreme.¹¹⁸

18. Claim: “Altercation” with EnglishTeacher11: Mrs. X reported an incident during the 11th grade in which, as Mrs. X described it, the Student was disrespectful to her 11th grade English teacher during a class and was asked to leave the class. (FF135) Mrs. X points to this incident as an example of the “control” issues that the Student had with teachers and also of the Student’s inappropriate behaviors at school and inability to maintain positive relationships with teachers. The Board offered no testimony about this event. This was the only incident of its type reported by Mrs. X. Accordingly, even if this incident reflects an SED Criterion B or C characteristic, there is no evidence that it was anything other than an isolated incident which had no adverse effect on the Student’s educational performance and does not reflect in any way a pattern of behaviors that were occurring to a “marked degree” or for which special education was required. Moreover, even as Mrs. X reported it, this event does not reflect atypical oppositional teenage behavior. None of the RDZ-HS staff who testified, some of whom interacted with the Student on a regular, daily basis over an extended period of time, testified that the Student was disrespectful or rude to them.

19. Claim: “Altercation” with GuidanceCounselor10/11: Mrs. X cites to the following event she states occurred in the 11th grade as an indication of the Student’s inappropriate responses to District staff: In connection with the effort to rearrange the Student’s schedule to implement a plan to address her difficulties in Geometry in the Fall of 2006, GuidanceCounselor10/11 yelled at the Student for not following the correct procedure to arrange a switch in classes, and then contacted Mrs. X to apologize for her own behavior in the incident. (FF138b) As described by Mrs. X, this incident says nothing whatsoever about the Student’s emotional, social or behavioral issues but rather (assuming the event happened as described) reflects poorly on GuidanceCounselor10/11.

20. Claim: The “Locker Shoving Incident” (11th grade): (Student Initial Brief at 21): Shortly after the February 9, 2007 IEP team meeting, MathDeptChair was in the hallway during passing time and observed the Student and a female peer (FS4) engaging in some shoving. He concluded that FS4 was the instigator, told them to stop, sent FS4 to the central office and sent the Student back to her class. MathDeptChair did not consider the incident to be significant. (FF167) According to Mrs. X the Student was shoved across the hallway by FS4 and was so traumatized by the event that she curled into a fetal position that night and stated that she would refuse to return to RDZ-HS. (FF168) Once again, the *Student’s* behavior in this event was not inappropriate and does not reflect an SED. The fact that she, as Mrs. X alleges, had a long-standing conflict with FS4 does not establish either of the SED Criterion B or C characteristics.

¹¹⁸ Mr. and Mrs. X note in their Initial Brief (at 16-17), Psychotherapist’s report that the Student was very upset about this incident and discussed it at length over several therapy sessions. (FF115) The Hearing Officer agrees that the Student was undoubtedly very upset about this incident given her love of animals, her history of trauma and the nature of her psychiatric disorders. However, Mr. and Mrs. X have not linked this event to any adverse affect on the Student’s educational performance or to any behavior of *the Student* that reflects SED Criterion B or C.

In sum, none of these events either individually or collectively establish an SED.

At hearing, the Student's counsel argued that the "traumas" the Student experienced in her early years "completely impacts" the IDEIA-eligibility issue on the basis of an SED and that the crux of that aspect of Mr. and Mrs. X's case was that as a result of the "traumas" that the Student experienced in her "early years" she "needed intensive support services." (11/8 Tr. at 59-62, 171-174) That argument conflates a need for mental health support services with a need for special education and related services, which is the key component of the IDEIA-eligibility criteria. Although, the evidence indicates that the Student's early traumas have left her less able to cope as well as her peers with the vicissitudes of being a teenager, that fact does not establish the need for special education or render the Student IDEIA-eligible.

In their Reply Brief at 22-23, Mr. and Mrs. X cite a string of descriptive statements identified in the CTDOE's *Guidelines for Identifying Children with Emotional Disturbance* as manifestations that CTDOE has identified could be consistent with an SED and claim that because the Student has been reported to have those characteristics she has an SED. That argument fails in part because Mr. and Mrs. X have failed to produce evidence that the Student is exhibiting many of the characteristics in their list at school. Specifically, the Hearing Officer does not agree that the Student is manifesting "emotional overreactions," "limited self-control," "limited premeditation or planning," "limited ability to predict consequences of behavior," "rapid changes in behavior or mood," "antisocial behaviors," "excessive dependence or over-closeness," or "inappropriate rebellion and defiance" at school. That argument is also a variant on the argument that because the Student has various DSM-IV-TR diagnoses she is IDEIA-eligible on the basis of an SED, and fails for the same reason. Even assuming the Student has some of the characteristics cited in the list (*e.g.*, low self-esteem, distorted self-concept) and even assuming she displayed some of the symptoms identified on the list at school (*e.g.*, emotional overreaction, change in behavior or emotion), Mr. and Mrs. X have failed to establish that such manifestations were to a marked degree such that they adversely affected the Student's educational performance.

Psychotherapist, Dr. Black and Dr. Sahani all agree that the Student's history of emotional, physical and sexual abuse, of emotional and physical neglect, and a chaotic home environment with BirthMother and LegalFather in her early formative years associated with significant disruptions in relationships with primary caretakers, have left her primed to perceive, interact with and react to her social environment in ways that have been deemed sufficient to establish the presence of several psychiatric disorders, specifically RAD and one or more anxiety disorders (PTSD, GAD and/or AD-NOS). There is no real dispute that the Student's perceptions of various events in her social environment that are emotionally charged may be distorted.¹¹⁹ Without regard to whether the symptoms of these psychiatric disorders were adversely affecting her

¹¹⁹ This is not to say that the Student is lying or fabricating stories when these distortions manifest in her description of an event – she is simply reporting the event as she perceives it.

educational performance prior to the time she entered RDZ-HS, the documentary and testimonial evidence reflects that since entering the 9th grade the symptoms of these psychiatric disorders were not manifesting at school to the extent that they were adversely affecting her educational performance. The isolated instances of peer conflicts, agitation and need to “walk off” things that anger her, the difficulty playing on a competitive team sport such as basketball and difficulty making and maintaining longer term friendships alleged by Mrs. X do not, either in and of themselves or collectively, satisfy the statutory requirements for IDEIA-eligibility under either SED Criterion B or C, and have not been linked to any adverse affect on her academic performance. The totality of the evidence suggests that notwithstanding her psychiatric disorders and her presentation at home, the Student was not manifesting at school social, emotional or behavioral issues that would be considered to be atypical of teenagers.

O. WHETHER THE STUDENT IS ELIGIBLE UNDER A “MULTIPLE DISABILITIES” CLASSIFICATION

As defined in the IDEIA, a child eligible on the basis of “multiple disabilities” is a child who has “concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment) the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.” Mr. and Mrs. X’s argument for eligibility under this category is a single conclusory paragraph in their Initial Brief which is nothing more than the statement of the definition of the impairment criteria. Mr. and Mrs. X offer no support for their argument that the Student is IDEIA-eligible on the basis of a Multiple Disabilities classification other than the fact that the Student has several psychiatric disorders. Having one or more psychiatric disorder does not automatically make a child IDEIA-eligible.

Moreover, Mr. and Mrs. X have not cited any precedent which establishes that OHI, SLD and SED are the types of “concomitant impairments” within the scope of the Multiple Disabilities classification. Even assuming (as Mr. and Mrs. X contend) that the Student is IDEIA-eligible on the basis of OHI, SLD *and* SED and that those impairments are the type of concomitant impairments relevant to a classification under Multiple Disabilities, Mr. and Mrs. X have failed to meet their burden of production that the combination of these impairments causes “such severe educational needs” that a special education program designed to target one of the impairments (*e.g.*, OHI based on ADHD or anxiety) could not accommodate either of the other impairments (*e.g.*, SED based on RAD and an SLD in mathematics). Since she started attending RDZ-HS in the 9th grade and at all points through the time she was placed unilaterally at KSchool in March 2007, the Student was making educational progress and receiving a meaningful educational benefit at RDZ-HS in the mainstream environment without special education and related services and notwithstanding that (accepting Mr. and Mrs. X’s theory of the case) she was IDEIA-eligible during this period on the basis of several qualifying impairments (*i.e.*, was eligible under a Multiple Disabilities classification).

P. THE ALLEGED “CHILD FIND” VIOLATION

To secure reimbursement for that portion of the 2006/2007 school year that she attended KSchool, Mr. and Mrs. X appear to rely primarily on an argument that they are entitled to reimbursement for that unilateral placement because the Student was denied a FAPE by the District’s failure prior to February 2007 to satisfy its “child find” obligations under the IDEIA and CSEL.¹²⁰

The IDEIA imposes an ongoing obligation on an LEA to identify and evaluate all children residing within its jurisdiction who either have or are suspected of having disabilities and are or may be in need of special education and related services as a result of those disabilities, regardless of whether the child is advancing from grade to grade. *See, e.g.*, IDEIA, 20 U.S.C. § 1412(a)(3); IDEIA Regulation, 34 C.F.R. § 300.111; CSEL, Conn. Gen. Stat. § 1076d(a)(1). That obligation is referred to as “child find.” Failure to comply with the child find obligation can deprive a student who should have been identified as IDEIA-eligible of a FAPE, potentially entitling the child to compensatory education or reimbursement for a unilateral placement accruing from the time the LEA first should have suspected that the child had a qualifying disability.¹²¹

The standard is whether the facts and circumstances known to the LEA are such that would cause a prudent educator to recognize the need to evaluate the child for the existence of handicapping conditions. *Edward A.F. v. Clint Ind. Sch. Dist.*, 508 IDELR 204 (SEA Tx. 1986) Accordingly, the lack of a request for an eligibility determination by a child’s parents does not alleviate the LEA’s obligation under the child find provision to identify children who may qualify for special education services. *McMullen County Ind. Sch. Dist.*, 49 IDELR 118 (SEA TX 2007). By the same token, although the LEA has a “continuous obligation to maintain a system of child find” it is not required to “continually assess a student where there is no indication of a disability” within the meaning of IDEIA. *Capistrano Unified School District*, 106 LRP 63886 (SEA CA 2006).

At hearing, Student’s counsel argued that the crux of their case with respect to the child find violation was that RDZ was “well aware” of the traumas that the Student had experienced in her early years, the effect of those traumas on the Student and her

¹²⁰ Mr. and Mrs. X did not at the February 9, 2007 IEP team meeting request that the Student be placed somewhere other than RDZ-HS but rather agreed to an evaluation process to determine her eligibility. (FF156, 160) The Student began attending KSchool on or about March 24, 2007. (FF173-174) They did not provide the required notice to RDZ-HS prior to placing her unilaterally at KSchool in the 2006/2007 school year, and did not even request an IEP team meeting to discuss District funding of a placement at KSchool in the 2006/2007 school year until about two weeks after she had been unilaterally placed there. (FF183)

¹²¹ *See, e.g., Department of Educ. v. Cari Rae S.*, 35 IDELR 90 (D. Haw. 2001) (reimbursement of placement costs prior to the eligibility determination may be proper in some circumstances); *Lakin ex rel. Lakin v. Birmingham Pub. Schs.*, 70 Fed. Appx. 295 (6th Cir. 2003) (violation of child find can support award of reimbursement for unilateral placement through point at which FAPE was offered).

need for “intensive support services” because of those traumas. (11/8 Tr. at 59-62, 171-174) That argument also conflates a need for mental health support services with a need for special education and related services. The key component of the IDEIA-eligibility criteria is need for special education not need for mental health support services.

In their Initial Brief, after reciting the history of what they argue were incorrect IDEIA-eligibility determinations made between the April 1998 and the October 2004 IEP team meetings, Mr. and Mrs. X argue:

In the present case, the procedural violations have been substantial and have resulted in a denial of FAPE. First, despite a very long history of great difficulties in academic, social and emotional functioning, the Board continuously failed to find [the Student] eligible for special education services. ***When she began demonstrating significant academic difficulties in the high school, not one staff member referred [the Student] for an evaluation.***

Student Initial Brief at 51 (emphasis added).¹²²

To the extent that their argument reflects a challenge to the IEP team determinations prior to February 2007 regarding IDEIA-eligibility, that claim is barred by the SOL. Putting aside the SOL issues, the primary problem with Mr. and Mrs. X’s claim is that, for all of the reasons set forth above in the discussion of eligibility on the basis of an SED, SLD and Multiple Disabilities, it is unsupported by the evidence. Put simply, the Student was not manifesting any “great” or “significant” academic, social, emotional or behavioral problems at RDZ-HS. Rather, she appeared, for all intents and purposes to those who were observing and working with her, to be a typical high school student albeit one with ADHD and sensitivities related to her history of trauma. While it is true that Mr. and Mrs. X made RDZ aware of the traumas the Student had experienced and her history and psychiatric diagnoses, from October 2004 forward they prevented the District from providing school-based counseling through which the District may have learned about how the Student was experiencing RDZ-HS. Without regard to whether the RDZ-HS staff had authorization to contact Psychotherapist, neither Psychotherapist nor Mrs. X saw fit to advise RDZ-HS of the Student’s purportedly negative experience of RDZ-HS she was reporting it to them and the emotional toll it was having on her.¹²³

¹²² Mr. and Mrs. X characterize a violation of the child find obligation to be a violation of the Student’s procedural rather than substantive rights under the IDEIA. Student Initial Brief at 51, *citing* to CTDOE 07-294, *Student v. Region 9 Bd. of Ed.* (CTSEA 2007) at Conclusion of Law No. 23 (“Failure to refer for evaluation a student who is suspected of having a disability is a procedural violation of IDEA.”). For the reasons set forth herein, whether a child find violation is a procedural or substantive violation makes no difference for purposes of this case.

¹²³ One inference that can be drawn from the fact that Psychotherapist – who purportedly had *carte blanche* to communicate with RDZ-HS – did not communicate with RDZ-HS about the problems the Student encountered at RDZ-HS and was addressing in psychotherapy is that those problems were ongoing reflections of her psychiatric disorders that were not sufficiently significant to report.

Between September 2004 (when she entered RDZ-HS) and October 2006 (when she earned an F in the first marking period of Geometry in the 11th grade) there had been no change in the Student's status or presentation at school which would have alerted RDZ staff of a need to reconsider her eligibility under the IDEIA. The Student was identified as Section 504-eligible on the basis of ADHD and manifested ADHD-related impacts on her academic performance. Notwithstanding her ADHD, RAD, PTSD and anxiety disorder, the Student made progress academically, behaviorally and socially while at RDZ-HS, attended school regularly and without difficulty, manifested no disciplinary issues or behavioral problems of any significance and was engaged in her academic program. See 78b, 84k, 84m, 84o, 84s, 84v, 86g, 86h, 86i, 102, 89, 80, 81, 83d, 83e, 83h, 84i, 84j, 85b, 85e, 85g, 85i, 85j, 86a, 87, 89, 104, 105, 110, 125, 141c, 142a, 142c, 143, 144, 150, 151, 154. Given her history of math weakness, the first indications of any difficulty that could even potentially warrant reconsideration of IDEIA-eligibility was that F grade in Geometry in October 2006. RDZ acted promptly to address that event, developing a plan that would test the theory that the Student's difficulties with Geometry reflected gaps in her knowledge – which was the initial conclusion reached by MathTeacher11, Title1Teacher10/11 *and* Mrs. X. (FF137, 146b, c, e) The plan was implemented but before its efficacy could be determined, Mr. and Mrs. X requested an IEP team meeting to review the Student's IDEIA eligibility.¹²⁴

Absent some intervening event which would trigger RDZ's obligation to review the prior IDEIA-eligibility determinations, it is not unreasonable for RDZ to rely on the unchallenged IDEIA-eligibility determinations and Section 504 plans in addressing the

¹²⁴ In support of their child find violation argument and claim for reimbursement for the placement at KSchool, Mr. and Mrs. X cite to *Forest Grove School District*, 40 IDELR 190 (SEA OR 2004). The student in *Forest Grove* was 18 years old at the time the case was asserted and had been attending the LEA's school for his entire academic career. The hearing officer found that teachers over the course of the student's academic career had expressed concerns about his difficulties in paying attention in class and completing school work and that the parents had advised the LEA of the considerable and extensive support that they had provided to him over many years at home to complete his school work, including spending several hours a night working with him on a 1:1 basis to help him complete homework. They also advised the LEA staff of the considerable difficulties that the student was having in mastering the content of his classes. The parents ultimately commenced due process, claiming that the student was IDEIA-eligible on the basis of OHI because of his ADHD and on the basis of an SED associated with increasing disciplinary and other problematic behaviors in high school that led to failing grades. The hearing officer found that the LEA breached its child find obligations by failing to evaluate the student for OHI based on his ADHD, despite information about his struggles to complete school work and stay on task, his mother's referral suggesting ADHD, and his failing grades. The hearing officer granted reimbursement from the beginning of the student's enrollment in a unilateral residential placement because the facts demonstrated "no amount of relevant information would cause the District to acknowledge the severity of [the student's] disability and [his] need for special education" on that basis of OHI due to his ADHD. The circumstances in this case are simply not the same. In contrast to *Forest Grove*, between October 2004 and February 2007, Mrs. X and the Student's Title 1 teachers were in regular communication to coordinate support for the Student between home and school as provided by an agreed-upon Section 504 plan. The Student was progressing in her curriculum and at the first clear indication of academic difficulty (failure of Geometry in the first marking period of the 11th grade), the District reacted promptly by developing a plan to address the problem in math. The Student's struggles academically (even as reported by Mrs. X) were nowhere close to those reported in *Forest Grove*.

Student's needs. No such event happened.¹²⁵ Given that the Student was identified as eligible under Section 504, the fact that she was exhibiting symptoms of ADHD and even perhaps one or more of her other psychiatric diagnoses at school from time to time and/or was struggling with school work would not be sufficient, in and of itself, to trigger the child find obligation in this case given her overall presentation.

Q. ALLEGED PROCEDURAL VIOLATIONS

The *Rowley* standard requires that RDZ provide a FAPE to each IDEIA-eligible child in its jurisdiction by developing an IEP for each child that (1) is reasonably calculated to provide the child with a meaningful educational benefit; and (2) is developed in accordance with the IDEIA's procedural requirements. The IDEIA defines detailed and comprehensive procedural requirements (the "procedural safeguards") that operate to assure that the parents or other designated legal representatives of an eligible child have a full and meaningful opportunity to participate along with LEA personnel in the eligibility determination and any subsequent IEP formulation process.

Procedural errors are subject to a harmless error analysis. *See, e.g., Mr. and Mrs. M. v. Ridgefield Board of Education*, 2007 U.S. Dist. LEXIS 24691 at *20-22 (D. Conn. 2007). To be entitled to relief on a claim of a procedural violation, it must be shown that the alleged procedural violation was such that the child's right to FAPE was "impeded," or that the parents' opportunity to participate in the eligibility determination process was "significantly impeded" or that the procedural error deprived the child of an educational benefit.¹²⁶ Procedural violations which do not result in a loss of educational opportunity

¹²⁵ Mr. and Mrs. X claim that they disagreed with each of those IDEIA eligibility determinations. Disagreement with an eligibility determination is not legally sufficient, however. Similarly, Mr. and Mrs. X apparently are unsatisfied with both the Section 504 plan and its implementation. However, they have not challenged the Section 504 plan or its implementation.

¹²⁶ *See* IDEIA Regulation, § 34 CFR 300.513(a)(2). Although the following cases describe the standard for evaluating procedural violations with respect to the IEP formulation process for a child that has already been identified as IDEIA-eligible, the principles established by these cases apply to the eligibility determination process as well: *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629 (4th Cir. 1985) (repeated failure to notify the parents of their procedural rights to challenge the proposed IEP over a several year period deprived them of a meaningful opportunity to test whether the proposed IEP complied with the IDEA); *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992) (child denied FAPE where school developed IEP independently, without participation of child's parents or teachers); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991) (to invalidate IEP based on procedural violations "there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation educational benefits"); *Urban v. Jefferson County School Dist., R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (deficient IEP did not in that case amount to a denial of an appropriate education); *O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School District No. 233*, 144 F.3d 692, 702 (10th Cir. 1998) ("technical deviations" from the IDEA's requirements do not necessarily "render an IEP entirely invalid"); *Briere v. Fair Haven Grade School Dist.*, 948 F. Supp. 1242 (D.Vt. 1996) (procedural violations resulted in denial of FAPE, where LEA inhibited meaningful parental participation, refused to discuss an alternative placement, failed to conduct supplemental evaluations, failed to advise the parent as to why a placement request was refused, delayed IEP team meetings and finalization of the IEP, and where student's teachers

or which do not constitute a serious infringement of parents' opportunity to participate in the process are insufficient to support a finding of denial of FAPE.

A procedural error made during an eligibility determination cannot, in and of itself, make a child IDEIA-eligible. However, for a child who is ultimately determined to have been IDEIA-eligible, an LEA's failure to comply with the IDEIA's procedural requirements in making an eligibility determination can be a basis on which the child may be entitled to relief. Mr. and Mrs. X contend that procedural violations committed by RDZ in connection with both the July 25, 2007 and August 31, 2007 IEP team meetings were "serious" and "taken as a whole clearly demonstrate" that a determination that the Student was not eligible under the IDEIA was a "foregone conclusion regardless of what input [Mr. and Mrs. X] provided or what evaluative data was presented" and resulted in a "total denial of FAPE" to the Student. (Student Initial Brief at 51-52; Student Reply Brief at 1-2)

One procedural violation they claim is absence at the July and August 2007 IEP team meetings of a regular education teacher who had actually taught the Student a substantive course. Although they are correct on that point to the July and August 2007 IEP team meetings, they have not explained how they were harmed by that error. Mr. and Mrs. X did not call any of the Student's regular education teachers to provide testimony to corroborate their claim that the Student's presentation at RDZ-HS reflected an SED and/or SLD. Accordingly, they have not offered evidence that the absence of a regular education teacher at either IEP team meeting harmed the Student's interests.¹²⁷

The remaining procedural violations alleged by Mr. and Mrs. X – even if substantiated and whether taken individually or collectively – do not support a finding that RDZ was obligated to fund the Student's unilateral placement at KSchool in the 2007/2008 school year, whether on a residential basis or otherwise.¹²⁸

did not attend IEP team meetings); *Logue By and Through Logue v. Shawnee Mission Public Sch. Unif. Sch. Dist. No. 512*, 959 F.Supp. 1338, 1348 (D.Kan. 1997) (absent prejudice caused by procedural violation, IEP need not be invalidated). See also *W.A. v. Pascarella*, 153 F. Supp. 2d 144 (D. Conn. 2001) (discussing the applicable principles).

¹²⁷ AgEdTeacher10/11 was the only regular education teacher who had actually taught the Student a substantive course who was called to testify. Mr. and Mrs. X vigorously cross-examined AgEdTeacher10/11 about the Student's presentation in AgEdTeacher10/11's classes. That cross-examination yielded no testimony to support that the Student had an SED or SLD. Other than testimony reflecting the fact that the Student was manifesting some ADHD-related symptoms in her class (impulsivity in wanting to answer questions) which were not disruptive or particularly problematic from AgEdTeacher10/11's perspective, and that the Student experienced some anxiety associated with more significant projects (which did not interfere with her ability to successfully do the project), AgEdTeacher10/11 described the Student as being fully engaged in the class, having positive peer relationships, taking her school work and animal care responsibilities seriously, interested in pursuing a career in the subject and succeeding in the curriculum. (FF85a-85l)

¹²⁸ Even if substantiated, Mr. and Mrs. X's claims of procedural violations at the July and August 2007 IEP team meetings would not support a finding that RDZ was obligated to fund the Student's placement at KSchool in the 2006/2007 school year since the alleged procedural violations did not occur until after the 2006/2007 school year was over.

1. February 9, 2007 IEP Team Meeting

Despite providing colorful testimony that Staff members attending the February 9, 2007 IEP team meeting had not read the Student's files or otherwise "did not know" the Student (FF156), Mr. and Mrs. X ultimately make no argument or claim in their Initial or Reply Briefs of any procedural violations in connection with this meeting other than the child find violation claim.

With respect to this meeting, a copy of the notice for this IEP team meeting was not included in the record. However, Mr. and Mrs. X make no claim that they were not provided with the required prior written notice of this IEP team meeting, which was convened at their request. (P29; FF153) The IEP team was properly constituted with respect to LEA members. The attendees included SpecEdDirector, MathTeacher11, Mr. and Mrs. X, SchoolPsychologist, SpecEdEvaluator, Title1Teacher10/11 and GuidanceCounselor10/11. Ms. Spencer and Mr. Meuser also attended. (FF155) Mr. and Mrs. X had a meaningful opportunity to participate in the discussion at this IEP team meeting and did participate. (FF156, 157, 158, 159, 160) The Safeguards were timely provided to Mr. and Mrs. X at the meeting. (FF161) The IEP team meeting minutes were timely provided to Mr. and Mrs. X on or about February 16, 2007. (FF164) The documentation of this IEP team meeting provided to Mr. and Mrs. X contained the information required by the IDEIA. (B3)¹²⁹

In addition, Mr. and Mrs. X were represented at this meeting by counsel experienced and knowledgeable in the procedural requirements of the IDEIA, including the procedural requirements for IEP team meetings. To the extent that RDZ committed a procedural violation with respect to the noticing or convening of this IEP team meeting, or with respect to the composition of the District staff attending this meeting, counsel for Mr. and Mrs. X should have raised the issue at or before the IEP team meeting so that the error could be corrected. Having failed to raise any such claims of what should have been an obvious procedural violation with respect to these matters, it can reasonably be presumed that Mr. and Mrs. X waived any claim of procedural error by proceeding with the IEP team meeting.

2. July 25, 2007 IEP Team Meeting

Mr. and Mrs. X make numerous claims of procedural violations in connection with this IEP team meeting which proceeded in their absence. (Student Initial Brief at 51-52; Student Reply Brief at 1-2) The Hearing Officer finds that the District's decision to proceed with this IEP team meeting notwithstanding Mr. and Mrs. X's request that an IEP team meeting not convene until Dr. Ciocca's evaluation was available aggravated an already strained relationship between the parties but not necessarily a procedural

¹²⁹ This meeting was convened before the Student turned 18 years of age. Prior to the Student's 18th birthday, guardianship of the Student had been vested in Mr. and Mrs. X. (FF91)

violation. However, even if the decision to proceed with this IEP team meeting over Mr. and Mrs. X's objection and in their absence was a procedural violation, that violation resulted in no harm to the Student's educational interests.

The pertinent facts are as follows:

- a. On May 25, 2007 RDZ notified the Student of its intention to proceed with an IEP team meeting on June 12, 2007 to review the results of its evaluations and invited the Student to participate. (FF201)
- b. At that time, the Student had turned 18 years of age. She had been advised of the transfer of legal rights under the IDEIA but she had not yet executed a power of attorney appointing Mr. and Mrs. X as her legal representatives. (FF2, 193) Mr. and Mrs. X were also not her conservators or guardians. Accordingly, as a matter of law Mr. and Mrs. X were not required attendees at this IEP team meeting. Nonetheless, RDZ also notified Mr. and Mrs. X of this IEP team meeting and invited them to attend as well, as the Student had requested in her May 20, 2007 letter. (HO5) (FF200-201)¹³⁰
- c. At the request of Mr. and Mrs. X the IEP team meeting initially noticed on May 25, 2007 and scheduled for June 12, 2007 (FF201) was rescheduled several times and finally rescheduled for July 24, 2007. That date was changed at the last minute to July 25, 2007 after RDZ's counsel was notified that Mr. and Mrs. X's counsel had a medical emergency. On July 24, 2007, RDZ provided oral notice (which was appropriate in the circumstances) that the IEP team meeting would convene on July 25, 2007. In the circumstances, it was impractical to provide written notice and the oral notice was satisfactory. (FF201, 202, 205, 207, 208, 211)¹³¹
- d. Mr. and Mrs. X do not claim that they did not receive written notice of the District's intention to proceed to an IEP meeting to review the results of the evaluations conducted by the District, and do not claim that they did not receive the oral notification of the last minute change of date from July 24, 2007 to July 25, 2007 as testified by SpecEdDirector.¹³²

¹³⁰ Mr. and Mrs. X note in their Reply Brief (at 2 n. 3) that technically between the time the Student turned age 18 years of age in May and the time she executed the POA in October, Mr. and Mrs. X were not authorized to act on her behalf and therefore the District should not have been communicating with Mr. and Mrs. X about the Student. Although the May 2007 letter (HO5) written by the Student asking that all communications regarding her schooling be directed to Mr. and Mrs. X was not sufficient to empower Mr. and Mrs. X to act as her attorneys-in-fact, that letter was sufficient in the circumstances to allow the District to continue to communicate with Mr. and Mrs. X regarding the Student.

¹³¹ Mr. and Mrs. X's claim in their Initial Brief (at 51-52) that RDZ proceeded with the July 25, 2007 IEP team meeting "without any written notice to [Mr. and Mrs. X] ..." is a mischaracterization of the actual facts. Mr. and Mrs. X were provided with written notice of the District's intention to convene this IEP team meeting and a proposed date. The meeting had to be rescheduled several times.

¹³² Mr. and Mrs. X make no claim that the Student did not have notice of this IEP team meeting.

- e. On July 11, 2007, RDZ forwarded to Mr. and Mrs. X and the Student the reports prepared by SchoolPsychologist, SpecEdEvaluator and Dr. Sahani, as well as the Safeguards and a notice for an IEP team meeting to convene on July 24, 2007. (B13) At that time, the IEP team meeting had been rescheduled from its initial proposed date of June 12, 2007 to July 27, 2007. (FF207) Accordingly, Mr. and Mrs. X and the Student received these reports in sufficient time in advance of the proposed July 24, 2007 rescheduled date for this IEP team meeting to enable them to review and prepare for that meeting.¹³³
- f. RDZ made clear to Mr. and Mrs. X and the Student immediately after the July 25, 2007 IEP team meeting that the District's evaluation reports could be reviewed with them either outside of an IEP team meeting or at the IEP team that would be convened to review Dr. Ciocca's report if and when that report was provided. (FF212d, 213; B23)
- g. As reflected in subparagraphs c, d, e and f above, Mr. and Mrs. X and the Student were provided with adequate notice of the July 25, 2007 IEP team meeting and had actual notice of the final rescheduled date and time.
- h. With respect to LEA staff attendees, the IEP team was not properly constituted as a technical matter. The Staff attendees were SpecEdDirector, MathDeptChair, a special education teacher (not SpecEdEvaluator), SchoolPsychologist, Title1Teacher10/11, and AssistantPrincipal. (FF212a) No regular education teacher who had actually taught the Student a substantive course attended. Title1Teacher10/11 is, however, classified as a regular education teacher. Although she did not teach the Student a substantive course, she was in communication with the Student's substantive teachers and worked with the Student 4 days per week in a classroom setting on school work. (FF84, 84a, 84b)
- i. Mr. and Mrs. X had an opportunity to participate in this IEP team meeting and chose not to attend, either in person or through counsel. (FF214, 215) Whether the Student wanted to attend or not, Mr. and Mrs. X's decision not to attend effectively precluded the Student's attendance as well.
- j. The Safeguards were timely provided to Mr. and Mrs. X and the Student with the minutes of the IEP team meeting. (FF213; B23)
- k. Mr. and Mrs. X and the Student were timely provided the documentation generated at this IEP team meeting and that documentation satisfied the

¹³³ Mr. and Mrs. X claim in their Initial Brief at 51-52 that "the Board's own assessments were not even mailed to [Mr. and Mrs. X] until July 11, 2007" and that "one PPT was scheduled for July 12, 2007 before [Mr. and Mrs. X] would have likely even received the evaluations in the mail." That statement also mischaracterizes the actual facts.

requirements of the IDEIA for content. (FF213; B23)

Mr. and Mrs. X argue that they were not given sufficient notice of the rescheduled IEP team meeting date. Without regard to whether there was any “practical” or “legal” reason to proceed with an IEP team meeting to review evaluation reports notwithstanding that there was an “outstanding” neuropsychological evaluation report, RDZ was within its legal rights to convene an IEP team meeting to review the evaluation reports that were available.¹³⁴ RDZ-HS used reasonable efforts to secure the attendance of representatives of the Student at a time convenient to the parties. Mr. and Mrs. X simply chose not to participate in an IEP team meeting before Dr. Ciocca’s evaluation report was completed. That is their prerogative.¹³⁵

Mr. and Mrs. X correctly note that no regular education teacher who had actually taught the Student a substantive course attended this IEP team meeting and describe that as a “serious procedural violation”. (Student Reply Brief at 1-2) They fail, however, to explain the harm that resulted from that violation given the purpose of the IEP team meeting and the fact that any eligibility determination made at this meeting would be and was revisited at a subsequent IEP team meeting when the Ciocca report was made available to the District.

Mr. and Mrs. X correctly note (Student Initial Brief at 52) that the “IDEA requires that as part of an initial evaluation ...the IEP team *must* consider evaluations and information provided by the parents of the child” *citing* IDEIA Regulation, 34 C.F.R. §300.305 (a)(1). As a technical matter, this IDEIA regulation does not prohibit an LEA from convening more than one IEP team meeting to consider evaluation results as they become available or require that the LEA delay convening an IEP team meeting until all evaluation results are available. Rather, this Regulation requires that the LEA consider the results of an evaluation and other information provided by the parents when those results are provided. At no time did RDZ refuse to consider the results of the Ciocca evaluation obtained by Mr. and Mrs. X or information that they wanted to provide.

At the July 2007 IEP team meeting, RDZ reviewed the results of the evaluations it was allowed to perform and correctly determined based on that information that the Student was not IDEIA-eligible. (FF212a-212d) That determination caused no harm to

¹³⁴ The documentary record indicates that Mr. and Mrs. X could not state with any certainty during the effort to schedule what became the July 25, 2007 IEP team meeting when Dr. Ciocca’s Report would be available. (FF205)

¹³⁵ Mr. and Mrs. X did not advise RDZ until July 27, 2007 that the reason why they had not attended the July 25, 2007 IEP team meeting was because they were meeting with Dr. Ciocca. (FF214, 215) Although Dr. Ciocca’s Report states that the feedback session was on July 25, 2007, Mrs. X in her letter to SpecEdDirector regarding the July 25, 2007 IEP team meeting stated that the feedback meeting was on July 24, 2007.

the Student because it was clear that RDZ would reconsider the Student's eligibility when and if Mr. and Mrs. X provided Dr. Ciocca's report.¹³⁶

3. The August 2007 Staff Meeting to Review Dr. Ciocca's Report (The PreDetermination Claim)

Dr. Ciocca's report was provided to RDZ on August 28, 2007. (FF220) At some point between August 28, 2007 and the August 31, 2007 IEP team meeting, SpecEdDirector, Title1Teacher10/11, SchoolPsychologist, MathDeptChair and SpecEdEvaluator met to review and discuss Dr. Ciocca's report and expressed their views to each other regarding the report itself and the question of IDEIA-eligibility on the basis of the report. (FF223) Various of these staff members also attended the February 9, 2007, July 25, 2007 and August 31, 2007 IEP team meetings.

Mr. and Mrs. X claim (Student Brief at 52) that the District staff attending this meeting violated the Student's procedural rights by "predetermining" her IDEIA-eligibility. The IDEIA requires that decisions, including eligibility decisions, be made at the IEP team meeting by the IEP team (which includes the parents or other representatives of the child). Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE.¹³⁷ The IDEIA does not, however, prohibit an LEA's staff from meeting among themselves before a scheduled IEP team meeting to

¹³⁶ Mr. and Mrs. X note further that the IDEIA requires that in determining whether a child has an SLD, the IEP team must include a regular education teacher and that no regular education teacher who had taught the Student attended the July 25, 2007 IEP team meeting. (Student Initial Brief at 52.) The issue of eligibility on the basis of an SLD was not, however, presented at the February 9, 2007 IEP team meeting and was not raised as a potential issue until the August 31, 2007 IEP team meeting. Nothing in SchoolPsychologist's or SpecEdEvaluator's evaluation reports which were the subject of the July 25, 2007 IEP team meeting indicated an SLD. Once again, Mr. and Mrs. X cannot establish a harm that resulted from this violation.

¹³⁷ Whether the outcome of a pre-IEP team meeting staff meeting is "predetermination" (which is prohibited) or prudent planning (which is permitted), is a question of fact. A parent seeking to establish that a prohibited predetermination occurred has a "heavy burden." Absent direct evidence that the decision to be made at the IEP team meeting was predetermined, evidence of the willingness of LEA staff members to discuss the issues at the IEP team meeting appears to be dispositive of the issue of predetermination. *See, e.g., H.B. v. Las Virgenes Unified School Dist.*, 48 IDELR 31 (9th Cir. 2007) ("predetermination occurs when an educational agency has made its determination prior to the IEP meeting" and is "unwilling" to discuss the issues or consider alternatives); *Deal v. Hamilton*, 42 IDELR 109 (6th Cir. 2004) (district violated IDEIA by predetermining the student's placement prior to the IEP team meeting); *Nack v. Orange City Sch. Dist.*, 46 IDELR 32 (6th Cir. 2002) (outcome of pre IEP-team staff meeting was not a prohibited predetermination); *Doyle v. Arlington County Sch. Bd.*, 806 F.Supp.1253, 1262. (E.D. Va. 1992) (pre-writing proposed goals and objectives does not constitute predetermination; nor does providing a written offer to a student before parents have agreed to it); *Solana Beach School District*, 49 IDELR 237 (SEA 2008) (no predetermination absent evidence that District staff members were directed by supervisor to refuse to consider a particular placement or that supervisor attempted to influence their recommendations in any way); *A.E. v. Westport Board of Education*, 463 F. Supp.2d 208 (D. Conn. 2006) (pre-IEP team meeting of staff to consider placement recommendations not in and of itself prohibited pre-determination)..

review and discuss evaluation results or discuss their positions with respect to issues that are to be addressed at the IEP team meeting.¹³⁸

Mr. and Mrs. X have not established that the Staff members at this pre-meeting were directed to reach a particular conclusion or that the August 31, 2007 IEP team meeting was a sham or charade. The Staff members came to the August 31, 2007 meeting ready to discuss their conclusions regarding the Ciocca report and the Student's IDEIA-eligibility. Before the IEP team meeting the District requested an opportunity to discuss its concerns with Dr. Ciocca which was denied. (FF220, 222) Dr. Ciocca did not attend the IEP team meeting. Mr. and Mrs. X agreed to take questions raised by District staff regarding her report to Dr. Ciocca for answers but did not do so. At the meeting they explained the basis for their conclusions regarding eligibility in light of the Ciocca report and expressed concerns regarding aspects of that report. The parties engaged at the August 31, 2007 IEP team meeting in a full and meaningful review of the Ciocca report, information from KSchool and the District's evaluation reports. (FF124, 225, 226, 227, 228, 229, 230, 231, 232)

Neither party was able, however, at the August 31, 2007 IEP team meeting to persuade the other to change its mind about the Student's IDEIA-eligibility. The IDEIA does not require that each side of the table agree with the position of the other. The fact that the District disagreed with the position of Mr. and Mrs. X on eligibility and it has now been determined that the District erred with respect to its eligibility determination does not establish that the District had predetermined the IDEIA-eligibility issue.

4. August 31, 2007 IEP Team Meeting

Mr. and Mrs. X allege the following procedural violations with respect to this IEP team meeting: (1) "The only notice in the record of the August 31, 2007 PPT came in the form of a letter from SpecEdDirector to [the Student] dated July 27, 2007 (referring to B-23)" and provided no "indication of who was going to attend the PPT beyond stating that appropriate staff members would be available." (2) RDZ violated the Student's procedural rights by making a determination that the Student was not eligible on the basis of an SLD without having a regular education teacher who had taught her attend this IEP team meeting. (Student Initial Brief at 52)¹³⁹

¹³⁸ Indeed, Dr. Ciocca's Report was 37 pages long and reported the results of 24 different assessments Dr. Ciocca administered. Given the "accusations" made by Mrs. X at the February 9, 2007 IEP team meeting regarding Staff knowledge of the Student and failure of all staff members attending the meeting to have read evaluation reports (FF156, 157, 160a), had District Staff not undertaken a thorough review of Dr. Ciocca's report prior to the August 31, 2007 IEP team meeting it is likely that they would have been "accused" of similar misconduct or failings with respect to the August 31, 2007 IEP team meeting.

¹³⁹ Questions of counsel to witnesses at hearing suggested that Mr. and Mrs. X also argue that the District erred at the August 31, 2007 IEP team meeting by not filling out a SLD checklist. It is not clear whether they are pursuing that claim. Whether or not RDZ committed a procedural error at the August 31, 2007 IEP team meeting by making an SLD determination without filling out an SLD checklist, any such violation was harmless and did not result in any denial of a FAPE to the Student given that Mr. and Mrs. X failed to demonstrate (both at the August 31, 2007 IEP team meeting and at hearing) that the Student had

Mr. and Mrs. X are correct that as a technical matter the August 31, 2007 IEP team meeting was not properly noticed. The apparent notice for this IEP team meeting was the SpecEdDirector's July 27, 2007 letter to the Student.¹⁴⁰ That letter reported the outcome of the July 25, 2007 IEP team meeting, offered to arrange another meeting or IEP team meeting to review the District's evaluation reports that were the subject of the July 25, 2007 IEP team meeting, offered to convene another IEP team meeting to discuss Dr. Ciocca's report when it was available, and offered several dates for that purpose. Although that letter did not identify the proposed attendees, it provided sufficient information to Mr. and Mrs. X and the Student regarding the nature of what became the August 31, 2007 IEP team meeting. (FF219)

A letter dated August 23, 2007 (B26) from SpecEdDirector to Mrs. X indicates that by August 15, 2007, the August 31, 2007 IEP team meeting date had been accepted by Mr. and Mrs. X. The date for the meeting was selected by Mr. and Mrs. X who attended with their attorney. They did not raise at this IEP team meeting any claim that notice of the meeting was defective. On the facts, any claim that they were prejudiced or their procedural rights were violated by a technically defective notice lacks merit and caused no harm to the Student's educational interests.

It is true that a regular education teacher "who had taught" the Student a substantive course while she attended RDZ-HS was not present at this IEP team meeting. However, neither Mr. or Mrs. X nor their attorney raised any claim at this IEP team meeting that required District staff members were not present. Accordingly, that claim of procedural error is waived since they had an opportunity to correct any such error but chose to proceed anyway.¹⁴¹

Mr. and Mrs. X had a meaningful opportunity to participate in the discussion at this IEP team meeting and participated. The Student was invited to attend but did not.¹⁴² All issues of concern raised by Mr. and Mrs. X and their attorney at this IEP team meeting were discussed and considered in a meaningful manner. (FF224, 225, 226, 227, 228, 229, 230, 231, 232) The fact that District Staff team members did not agree with the position of Mr. and Mrs. X or their attorney regarding Dr. Ciocca's report or the

an SLD. Even assuming, however, that a court on appeal concludes that both RDZ and the Hearing Officer incorrectly concluded that the Student did not have an SLD in mathematics, for the reasons set forth herein the resulting denial of FAPE does not justify the relief sought by Mr. and Mrs. X (residential placement at KSchool).

¹⁴⁰ SpecEdDirector claims that the pre-printed notice form was sent to Mr. and Mrs. X and the Student but no copy of that form was in the record.

¹⁴¹ Once again, Title I Teacher 10/11, a state certified special education teacher who worked regularly with the Student in the 10th and 11th grades in the Title I support room and who had received reports from her substantive subject regular education teachers regarding her performance in her classes during that period was present.

¹⁴² The record does not establish with any degree of clarity whether the Student did not attend because she chose not to attend or because she was not allowed to attend by Mr. and Mrs. X.

Student's eligibility does not mean that the District refused or failed to engage in a meaningful discussion of those issues or was unwilling to consider Mr. and Mrs. X's position.¹⁴³

The Safeguards were provided to Mr. and Mrs. X on August 15, 2007. (FF221) The documentation of this IEP team meeting in the record contained the information required by the IDEIA. There is no indication in the record as to when the minutes of the August 31, 2007 IEP team meeting were sent to Mr. and Mrs. X. However, they make no claim that they did not timely receive the minutes or that they were unaware of or did not understand what the outcome of that meeting was. By September 7, 2007 they had commenced due process.

R. REIMBURSEMENT FOR KSCHOOL PLACEMENT

Mr. and Mrs. X placed the Student unilaterally at KSchool (*i.e.* without obtaining a determination by an IEP team that placement at KSchool was the least restrictive environment or LRE placement needed to provide her a FAPE). A parent who believes that an LEA is denying their child a FAPE under the IDEIA may unilaterally place their child in a private school. Such an action is at their own financial risk, however, because they would not be entitled to reimbursement from the LEA for that placement unless it is subsequently determined by either a due process hearing officer or a court both: (1) that the LEA denied the child a FAPE, and (2) that the unilateral placement was "appropriate."¹⁴⁴

The appropriateness of the unilateral private placement "necessarily depends on the nexus between the special education required and the special education provided." Accordingly, the placement must offer at least "some element of special education services in which the public school placement was deficient." *Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1 (1st Cir. 2007) (IDEIA does not entitle a parent, at public expense, to "seek any alternative school she wishes if the public education is inadequate;" proposed unilateral placement was not appropriate because it

¹⁴³ The District was not required to consider in detail the need for a placement at KSchool once it had made its eligibility determination. *See, e.g., Student v. RDZ* (since an LEA must comply with the LRE mandate, the LEA at an IEP team meeting is free to discuss alternatives and issues sequentially from least to most restrictive, and may reject more restrictive placement proposals "without further consideration" once it identifies a less restrictive placement proposal).

¹⁴⁴ *See* IDEIA Regulations, 34 CFR § 300.148(c), which provides in pertinent part that where a parent enrolls their "child in a private preschool, elementary or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the costs of that enrollment if the court or hearing officer finds that the agency has not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate" and further provides that "[a] parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the [state educational agency] and LEAs."

did not offer anything approaching the direct teaching of social skills unanimously endorsed by the professionals who have tested and treated [the student]”) (citations omitted). *See also Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 112 (2d Cir. 2007) (to establish appropriateness of a unilateral placement, parents need not show that the private placement is ideal in every respect, but must show that the placement meets the special needs of the student and that the student is able to benefit from the instruction provided by the placement); *Frank G. V Bd. of Educ. of Hyde Park*, 459 F.3d 356 (2d Cir 2006) (the unilateral placement need not meet every last one of the child's special education needs to be appropriate). The standard does not require that Mr. and Mrs. X demonstrate that the Student cannot be educated in the public school.¹⁴⁵

Reimbursement for a unilateral placement is equitable relief and the conduct of both parties is therefore a factor to consider in determining whether that relief should be provided. *See, e.g., W.G. and B.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1486 (9th Cir 1992).¹⁴⁶ More specifically, the IDEIA Regulations, 34 CFR § 300.148(d), provide that reimbursement for a unilateral placement, even if appropriate, “can be reduced or denied:”

- (1) If –
 - (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the

¹⁴⁵ The fact that the Student is doing well at KSchool or is happy and satisfied at KSchool is not dispositive as to whether the placement is “appropriate” within the meaning of the applicable standard. *See, e.g., Berger v. Medina City Sch.*, 348 F.3d 513, 522 n.6 (6th Cir. 2003) (reimbursement does not depend on the “mere happenstance” of whether a child does well in private placement); *Rome Sch. Comm. v. Mrs. B.*, 247 F.3d 29, 33 (1st Cir. 2001) (fact that child does well in unilateral placement does not mean child needs unilateral placement to receive a FAPE); *W.C. v. Cobb County Sch. Dist.*, 407 F. Supp. 2d 1351, 1362-63 (N.D. Ga. 2005) (finding no reimbursement where evidence showed private placement's methodology and certification were inadequate to meet student's needs despite fact that he had made progress in the program).

¹⁴⁶ Reimbursement and compensatory education are forms of equitable relief awardable under the IDEIA. *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 363-64 (2d Cir. 2006); *Mrs. C. v. Wheaton*, 916 F.2d 69, 75 (2d Cir. 1990); *Letter to Kohn*, 17 IDELR 522 (OSEP 1991) (Although Part B does not address the specific remedies an impartial hearing officer may order upon a finding that a child has been denied FAPE, OSEP's position is that, based upon the facts and circumstances of each individual case, an impartial hearing officer has the authority to grant any relief he/she deems necessary, inclusive of compensatory education, to ensure that a child receives the FAPE to which he/she is entitled). Compensatory education is equitable relief in the form of an award of educational services prospectively and is designed to catch-up the student to where he/she should have been absent the denial of a FAPE. *See* A reimbursement remedy is set in motion when the parent unilaterally enrolls the child in private school, sue and are subsequently reimbursed for their expenses for a year if the hearing officer or court agrees that the IEP for that year denied a FAPE, and that the private school placement was appropriate. *See, e.g., Student v. RDZ* (defining standard); *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 111-12 (2d Cir. 2007).

public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
- (2) If, prior to the parents' removal of the child from the public school, the [LEA] informed the parents, through the notice requirements described in [IDEIA Regulations, 34 CFR § 300.503(a)(1), of its intent to evaluate the child (including the statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

See also IDEIA, 20 U.S.C. § 1412(a)(10)(C)(iii) (same).

The Hearing Officer concludes that, under the principles applicable to reimbursement for unilateral placements, Mr. and Mrs. X: (1) are not entitled to reimbursement for the costs of the Student's placement at KSchool in the 2006/2007 school year; but (2) are entitled to reimbursement for a portion of the costs of the Student's placement at KSchool for the 2007/2008 school year, specifically the cost of the Student's Support Unit class calculated as set forth subsequently herein.

1. Placement at KSchool on a Residential Basis was not Appropriate Because the Placement is Disproportionate

In designing an educational program for an eligible child, an LEA is required by IDEIA, 20 U.S.C. § 1412(a)(5)(A), to:

assure that, to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . .

This IDEIA provision defines the LEA's obligation to provide FAPE in the LRE and establishes a rebuttable presumption that the appropriate placement for an eligible

child is the mainstream or regular education environment.¹⁴⁷ This provision reflects a conclusion of Congress that interaction with non-disabled peers provides significant benefits to children with disabilities. Accordingly, even if it is determined that the child cannot be satisfactorily educated in a mainstream classroom, the IDEIA requires the LEA to define a program that includes the child in the mainstream environment to the maximum extent appropriate.

The IDEIA recognizes, however, that for some children the LRE may be placement in a segregated setting (such as a residential setting) which does not include any mainstream components or interaction with non-disabled children. “If placement in a public or private residential program is *necessary* to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” IDEIA Regulation, 34 CFR § 300.104 (emphasis added). The need for placement in a segregated setting may be due to educational factors, to non-educational factors (such as physical, social, emotional or behavioral problems) or to some combination of the two. If “the [child’s] medical, social or emotional problems that . . . create or are intertwined with the educational problem” (1) cannot “effectively” be treated outside of the segregated setting and (2) “prevent the child from making meaningful educational progress” outside of a segregated placement, the segregated placement would be LRE without regard to the seriousness of the child’s educational problems. *Mrs. B.*, 103 F.3d at 1122 (rejecting hearing officer’s finding that the LEA was not obligated to fund the full cost of residential placement because “predominantly and significantly the [student’s] problems gr[e]w out of the home situation rather than the school environment”).¹⁴⁸

¹⁴⁷ See, e.g., *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1219 (2nd Cir. 1993) (IDEA’s mainstreaming preference rises to level of rebuttable presumption); *Mavis v. Sobol*, 839 F.Supp. 968 (N.D.N.Y. 1993) (IDEA favors mainstream placement unless the nature or severity of the child’s disability is such that education in regular classes with the use of supplementary aids and services cannot be “satisfactorily achieved”).

¹⁴⁸ In *Mrs. B.*, 103 F.3d at 1121, a residential placement at Devereux was deemed “necessary for [the child] to make meaningful progress” where the child’s history in the public school system over the prior several years was “marked [not only] by limited academic progress” but also “serious regression in the year prior to the placement.” She failed to “meet nearly all of the objectives set in her IEP and nearly all of her grades were unsatisfactory,” she did not “advance more than one grade level in any subject” and the LEA offered no plan to deal with her worsening behavior in spite of a clinical evaluation concluding that her “debilitating emotional problems could only be addressed in a highly structured residential setting.” See also *Naugatuck Bd. of Educ. v. Mrs. D.*, 10 F.Supp.2d 170, 181 (D. Conn. 1998) (even though the student’s “academic problems were not serious, his social and emotional needs were severe and qualified as educational needs which warranted residential placement”); *McKenzie v. Smith*, 771 F.2d 1527 (D.C.Cir. 1985) (LEA was responsible for funding the residential treatment of a child with severe emotional disabilities because the child required a highly structured environment in order to learn); *King v. Pine Plains Central School Dist.*, 918 F. Supp. 772 (S.D.N.Y. 1996) (when the residential placement is a response to medical, social or emotional problems that are segregable from the learning process, the LEA must cover the cost of special education and related services but need not fund medical treatment or other non-educational expenses).

Although RDZ is held to the LRE requirement in making its placement determination, Mr. and Mrs. X are not so constrained. Rather, their unilateral placement must be “appropriate” when measured against the standard identified above.¹⁴⁹ There is no one test for determining appropriateness. Rather the determination reflects consideration of a variety of factors. Although Mr. and Mrs. X are not held to the same LRE standard to which RDZ would have been held in its placement choice, one way to measure the appropriateness of a unilateral placement (given that the placement is intended to correct a denial of FAPE) is to compare it to the placement that the LEA would have been required to provide FAPE under the IDEIA.

Under the applicable standard that would govern RDZ’s placement determination, and even assuming that the District had found the Student IDEIA-eligible under categories of OHI, SED *and* SLD at the February, 2007, July 2007 or August 2007 IEP team meetings, the District would not have been obligated to place the Student at KSchool (either on a residential or day basis) because such a placement would not have been the LRE placement for the Student (even assuming it is “appropriate” which as set forth herein the Hearing Officer finds it is not). Under Mr. and Mrs. X’s theory, the Student at all times she was attending RDZ-HS should have been identified under one, two or all three of these categories. At all points in time while she was attending RDZ-HS, the Student was attending mainstream classes, was progressing in her curriculum and earning credits toward graduation at the same pace as her peers, was experiencing academic successes and struggles, was making educational progress commensurate with her intellectual abilities and was receiving a meaningful educational benefit, all without special education and related services as those terms are defined in the IDEIA. *See* FF 78b, 84k, 84m, 84o, 84s, 84v, 86g, 86h, 86i, 102, 89, 80, 81, 83d, 83e, 83h, 84i, 84j, 85b, 85e, 85g, 85i, 85j, 86a, 87, 89, 104, 105, 110, 125, 141c, 142a, 142c, 143, 144, 150, 151, 154. In addition, at all points at which the Student was attending RDZ-HS she was receiving outpatient psychotherapy to address the impacts of her psychiatric disorders and was receiving medical treatment for her ADHD and anxiety disorders. *See, e.g.*, FF251a; 28, 35, 111e, 198b, 237, 251n, 98. In other words, any medical, social and/or emotional issues that “create[d] or [we]re intertwined with the educational problem” Mr. and Mrs. X assert she was experiencing were being effectively treated on an outpatient basis and were not preventing the Student from making meaningful educational progress as outlined above.

The Hearing Officer also notes, and finds particularly persuasive, the fact that Psychotherapist (who had been treating the Student for 9.5 years) was not asked her opinion, was not offered to testify and did not actually offer any opinion that the Student needed a residential placement to receive a meaningful educational benefit. Psychotherapist testified that she was not “instrumental” in the decision made by the family to remove the Student from RDZ-HS and place her at KSchool. (FF251j, 187)

¹⁴⁹ *See generally* *Florence County School District Four v. Carter*, 501 U.S. 7 (1993); *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.*, 471 U.S. 359 (1985); *M.S. ex rel S.S. v. Bd. of Educ. of the City of Yonkers*, 231 F.3d 96 (2d Cir 2000); *W.C. v. Cobb County Sch. Dist.*, 407 F. Supp. 2d 1351 (N.D. Ga. 2005).

She testified that she would recommend that the Student (who by the time of Psychotherapist's testimony had completed several months at KSchool) *remain* at KSchool because the Student was reporting "satisfaction" there and because the Student at the time she left RDZ-HS viewed RDZ-HS negatively and stated that she would consider withdrawing from RDZ-HS if she had to return. (FF251i-251j)¹⁵⁰

For all of these reasons and those stated previously elsewhere herein, placement at KSchool was not appropriate as a response to any procedural violation alleged by Mr. and Mrs. X (including the child find violation) or eligibility determination error as found by the Hearing Officer herein, and is not required to enable the Student to receive a meaningful educational benefit.

2. Placement at KSchool is not Appropriate Because KSchool is not a Clinical Program

Under the arguments asserted by Mr. and Mrs. X, the primary (if not exclusive) reason why Mr. and Mrs. X placed the Student at KSchool on a residential basis was to address the emotional, behavioral and social issues associated with the Student's RAD, PTSD and GAD (or AD-NOS) that the District was ignoring with the result that she was not able to obtain meaningful educational benefits from her program. Even assuming *arguendo* (as Mr. and Mrs. X claim) that the Student was manifesting some symptoms of her RAD, PTSD and GAD (or AD-NOS) at school such that she needed a residential placement to obtain a meaningful benefit from her education, KSchool would still not be an appropriate placement because it does not provide the clinical services to address the issues which they claim prevented her from obtaining a meaningful educational benefit at RDZ-HS and was driving the need for the residential placement.

The issue of appropriateness of KSchool does not hinge on the fact that the Student has no interactions with non-disabled peers at KSchool since most of the students attending KSchool are not identified as disabled and therefore the Student is interacting with non-disabled peers at KSchool. (FF254) Rather, what makes KSchool inappropriate as a unilateral placement is that KSchool is not providing the Student with clinical services as part of a *coordinated package* of educational and clinical programming targeting the emotional, social, behavioral and academic issues that Mr. and Mrs. X claim: (1) she was manifesting at RDZ-HS to such an extent that she could

¹⁵⁰ Psychotherapist testified that in her clinical opinion the Student had been on a downward spiral at RDZ-HS in the period before she was withdrawn, and that she might decide not to return to RDZ-HS and that it was preferable for her to remain at KSchool at this time. (FF251i) Psychotherapist did not, however, testify that the Student could not receive a meaningful educational benefit at RDZ-HS. As noted previously, Mr. and Mrs. X stated at hearing she was not being offered to testify about educational matters. (FF251) Psychotherapist stated that because the Student is receiving around the clock supervision and support at KSchool with respect to social and emotional issues, the frequency of her counseling sessions with Psychotherapist has been reduced since she began attending KSchool. (FF251u) In other words, the Student is from a clinical perspective receiving some benefit from around the clock supervision at KSchool. That testimony says nothing, however, about whether she needs that supervision to obtain a meaningful educational benefit.

not receive a meaningful educational benefit at RDZ-HS and (2) were being ignored by District staff.

KSchool is a college preparatory boarding school. KSchool does not hold itself out to be a provider of psychological/mental health services or as a mental health treatment program and it does not specialize in providing that service. KSchool's program does not report progress on meeting social, emotional or behavioral goals and objectives that may be established for a student, if any. KSchool's program does not integrate clinical and educational services and in fact does not have the clinical components (*e.g.*, a token economy, formal social skills training or formal life skills training) recommended by Dr. Ciocca. KSchool offers no individual, group or family therapy components to its students as part of its programming, but apparently makes some individual counseling available if needed through the KSchool(CounselingDirector), a full-time, live-in Master's level counselor. There is no evidence that the Student accessed KSchool-based counseling services when she first began attending in the 2006/2007 school year. She has been accessing the KSchool(CounselingDirector) in the 2007/2008 school year. (FF268) KSchool(07/08Advisor/DormParent) stated her understanding that the Student was working on "social skills issues" in her meetings with KSchool(CounselingDirector). Neither Psychotherapist nor Mrs. X testified about what services KSchool(CounselingDirector) was providing to the Student. In fact, there is no evidence that Psychotherapist and KSchool(CounselingDirector) have had any communications with each other to coordinate the provision of services to the Student. Mrs. X offered no testimony that she has been in contact with the KSchool(CounselingDirector) and what if anything the Student is working on with the KSchool(CounselingDirector). KSchool has done no psychological or psychoeducational testing on the Student. KSchool has not prepared any kind of intake summary or developed a discharge plan (a component of a typical therapeutic placement). (FF253, 254, 256, 257, 266, 268, 271, 272)

Mr. and Mrs. X point to the work of KSchool(07/08Advisor/DormParent) with the Student to support their claim that KSchool provides clinical support to the Student. KSchool(07/08Advisor/DormParent) testimony indicates little coordination and contact between KSchool(07/08Advisor/DormParent) and KSchool(CounselingDirector) – KSchool(07/08Advisor/DormParent) appeared to be uncertain as to how often the Student met with KSchool(CounselingDirector), how it was she came to be meeting with him, and what issues they were working on (beyond a vague statement that they were working on "social skills issues." (FF267-268) As to her work with the Student, KSchool(07/08Advisor/DormParent) reported that at the beginning of the 2007/2008 school year she talked with the Student about academic, athletic and social goals to work on. However, she did not actually identify what those goals were and whether and how she was assessing the Student's progress. (FF268) She also testified that she works with the Student on social, emotional and behavioral issues with the Student on a regular basis. (FF262-264)¹⁵¹ However, she is not a psychologist, a therapist or a social worker and her

¹⁵¹ KSchool(07/08Advisor/DormParent) did not actually describe the specific things she and the Student identified at the beginning of the year to work on. Mr. and Mrs. X (Reply Brief at 24) state,

description of the “services” she provides to the Student indicates that they are provided on an *ad hoc* basis as things arise.¹⁵²

The Support Unit at KSchool reportedly produced a “Support Unit” sheet for the Student. (FF259-260) That document was not, however, provided by Mr. and Mrs. X and Mrs. X did not describe what was in that document.¹⁵³ KSchool(07/08Advisor/DormParent)’s description of the Support Unit sheet indicates that it identifies “accommodations” the Student needs to support her functioning in academic and nonacademic areas, and suggestions for how to address issues that might arise. (FF254) In other words, the Support Unit sheet is essentially the equivalent of a Section 504 plan, rather than an IEP. Even assuming the Support Unit sheet contains goals and objectives (as would be required for an IEP), no documentation or other evidence was offered demonstrating the extent (if any) of the Student’s progress on meeting those goals and objectives, whatever they are.

Dr. Ciocca had recommended family therapy. There is no evidence that Mr. and Mrs. X are participating in any kind of family counseling with the Student through a service offered by or associated with KSchool.¹⁵⁴ The Student apparently returns home more weekends than not. However, there is no evidence that any kind of therapeutic supports have been established for her in her home by KSchool to support her functioning when she visits, or goals and objectives for her weekends at home, whether in the area of family dynamics or life skills (such as shopping or meal preparation). These are elements of a typical therapeutic residential program and would be appropriate for placement at KSchool on the basis claimed by Mr. and Mrs. X.

3. Mr. and Mrs. X Are Not Entitled to Reimbursement for Placement at KSchool on Equitable Grounds

The failure of Mr. and Mrs. X to authorize RDZ to perform its proposed evaluation of the Student is an appropriate factor to consider in determining whether Mr.

however, that these unidentified goals were “therapeutic” and are being “addressed ... all along” by KSchool. There are no reports of what those goals actually were, the methods that are being used to achieve the goal, the measure of the Student’s progress toward meeting those goals, and of coordination between dorm and school on achieving those goals.

¹⁵² Although it may be beneficial for the Student to have this around-the-clock supervision by and access to adult mentors to help her work her way through issues as they arise and that supervision may be therapeutic, it is not therapy.

¹⁵³ Accordingly, there is actually no basis in the record for the claim made by Mr. and Mrs. X in their Reply Brief (at 28) that the Support Unit sheet is a plan that addresses the Student’s “academic *and* social *and* emotional needs.” (Emphasis added.)

¹⁵⁴ Psychotherapist is not a licensed family therapist. She testified that she sometimes involves the Student’s family members in therapy sessions with the Student, and that she believes she is providing the family therapy that Dr. Ciocca recommended. (FF251v)

and Mrs. X are entitled to reimbursement for the Student's placement at KSchool given their reliance on the Ciocca report to support that placement.¹⁵⁵

At the February 9, 2007 IEP team meeting, Mr. and Mrs. X described the Student's "emotional issues" as an area of concern to them. The District offered to have another psychiatric evaluation performed and asked for authorization to speak to Psychotherapist. Mr. and Mrs. X agreed to the psychiatric evaluation but would not allow the psychiatrist to perform as complete an evaluation as he wanted to do specifically by refusing to allow him to speak with Dr. Black (who performed a psychiatric evaluation in 2004). Mr. and Mrs. X refused to provide the release needed by District staff to communicate with Psychotherapist. (FF156, 158, 160, 161, 176, 178, 179, 180, 181, 185) Those actions, coupled with the refusal to allow the Student to participate in school-based counseling, effectively deprived District staff of potentially valuable information regarding the Student's perceptions of RDZ-HS and her experiences there.¹⁵⁶

Had the District been able to perform the assessments it had proposed to do, and been permitted to discuss the Student's circumstances with Psychotherapist both over the course of her attendance at RDZ-HS and as part of the 2007 evaluation process, it is possible that the District could have taken steps to address Mrs. X's concerns regarding emotional concerns or responded differently to the various events that Mr. and Mrs. X alleged in 2007 were problematic and warranted placement at KSchool.

4. Reimbursement for Placement at KSchool Based on Victimization by Bullying

¹⁵⁵ See, e.g., *P.S. v. The Brookfield Board of Education*, 42 IDELR 204 (D. Conn. 2005) (reimbursement for unilateral placement denied where parent refused to make the child available for an evaluation that they agreed to have performed at an IEP team meeting); *Patricia P. ex rel. Jacob P. v. Bd. of Educ. Of Oak Park and River Forest High Sch. Dist. No. 200*, 203 F.3D 462 (7th Cir. 2000) (same).

¹⁵⁶ The Hearing Officer considers Mrs. X's behavior regarding authorization to speak to Psychotherapist to be a refusal to provide the authorization, rather than a failure to do so. Although she did not state that she was refusing to provide the authorization, she did not provide the authorization when asked to do so on at least two occasions. In *Forest Grove School District*, 40 IDELR 190 (SEA OR 2004), the parents had initially argued that a unilateral placement was justified given their child's SED. They ultimately withdrew that request and relied instead on the OHI classification. The hearing officer noted the LEA's arguments that the parents were not entitled to reimbursement for the unilateral placement on the basis that they consistently withheld information from LEA staff and prevented LEA staff from communicating with the student's private service providers regarding the student's emotional difficulties particularly diagnoses of depression or dysthymia. The hearing officer noted that that argument might have relevance to the balancing of equities with respect to reimbursement for the unilateral placement had the parents continued to press their claim for reimbursement on the basis of those emotional difficulties (their SED claim). The student's emotional difficulties were not readily apparent to LEA staff. In contrast, the LEA had "ample information" regarding the impact of the student's OHI on his educational performance. See note 124 *infra*.

Mr. and Mrs. X allege that the Student was the subject of “bullying” taunting and teasing throughout her entire career at RDZ-HS which the District failed to address.¹⁵⁷ Given this bullying, they state that placement at KSchool after the Locker Shoving Incident was warranted because continued placement at RDZ-HS “caused harm to [the Student] socially, emotionally and academically and resulted in [the Student’s] decision to drop out of school if she was required to continue attending” RDZ-HS. (Student Reply Brief at 29) Mr. and Mrs. X argue further that based on the Locker Shoving Incident, which occurred after the February 9, 2007 IEP team meeting, “[h]aving [the Student] attend a private placement was *imperative for her safety* and well being and failure to do so would have resulted in a nearly eighteen year old dropping out of school. Clearly, for her *physical and psychological* safety and well-being [Mr. and Mrs. X] had no choice but to enroll her [at KSchool] immediately upon acceptance.” (Student Reply Brief at 31-32; emphasis added)

To support their position, Mr. and Mrs. X cite to IDEIA Regulation 34 CFR § 300.148(e)(2)(ii) which provides that a hearing officer may, in the exercise of his/her discretion, not reduce or deny reimbursement for failure to provide the required notice of intent to place unilaterally if “[c]ompliance [with that notice provision by the parents] would likely result in serious emotional harm to the child” (the “Emotional Harm Exception”). (Student Reply Brief at 31-32, 35)

Although they reference and argue physical “safety” concerns in their Reply Brief, Mr. and Mrs. X do not in that brief rely on IDEIA Regulation 34 CFR § 300.148(e)(1)(iii), which provides that “the cost of reimbursement [for a unilateral placement] ... [m]ust not be reduced or denied for failure to provide [notice at the most recent IEP team meeting attended of the intent of the parents to place the child unilaterally at public expense] if ... [c]ompliance [with that notice requirement] would likely result in physical harm to the child” (the “Physical Harm Exception”).

As a preliminary matter, even assuming that continued attendance at RDZ-HS was “likely” to result in “serious emotional harm” or even physical harm to the Student, the unilateral placement selected must still be appropriate to meet the Student’s purported special education needs. KSchool is not appropriate so neither exception would entitle Mr. and Mrs. X to reimbursement for the placement at KSchool.

The Hearing Officer does not find persuasive claims that Mr. and Mrs. X placed the Student at KSchool initially in 2006/2007 or subsequently in 2007/2008 because she was likely to experience physical or serious emotional harm if she were to continue to attend RDZ-HS, even given the Locker Shoving Incident. As to physical harm in particular, Mr. and Mrs. X at the time did not act as if the Student were in physical danger at RDZ-HS. The Locker Shoving Incident was reported to Principal who investigated it, concluded that the peer was the aggressor and disciplined the peer.

¹⁵⁷ They claim that the bullying was also occurring at E/MS. (FF52a – Dr. Black’s May 2004 psychiatric evaluation notes Mrs X’s report that the Student had been bullied by peers while at E/MS).

Principal did not call the police or ask for police intervention. Notwithstanding the conclusion reached by Principal, nothing stopped Mr. and Mrs. X from filing a complaint with the police for what they appear to contend was a serious physical assault against the Student. Similarly, nothing stopped Mr. and Mrs. X from advising the Student's teachers and other District staff members that the Student's physical safety was at risk because of the threat posed by this peer with whom they reported the Student had had difficulties over a long period of time.¹⁵⁸ Nothing stopped Mrs. X from reporting to District staff her concerns that the Student was traumatized by the Locker Shoving Incident or at risk for dropping out of school as a result of the Locker Shoving Incident. She did not make any such report. *See* FF166-168, 227f and 230g (summarizing testimony about this incident).

In terms of emotional or psychological harms, Mrs. X testified that when the Student reported the Locker Shoving Incident to her that evening, the Student was "curled into a fetal position" and stated that she would not return to RDZ-HS and would find some other means to finish her education if necessary. (FF168) Even assuming that the Student *verbalized* that she would drop out of school and complete her education through some other means on the night of this incident, *verbalizing* that emotion is not the same as *acting* on that emotion.¹⁵⁹ There is no evidence that the Student (between the time of the Locker Shoving Incident and the time that she was interviewed at KSchool) ceased coming to RDZ-HS, expressed concern about her safety to any Staff member or even discussed the Locker Shoving Incident with any staff member. In contrast with her discussion of the impact of the Chocolate-Chip-the-Chick Incident on the Student, Psychotherapist offered no particular testimony regarding the Locker Shoving Incident or its impact on the Student.¹⁶⁰

In addition, at the August 31, 2007 IEP team meeting neither Mrs. X nor counsel advised the District of how traumatized the Student purportedly was by the Locker Shoving Incident or that she had threatened to drop out of school if she had to continue to attend RDZ-HS, or that they had placed her at KSchool in the 2006/2007 school year because of their concerns for her physical safety and emotional well-being at RDZ-HS because of bullying. They also did not raise this as an issue in their requests for due process or at the PHC's in either CTDOE 07-285 or 07-323.

¹⁵⁸ It is not clear from the evidence whether the peer involved in the Locker Shoving Incident was also involved in the Glass Punching Incident. Indeed, the Hearing Officer believes that of the two incidents, the altercation occurring during the Glass Punching Incident (as described by Mrs. X) which occurred in the 10th grade seems to present a far more serious threat to the Student's physical well being than the Locker Shoving Incident occurring in the 11th grade. However, Mr. and Mrs. X did not take any steps at that time that indicated that they thought the Student was at risk of physical harm at RDZ-HS.

¹⁵⁹ This was also the first point identified by Mrs. X in which the Student purportedly stated that she did not wish to attend RDZ-HS and could consider dropping out.

¹⁶⁰ The Student was not physically hurt in the incident and asked MathDeptChair not to report it, in his opinion because it was not that big of a deal. (FF166, 167, 168)

Notwithstanding their purported concerns about the Student's "poor" academic performance, her purported victimization before the February 9, 2007 IEP team meeting and the Locker Shoving Incident (which occurred after that IEP team meeting), when they applied to KSchool in March 2007 they applied to KSchool for the **2007/2008** school year. In other words, they were not applying to seek an immediate transfer from RDZ-HS (which one would expect them to do if they were that concerned with the Student's physical safety and emotional well-being based on victimization by bullying). Reliance on the Locker Shoving Incident, whose significance was only belatedly reported in this hearing, appears to be nothing more than a post hoc rationalization to justify their decision to unilaterally place the Student in the 2006/2007 school year at KSchool and failure to provide prior written notice or invoke due process. *See, e.g.*, FF145, 153, 169, 173.¹⁶¹

An IDEIA-child would be denied a FAPE and may be entitled to a change of placement under the IDEIA if that child is the subject of bullying (verbal and/or physical intimidation or harassment, taunting, teasing) at the LEA's school that is so pervasive and persistent that the child's ability to obtain a meaningful benefit at the LEA's school has been substantially impaired **and** the LEA ignores or fails to act to resolve the situation.¹⁶² The cases suggest that the bullying must either cause an exacerbation of the symptoms of the child's disability or result in the development of new symptoms or disorders, in either case sufficient to prevent the child from obtaining a meaningful educational benefit from that placement. *See, e.g., Gagliardo v. Arlington Cent. Sch. Dist.*, 45 IDELR 119 (S.D.N.Y. 2006)¹⁶³ and *Shore Regional High School Board of Education v. P.S.*, 41 IDELR 234 (3rd Cir. 2004).¹⁶⁴

¹⁶¹ The motivation of Mr. and Mrs. X to place the Student unilaterally is not necessarily dispositive of the Student's entitlement to such a placement. To the extent Mr. and Mrs. X placed their motivation for placing the Student at KSchool at issue in their arguments, the Hearing Officer states herein his conclusion that the primary motivating factor for placing the Student at KSchool had to do with family issues rather than the Student's experience at RDZ-HS. According to Mrs. X, the Student had put the family through "hell" during the second half of the 10th grade. Mrs. X was frustrated and concerned that those issues were resurfacing at the start of the 11th grade. When Mr. and Mrs. X saw indications of what they believed would be a repeat of that "hell," they placed the Student at KSchool to address those issues. (FF120, 127-132)

¹⁶² *See, e.g.*, USDOE, July 25, 2000 Memorandum On Harassment Based on Disability (disability-based harassment that is not appropriately addressed by an LEA can constitute a denial of FAPE, where the harassment decreases an eligible child's ability to benefit from the special education and related services that have been provided); *Pittsburgh School District*, 46 IDELR 233 (PA SEA 2006) (although an IDEIA-eligible student had sustained physical injuries caused by an IDEIA-eligible peer in his placement in a series of incidents, the student was not denied a FAPE absent evidence that the incidents "substantially undermined" his educational progress).

¹⁶³ The student in that case generally performed well academically in his mainstream placements which the LEA had determined constituted the LRE placement for him. The student, however, had "endured years of being teased and bullied at the [LEA's public schools], to the point where he was afraid to go to school. Starting in the 5th grade he received treatment for depression and social anxiety, which included trials of antidepressant medications. He attended the LEA's public high school in the 9th grade and was doing well academically until he was "threatened by another student" early in the school year. Following that incident his grades declined and he became increasingly anxious about going to school. In his 10th grade he was hospitalized due to anxiety and refusal to go to school. The parents ultimately placed

In this case, in contrast, the Student attended school regularly, did not develop any additional disorders as a result of any of the incidents described by Mr. and Mrs. X that arguably constitute bullying, did not manifest at school an increase in her symptoms and did not act out at school¹⁶⁵ and the Student was not reporting to District staff instances of bullying, taunting, teasing or peer relationship difficulties that were atypical or significant.¹⁶⁶ District staff who observed the Student on a day-to-day basis did not observe any such incidents. *See* FF82, 83f, 84d, 84x, 86f. Mr. and Mrs. X describe isolated instances of events that may or may not be bullying to which RDZ-HS responded appropriately when made aware of the event.¹⁶⁷

the student in an out-of-district program that “protected [the student] from teasing or bullying or ostracism because it refused to tolerate such behavior” and “inculcated [in all students] with Quaker values of tolerance and respect.” As a result the student was not afraid to attend classes. The LEA was found responsible for the costs of the placement because in failing to address the student’s social issues (*i.e.*, he was a victim of bullying and teasing over a long period of time that caused him to experience significant psychiatric problems that were adversely affecting his educational performance) it was found to have denied the student a FAPE.

¹⁶⁴ The student in that case had perceptual disabilities and had been subject to persistent disability-related physical and verbal harassment and social isolation by classmates over a several year period, with the result that the student became depressed and attempted suicide. The LEA was found to have denied him a FAPE when its proposed to place him in a public school environment where he would continue to be subject to the harassment that the LEA had ignored or been unable to successfully address.

¹⁶⁵ While it is true that the Student began manifesting signs of emotional distress at RDZ-HS and disengagement from school between December 2006 and her withdrawal from RDZ-HS in March 2007, the Locker Shoving Incident does not appear to be the cause of those behaviors. Mr. and Mrs. X in their Reply Brief (at 30-31) acknowledge that they were “considering a private school” placement and requested the February 9, 2007 IEP team meeting (which occurred before the Locker Shoving Incident) as an initial step in that placement process. By December 2006, the family was actively considering placement of the Student at a residential school. Between December 2006 and February 2007, the Student began manifesting emotional distress at RDZ-HS associated with the potential for leaving RDZ-HS, failed to turn in assignments, began to disengage from her Title 1 class, and her grades started to slip. She reported that Mrs. X had directed her to list out all of the negative experiences she had had at RDZ-HS and would be pleased with her failing grade on her first semester Spanish exam. *See, e.g.*, Title1Teacher 12/20 Test. at 270, 267; SchoolPsychologist 1/23 Test. at 193.; FF162a.

¹⁶⁶ Although Mr. and Mrs. X argue that Staff were aware of the issues and problems the Student was having and did nothing, Mrs. X also claims that the Student essentially stopped reporting these matters to District staff because Staff was not responsive. (FF111a) Even assuming that the Student stopped reporting these events and problems to Staff, nothing was stopping either Mrs. X or Psychotherapist from reporting them or raising the issue of Staff’s purported lack of response. Given the significance of the impact of what they claim at hearing were ongoing, pervasive and persistent bullying and peer difficulties, one would have expected either Mr. or Mrs X or Psychotherapist to have done so.

¹⁶⁷ Following the Glass Punching Incident, Principal attended JVTeam activities more often and following the Locker Shoving Incident disciplined the peer who was the identified aggressor and provided an aide to stay with the Student the day following the Incident. (FF119d, 168)

It may very well be that the Student was reporting to Mrs. X on a regular perhaps even nightly basis the difficulties she was experiencing socially and emotionally at RDZ-HS. She continued, however, up until the point at which she was withdrawn from RDZ-HS, to make meaningful educational progress and demonstrate emotional and social growth in a mainstream program. Since Mr. and Mrs. X effectively precluded the District from communicating with Psychotherapist, the District did not know and could therefore not respond to the Student's purported perceptions of her day-to-day experiences at RDZ-HS or their purported impact on her emotional well-being as reported by Mrs. X, Psychotherapist and Dr. Ciocca at hearing.

S. REIMBURSEMENT FOR THE CIOCCA EVALUATION

Mr. and Mrs. X argue that they are entitled to reimbursement for Dr. Ciocca's evaluation on the basis that it was an "independent educational evaluation" or "IEE" within the meaning of the IDEIA that they obtained because they disagreed with the District's evaluation. (Student Initial Brief at 53) They claim that Mrs. X had been asking for a comprehensive evaluation of the Student, including academic, social and emotional functioning that had never been conducted since 2004 "when she clearly disagreed" with the District's evaluation and argue that it "would have been futile to allow the school staff [specifically SchoolPsychologist and SpecEdEvaluator], with extremely limited experience or training, if any, in [the Student's] complex needs" to evaluate the Student such that having the District complete its evaluations would have "simply served to delay the process even further." (Student Initial Brief at 54). These claims are discussed below.

1. The Statutory Standard For Reimbursement for an IEE

Before providing special education and related services to a child, an LEA has the right and obligation to conduct a pre-placement or initial evaluation of the child to obtain data to enable the IEP team to determine whether the child is IDEIA-eligible and if so what special education and related services the child requires to be provided with a FAPE in the LRE.¹⁶⁸ An LEA has the discretion to determine the scope of the evaluation and

¹⁶⁸ The initial or pre-placement evaluation is conducted consistent with the procedures and requirements stated in IDEIA Regulations, 34 C.F.R. §§ 300.301 through 300.311. *See* IDEIA, 20 U.S.C. §§ 1414(a)(1)(A), 1412(a)(1), 1412(a)(5); IDEIA Regulation, 34 C.F.R. § 300.301(b); Conn. Regulations at §§ 10-76d-6; 10-76d-7; 10-76d-10(a)-(b). IDEIA Regulation, 34 CFR § 300.306(a) provides that upon completion of an evaluation process, the IEP team determines whether the child is a child with a disability, as defined in IDEIA Regulation, 34 CFR § 300.8, in accordance with IDEIA Regulation 34 CFR § 300.306(b) and the educational needs of the child. IDEIA Regulation, 34 CFR § 300.306(c)(1), provides for procedures for determining eligibility and educational need. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under IDEIA Regulation, 34 CFR § 300.8, and the educational needs of the child, the LEA must: (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. IDEIA Regulation 34 CFR § 300.306(c)(2) provides that if a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in

the evaluative instruments that will be used in compliance with statutory requirements and bears the risk that its proposed evaluation will not be sufficient to enable a proper IDEIA-eligibility determination to be made.

Notwithstanding the LEA's right to conduct an initial evaluation, the parents of a child also have the right to obtain their own evaluation of their child. An evaluation obtained by the parents of a child is generally referred to as an "independent educational evaluation" or "IEE." As defined in the IDEIA and CSEL, an IEE is an evaluation of the child conducted by a qualified examiner who is not employed by the LEA responsible for the child's education. A parent who obtains an IEE with the intention that the LEA will pay for that IEE without first securing the consent of the LEA to pay for the IEE, bears the risk that the LEA will not have to pay for the IEE.¹⁶⁹ First, a "parent has the right to an [IEE] at public expense if the parent disagrees with an evaluation obtained by the public agency" and is "entitled to only one [IEE] each time the public agency conducts an evaluation with which the parent disagrees." See IDEIA Regulation, 34 CFR § 300.502(b)(1) and (5). IEE requests are not made "in the absence of existing evaluations." *Fayette Country School System*, 41 IDELR 224 (SEA GA 2004). Second, if the parents seek to have the LEA pay for an IEE, the parents have an initial burden of showing that "the criteria under which the evaluation is obtained [is] the same as the criteria that the [LEA] uses when it initiates an evaluation, to the extent that those criteria are consistent with the parent's right to an independent educational evaluation." See IDEIA Regulation, 34 CFR § 300.502(e).

Regardless of whether the parents are asking the LEA to pay for the IEE or whether the LEA has offered to do so, provided that the IEE meets "agency criteria," the LEA is obligated to consider an IEE presented by the parents in determining eligibility or what constitutes FAPE in the LRE for a child who has already been determined to be eligible. See IDEIA Regulation, 34 CFR 300.502(c)(1). The LEA's obligation to consider the IEE in determining eligibility or what constitutes FAPE in the LRE does not, however, translate into an obligation to accept or agree with the IEE or its recommendations, or to pay for the IEE.

accordance with the IDEIA Regulations, 34 CFR §§ 300.320-300.324; IDEIA, 20 USC § 1414(b)(4)-(5). The CSEL imposes essentially the same requirements for initial or pre-placement evaluations. See Conn. Gen. Stat. § 10-76ff; Conn. Regulations § 10-76d-9.

¹⁶⁹ See also *Krista P. v. Manhattan Sch. Dist.*, 255 F.Supp.2d 873, 889 (N.D. Ill. 2003) ("Parents had not met the prerequisite for requesting an IEE" because the school had not conducted its own evaluation with which the parents disagreed); *Mount Greylock Regional Schs.*, 26 IDELR 1238, 1247 (SEA MA 1997) ("state and federal law regarding a school committee's financial obligation for the costs of independent evaluations [were] not applicable" where parents refused to permit the school system to evaluate student prior to requesting an independent evaluation); *Colchester Sch. Dist.*, 30 IDELR 221, 231 (SEA VT 1999) (parents who obtained evaluation to help them decide which program was appropriate for student, rather than in response to a school system evaluation which with they disagreed, were not entitled to IEE reimbursement).

2. Determination as to Reimbursement for the Ciocca Evaluation

The Board argues that Dr. Ciocca's evaluation failed to comply "with standards associated with comprehensive educational evaluations" or with Dr. Ciocca's own standards for conducting an evaluation, based on the limited scope of documents reviewed by Dr. Ciocca. (Board Initial Brief at 47) Those claims may very well be true. However, the applicable standard is whether Dr. Ciocca's evaluation complied with the Board's criteria for such evaluations. Neither party introduced any evidence on that point. Since Mr. and Mrs. X had the burden of production on that point, however, their failure to introduce such evidence precludes them from obtaining reimbursement for Dr. Ciocca's evaluation on that basis, pursuant to IDEIA Regulation, 34 CFR § 300.502(e) discussed above.

Mr. and Mrs. X claim that they are entitled to reimbursement for the Ciocca evaluation on the basis that because District staff lacked the expertise to perform a neuropsychological evaluation it would have been "futile" to delay retaining an evaluator to perform that evaluation also lacks merit.¹⁷⁰ Prior to asserting that claim in their post-hearing Initial Brief, Mr. and Mrs. X had not asserted the purported inexperience of District staff as a basis for obtaining the Ciocca evaluation. Rather, at the February 9, 2007 IEP team meeting they requested a neuropsychological evaluation which the District did not agree to perform. The disagreement regarding evaluation at the February 9, 2007 IEP team meeting concerned the scope of the evaluation that would be performed (*i.e.*, whether it would include a neuropsychological evaluation), not who would perform the neuropsychological evaluation.¹⁷¹

For these reasons Mr. and Mrs. X are not entitled to reimbursement for the Ciocca evaluation on the basis that it is an IEE.¹⁷² For the reasons stated in Conclusion of Law

¹⁷⁰ As to their other arguments, a disagreement about an evaluation in 2004 is not sufficient to establish entitlement to an evaluation in 2007. Second, absent some demonstrated prejudice to the child from any such delay, delay in completing an evaluation process in and of itself is not a statutory basis on which an award of reimbursement for an IEE can be made. Indeed, notwithstanding that Mr. and Mrs. X's failure to provide consent for the District to perform some evaluations for close to 7 weeks after the February 9, 2007 IEP team meeting, the District's evaluations were completed quickly and several weeks before Dr. Ciocca's evaluation was completed.

¹⁷¹ To the extent that Mr. and Mrs. X objected to having District staff evaluate the Student based on lack of expertise, they should have so stated at the IEP team meeting so that the District could determine whether, in light of that claim, it would make arrangements for an outside evaluator with the requisite expertise to perform the evaluation at issue.

¹⁷² Given that conclusion it is not necessary to address the Board's remaining arguments (Board Initial Brief at 48) as to why it is not obligated to fund the Ciocca evaluation on the basis that it is an IEE. The Hearing Officer does not agree with the Board's arguments, however, and notes as follows. The Board argues first that Mr. and Mrs. X are not entitled to reimbursement for the Ciocca evaluation on the basis that there was no "disagreement" as required by the IDEIA because Mrs. X did not explain why she wanted a neuropsychological evaluation performed. (Board Initial Brief at 47) While it may be true as a factual matter that Mrs. X did not explain why she wanted a neuropsychological evaluation, and while it may have

Section P above, they are also not entitled to reimbursement as a form of equitable relief for the child find or procedural violations alleged or for the error in eligibility determination made at the August 31, 2007 IDEIA meeting.

3. Board's Failure to Defend its Evaluation

An LEA will not be required to pay for that IEE if the LEA “without unnecessary delay either (i) [f]ile[s] a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) [e]nsure[s] that an [IEE] is provided at public expense, unless the agency demonstrates in a hearing pursuant to [IDEIA Regulation, 34 CFR § 300.507 through 300.513] that the evaluation obtained by the parent did not meet agency criteria.”¹⁷³ The Conn. Regulations provide that the parents may request that the LEA fund an independent evaluation if they “disagree[] with an evaluation obtained by the [LEA]” and that if the parents ask the LEA to fund an IEE, the LEA is required to either (1) provide such an evaluation or (2) initiate a due process hearing to “show that its evaluation is appropriate.” Conn. Regulation 10-76d-9(c).

An LEA may request a hearing before the IEE has taken place, or after the IEE has been performed to show that its evaluation is appropriate. *See Letter to Wessels*, 16 IDELR 735 (OSEP 1990). In this case, Mr. and Mrs. X were proceeding with the Ciocca evaluation at the same time the District was proceeding with the limited evaluations they allowed the District to perform. Mr. and Mrs. X did not provide the Ciocca evaluation and request reimbursement for it as an IEE until August 31, 2007, which was after the District had completed the limited evaluations that it was allowed to perform. Within days of making the request for reimbursement at that IEP team meeting, on September 7, 2007 Mr. and Mrs. X commenced CTDOE 07-285. Similarly, Mr. and Mrs. X commenced CTDOE 07-323 prior to issuance of the Final Decision and Order in CTDOE 07-285 granting the District's motion to dismiss CTDOE 07-285. In the circumstances, the District's failure to commence due process to defend its evaluation does not render it obligated to pay for the costs of the Ciocca evaluation. *See, e.g., P.R., et al. v. Woodmere Local School Dist.*, 49 IDELR 31 (6th Cir. 2007) (district's failure to commence due process to defend its evaluation was a technical error that did not render it liable, where

helped persuade the Board of the need for a neuropsychological evaluation if Mr. and Mrs. X had articulated some reason for conducting such an evaluation, they are not obligated to explain why they wanted a neuropsychological evaluation to secure consent from the District to pay for it as an IEE. The Board argues next that the Ciocca evaluation did not provide any new information, largely validated prior test results, and did not support a finding of eligibility. Reimbursement for an IEE does not hinge on the outcome of the IEE.

¹⁷³ *See generally* IDEIA, 20 U.S.C. §§ 1415(b)(1) and (d)(2)(A); IDEIA Regulation, 34 C.F.R. §§ 300.103, 300.502(a)(3)(i)-(ii), 300.502(b)(2)-(5); and 300.502(c). Pursuant to IDEIA Regulation, 34 C.F.R. § 300.502(e): (1) If an [IEE] is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the [LEA] uses when it initiates an evaluation, to the extent those criteria are consistent with the Parent's right to an [IEE]. (2) Except for the criteria described in [IDEIA Regulation, 34 C.F.R. 300.502(e)(1)], [an LEA] may not impose conditions or timelines related to obtaining an [IEE] at public expense.

parents promptly commenced due process in which district's evaluation could be reviewed).

T. INTENT OF ORDER OF REIMBURSEMENT RELIEF

Whether reimbursement relief provided in a unilateral placement case renders the unilateral placement a "stay-put" placement under the IDEIA depends on whether the hearing officer, in granting reimbursement relief, has done so because the hearing officer concluded that the unilateral placement was "appropriate."¹⁷⁴

Given the Student's age and representations by Mrs. X and Psychotherapist that she may decide not to continue to work toward a regular high school diploma if she could not attend KSchool, the Hearing Officer has elected to award relief in the form of reimbursement rather than in the form of compensatory education. However, the award of reimbursement does not reflect a determination that KSchool was an appropriate unilateral placement (whether on a residential basis or otherwise) and nothing in this Final Decision and Order should be construed or interpreted to reflect any such finding. The Hearing Officer expressly finds that KSchool is not an appropriate placement.

U. COMPENSATORY EDUCATION AWARD

Had the Student been properly identified as IDEIA-eligible at the August 31, 2007 IEP team meeting, an IEP would have been developed for her for the 2007/2008 school year which would have included goals and objectives related to post-secondary education or employment (the "transition service goals"), and she would have been entitled to such transition services.¹⁷⁵ As a result of the IDEIA-eligibility determination

¹⁷⁴ See, e.g., *Student v. RDZ* (if a hearing officer concludes that the unilateral placement is appropriate, it becomes the "stay put" placement under IDEIA): IDEIA Regulations, 34 C.F.R. § 300.514(a) ("[i]f the decision of a hearing officer in a due process hearing ... agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State ... and the parents for purposes of" the stay-put provision).

¹⁷⁵ As a general matter, The IDEIA requires that IEPs for older students include a plan for a coordinated set of services designed to move special education students successfully from school to post-school settings. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include: (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals. See, IDEIA, 20 U.S.C. § 1402(34), which defines transition services as a coordinated set of activities for a child with a disability that: Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation; Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

error in August 31, 2007, the Student was deprived of those services in the 2007/2008 school year.

Such services are particularly important for the Student, who at the time (and had she attended RDZ-HS in the 2007/2008 school year) would have been entering school as a senior expecting to graduate at the end of the year. Because Mr. and Mrs. X enrolled her in 2006/2007 at KSchool as a 10th grader rather than 11th grader, she entered the 2007/2008 school year as an 11th grader at KSchool and will therefore be a 12th grader for the 2008/2009 school year.¹⁷⁶ In other words, at this point she is essentially in the same place in terms of anticipated graduation date now as she was at the time of the August 31, 2007 IEP team meeting.

Should the Student return to RDZ-HS for 2008/2009, RDZ-HS will be required to identify transition related goals and provide transition related services and the Student will be able to receive in 2008/2009 what she was entitled to receive in 2007/2008 had she attended RDZ-HS. The Student therefore has an opportunity to receive transition related services for her senior year of high school.

However, it is not clear whether the Student will be returning to RDZ-HS in 2008/2009 to complete her high school education. If she does not do so, her educational interests will be harmed by the eligibility determination error at the August 31, 2007 IEP team meeting because she will not have received transition related services that the District was obligated to provide to her. The fact that she does not return to RDZ-HS for the 2008/2009 school year does not alleviate the District of its obligation to provide the transition related services it failed to provide due to the eligibility determination error.

Based on the record, the Student has expressed a desire to go to college and pursue her interest in animal care. In the circumstances, to achieve that goal if she does not return to RDZ-HS or attend KSchool, the Student will need to complete a GED and will need to take various standardized admissions tests. She may need support, particularly with the math components of those activities. Accordingly, to remedy the denial of FAPE with respect to transition-related services arising from the District's incorrect eligibility determination at the August 31, 2007 IEP team meeting, and should the Student not return to RDZ-HS in 2008/2009 to complete high school and instead drop out of school to pursue a GED, the Hearing Officer will grant her relief in the form of a compensatory education award totaling up to \$2,000 and to be paid for GED study programs, college exam preparation, tutoring and similar services the Student obtains to enable her to pursue either post-secondary education or career training. This will allow

¹⁷⁶ The decision to enroll the Student at KSchool in March 2006/2007 as a 10th grader, notwithstanding that she was an 11th grader at RDZ-HS was, in the Hearing Officer's view, motivated by availability of an opening at KSchool in the 10th grade and not by any particular educational need. *See, e.g.,* 169, 170, 173, 257.

the Student to make a choice as to how she wishes to proceed, which is appropriate given her age and circumstances.¹⁷⁷

V. ORDERS REGARDING 2008/2009 SCHOOL YEAR

Because the Student is attending KSchool as an 11th grader in the 2007/2008 school year, she will presumably not graduate in June 2008. The Hearing Officer sincerely hopes that the adults in the Student's life will counsel the Student to complete her high school education and obtain a regular high school diploma. Whether she will do so by returning to RDZ-HS for the 2008/2009 school year remains to be seen.

Given the claims made in this case and based on what the Hearing Officer observed of the relationship of the parties at hearing, the Hearing Officer has concerns about the ability of some of the adults in the Student's life to provide her with appropriate supports to enable her to successfully transition back to RDZ-HS from KSchool to complete her high school education at RDZ-HS (if that is what she intends to do). The Hearing Officer believes that the Student could successfully complete her high school career at RDZ-HS and that her ability to do so will be enhanced if appropriate mechanisms to transition her back to RDZ-HS are put into place and the parties cooperate in implementing those transition mechanisms. Given certain recommendations made by Dr. Sahani, Dr. Ciocca and Psychotherapist regarding supports the Student may need should she return to RDZ-HS, and given the conduct of this litigation, the potential is high that disagreements regarding transition mechanisms will arise and diminish the chances of the Student making a successful transition back to RDZ-HS.

The Hearing Officer, having considered all of the documentary and testimonial evidence, believes that he is properly situated to enter such orders and that doing so will be helpful to the Student in light of what is likely to be an ongoing contentious and strained relationship between the parties.

Accordingly, although issues regarding the 2008/2009 school year are not before the Hearing Officer, the Hearing Officer will exercise his discretion to enter certain orders regarding the 2008/2009 school year *should* the Student return to RDZ-HS. The Hearing Officer is not making any determination that RDZ-HS is the LRE placement for the Student for the 2008/2009 school year.

¹⁷⁷ See, e.g., *Draper v. Atlanta Indep. Sch. Sys.*, 108 LRP 13764 (11th Cir. 2008). In this string of cases, the Court of Appeals upheld an award of compensatory education to a student who although an 18 year old 11th grader could only read at the 3rd grade level. The Court found that the Student had been consistently denied a FAPE over his educational careers. The compensatory education was defined as one of two options for the student to choose from: Option 1 defined a program with expansive support services to be delivered in the public school system should the student desire to return to the public school. Option 2 provided that the district was to pay a portion of his placement in a private school should the student desire to pursue such a placement, for a defined period.

FINAL DECISION AND ORDERS

1. Based on this record, the Student is eligible to receive special education and related services under the IDEIA and CSEL under an exceptionality of OHI on the basis of her ADHD and its related executive dysfunction. Based on this record, the Student is not eligible to receive special education and related services under the IDEIA or CSEL under an exceptionality of SED, SLD or Multiple Disabilities.
2. Mr. and Mrs. X are not entitled to reimbursement for the Ciocca evaluation on the basis that it is an IEE or on the basis that reimbursement is an appropriate remedy for a denial of FAPE, whether arising from a procedural violation or otherwise.
3. Mr. and Mrs. X are not entitled to reimbursement for any of the costs of the Student's unilateral placement at KSchool for any portion of the 2006/2007 school year.
4. Prior to the August 31, 2007 IEP team meeting, the Student was not denied a FAPE (on either substantive or procedural grounds) under the IDEIA or CSEL. At the August 31, 2007, the District erred in determining the Student was not eligible under IDEIA and CSEL on the basis of ADHD. The District's error in that eligibility determination resulted in a substantive denial of FAPE because no IEP was written for the Student.
5. Mr. and Mrs. X are not entitled to reimbursement for the Student's attendance at KSchool for the 2007/2008 school year except as provided herein. To remedy the substantive denial of FAPE that occurred at the August 31, 2007 IEP team meeting, the Board shall reimburse Mr. and Mrs. X for that portion of the costs of the Student's tuition at KSchool that reflects the Support Unit class she was provided as follows: If the tuition cost for the Student to attend KSchool as a day student in the 2007/2008 school year is \$10,000 and the Student takes 5 academic courses (including the Support Unit class), the Board shall reimburse Mr. and Mrs. X \$2,000 (reflecting the pro-rated costs of the Student's tuition allocated to the Support Unit class). The Board shall not be obligated to reimburse Mr. and Mrs. X for any other aspect of the Student's attendance at KSchool, including but not limited to any fees for activities, registration/application, meals, parent organization dues, dormitory or residential fees, nursing, social work, psychological or any other similar services, and any transportation costs.
6. The placement at KSchool was not appropriate. The reimbursement remedy defined above is being provided because the Hearing Officer has concluded that an award of compensatory education (*i.e.*, an order providing for future educational services at RDZ-HS) is not an adequate remedy in the circumstances given the Student's age and the possibility that she might not return to RDZ-HS.
7. As to the 2008/2009 school year:
 - a. The District is to convene an IEP team meeting within 30 calendar days of the date of this Final Decision and Order for the purpose of developing an IEP for the Student for the 2008/2009 school year. In addition to any other goals and objectives that the IEP

team determines are required, the IEP is to include goals and objectives that target the Student's mathematics difficulties. The IEP team shall identify post-secondary education transition service related goals and objectives.

- b. *If* the IEP team determines that placement at RDZ-HS for the 2008/2009 school year is FAPE in the LRE for the Student for that school year, the IEP team shall develop a written plan for handling the transition of the Student from KSchool to RDZ-HS, including but not limited to a plan to provide emotional support to the Student at RDZ-HS related to the transition back to RDZ-HS until such time as both the Student and the IEP team agree that this transition-related support is no longer needed. This transition-related support should be defined as a specific goal and objective in the Student's IEP. However, in any event, it shall be stated in a written document. This support should be developed with input from the Student. As part of this transition support, the Student is directed to execute releases authorizing designated RDZ-HS personnel and any provider of individual or family therapy with whom the Student is working outside of the school to communicate with each other regarding the Student to support her functioning at RDZ-HS. This transition plan is not required because of the Student's exceptionality but rather to address what is essentially an issue created by the unilateral placement and because of the manner in which this litigation has been conducted and the strained relationship between the parties which has the potential to continue to put the Student's educational interests at risk.
- c. *If* the IEP team determines that placement at RDZ-HS for the 2008/2009 school year is FAPE in the LRE for the Student for that school year, RDZ is to treat the Student as an incoming senior for purposes of defining course requirements and schedules for the 2008/2009 school year unless and until it is determined that she does not have the credit status to be a senior. The Student is directed to provide KSchool a release authorizing KSchool to disclose to RDZ-HS personnel all pertinent KSchool school records regarding the Student, including but not limited to her final grades for the 2007/2008 school year. The Student is to request that KSchool provide that information by no later than July 15, 2008. RDZ-HS shall determine, based on the Student's courses at RDZ-HS prior to March 2007 and her work at KSchool what remaining requirements she needs to complete for graduation in June 2009, determine whether she can complete those requirements in the 2008/2009 school year and design a schedule of courses for the 2008/2009 school year. Once that schedule is determined, an IEP team meeting shall be convened to define the Student's schedule for the 2008/2009 school year. To the extent that because the Student has completed graduation curriculum requirements in any particular area she has open blocks in her schedule, the IEP team shall determine programming that will prepare her for post graduation functioning and/or remedial services that may be available and appropriate to offer to her.
- d. *If* the IEP team determines that placement at RDZ-HS for the 2008/2009 school year is FAPE in the LRE for the Student, regardless of whether the Student has completed the requirements for graduation with a regular diploma prior to the end of the 2008/2009 RDZ-HS school year, the District is not to award the Student her diploma unless the

Student agrees in writing at an IEP team meeting that she should be awarded the diploma prior to the end of the 2008/2009 school year.

- e. The Student shall be invited to participate in the IEP team meetings discussed above (and all other IEP Team meetings held for her), regardless of whether she has executed a Power of Attorney or other document granting authority to Mr. or Mrs. X to participate on her behalf and in her stead. If the Student requests in writing, Mr. and Mrs. X shall also be invited to attend. To the extent necessary to support her ability to participate in IEP team meetings and to support her transition back to RDZ-HS, the District shall also invite Psychotherapist (or such other therapist with whom the Student may be working if it is not Psychotherapist) to each IEP team meeting as well, and shall pay the customary fees charged by Psychotherapist (or that provider) for time spent attending the IEP team meeting. This order is intended to implement a related service support and is not compensatory education. IEP team meetings shall be conducted in a manner which is sensitive to the Student's sensitivities and will enable her to participate meaningfully in the decision-making process.
- g. Should the Student return to RDZ-HS in the 2008/2009 school year, as to the recommendations of Psychotherapist: The IEP team should implement Psychotherapist's recommendation for a check-in contact and procedure, as well as an opportunity to process the day's events. (FF251f) The Hearing Officer believes that the suggestion that the check-in be done hourly may be excessive, but the IEP team should consider the frequency and structure of this check-in as part of its determination of transition issues. The IEP team (including the Student and Psychotherapist) should consider whether and to what extent placement in segregated classes at RDZ-HS as part of a transition plan should be implemented, as discussed by Psychotherapist.
- h. Should the Student return to RDZ-HS in the 2008/2009 school year, as to Dr. Ciocca's recommendations stated in her Report (FF218): Recommendations 2 (eligibility determination) and 3 (residential placement) are mooted or inapplicable. Recommendation 4 is not appropriate and need not be implemented. Recommendations 5, 6 and 9 were part of the Student's Section 504 plan and appear appropriate to continue. Recommendation 7 is appropriate (and to some extent was part of the Ag-Ed curriculum) and should be utilized. The IEP team should determine how Recommendations 8 and 11 will be implemented at RDZ-HS. Recommendations 12 and 13 should be considered as part of transition service planning for the Student. As to Recommendation 14 (continued psychotherapy), that is up to the family. The IEP team shall determine whether the Student will be provided with school-based counseling and, if so, the frequency of that service. The family rather than the District needs to respond to Recommendations 15 (medication management of anxiety) and 16 (family therapy). To the extent that the Student desires to have Mr. and Mrs. X involved in a home-school communication protocol suggested by Recommendation 17, the IEP team should determine how that protocol will work.
- i. Should the Student return to RDZ-HS in the 2008/2009 school year, as to Dr. Sahani's recommendation that the Student be provided with an aide to accompany her to classes

appears to be inappropriate and need not be implemented unless the IEP team (considering the Student's status and circumstances at the time of the meeting) determines that such an aide is needed.

8. As to the order of compensatory education for transition-related services discussed in Section U of the Conclusions of Law: For a period of 24 months from the date of this Final Decision and Order and should the Student not return to RDZ-HS for the 2008/2009 school year and elect to pursue a GED, the Student may receive up to \$2,000 in total from the Board to enable her to attend GED study programs, college exam preparation courses, tutoring or similar services as part of her preparation for her postsecondary education school or vocational path. Arrangements are to be made so that on the submission by the Student of an invoice and other reasonable documentation evidencing enrollment for such service(s) the District will subject to the cap stated above timely pay for the service directly to the provider if the Student has not already paid for the service, or to the Student (on submission by the Student of documentation that she has paid for the service).

Nothing in this Final Order and Decision shall be construed or interpreted to reflect a determination by the Hearing Officer that KSchool is an appropriate unilateral placement for the Student. The Hearing Officer expressly finds that KSchool is not an appropriate unilateral placement for the Student, regardless of whether that placement was purportedly made to address the Student's ADHD, PTSD, RAD, GAD or AD-NOS, and regardless of her IDEIA-eligibility on the basis of OHI, SED, SLD or Multiple Disabilities. The order for reimbursement of a portion of the Student's tuition at KSchool rather than compensatory education to be delivered in the future reflects the Hearing Officer's determination that an award of compensatory education is not an appropriate remedy.

(Reissued June 16, 2006 to replace a name with its corresponding pseudonym in FF# 111c, 173 and 234, as indicated)

Summary of Evidence and Facts Table of Contents		
FF #	Topic/Subject Matter	
1	A.	Hearing Officer Observations Regarding the Student
2	B.	General Background Information
	C.	Background Through End of 8 th Grade (2003/2004 School Year)
12	1.	1997/1998 School Year (Grade 3)
20	2.	1998/1998 School Year (3 rd Grade-Repeated)
27	3.	1999/2000 Through 2001/2001 School Years (4 th -6 th Grades)
34	4.	2002/2003 and 2003/2004 School Years (7 th and 8 th Grades) – Generally
39	5.	2002/2003 School Year (7 th Grade)
41	6.	2003/2004 School Year (8 th Grade) – Generally
42	7.	The 8 th Grade Referral to Special Education and Related Services
45	8.	The 2004 E/MS(SchoolPsychologistB) Evaluation (8 th Grade)
47	9.	The April 2004 Eligibility Determination (8 th Grade)
	D.	May 2004 Psychiatric Evaluation and October 2004 IDEIA-Eligibility Determination (8 th into 9 th Grade)
51	1.	May 2004 Psychiatric Evaluation by James Black, MD
62	2.	The October 2004 IDEIA-Eligibility Determination
65	3.	The October 2004 Section 504-Eligibility Determination and Plan
68	E.	RDZ and RDZ-HS Generally
75	F.	Certain Findings Regarding Counseling and Communication with Psychotherapist
77	G.	Mrs. X's Testimony About the Student and RDZ-HS Generally
	H.	Testimony of RDZ-HS Staff Generally
79	1.	SchoolPsychologist
83	2.	XCountryCoach9/10/11
84	3.	Title1Teacher10/11
85	4.	AgEdTeacher10/11
86	5.	AssistantPrincipal
	I.	2004/2005 School Year (9 th Grade)
87	1.	Generally
93	2.	The "Raggie" Incident
97	3.	June 8, 2005 IEP Team Meeting
	J.	2005/2006 School Year (10 th Grade)
102	1.	Generally
108	2.	Staff Testimony Regarding the Student's 10 th Grade Year Generally
111	3.	Mrs. X's Testimony Regarding the Student's 10 th Grade Year Generally
112	4.	The Incident Involving "Chocolate Chip" the Chick

Summary of Evidence and Facts			
Table of Contents			
FF #	Topic/Subject Matter		
116		5.	The Student's JVTeam Experience According to Mrs. X
		6.	Omitted
117		7.	The Student's JVTeam Experience According to the Coach
120		8.	The Referral to the Department of Children and Families
121		9.	The Student's Performance on the CAPT – April 2006
	K.	2006/2007 School Year Through January 2007 (11 th Grade) at RDZ-HS	
124		1.	The 11 th Grade at RDZ-HS Generally
125		2.	The September 13, 2006 E-Mail Exchange
133		3.	The October 5-6, 2006 E-Mail Exchange
135		4.	The Incident with EnglishTeacher11
136		5.	The Student Fails Geometry in the 1 st Marking Period
141		6.	AgEdTeacher10/11's Testimony About 11 th Grade Generally
142		7.	Title1Teacher10/11's Testimony About 11 th Grade Generally
143		8.	The Student's First Marking Period Grades (November 2006)
	L.	The Road to Litigation	
145		1.	Mrs. X's Testimony Generally
146		2.	November-December 2006
150		3.	January 2007 – The Student's First Semester Grades
153		4.	The February 9, 2007 IEP Team Meeting
162		5.	The Aftermath of the February 9, 2007 IEP Team Meeting; The Locker Shoving Incident
169		6.	Withdrawal from RDZ-HS
176		7.	The Efforts by the District to Complete Its Evaluations
190		8.	The Student's Performance on the April 2007 CAPT
191	M.	The SpecEdEvaluator Evaluation	
194	N.	The SchoolPsychologist Evaluation	
198	O.	The Sahani Evaluation	
200	Q.	The July 25, 2007 IEP Team Meeting	
216	R.	Dr. Ciocca's Neuropsychological Evaluation	
219	S.	The August 31, 2007 IEP Team Meeting	
234	T.	Dr. Ciocca's Testimony	
251	U.	Testimony of Psychotherapist	
252	V.	KSchool	

A. HEARING OFFICER OBSERVATIONS REGARDING THE STUDENT

1. The Student appeared to testify on February 25, 2008 and testified for approximately ½ hour. She appeared her stated age and was casually dressed and meticulously groomed. She entered the hearing room without hesitation and on request, accompanied by Psychotherapist who attended at the Hearing Officer's request for the reasons stated the February 8, 2008 Order Regarding the Student's Testimony. The Student was tense, manifested by an anxious (rather than irritable, agitated or depressed) affect, a rigid posture, clenching of her jaw, a flush to her facial features, avoidance of direct eye contact and relatively flat affect with little variation. Her tension/anxiety did not interfere with her ability to participate in the hearing or answer questions. She answered most questions asked without hesitation. Her answers were brief but sufficient in content. The tempo and pace of her speech was appropriate, neither too slow nor too fast. She tended to make more direct eye contact with the Hearing Officer when asked questions rather than during the discussion prior to being sworn in. Her overall level of eye contact was appropriate for the situation. She did not exhibit any inappropriate or unusual behaviors (verbal or otherwise) or emotions during the hearing. She was polite and interacted appropriately with the Hearing Officer.

B. GENERAL BACKGROUND INFORMATION

2. The Student turned 18 years of age in May 2007. (Mrs. X 11/8 Test. at 50; Student 2/25 Test. at 12) No conservator or guardian has been appointed for her. On October 16, 2007, the Student executed a Power of Attorney (the "POA") (HO5) appointing Mr. and Mrs. X to be her attorneys-in-fact with respect to all claims and litigation and all matters concerning her education. The Student's execution of the POA was knowing, intelligent, voluntary and informed.
 - a. The Student identified Ms. Spencer as her lawyer. She struggled (reflected as hesitation in her response not evident from the transcript) initially to explain what a lawyer does, but eventually answered that a lawyer "defends people." (Student 2/25 Test. at 13)
 - b. Prior to February 25, 2008, she had met with Ms. Spencer once (sometime between September and December 2007) and had spoken with Ms. Spencer on the telephone several times. (Student 2/25 Test. at 12)
 - c. The Student was aware that this hearing was going on and Ms. Spencer had explained the issues in the hearing to her. (Student 2/25 Test. at 12-13)
 - d. HO6 is a letter signed by the Student dated on her 18th birthday and addressed to SpecEdDirector. The Student did not write the letter but did sign it. She understood the letter to be a direction to the school to communicate with Mr. and Mrs. X and Ms. Spencer regarding educational matters. The Student agreed to sign the letter and make that request because she did not want to "make a mistake and do something stupid" with respect to her

education. (Student 2/25 Test. at 14-16)

- e. The Student recognized the POA, remembered signing it and verified that her signature appears on the document. She reported that Mr. and Mrs. X had given her the document and explained the purpose of the document when she was asked to sign it. Initially she had difficulty articulating the purpose of the POA (evidenced by hesitation in responding not reflected in the transcript) but eventually stated that the purpose of the POA was the same as her May 2007 letter (HO6) and that when she signed the POA she was again agreeing to have Mr. and Mrs. X represent her interests for the same reason she had signed that letter. (Student 2/25 Test. at 16-19)
3. The POA conforms to the requirements of the Connecticut Short Form Power of Attorney Act, Conn. Gen. Stat. §§ 1-42 – 1-56. Accordingly, Mr. and Mrs. X have standing to commence and litigate this proceeding on the Student's behalf.
4. There is no dispute that the Student at all times since 2002 has resided in a town that is within RDZ's jurisdiction. The Student verified her home address at hearing. (Student 2/25 Test. at 11)
5. As of the last day of hearing, the Student had not been awarded a high school diploma.
6. At hearing, Mrs. X referred to herself as the Student's mother and referred to the Student as her daughter. Their actual legal relationship is as follows: The Student's birthmother ("BirthMother") had a relationship with "M" who is Mrs. X's stepson and Mr. X's son. M is not the Student's birthfather, but is identified on her birth certificate as her father, is sometimes referred to in various documents as the Student's "legal father" and will be referred to herein as "LegalFather." *See, e.g.*, 11/8/07 Trans. at 46-49.
7. The Student first began residing with Mr. and Mrs. X in February of 1998 on a foster placement basis associated with abandonment by BirthMother and inability of LegalFather to care for her. Prior to 1998, Mr. and Mrs. X had had minimal contact with the Student. She resided with Mr. and Mrs. X from February 1998 until May of 1999. At that point she was placed in a foster home in another town by the Connecticut Department of Children and Family Services ("DCF") as part of an effort to reunify the Student with LegalFather and Mr. and Mrs. X lost contact with her. From May 1999 until April 2002, the Student lived with relatives of LegalFather with her younger sister ("YS") in a home in which she and YS had no room to themselves and slept on the floor. DCF returned the Student and YS to Mr. and Mrs. X's home in April of 2002. The Student has resided with Mr. and Mrs. X continuously since then. Over time as the Student lived with Mr. and Mrs. X, she began reporting various events to them and they gradually became aware of the magnitude and extent of the emotional and physical abuse and neglect, and sexual abuse she had experienced prior to 1998 while living with BirthMother and LegalFather, and the difficult living experiences and additional neglect and trauma that she had experienced in the period May 1999 to April 2002 when efforts were being made to reunify her with LegalFather. (Mrs. X 11/8/07 Test. at 52-55; 63-64; 68; 70; 78-80; 88-91; 177-178)
8. The Board does not dispute that the Student experienced these traumas, abuse and neglect as alleged by Mrs. X.

9. Shortly after the Student began to live with Mr. and Mrs. X in 1998, she began treatment with Psychotherapist, who has a Ph.D. and is a licensed clinical psychologist. Throughout the periods in which the Student has resided with Mr. and Mrs. X, including through the date of the last day of hearing, she has been in treatment with Psychotherapist.
10. Mrs. X's testimony is offered as parent not expert testimony. (Mrs. X 11/8 Test. at 55-56) Mrs. X is not testifying as to the "clinical significance" of the effects of the traumas on the Student. (11/8 Tr. at 173-174)
11. In testifying, Mrs. X is reporting what the Student reported to her. She does not know whether the Student's report of the event is completely accurate. (Mrs. X 11/8 Test. at 346-347)

C. BACKGROUND THROUGH END OF 8TH GRADE (2003/2004 SCHOOL YEAR)

1. 1997/1998 School Year (3rd Grade)

12. Immediately after she was placed initially with Mr. and Mrs. X, the Student began attending school within RDZ. On February 14, 1998 she enrolled in E/MS (her local elementary/middle school), entering as a 9 year old 3rd grader attending mainstream classes. At that time, Mrs. X advised E/MS staff of the Student's circumstances and history as they understood it. (Mrs. X 11/8/07 Test. at 67-68; 70-87)
13. On March 14, 1998, the Student was referred for an IDEIA eligibility determination by her teacher ("E/MS(Grade3Teacher)") who was concerned about the Student "academically and emotionally." The Student was noted to have weak math skills, to be a "reluctant writer and reader," to require 1:1 writing support, to be having a difficult time staying on task and working independently and to be reading on the 1st grade level orally and silently. (P1) A PPT was convened on April 6, 1998. The minutes (P2) note the following, among other things: The Student was showing weaknesses in writing, language mechanics and math concepts and computation; teacher reports that she wants to see the nurse several times a day; her adjustment to school has been "slow;" she requires a "great deal" of the teacher's time; she is working hard to make friends and tends to "gravitate" to adults in the school; and family history reportedly "may impact ability to succeed at school." A psychoeducational evaluation was recommended, to include achievement and intellectual/cognitive testing and, as needed, language testing, behavior rating scales and personality assessment. (P2)
14. In May 1998, the Student was evaluated by E/MS(SchoolPsychologistA) (at the time a District school psychologist intern). E/MS(SchoolPsychologistA) noted in his report (P5) the following, among other things:
 - a. The Student had previously been diagnosed with ADHD, combined type.
 - b. "During testing, she had difficulty attending to what she was asked to do. She appeared

quite distractible, often talking about irrelevant topics in order to avoid the tasks she may have felt uncomfortable with. She also seemed quite sensitive to frustration, and she tended to give up very easily. When encouraged, she would make further attempts, but she continued to show a great deal of apprehension. The results of the testing may therefore be a low estimate of her intellectual abilities due to her low frustration tolerance and unwillingness to apply herself to challenging tasks.”

- c. On the Wechsler Intelligence Scale for Children – Third Edition (“WISC-III”), the Student attained the following results

Scale/Index	Score
Verbal IQ (“VIQ”)	90
Performance IQ (“PIQ”)	82
Full Scale IQ (“FSIQ”)	85
Verbal Comprehension Index ¹	87
Perceptual Organization Index ²	83
Freedom from Distractibility Index	98

E/MS(SchoolPsychologistA) reported that the Student’s FSIQ was in the Low Average range of intellectual functioning. With respect to the Freedom from Distractibility Index, E/MS(SchoolPsychologistA) stated that the Student’s score suggested average abilities with tasks involving sustained attention, short term memory and concentration.

E/MS(SchoolPsychologistA) notes that this index is more of an assessment of the ability to attend and concentrate in a novel one-to-one environment rather than a classroom environment. Based on the results, E/MS(SchoolPsychologistA) concluded that the Student “may experience academic difficulties due to her weak word development and visual alertness. Her low frustration tolerance and distractibility will also impact her ability to perform in the classroom.”

- d. The Student attained the following results on the Woodcock-Johnson Psycho-Educational Battery-Revised (“WJ-R”), Tests of Cognitive Ability –Revised:

Subtest	Score
Long-Term Retrieval	Average
Processing Speed	Average
Auditory Processing	Average
Visual Processing	Average
Fluid Reasoning	Average
Short-Term Memory	Low Average
Comprehension/Knowledge	Low Average

¹ E/MS(SchoolPsychologistA) states in his report that this index measures ability to apply verbal skills and information to solve new problems and ability to process verbal information.

² E/MS(SchoolPsychologistA) states in his report that this index measures the ability to perform abstract visual tasks without the use of words, manipulate objects and perceive relationships between objects.

- e. On the WJ-III Tests of Achievement-Revised, she attained the following scores:

Subtest	Score
Broad Reading	Average
Basic Reading Skills	Average
Reading Comprehension	Average
Basic Writing Skills	Average
Broad Knowledge	Average
Broad Mathematics	Low Average
Mathematical Reasoning	Low Average
Broad Written Language	Low Average
[Phonics] Skills	Low Average
Basic Math Skills	Low
Written Expression	Low

- f. E/MS(SchoolPsychologistA) states that the results of cognitive testing indicate no “significant processing weaknesses” with the Student showing “relative weaknesses” in short-term auditory memory and depth and breadth of knowledge, which in turn will be associated with difficulties in academic performance.
- g. E/MS(SchoolPsychologistA) made the following recommendations:
1. The Student responds well to praise and encouragement and her teacher “should be sensitive to her low frustration tolerance.”
 2. “Smaller, more manageable steps may be appropriate . . . so that she can more easily see her progress and develop self confidence.”
 3. Her weak vocabulary may benefit from reading and keeping a journal.
 4. “Provide predictability and structure . . . Avoid changes in schedule.”
 5. Allow her extra time if needed and emphasize quality rather than quantity of work.
15. These recommendations are “accommodations” rather than special education or related services.
16. At a PPT convened on June 15, 1998 to review the results of the evaluation, the PPT team found that the Student was not IDEIA-eligible as she showed no discrepancy between ability and achievement and no evidence of a processing disorder. Rather “Anxiety and emotional factors” were identified as “present and impacting her educationally.” (P6) SpecEdDirector did not attend that PPT meeting.
17. The “discrepancy standard” referenced in the preceding Finding was the standard for determining the presence of an SLD under the IDEIA at the time. Accordingly, this PPT meeting concluded that the Student did not have an SLD.

18. Mrs. X disagreed with the eligibility determination made at this PPT meeting. However, she did not commence due process with respect to this PPT meeting. The minutes (P6) indicates that the CTDOE written procedural safeguards (the "Safeguards") were provided to Mr. and Mrs. X in connection with this PPT meeting.
19. Mrs. X, the E/MS principal and E/MS(3rdGradeTeacher) collectively decided that the Student was not ready to advance to 4th grade because of her academic, social and emotional issues, and she repeated 3rd grade in the 1998-1999 school year. (Mrs. X 11/8/07 Test. at 67-68; 70-87)

2. 1998/1999 School Year (3rd Grade-Repeated)

20. A PPT convened on September 8, 1998 in response to Mrs. X's request agreed to perform an evaluation to determine the Student's IDEIA eligibility on the basis of ADHD. (Mrs. X 11/8/07 Test. at 67-68; 70-87; P7) SpecEdDirector did not attend this PPT meeting.
21. The evaluation was performed by E/MS(SchoolPsychologistA) (now a District school psychologist) in October 1998. E/MS(SchoolPsychologistA)'s report (P8) indicates the following, among other things:
 - a. The Student was referred for an ADHD evaluation due to manifestation of impulsive behaviors in the prior testing setting, at home and at school. E/MS(SchoolPsychologistA) administered several behavioral rating scales for ADHD.
 - b. Mrs. X was reporting unwillingness to follow directions, disobedience and defiant behavior at home.
 - c. A classroom observation indicated that the Student remained on task for approximately 86% of periods that she was observed, in contrast to an average on task percentage of 89% for a sample of her classmates. On the Child Behavior Checklist, Mrs. X rated the Student in the clinically significant range for all areas assessed except for Delinquent Behavior and Aggressive Behavior, whereas the two teachers completing the form reported scores that were below the cut-off for clinical significance. The categories rated are: Withdrawn, Somatic Complaints, Anxious/Depressed, Social Problems, Thought Problems, Attention problems, Delinquent Behavior and Aggressive Behavior.
 - d. The Student meets the DSM-IV-TR diagnostic criteria for ADHD, Combined Type with noncompliant behaviors more evident in the home than the school. At school the Student's symptoms are more consistent with inattention, which may impact learning ability and social interaction. The behaviors in each setting may be impacted by the current situational stressors in the Student's life.
 - e. E/MS(SchoolPsychologistA) made the following recommendations:
 1. Preferential seating in the classroom and use of a distraction-free setting at home for homework.

2. Allow the Student to take breaks when necessary.
 3. Provide a consistent structure and routine; keep activities predictable.
 4. “For individual seat work, help [the Student] get started. Have her verbalize her understanding of the task. Check back with her to verify she is on track.”
 5. Use a multi-modal approach, combining visual-tactile with verbal modalities where possible.
 6. Break large assignments into smaller, more manageable chunks, and provide checklists for her to follow to complete the task.
 7. Allow extra time to complete tests and assignments when needed.
 8. Regular consultation between home and school. If a behavior management plan is necessary, rewards for good attending at school may be provided at home.
22. These recommendations were for “accommodations” rather than special education or related services.
23. A PPT meeting was convened on November 17, 1998 to review the results of the second E/MS(SchoolPsychologistA) evaluation. The Student was not identified as eligible under either IDEIA or Section 504 at this PPT meeting. The minutes (P9) indicate, among other things, that:
- a. The attendees included: Mrs. X, Psychotherapist, E/MS(Grade3Teacher), E/MS(SchoolPsychologistA).
 - b. The Student was determined to meet the DSM-IV-TR criteria for ADHD. The assessment indicates that the Student is manifesting ADHD symptoms primarily at home. The Student was showing focus and avoidance problems which were impacting her school work, and was having difficulties with math. The Student’s teacher was reported to have stated that she saw “growth” in the Student and that the Student has “come a long way.”
 - c. The IEP team recommended that she be provided with supports in her mainstream classroom in every category of available accommodations on the then-current CTDOE IEP documentation page defining accommodations (P9 at 6). The accommodations and supports to be provided to her were:
 1. Materials/Books/Equipment: Modified worksheets, manipulatives, calculators
 2. Tests/Quizzes/Time: Extra time (tests); Pace long term projects; “Student Write on Test;” Shortened tasks; extra response time; hands-on project; extra time-written work; reduced reading

3. Grading: Grade improvement
 4. Organization: Provide daily outlines; give one paper at a time; daily assignment list; folders to hold work; daily homework list; list sequential steps; pencil box for tools; post routines; pocket folder for work; post assignments
 5. Environment: Preferential seating
 6. Behavior Management/Support: Daily feedback to student; positive reinforcement; cue expected behavior; proximity/touch control; set/post class rules; break between tasks
 7. Instructional Strategies: Check work in progress; use manipulatives; immediate feedback; highlight key words; concrete examples; review directions; assign study partner; repeat instructions; oral reminders; visual reminders; use mnemonics; have student restate information; provide lecture notes; personalized examples
24. All of these supports were “accommodations” rather than special education or related services.
25. Mrs. X stated that she disagreed with the IEP team’s conclusion that the Student was not eligible for special education and related services. (Mrs. X 11/8/07 Test. at 67-68; 70-78; 79-87) Notwithstanding her disagreement with the IEP team’s conclusion regarding eligibility, Mrs. X did not challenge the IEP team’s determination. The documents indicate that the Safeguards were provided to Mr. and Mrs. X in connection with this IEP team meeting.
26. The Student was receiving psychotherapy once weekly during this period with Psychotherapist. (Mrs. X 11/8/07 Test. at 67-68; 70-78; 79-87)

3. 1999/2000 through 2001/2002 School Years (4th-6th Grades)

27. The Student resided with Mr. and Mrs. X until May of 1999, at which point she was placed in a foster home in another town by DCF as part of an effort to reunify her with LegalFather. After the Student was removed from their home in May 1999, Mr. and Mrs. X lost contact with the Student until April 2002. This period included her entire 4th and 5th grade and most of her 6th grade school years. (Mrs. X 11/8/07 Test. at 52-55; 63-64; 68; 70; 78-80; 88-91; 177-178)
28. The Student returned to Mr. and Mrs. X’s home in April 2002. Mrs. X reported that the Student was “very confused” and “scared” about the uncertainty of the permanency of the placement with Mr. and Mrs. X, and was “very anxious” and “hyper.” She arrived with a “bag of medications” that had been prescribed for her, including Concerta (for ADHD) and medication to manage anxiety. The Student’s pediatrician (“Physician”) ceased all of the medication “so we could find out exactly where she was.” By June 2002, the Student was again prescribed Concerta (for ADHD) and Paxil (for anxiety). Several months later, the Paxil was discontinued and the Student was prescribed Luvox. The Student resumed seeing Psychotherapist for regular therapy. (Mrs. X 11/8/07 Test. at 91-112)

29. Neither party submitted any documents or school records for the period between May 1999 and April 2002.
30. In April 2002, the Student was re-enrolled in E/MS as a 6th grader attending mainstream classes. Mr. and Mrs. X did not make any requests for services at that time. They advised E/MS staff of the circumstances of the Student’s return to their home but did not advise them that the Student had been on medication for anxiety. Mrs. X was in “regular communication” with the Student’s teachers who were reporting to her concerns with the Student’s inability to “sit still” and stay focused. (Mrs. X 11/8/07 Test. at 91-112)
31. At this time custody issues remained unresolved and LegalFather, who lived in CityA, was still recognized as the Student’s parent. Accordingly, although the Student was attending schools in RDZ, the CityA public schools (“CityA-BOE”) was the nexus LEA and therefore was responsible for determinations regarding IDEIA-eligibility for the Student.
32. On May 10, 2002, the Student’s classroom teacher (“E/MS(6thGradeTeacher)”) referred the Student for an IDEIA eligibility determination. E/MS(6thGradeTeacher) reported that strategies involving extra help from her teachers and peer tutoring had not been successful in addressing problems with math and turning in homework. As to math, E/MS(6thGradeTeacher) reported that the Student “needs extra help even with concepts that were first introduced in 5th grade. She is eager to learn and just seems to need to settle down and pay attention.” (P10) On a checklist assessing 192 problematic behaviors or issues across multiple domains, E/MS(6thGradeTeacher) noted the following concerns:
 - a. [Memory, Abstractions, Generalization and Organization]:³ Needs oral questions and directions frequently repeated;
 - b. [Mathematical Calculations]: Has difficulty solving math word problems; Fails to change from one math operation to another; Fails to correctly solve math problems requiring multiplication; Does not remember math facts;
 - c. [Academic Performance]: Does not turn in homework; Fails tests or quizzes; Performs below ability level;
 - d. [Depression/Motivation]: Is preoccupied with problems unrelated to school;
 - e. E/MS(6thGradeTeacher) did not report any difficulties in the following domains on this checklist:

Domain Name	Description
Listening	Ability to comply with directions and respond to orally presented information

³ The information in the brackets is the designation of the category of those particular problematic behaviors/issue.

Speaking	Vocabulary and speech
Reading	Phonics issues and ability to comprehend what she reads
Writing	Mechanics and grammar
Spelling	Spelling skills
Interpersonal Relationships	Appropriateness of relationships with peers, verbal and physical aggression, and interactions with adults and authority figures
Inappropriate Behaviors Under Normal Circumstances	Quality and magnitude of emotional and behavioral responses to typical situations, ability to deal with change, regulation of emotional arousal level, adaptive functioning
Rules and Expectations	Ability to understand and comply with school behavioral rules
Group Behavior	Functioning within a small group setting

33. Documents in the record reflect that a PPT convened in June 2002. The record did not, however, include the minutes of a PPT meeting from June 2002 and no testimony was offered regarding that meeting, if in fact it took place and was IDEIA- rather than Section 504-related. The record evidence reflects that if that PPT meeting took place, the PPT team did not find that the Student to be eligible under either IDEIA or Section 504, and that Mr. and Mrs. X did not commence due process with respect to the June 2002 PPT. The CityA-BOE remained the nexus LEA at this time.

4. 2002/2003 and 2003/2004 School Years (7th and 8th Grades) – Generally

34. The Student was not identified as IDEIA- or Section 504-eligible in the 7th or 8th grades.
35. During 7th and 8th grade, the Student continued to be treated with Concerta for ADHD. The Paxil was discontinued late in the 7th grade and she began taking Luvox (also for anxiety) which she continued to take in the 8th grade. (Mrs. X 11/8/07 Test. at 106-107, 120, 317-318)
36. The Student had no disciplinary referrals in the 6th, 7th or 8th grades. (Mrs. X 11/8/07 Test. at 343-344)
37. Neither party offered any evidence to indicate that the Student had attendance or disciplinary issues in the 7th and 8th grades, that she failed any classes, that she was held back or that she was not taking grade level courses.

38. During the Student's 6th, 7th and 8th grade years at E/MS, Mrs. X was very actively involved with the Student's educational program. She was employed at E/MS at the time, was there virtually every day and was in essentially daily contact with the Student's teachers to help them understand the Student's circumstances and to work with them to structure supports for the Student. (Mrs. X 11/8/07 Test. at 112-118; 175-179; 393)

5. 2002/2003 School Year (7th Grade)

39. The Student was not referred for an IDEIA or Section 504 eligibility determination in the 7th grade, and attended mainstream classes in the 7th grade (2003/2003 school year) at E/MS.
40. Mrs. X testified as follows generally about the Student's 7th grade year at E/MS (Mrs. X 11/8/07 Test. at 112-118; 175-179):
- a. The Student continued to exhibit the problems and issues that she had manifested in the 6th grade.
 - b. The Student was engaging in attention-seeking behaviors at school, "couldn't settle down to do the schoolwork" and "had difficulty making friends, keeping friends."
 - c. The Student would "go in one day perfectly fine and another day she would be off the wall in the sense that she was totally distracted, she would get very emotional, she would start crying, she would become very dramatic about things."
 - d. The teachers were reporting that the Student was having a "difficult time mathematically and educationally," that she had trouble staying focused on the task, and that her writing reflected that she would "go off on tangents."
 - e. The teachers were reporting that "the majority of the time she would interrupt in the middle of an assignment or they would be talking about something and she would just out of the blue talk about something totally random that has absolutely nothing to do with what they were doing in class."
 - f. In Mrs. X's opinion the Student's assignments and work were not the same as other 7th graders and the Student was "definitely struggling" academically. Toward the end of the school, Mrs. X contacted E/MS(SchoolPsychologistB) to discuss an evaluation to determine eligibility for special education.

6. 2003/2004 School Year (8th Grade) - Generally

41. Mrs. X testified generally as follows about her concerns regarding the Student's academic and social issues during the Student's 8th grade year at E/MS. (Mrs. X 11/8/07 Test. at 112; 118-130):
- a. The Student was continuing to have a "very difficult" time socially. She would say

“inappropriate” things to her peers that were “mean” even though Mrs. X did not believe that the Student intended to be “mean.” The Student would talk “incessantly.”⁴ “People would just walk away from her, could not listen, and she would ramble on about things that made no sense whatsoever. And then she would bring in – if they were working on something in class that struck a memory with her, she would just start talking about something that happened ... some place else and it was just totally inappropriate for what they were doing.”

- b. The Student was impulsive – “she would do things for no reason, get up in the middle of a class and would do something while they were in the middle of an assignment.” She was not included in social events and had trouble keeping and making friends.
- c. The Student’s teachers reported to Mrs. X that they had to keep refocusing her and that “they felt that she wasn’t getting and being prepared for the next year” at RDZ-HS and were concerned about her entry into high school, and did not “see how she got to this point without being referred to a Special Ed program.”
- d. To address the Student’s issues at E/MS, the Student’s teachers were providing her with various supports. She had been placed in a small group for reading and for math. The math group focused on basic math and allowed the Student to work at her own pace.
- e. Although the Student “can read faster than anybody on this planet, she never – she couldn’t comprehend anything that she was reading ...” The Student could not retain what she was learning in social studies. The Student would study something and when asked about it the next day would say that she could not remember what she had studied or learned.

7. The 8th Grade Referral to Special Education and Related Services

42. In November 2003, E/MS(7th/8thGradeEnglishTeacher) referred the Student for an evaluation for special education. (P11) In connection with that referral, the Student’s teachers completed reports between November 2003 and January 2004, in which they reported the following, among other things:
- a. E/MS(7th/8thGradeEnglishTeacher) reported that “it was obvious to the middle school team that [the Student] had specific weaknesses in Math and Literature.” In response, the Student was placed in a “special class” for Math and Literature which provided for “flexible grouping and the ability to obtain individual instruction.” The Student reportedly participated in that class with success. In social studies and science the Student was having difficulties synthesizing what she read. Modifications in those areas to support the Student included meeting with teachers during recess or after school for help sessions to help her prepare for tests and quizzes. The Student has been successful with those modifications and structure, but E/MS staff is concerned with her progress if she is mainstreamed in the high

⁴ The hearing transcript contains an error at page 119 line 20. The descriptor Mrs. X used was “incessantly.” Although not always noted herein, the Findings of Fact reflects other transcription error corrections made by the Hearing Officer.

school setting. The Student was “conscientious and hard working.” (P11) On January 22, 2004, E/MS(7th/8thGradeEnglishTeacher) reported further as follows: The Student “has been successful because of modifications made in the reading/English area. She has difficult [sic] synthesizing what is read. Basic grammar rules (verb agreement/direct/indirect obj) are difficult for [the Student] unless one-on-one attention is given to her. [The Student’s] writing consistently needs to be well-planned before she begins writing. Organization of her thoughts and ideas can be random without assistance.” The Student “must complete a graphic organizer (with help) before writing. When [the Student] does this she can be successful. In Literature, the Student “is in a class with 3 other students to afford [the teacher] the opportunity to meet her needs. In this group she is very successful because its at her level.” [E/MS(7th/8thGradeEnglishTeacher)] states further that “Please note that [the Student] is meeting with success because of current modifications (small classes, one on one assistance) that are in place. My major concern is when she is ‘mainstreamed’ in regular ed classes at the high school. Our small size affords us the time/opportunities this will not be so at the high school.” (P17) E/MS(7th/8thGradeEnglishTeacher) reported that in her language arts class, the Student is in a group of 4 students and has been provided on a daily basis with small group instruction, books at instructional level, reading organizers, retelling of the story and summarization support. (P16)

- b. The Student’s math teacher reported that the Student has been placed into a math class with a 1-3 teacher-student ratio and her progress is assessed essentially weekly with curriculum-based assessments. She is provided a self-paced math curriculum and must achieve 80% success to advance to the next level. (P12)
 - c. Another teacher (“E/MS(Grade8TeacherB)”) identified concerns in the “social/emotional” and “communication” areas, and stated that the Student can be “quite insecure and melodramatic at times” with “big improvement” from the prior year noted. (P14)
 - d. The Student’s 8th grade science teacher (“E/MS(Grade8ScienceTeacher)”) reported that the Student was showing difficulty with comprehension of written and oral communication and long and short term recall, and identified academic as well as social/emotional concerns. This teacher was providing the Student one-on-one instruction, modified assignments, study guides and models. (P15)
43. A PPT meeting was convened on February 4, 2004 for the Student, now a 14 year old 8th grader. SpecEdDirector, E/MS(Principal), E/MS(7th/8thGradeEnglishTeacher), E/MS(SchoolPsychologistB) and the DCF appointed surrogate attended this meeting. The minutes (P19) indicate that her current teacher team reported in addition to the difficulties she was experiencing, that the Student was “work[ing] to her ability with classroom modifications” and was “cooperative, hard worker and social.” The current teacher team was recommending an evaluation to rule out a learning disability. The PPT team agreed to perform an evaluation consisting of an assessment with the Wechsler Intelligence Scale for Children –Fourth Edition (“WISC-IV”) supplemented by the Woodcock-Johnson III Tests of Achievement (“WJ-III”) “as needed”, the KeyMath-Revised (“KM-R”) and the Test of Written Language – Third Edition (“TOWL-3”). CityA-BOE was the nexus LEA at this time.

44. No testimony or evidence was presented that Mr. or Mrs. X disagreed with this IEP team meeting outcome, or requested due process to challenge it. The documentation indicates that the Safeguards were provided to Mr. and Mrs. X in connection with this IEP team meeting.

8. The 2004 E/MS(SchoolPsychologistB) Evaluation (8th Grade)

45. In February and March of 2004, E/MS(SchoolPsychologistB) performed an evaluation of the Student. His report (P18) makes no recommendations and indicates the following, among other things:

- a. Although the Student initially would not meet with E/MS(SchoolPsychologistB) in his office, she eventually cooperated and was reported to be “straight forward, talkative and personable” and a “little impulsive with her conversation, sometimes tangential in her thought process.” She did not show signs of frustration on difficult items and the results are a “good estimate” of her current functioning.
- b. On the WISC-IV, the Student attained the following results, all within the average range:

Domain	Score
Verbal Comprehension Index	99
Perceptual Reasoning Index	92
Working Memory Index	99
Processing Speed Index	109
FSIQ ⁵	99

- c. On the WJ-III the Student attained a score of 103 on the Broad Reading assessment and 102 on the Broad Math Assessment. All of her scores on this assessment fell within the average range.
- d. On the TOWL-3, the Student’s scores all fell within the average range.
- e. On the KM-R, the Student showed weakness in geometry, multiplication and division.
- f. E/MS(SchoolPsychologistB) concluded that overall, the assessment results indicate that the Student is functioning in the average range of general intelligence with no processing weaknesses and average achievement in the broad areas tested, with some specific weaknesses noted in math.

46. The E/MS(SchoolPsychologistB) evaluation establishes that the Student does not have an SLD, as there was no discrepancy between the Student’s intellectual functioning and achievement as reflected in across the board average scores on those assessments.

⁵ The report does not state the Student’s VIQ or PIQ.

9. The April 2004 Eligibility Determination (8th Grade)

47. A PPT meeting convened on April 6, 2004. CityA-BOE was still the nexus LEA at this point. The minutes (P20) indicate the following, among other things:
- a. The attendees included SpecEdDirector, E/MS(Principal), E/MS(7th/8thGradeEnglishTeacher), E/MS(SpecEdTeacher) who had assisted E/MS(SchoolPsychologistB) complete the evaluation of the Student, and the DCF appointed surrogate.
 - b. The Student was found not eligible under IDEIA on the basis of a learning disability.
 - c. CityA-BOE declined Mrs. X's request to fund a psychiatric evaluation.
 - d. The Student was reportedly achieving at a 7.0 level in social studies, with teacher-modified assignments and expectations.
 - e. The Student was "extremely motivated to learn" but was showing issues with emotionality, communication and processing.
 - f. The Student's math difficulties were deemed to reflect to some extent gaps in knowledge.
 - g. The Student would be referred to the Section 504 team for a Section 504 eligibility determination.
48. Mrs. X did not agree with E/MS(SchoolPsychologistB)'s evaluation results, which did not "make sense" to her given what the teachers were reporting. (Mrs. X 11/8 Test. at 131-161)⁶ Mrs. X did not, however, challenge the PPT's eligibility determination. The documentation does not indicate that the Safeguards were provided to Mr. and Mrs. X in connection with this IEP team meeting.
49. SpecEdDirector attended that PPT meeting and recalls that Mrs. X was concerned about the Student's emotional presentation in the home. (SpecEdDirector 2/8 Test. at 40; SpecEdDirector 1/25 Test. at 197-198) SpecEdDirector agreed to have RDZ perform a psychiatric evaluation as part of the Section 504 eligibility process.
50. At a Section 504 meeting convened on April 23, 2004, the Student was identified as Section 504-eligible on the basis of having ADHD and an anxiety disorder which were found to be "severe" and "substantially" limiting her "school work" and learning. The meeting was chaired by Section504Coordinator, who also became the Student's 9th grade guidance counselor. Attendees included Mrs. X, the E/MS(SchoolPsychologistB), E/MS(Principal), E/MS(SpecEdTeacher), and two of the Student's 8th grade E/MS teachers. The Section 504 team agreed to perform the psychiatric evaluation requested by Mrs. X. Pending completion of that evaluation and review of the results, it was agreed that the Student would be provided with the following Section 504

⁶ Mrs. X uses the term "special education" or "special ed" to refer to IDEIA eligibility and IDEIA-related relief, rather than Section 504 eligibility and Section 504-related relief.

accommodations and services: The meeting notes state further that the Student would be introduced to CCSW for ongoing counseling.

modified test/quizzes;
vocabulary word banks;
simplified test wording (a “different test”);
study guides with feedback on them;
prior notice of tests and quizzes;
no multi-task directions; verbal prompting;
testing in separate setting when needed;
daily support study hall;
“access to counselor [at school] as needed.”

(P21, P22, P23, P24) The “daily support study hall” as implemented was a Title 1 support study hall.

D. MAY 2004 PSYCHIATRIC EVALUATION AND OCTOBER 2004 IDEIA-ELIGIBILITY DETERMINATION (8TH INTO 9TH GRADE)

1. May 2004 Psychiatric Evaluation by James Black, MD

51. James Black, MD, is a child and adolescent psychiatrist, who has been working in the field since 1967. Currently, 70% of his practice is focused on school consultations, 20% on “legal work” (performing evaluations and testifying as an expert primarily in custody and criminal, and “rarely” in an educational hearing) and 10% in private practice. (Black 1/23 Test. at 4-10)
52. Dr. Black performed a psychiatric evaluation of the Student on May 19, 2004. (Black 1/23 Test. at 43-44) He interviewed the Student and Mrs. X separately, met with District staff, and reviewed available documents. (Black 1/23 Test. at 11-12, 30, 51-53, 138) Dr. Black’s report (P4) indicates, the following, among other things:
 - a. Dr. Black noted the following information reported to him by Mrs. X: In the classroom, the Student “voices random, disconnected thoughts out of the blue often while the class is doing something else.” She makes “very derogatory comments” toward peers and “has been bullied” by some peers. She “personalize[es] others’ comments and actions [and] efforts to joke with her. If someone reaches out to touch her, she withdraws apparently because she sees them as inappropriately getting in her space.” She “recoils from all males and interprets boys calling her a nickname as acting flirtatious.” She complains about coaches and teachers being “unfair” and will from “day to day . . . fluctuate as to who she thinks is against her.” “If she writes a story, she rambles, gets off the track and introduces irrelevant issues. If she needs to synthesize material or generalize from one concept to another, she has great difficulty doing so.” The Student “has trouble making and keeping friends,” is a “very sweet girl with a heart of gold and wants to be everyone’s friend, but . . . that [she] makes absurd, derogatory statements to other children such as about their dress.” The Student also takes things very literally and although she “used to lie about everything, that has changed, and

she no longer does.” (Black 1/23 Test. at 56-57)

- b. Dr. Black noted further reports that: In small groups at school last year, the Student “monopolized the conversation” and that that issue had “improved with correction” at school but not in other situations.⁷ “In small groups she is meeting with success” and there is a concern that she will “flounder” in the 9th grade when she transitions to high school.
- c. Dr. Black reviewed the E/MS(SchoolPsychologistB) evaluation report (P18) which Dr. Black concluded indicated that the Student’s WISC-IV scores were all in the average range and that her achievement scores on the WJ-III were commensurate with her intellectual ability with distinct isolated gaps in knowledge.
- d. Dr. Black noted Psychotherapist’s report that the Student had been diagnosed with ADHD in 1996; that Psychotherapist had initially identified the Student was having an Adjustment Disorder with mixed emotions and conduct, and then subsequently changed that diagnosis to PTSD; and that TreatingPsychiatristA (a psychiatrist at MentalHealthCenterA) had previously diagnosed the Student as having Dysthymic Disorder.
- e. Dr. Black observed the Student during the interview to have an “anxious look on her face” and as being “hypervigilant and “easily startled.”
- f. The summary section of Dr. Black’s report states as follows: The Student is undoubtedly suffering from a [RAD]” and that children who have been subjected to mistreatment of the type experienced by the Student “develop what amounts to cognitive deficits including thought processing problems⁸, mistrust of the adult world, egocentricity, and serious ego deficits including the projection of self-perception into their environment causing them to view others as against them or acting harmful [to] them when in fact that is not true. Relative to her thought processing problems, [the Student] is tangential, rambles and even introduces irrelevancies into her thinking. In addition, those rigid thought processing problems account for [the Student’s] literal interpretation of others’ comments and statements . . . [The Student] has clear-cut symptoms of [PTSD associated with past abuse] characterized by flashback phenomena probably in the form of bad dreams, hypervigilance and startle responses.” The Student has made “considerable headway since her placement with [Mr. and Mrs. X] and is very available to redirection and adult assistance.”
- g. Dr. Black made the following recommendations:
 1. “It is extremely advisable that, next year, for 9th grade, providing the PPT agrees [the Student] be mandated under the heading of Seriously Emotionally Disturbed (SED) because of her [RAD]. She desperately needs special education support, and if she

⁷ That comment regarding monopolization of conversations reflects information provided by Mrs. X. See Black 1/23 Test. at 63-66.

⁸ In the context of this report, the Hearing Officer understands Dr. Black to be using this phrase to reference a cognitive distortion or misperception of events rather than a psychotic process (hallucination or delusion).

does not receive it, she is at risk of dropping out of school when she reaches 16 years of age. Given her very deficient self-esteem, [the Student] is prone to give up easily and may decide, at 16, that she is such a failure and that she no longer wants to attend school.”

2. Management of her symptoms with psychoactive medications should continue.
 3. Continued psychotherapy with Psychotherapist to address, among other things, PTSD symptomatology. “Such psychotherapy is essential to her psychological well-being but is not necessary for satisfactory educational programming.”
 4. Continued, close collaboration between school staff and Mrs. X.
 5. “It is essential that the educational staff, on a regular basis, point out [the Student’s] misperceptions. Because of the aforementioned projection process, [the Student] regular [sic] sees others as against her, and it is for this reason, that she makes some of her derogatory statements toward others seeing them as her enemies. She needs to recognize that this anger and hostility arises from within, and the people that she treats with denigration are not her enemies, but potentially can be allies and friends.”
 6. The Student should be involved as “much as possible” in competitive and non-competitive activities with peers. “Through this means, she can learn to improve her socialization skills acquiring the capacity to better interpret what peers mean by what they say and do, how to create and sustain friendships, and the importance of deferring to the group and putting others before herself in addition to learning how to appropriately cope with teasing and scapegoating.”
53. In diagnosing the Student as having an RAD, Dr. Black considered, among other things, reports that she was “verbally aggressive with peers at times, saw herself as the object of persecution and ... at times didn’t always tell the truth.” For purposes of this diagnosis, Dr. Black concluded that “mostly her difficulty consisted of distortion of reality.” (Black 1/23 Test. at 12-13)
54. Dr. Black suggested “mandation” on the basis of “SED,” which reflected the diagnosis of RAD. He did not recommend mandation under any other exceptionality or because of her ADHD. (Black 1/23 Test. at 27, 60)
55. The mandation recommendation reflected Dr. Black’s desire to maximize the supports provided to the Student, his assumption that the range of services under IDEIA would be greater than under Section 504, and a lack of knowledge of what could be provided under Section 504. (Black 1/23 Test. at 30-31, 43-44, 59-60) In his opinion, the Student would benefit from having the supports he suggested. However, “to say that it was [my] opinion that she needed Special Education would be giving me credit for more knowledge than I really had.” (Black 1/23 Test. at 44, 46) Dr. Black is not the “final decision-maker” on whether a child should be identified as IDEIA-eligible and with respect to the Student he did not make any specific educational recommendations in terms of curriculum or coursework because that is not his area of expertise. (Black 1/23 Test. at 27)

56. Dr. Black did not recommend residential placement because in his opinion the Student was getting a “satisfactory education” and was not unable to function “satisfactorily” at home. (Black 1/23 Test. at 13, 26-27) Dr. Black’s conclusion that the Student was getting a “satisfactory education” was from the perspective of a psychiatrist and reflected that she “was working with a school staff that was working hard to understand her, appreciate the origins of her behavior and provide her with some smaller groupings, and to be responsive to her vulnerable ego.” Dr. Black is not an educator and does not have the “real expertise to say whether ultimately she’s getting a satisfactory education or not.” (Black 1/23 Test. at 37)
57. There was no indication that the Student was a danger to herself or others. (Black 1/23 Test. at 26)
58. Dr. Black recommended that the Student continue with outside counseling to address her “reality testing” issues by improving her ability to “see things as they really are ... rather than as she feared them to be” and otherwise improve her “symptomatic difficulties, mistrust of adults, her dependence, [her PTSD related] symptomatology, [and] her deficient self-esteem.” Addressing these issues was “very important for her future development and personality but it wasn’t essential to provide [her] with an adequate education.” (Black 1/23 Test. at 14) It would have been “desirable” for school staff to have regular contact with the Student’s outside therapist given the Student’s issues, but such contact was not “essential.” (Black 1/23 Test. at 36)
59. The Student was reported to be “acting out” in class and manifesting issues with “hostility,” but not defiance. A person does not need to manifest defiant behavior to be diagnosed with RAD. (Black 1/23 Test. at 34-35)
60. Dr. Black recommended that the Student participate in competitive and non-competitive peer activities to encourage development of socialization skills and increase her ability to handle teasing and learn that “comments made by other kids of a derogatory nature [are not] necessarily personal.” Dr. Black concluded that the Student “distorted [peer comments] all of the time.” (Black 1/23 Test. at 29-30)
61. Mrs. X agreed with Dr. Black’s evaluation. (Mrs. X 11/8 Test. at 142, 163; Mrs. X 11/30 Test. at 161-162, 182-183)

2. The October 2004 IDEIA-Eligibility Determination

62. In September 2004 the Student entered RDZ-HS as a 15 year old 9th grader. CityA-BOE was still the nexus LEA at that time. An IEP team meeting to review Dr. Black’s evaluation report and determine IDEIA-eligibility was convened by CityA-BOE on October 13, 2004. The minutes (P25) indicate that the PPT meeting was chaired by CityA-BOE, and that SpecEdDirector, Mrs. X., E/MS(7th/8thGradeEnglishTeacher), SchoolPsychologist, Psychotherapist, Section504Coordinator (who was also the Student’s 9th grade Guidance Counselor), AssistantPrincipal, Title1Teacher9, the DCF surrogate and an RDZ-HS special education teacher attended. The IEP team determined that the Student did not meet IDEIA-eligibility on the basis of an SED (or any other IDEIA exceptionality).

63. Mrs. X asked that Dr. Black's recommendations be implemented, and requested special education services to address social and academic issues and 1-1 support and other modifications to "get her where she needed to be academically." Mrs. X did not agree with the finding that the Student was not IDEIA-eligible. (Mrs. X 11/8 Test. at 142, 163; Mrs. X 11/30 Test. at 161-162, 182-183)
64. Mr. and Mrs. X did not commence due process to challenge the IEP team's eligibility determination. The minutes of the IEP meeting note that the Safeguards were provided to Mrs. X with a copy of the minutes. (P25 at 2) No claim has been made in this case that Mrs. X was not provided with the Safeguards on a timely basis in connection with this IEP team meeting.

3. The October 2004 Section 504-Eligibility Determination and Plan

65. A Section 504 meeting was convened immediately after the October 13, 2004 IEP team meeting. The attendees at this meeting were SpecEdDirector, Section504Coordinator, SchoolPsychologist, the RDZ-HS special education teacher who had attended the PPT meeting, Title I Teacher9, E/MS(7th/8thGradeEnglishTeacher), the DCF surrogate and a CityA-BOE representative.
66. The documentation generated at this Section 504 meeting (B2) indicates the following:
- a. The Student's "disabilities" for Section 504-eligibility purposes were identified as ADHD, "anxiety disorder" and RAD based on the results of the "history of 504 accommodations from [E/MS];" the E/MS(SchoolPsychologistB) evaluation, diagnostic information provided by Psychotherapist, Dr. Black's evaluation and the determination at the October 13, 2004 IEP team meeting that the Student was not IDEIA-eligible.
 - b. The Section 504 team found that "Learning is adversely affected due to weakness in thought processing⁹ and focus, mistrust of adults and lack of self-confidence."
 - c. A Section 504 plan providing for the following accommodations was developed:
 - (1) Test modifications, including separate settings when needed, simplification of test instructions/wording to smaller parts when needed; prior notice of tests and quizzes; course outlines, study guides, vocabulary word banks, graphic organizers, verbal prompting for focus, and extended time when needed;
 - (2) For reading support, use questioning techniques and visuals in all academic areas;
 - (3) Preferential seating near teacher for focus;
 - (4) Positive reinforcement; and
 - (5) Title 1 support for English, social studies, science and mathematics including: long term projects, organization of assignment notebook and self-advocacy skill; bi-weekly teacher

⁹ This is a reference to the term used by Dr. Black in his report.

feedback and once monthly meeting with Title 1 teacher.

67. This Section 504 plan remained in effect at all times after October 13, 2004 and was in place while the Student attended 9th, 10th and 11th grades at RDZ-HS. (Mrs. X 11/8/07 Test. at 196)

E. RDZ AND RDZ-HS GENERALLY

68. RDZ-HS is the public high school operated by RDZ. During each year that the Student attended RDZ-HS, the student population of RDZ-HS was approximately 550 9th-12th graders.¹⁰ (AssistantPrincipal 12/20 Test. at 11-13; 11/8/07 Trans. at 17-18; SpecEdDirector 2/8 Test. at 158; SpecEdDirector 1/25 Test. at 187-188.)
69. Of the approximately 550 students enrolled in RDZ-HS in the 2007/2008 school year, approximately 63 are identified as IDEIA-eligible. (SchoolPsychologist 1/23 Test. at 68; 74)
70. During the period that the Student attended RDZ-HS, the staff included three full-time guidance counselors, a full-time school psychologist and a full-time Student Assistance Teacher. (AssistantPrincipal 12/20 Test. at 14-17, 48-49, 128)
71. The CounselingCenter¹¹ was an additional support available to RDZ-HS students and their families. The CounselingCenter was staffed by CCSW, a social worker, and is affiliated with but not operated by RDZ. CCSW has an office in the District's special education office building, which is adjacent to RDZ-HS. (SchoolPsychologist 1/23 Test. at 81-83)
72. SpecEdDirector has been working at RDZ since 1988 and has been Director of Special Education since 1998. She has a Masters of Education Degree in Special Education and a Sixth Year Administration Certificate from Connecticut. (SpecEdDirector 1/25 Test. at 186-187) SpecEdDirector is responsible for the identification, evaluation and provision of special education and related services to all IDEIA-eligible children in each of the schools within the jurisdiction of RDZ and at RDZ-HS. (SpecEdDirector 1/25 Test. at 188) Section 504 meetings in RDZ are not referred to as "PPTs." (SpecEdDirector 2/8 Test. at 57) SpecEdDirector is not responsible for coordinating Section 504 meetings and would not have attended all Section 504 meetings for the Student. The Student's 9th grade Guidance Counselor was also RDZ's Section 504 coordinator. (SpecEdDirector 1/25 Test. at 198-199; SpecEdDirector 2/8 Test. at 48) SpecEdDirector attended all IEP team meetings convened for the Student while she was attending RDZ-HS and all but the two earliest PPTs identified in the record that were convened while the Student was at E/MS. SpecEdDirector does not have any direct teaching responsibilities and has never taught the Student.
73. Title 1 support is "remedial" assistance provided to students in the mainstream who need help with academic areas and organizational skills. A student can be referred for Title 1 services through a

¹⁰ By way of comparison, during the period of time that the Student attended E/MS, E/MS ranged in size from 101 to 125 students. (SpecEdDirector 1/25 Test. at 188)

¹¹ This is a fictitious name for the entity utilized for purposes of this Final Decision and Order.

Section 504 process or by parent request. (AssistantPrincipal 12/20 Test. at 134-135) The Title 1 teaching position at RDZ-HS provides academic support and guidance. During the period of time that the Student attended RDZ-HS, approximately 1/3rd of the Students receiving Title 1 support were Section 504-eligible. The remainder were regular education students. (Title1Teacher10/11 12/20 Test. at 192; 208-209)

74. Courses at RDZ-HS are “tiered” or leveled. “A” or “Academic” level courses are more rigorous than “G” or “General” level courses. “H” or “Humanities” level courses are the top tier and “R” or “Review” level courses are the lowest tier. Incoming freshman are placed in classes based on recommendations from 8th grade teachers and RDZ-HS guidance department assessment. A student can move from level to level over time. Students taking “A” or “G” level classes would be prepared to go to college. (AssistantPrincipal 12/20 Test. at 49-53; 60; Title1Teacher10/11 12/20 Test. at 303-304)

F. CERTAIN FINDINGS REGARDING COUNSELING AND COMMUNICATION WITH PSYCHOTHERAPIST

75. The parties agree that the Student did not receive any school-based counseling services while she was at RDZ-HS. They disagree as to why she did not receive those services. The following testimony is pertinent to this issue:
- a. SchoolPsychologist recalls a discussion at the October 2004 Section 504 meeting about providing school-based counseling services. Staff was not recommending school-based counseling but discussed its availability. (SchoolPsychologist 1/23 Test. at 86-90) SchoolPsychologist testified that Mrs. X advised that the family had an outside counselor and declined school-based counseling because they wanted to keep the counseling “separate from the school and to try to make the experience [at RDZ-HS] as normal as possible” for the Student. (SchoolPsychologist 1/23 Test. at 86-90)
 - b. Mrs. X claims that the District did not offer to provide in-school counseling for the 9th, 10th or 11th grades and that she did not tell District staff that she did not want the Student have counseling in school. (Mrs. X 11/30 Test. at 152)
76. The parties agree that RDZ-HS staff did not have any communications with Psychotherapist while the Student was attending RDZ-HS. They disagree as to why. In addition to evidence that Mrs. X failed to provide releases to authorize RDZ-HS staff to communicate with Psychotherapist, the following testimony reflects that Mrs. X positioned herself to be the information conduit between RDZ-HS staff and Psychotherapist.
- a. The Student is a “very emotionally charged child who could be having --- something could happen in a day that just traumatized her, and she had one particular, or maybe a couple – actually she had a couple [of staff] that she could go to talk to. I needed to have the communication so if I knew there was a problem that I could deal with the problem with her therapist. I didn’t want to know every conversation that went on in the school.” (Mrs. X 11/20 Test. at 28-29)

- b. After learning that the Student was talking to teachers about issues that were occurring in the school, “I called the school and I said well do you know – I’d never heard – I heard nothing about any of this. I knew nothing about this stuff going on. So I called the school and I said, you know, I said [the Student] is talking to some of the teachers there and I said I really need to know what’s going on and what she’s talking about. At which time I was told that the kids in the school can talk to any teacher they want to talk to and they don’t have to tell me a thing. Well how am I supposed to work with the school that won’t communicate with me about the problems my child is having? I don’t know.” (Mrs. X 11/8 Test. at 243)
- c. “If [the Student] was talking to a teacher that had absolutely – she had no – if she was going to a teacher with a problem, and it was a teacher that she didn’t have for class or anything else that was just a teacher that she felt comfortable talking to, because of her history, we wanted to know you know what she’s talking about and have communication with her so that we could keep a track on [the Student] emotionally.” (Mrs. X 11/20 Test. at 27)
- d. Mrs. X spoke to AssistantPrincipal at one point about being advised about conversations that the Student was having with her teachers. “[M]y concern was that because of [the Student’s] history and because of [her] perceptions that she doesn’t always – she may be talking to somebody about something that can be easily handled, or somebody can get a misperception of, and I would really like to be able to talk to the teachers when she talks to these teachers.” (Mrs. X 11/30 Test. at 185)

G. MRS. X’S TESTIMONY ABOUT THE STUDENT AND RDZ-HS GENERALLY

- 77. Mrs. X describes the Student as a kind, sweet, “complicated kid with potential” who is “extremely [im]mature, very distrusting,” and “very anxious.” Her judgment is “limited” and influenced by her emotional state. She “misjudges people” and their intentions, does not “read” social cues properly, and may consider people to be “against her” based on the way she is feeling at the moment. She has limited social skills, alienates others by “some of the things she says.” She does better socially with women and adults than her peers, has “very few friends and is unable to keep and sustain a relationship with friends.” (Mrs. X 11/8/07 Test. at 50-51, 56-58)
- 78. Mrs. X testified generally about the Student’s experience at RDZ-HS as follows:
 - a. Mrs. X did not initiate contacts with teachers at RDZ-HS because the Section 504 plan provided for regular communications from Staff to Mrs. X. (Mrs. X 11/8 Test. at 392-394) Mrs. X did communicate frequently with Title1Teacher10/11 . (Mrs. X 11/8 Test. at 394-395; Mrs. X 11/30 Test. at 166-167) Mrs. X spoke to Principal about a number of incidents regarding the Student while she attended RDZ-HS. (Mrs. X 11/20 Test. at 9-10)
 - b. Mrs. X is not aware of any disciplinary referrals involving the Student while she attended RDZ-HS she was in school “practically every day.” (Mrs. X 11/20 Test. at 11)

- c. When asked if the Student ever attempted to stay home from school, Mrs. X reported that she would “come down with headaches, stomach aches, you know, just not feeling well, and I didn’t want to let her get away with it. I sent her to do school.” (Mrs. X 11/30 Test. at 172)
- d. Mrs. X worked with the Student at home to complete her homework assignments during high school and the Student had quiet study time at home. (Mrs. X 11/20 Test. at 13)
- e. The Student felt “comfortable” talking with XCountryCoach9/10/11 and RDZ-HS(TeacherP), another District staff member who was not a teacher of the Student’s. (Mrs. X 11/20 Test. at 29)

H. TESTIMONY OF RDZ-HS STAFF GENERALLY

1. SchoolPsychologist

- 79. SchoolPsychologist is a Connecticut certified school psychologist. He has been employed by RDZ since 1988 and currently assigned to RDZ-HS. As the school psychologist, SchoolPsychologist is responsible for performing evaluations, working with classroom teachers on behavior management plans, responding to parent inquiries, supporting the three guidance counselors, and providing individual counseling to a caseload of students. He provides services to students who are identified as IDEIA- and Section 504-eligible, as well as to students who are not identified under either statute. (SchoolPsychologist 1/23 Test. at 68, 74-75) Prior to coming to RDZ-HS, SchoolPsychologist had worked professionally with adolescents and children in a psychiatric hospital setting and in residential treatment facilities for children and adolescents with emotional disturbances and learning disabilities. Some of the children at these facilities presented a danger to themselves or others. (SchoolPsychologist 1/23 Test. at 69-74, 139)
- 80. Except in connection with an event that occurred when the Student was in the 9th grade that is referred to herein as the “Raggie Incident” and is discussed more fully subsequently herein, SchoolPsychologist did not interact with the Student in his capacity as a school psychologist and never provided direct services to her. During the course of performing his duties, however, he would periodically have opportunities to observe the Student during her 9th, 10th and 11th grade years. SchoolPsychologist observed that the Student appeared to be engaged in positive interactions with her peers and was not a “loner” but rather “most of the time [that he observed her] she would be with somebody else like a teammate or a bunch of kids at a dining room table ...” SchoolPsychologist would sometimes perform observations of other students in classes the Student was also taking. He does not recall anything about the Student’s participation in those classes that made her stand out in his mind. He would also periodically receive reports from Title1Teacher10/11 and some of the Student’s teachers. These staff members were reporting that the Student “had come along over the years.” SchoolPsychologist recalls having conversations with some of the Student’s teachers who were looking for information on RAD and suggestions as to how to approach the Student, including Title1Teacher10/11 and XCountryCoach9/10/11. (SchoolPsychologist 1/23 Test. at 102-108)

81. Based on what teachers reported to him and what he observed of the Student in her interactions in the cafeteria or the hallway, SchoolPsychologist concluded that between the 9th grade and 11th grade the Student had made “very significant progress” in her relationships with peers. (SchoolPsychologist 1/23 Test. at 143-144) He did not observe the Student involved in any fights, or to “lose control” or to be “overly agitated.” (SchoolPsychologist 1/23 Test. at 145) It appeared to SchoolPsychologist that over time she “was happier in the hallways, she was talking with more people, interacting, having more fun and just seemed to be fitting in and feeling good about being around other kids at the high school.” She appeared to be more “comfortable” and “trusting” of the environment and some of her teachers and “generally appearing to be more at ease of being in the high school.” (SchoolPsychologist 1/23 Test. at 203-204)
82. SchoolPsychologist was not aware that the Student was being bullied at RDZ-HS (as alleged by Mrs. X). (SchoolPsychologist 1/23 Test. at 136) No RDZ-HS staff member ever reported to SchoolPsychologist any concern about the Student being a danger to herself or to others. Nothing that SchoolPsychologist has reviewed in the Student’s records indicates to him that she is a danger to herself or others. Nothing in his interactions with the Student would cause him to conclude that she was a danger to herself or others. (SchoolPsychologist 1/23 Test. at 139-140)

2. XCountryCoach9/10/11

83. XCountryCoach9/10/11 is a science teacher and cross-country coach at RDZ-HS. (XCountryCoach9/10/11 12/20 Test. at 143; 168) The Student was on the cross-country team in the 9th, 10th and 11th grades. XCountryCoach9/10/11 testified as follows:
- a. XCountryCoach9/10/11 met the Student the week before the start of 9th grade when the Student joined the cross-country team. She knew Mr. and Mrs. X prior to that because she had also coached their daughter [referred to at hearing as the Student’s older sister] (“OS”) who was also attending RDZ-HS when the Student entered the 9th grade. XCountryCoach9/10/11 was told about the Student’s background at that time by Mrs. X. She learned more information from OS over time as well. (XCountryCoach9/10/11 12/20 Test. at 145-147)
 - b. The cross-country season is approximately 9 weeks ending at around Halloween. Students participating on the team practice 5 to 6 days/week. The team is coed with an average of 25 members. (XCountryCoach9/10/11 12/20 Test. at 147;152)
 - c. XCountryCoach9/10/11’s interactions with the Student occurred primarily in connection with cross-country team activities but also included periodic encounters during the day at school. (XCountryCoach9/10/11 12/20 Test. at 148; 184-186)
 - d. XCountryCoach9/10/11 had a “good relationship” with and served as a “decompressing agent” for the Student. The Student confided in her about various issues and matters and sought her assistance and support when things were troubling her at school. XCountryCoach9/10/11 had a similar relationship with other members of the team. XCountryCoach9/10/11 testified that over the three years that she interacted with the Student as her cross-country coach she saw “amazing” growth in the Student. As the Student moved

from a 9th to an 11th grader she became more active in interactions with XCountryCoach9/10/11 and developed better coping and problem solving skills. The Student and XCountryCoach9/10/11 discussed a broad range of topics over the years including problems the Student was having with peer relationships. The problems discussed by the Student were not “out of the ordinary for a high school kid.” No particular issues were recurrent themes in their discussions. (XCountryCoach9/10/11 12/20 Test. at 149-152; 173-174; 182-183; 186) XCountryCoach9/10/11 provides “constructive criticism” to all of the team members and one aspect of the Student’s growth was the improvement in the Student’s response to the constructive criticism over time. “She was more willing to accept it and starting seeking out that constructive criticism.” (XCountryCoach9/10/11 12/20 Test. at 153-154)

- e. The Student had great pride in her accomplishments in the RDZ-HS Ag-Ed program and based on her conversations with the Student, XCountryCoach9/10/11 believes that those were very positive experiences for the Student at RDZ-HS. (XCountryCoach9/10/11 12/20 Test. at 153)
- f. XCountryCoach9/10/11 does not recall the Student ever reporting to her that she had been treated unfairly by staff at RDZ-HS or been bullied by peers. (XCountryCoach9/10/11 12/20 Test. at 154)
- g. The Student was “sensitive” and “very funny, had an awesome sense of humor, was incredible, as to how well she read adults. She picked up on emotions of the adults around her very well. She was outspoken at times. When she felt strongly about something, you’d know that, which I actually think is a wonderful thing, to speak your mind when you believe passionately about something, but was a very spirited girl, very spirited.” (XCountryCoach9/10/11 12/20 Test. at 154; 160; 187)
- h. The Student developed friendships with female peers on the team, including one friendship with a teammate (“FS3”) that started in the 9th grade and continues to date to XCountryCoach9/10/11’s knowledge. (XCountryCoach9/10/11 12/20 Test. at 154-155)
- i. Occasionally the Student would get “upset” about something and would need to “cool down” by walking it off. “That was [the Student’s] strategy for when she got upset over something that somebody said, or having a bad day, or whatever.” This type of walking off occurred between five to ten times over the three year period that XCountryCoach9/10/11 knew the Student. Comments about things that the Student believed strongly about would upset her. The Student’s “cooling” off strategy required only a few minutes, did not detract from her participation in the activity and was in XCountryCoach9/10/11’s opinion a “mature” way of handling the stressor. XCountryCoach9/10/11 never observed incidents in which the Student teased or taunted a peer. (XCountryCoach9/10/11 12/20 Test. at 157-159; 188)
- j. In the Fall of 2007, which was after the Student was withdrawn from RDZ-HS, the cross-country team was returning from a meet in another town. FS3, the cross-country teammate that XCountryCoach9/10/11 testified the Student had developed and maintained a long standing friendship with, received a call from the Student who then wanted to talk to

XCountryCoach9/10/11. The Student was crying during the call and stated how much she missed the team, her friends at RDZ-HS and XCountryCoach9/10/11.
(XCountryCoach9/10/11 12/20 Test. at 155-156)

3. Title1Teacher10/11

84. Title1Teacher10/11 is currently the Title 1 teacher at RDZ-HS and has held that position since the start of the 2005/2006 school year. During the period 1988 until 2005 she was a special education teacher for students in grades K-8. She has a state Special Education teaching certification but the Title 1 position she currently holds is considered a regular education teaching position. She has had experience in working with and training to work with students identified as SED, RAD and SLD and with students who are adopted. (Title1Teacher10/11 12/20 Test. at 190-192; 205-206) Title1Teacher10/11 first began working with the Student in September 2005 in her capacity as a Title 1 teacher and worked with the Student in a Title 1 classroom four out of every five school days from September 2005 through the Student's departure from RDZ-HS in March 2007. (Title1Teacher10/11 12/20 Test. at 249-254) She offered the following testimony:
- a. The Title 1 period ranges from 55 to 72 minutes depending upon the block rotation. (Title1Teacher10/11 1/11 Test. at 149-150) In the Title 1 class, Title1Teacher10/11 supported the Student's efforts to complete assignments given by her other teachers but did not provide any direct instruction in a subject matter area. (Title1Teacher10/11 1/11 Test. at 132-136) Homework was done in the Title 1 class and the Student had the option of taking tests and quizzes there if she wanted to do so. She would sometimes choose to do so and when she did she would not receive support on the test or quiz. (Title1Teacher10/11 1/11 Test. at 140-142)
 - b. Title1Teacher10/11 was providing academic support and organization and structuring to support the Student's day-to-day academic functioning. The Student had access to study guides and outlines provided by her regular education teachers and used in the Title 1 setting. She was also in communication with Mrs. X on a biweekly basis, typically by e-mail, regarding assignments and expectations as provided in the Section 504 plan. Title1Teacher10/11 utilized "realign" and "reassign" strategies, with guiding and social cuing. Title1Teacher10/11 provided support to help the Student complete longer term projects and assignments. There were typically 7 to 10 other students in the Title 1 class attended by the Student and Title1Teacher10/11 had the support of a paraprofessional. The Student's regular education teachers could and would come into the Title 1 class to work with her on various occasions and Title1Teacher10/11 was in regular contact with the Student's teachers regarding her progress. (Title1Teacher10/11 12/20 Test. at 194-201; 206)
 - c. On average, Title1Teacher10/11 had to redirect or refocus the Student 3 to 4 times during a block because she would become distracted by something. She did not need more support than the "average" Title 1 student Title1Teacher10/11 worked with at RDZ-HS. (Title1Teacher10/11 12/20 Test. at 207)
 - d. The Student never reported to Title1Teacher10/11 that she was being bullied, teased or taunted by peers and Title1Teacher10/11 was not aware of any reports that the Student was

bullying, teasing or taunting other students. (Title1Teacher10/11 12/20 Test. at 265)

- e. In Title1Teacher10/11's opinion, the Student's math difficulties reflect gaps in her knowledge rather than a learning disability. The gaps in her math knowledge did not "preclude" her from learning higher level math. (Title1Teacher10/11 1/11 Test. at 67-70; Title1Teacher10/11 12/20 Test. at 287) In Title1Teacher10/11's opinion, a math learning disability is an inability to learn the set of skills and a math learning deficit is "simply missing pieces in the skill set." Title1Teacher10/11 does not believe the Student needs specialized instruction in math. (Title1Teacher10/11 12/20 Test. at 288-289) She agrees that a person does not need to have an "inability to learn" to be found to have a learning disability. (Title1Teacher10/11 1/11 Test. at 65)
- f. The Student would lie on average once weekly to Title1Teacher10/11 about typical teenage things like saying she had completed an assignment when she did not. Title1Teacher10/11 did not view this as a "problem with lying" but rather as "typical" teenage "deflecting behavior." (Title1Teacher10/11 12/20 Test. at 299-300)
- g. The Student discussed attending college with Title1Teacher10/11 and indicated an interest in attending one of two specific local colleges. (Title1Teacher10/11 12/20 Test. at 304-306)
- h. If the Student returned to RDZ-HS, she could be successful given that in Title1Teacher10/11's opinion she was succeeding at RDZ-HS while she attended. (Title1Teacher10/11 12/20 Test. at 306)
- i. Title1Teacher10/11 had a custom of greeting students as they arrived and doing "check ins" with them as necessary. She routinely did this with the Student in the 10th and 11th grades. "Every day [the Student] would stop by and chat with me on her way in. We got along fairly well." "She was really communicative." (Title1Teacher10/11 12/20 Test. at 249-254)
- j. Title1Teacher10/11 had opportunities to observe the Student interact with her peers in the cafeteria in the morning before school started. The Student had a "whole table of friends" that remained fairly consistent over time. She observed the Student engaged in interactions with these peers and did not observe any interactions she would characterize as inappropriate. Title1Teacher10/11 chaperoned a dance at RDZ-HS during the Student's junior year, which the Student attended. (Title1Teacher10/11 12/20 Test. at 255-256; 261; 271-272)
- k. Title1Teacher10/11 did not observe any negative interactions between the Student and her peers and none were reported to her by other teachers. (Title1Teacher10/11 12/20 Test. at 258)
- l. The Student was "vivacious" with a "sense of humor." She was responsive to social cues used by Title1Teacher10/11. The Student is a "gentle soul, with a love for animals and the well-being of – the depth of that nurturing capacity is well established in her." The Student never did or said anything that would cause Title1Teacher10/11 to conclude that she was a danger to herself or others. (Title1Teacher10/11 12/20 Test. at 259-260; 297)

- m. Title1Teacher10/11 never observed the Student having an emotional outburst. (Title1Teacher10/11 12/20 Test. at 272-273)
- n. Title1Teacher10/11 does not believe the Student has an SED or SLD. (Title1Teacher10/11 1/11 Test. at 41-42)
- o. Title1Teacher10/11 is not aware of the Student having any teacher detentions other than one given to her by MathTeacher11 (her 11th grade geometry teacher), or any other type of disciplinary detention in either the 10th or 11th grades. Teacher detentions are a less severe disciplinary consequence than the type of detentions that AssistantPrincipal's or Principal's office would issue. A teacher level detention is used to complete the work that is missing under the teacher's supervision. (Title1Teacher10/11 1/11 Test. at 122-126)
- p. Title1Teacher10/11 worked with MathTeacher11 and EnglishTeacher10, the Student's 10th grade English teacher to modify expectations in those classes. In geometry, the quantity of the problems the Student needed to complete was reduced and she was given extra time to complete assignments. The Student was expected to complete the same curriculum as other students in the geometry class. EnglishTeacher10 provided more direct support to the Student and scaffolding with her. The Student was expected to complete the same assignments as other students in the class. (Title1Teacher10/11 1/11 Test. at 132-136)
- q. During the 11th grade, the Student's English teacher (EnglishTeacher11) came to discuss the Student with Title1Teacher10/11 three times, her History teacher (HistoryTeacher11) came twice; her biology teacher (BiologyTeacher11) came one; her 11th grade Spanish teacher (SpanishTeacher11) came approximately a half dozen times, and her 11th grade Ag-Ed teacher (AgEdTeacher10/11) came three times. These contacts were in addition to the bi-weekly communication protocol. (Title1Teacher10/11 1/11 Test. at 152-159; 165) Title1Teacher10/11's contacts with the Student's 10th grade teachers were similar. (Title1Teacher10/11 1/11 Test. at 168)
- r. The Student had trouble with handing in assignments on time. She had problems with organization, but did not have a "serious problem with organization." She had mastered structured small pockets of organization but was forgetful and might work on a project and then leave it home. Her problems with organization were impacting her grades by impacting homework completion. She would lose credit for turning in completed assignments late. She had this problem in both 10th grade and 11th grades. She was not a behavioral problem in class but had problems with coming prepared to class, taking notes "when offered" and similar types of behaviors. (Title1Teacher10/11 1/11 Test. at 167-171; 175) When Title1Teacher10/11 initially started working with the Student, she manifested avoidant behaviors with respect to work completion. (Title1Teacher10/11 1/11 Test. at 186-187) She showed improvement in that area over time. (Title1Teacher10/11 1/11 Test. at 263-264) Title1Teacher10/11 was "always" working with the Student on staying on task during her work with the Student. Title1Teacher10/11 stated that there were times when the Student did not need to be redirected during a Title 1 block, and other times when she might need to be redirected as many as 3 times. (Title1Teacher10/11 1/11 Test. at 175-178; 180-181)

- s. Her teachers were not reporting disciplinary issues, altercations, oppositional or argumentative behaviors in class but sometimes reported that the Student was “emotional” which Title1Teacher10/11 defined to mean that she was manifesting an elevated level of activity or energy and needed to be refocused. When Title1Teacher10/11 first began working with the Student, Title1Teacher10/11 observed the Student to be talking incessantly when her energy level was high, but over time that behavior diminished. No teachers reported that the Student broke down into tears or was “inappropriately happy” in classes or engaging in angry outbursts or showing frequent mood shifts. (Title1Teacher10/11 1/11 Test. at 175-178; 180-181)
- t. Title1Teacher10/11 had a good relationship with the Student but was not “allowed to talk to her about things at home.” Mrs. X told Title1Teacher10/11 that she wanted Title1Teacher10/11 to “do academics and keep her focused” and not to “get off task by discussing things.” The Student and Title1Teacher10/11 did, however, talk about a variety of things, including who the Student thought was “cute.” (Title1Teacher10/11 1/11 Test. at 216-218; 220-222)
- u. The Student told Title1Teacher10/11 that Mrs. X told the Student she could not go to guidance for support. (Title1Teacher10/11 1/11 Test. at 229-230; 265; 280-281)
- v. No teacher ever reported to Title1Teacher10/11 an incident in which the Student threatened to punch another student and Title1Teacher10/11 never observed any behavior in the Student that she would characterize as the Student threatening a peer. (Title1Teacher10/11 1/11 Test. at 255)
- x. Mrs. X spoke with Title1Teacher10/11 about concerns Mrs. X had regarding peer issues the Student was having in basketball but Title1Teacher10/11 does not recall other instances of Mrs. X reporting peer difficulties. The Student would report “trouble with her peers” in the form of a peer being “nosy” or “girl stuff.” (Title1Teacher10/11 1/11 Test. at 257-258)

4. AgEdTEACHER10/11

85. AgEdTeacher10/11 is the Animal Science teacher and co-chair of the Agricultural Science Department at RDZ-HS, which is referred to generally as “Ag-Ed.” Ag-Ed involves plant science, animal science, agricultural engineering, environmental science and forestry. AgEdTeacher10/11 has been teaching at RDZ-HS for 12 years and has 5 additional years of teaching in a public high school. (AgEdTeacher10/11 1/25 Test. at 6-8) She testified as follows about the Student:
- a. The Ag-Ed programs that the Student participated in included a “Supervised Agricultural Experience” or “SAE” and participation in the FFA National Organization programs, a student leadership group. (AgEdTeacher10/11 1/25 Test. at 9) FFA at RDZ-HS has approximately 130-140 students and adults. A student does not receive academic credit for participating in the FFA. (AgEdTeacher10/11 1/25 Test. at 10)
 - b. AgEdTeacher10/11 taught both the Student and OS and knew Mr. and Mrs. X prior to the

time that she began teaching the Student. (AgEdTeacher10/11 1/25 Test. at 10-11) AgEdTeacher10/11 taught the Student Vet Science I in the 10th grade and Vet Science II in the 11th grade while she was at RDZ-HS. Vet Science I is a basic introductory class to the subject matter and Vet Science II moves beyond the classroom to actual field experiences. Had the Student returned to RDZ-HS in the 2007/2008 school year, based on her performance in Vet Science I and II she would have been able to take Vet Science III. A student taking Vet Science II and III can receive advanced credit at various colleges in the area. (AgEdTeacher10/11 1/25 Test. at 12-14) The Student did “very well” in Vet Science I and II. The Student performed “very well” on the variety of written, oral and research projects she was asked to perform in the Vet Sciences curriculum, and was able to complete projects on time. In regard to a particular project that was part of an FFA competitive exercise, the Student “was much like many of the other students, [with] that anxiety thing and picking a topic, but then, the next day, she would have the outline done.” Her confidence increased over time. “She would come in with note cards to present, not the whole paper, and it was edited ... She went a little bit above.” She worked “really hard” at making eye contact when giving her presentations in class. (AgEdTeacher10/11 1/25 Test. at 16-19)

- c. AgEdTeacher10/11 spoke with the Student about her post-high school plans and understands that the Student was interested in pursuing a career in veterinary science, such as Vet Tech, Vet Assistant or Veterinarian. (AgEdTeacher10/11 1/25 Test. at 14, 82)
- d. As part of the Ag-Ed curriculum, the Student was required to demonstrate a number of math skills (algebraic equations for animal nutrition classes) and book-keeping type activities. She needed some assistance on the book-keeping activities initially but was then able to perform the task once taught how to do it. (AgEdTeacher10/11 1/25 Test. at 19-21)
- e. There were lots of group discussions and partner work in Vet Sciences. The Student did “very well. She pretty much always had a discussable point.” (AgEdTeacher10/11 1/25 Test. at 21)
- f. AgEdTeacher10/11 was aware that the Student had a Section 504 plan. She sometimes needed extra time to complete a task. (AgEdTeacher10/11 1/25 Test. at 22)
- g. AgEdTeacher10/11 saw increased growth in the Student over time. She had friends in the class with whom she interacted. (AgEdTeacher10/11 1/25 Test. at 24)
- h. The Student’s SAE consisted of working with horses at Mrs. X’s mother’s house. (AgEdTeacher10/11 1/25 Test. at 27-28)
- i. At RDZ-HS, the Student was particularly fond of taking care of the miniature pony. She would bring friends over to see and work with the pony during free periods. She was very responsible about checking in and getting permission to bring those students, who were not Ag-Ed students but rather other friends of the Student, to see and work with the pony. (AgEdTeacher10/11 1/25 Test. at 29-32; 93-95)

- j. The Student was an “enthusiastic” participant in class in the 10th grade and frequently was the first to arrive for class and would engage AgEdTeacher10/11 in discussions. During the 10th grade, the Student “tended to have that hand shooting up all the time, and she wanted to be very involved and discuss every point.” The behavior was not “disruptive” and the Student was able to adhere to class rules. Mrs. X and AgEdTeacher10/11 had some communications regarding this issue. The Student was not disrespectful. (AgEdTeacher10/11 1/25 Test. at 35-41) AgEdTeacher10/11 saw growth in the Student from 10th to 11th grade reflected in part in being more “calm” in the class. “She wasn’t so quick on that trigger anymore, and I remember thinking that that was a really good thing, that she was able to participate, not as the first speaker, but to come in as the discussion was going.” (AgEdTeacher10/11 1/25 Test. at 39)
- k. The Student was not a threat to anybody or herself. (AgEdTeacher10/11 1/25 Test. at 52-53) The Student never had any disciplinary referrals from AgEdTeacher10/11 and her attendance was “very good.” (AgEdTeacher10/11 1/25 Test. at 53)
- l. The Student could have successfully completed the Vet Science curriculum at RDZ-HS and based on her performance, and her “innate interest, feel, talent” for the subject was capable of attending a college program in Vet or Agricultural Science. (AgEdTeacher10/11 1/25 Test. at 55)

5. AssistantPrincipal

86. AssistantPrincipal is currently the RDZ-HS Assistant Principal. She has had held that position for 7 years. For the preceding 7 years she had been a teacher at an off-campus RDZ-HS program serving students who were having difficulty fitting into the traditional academic setting. She has a Connecticut certification in Special Education, experience teaching disabled middle and high school students, and experience teaching students with SLD, SED and RAD, as well as students who were adopted. (AssistantPrincipal 12/20 Test. at 7-11) AssistantPrincipal knows but has never taught the Student. (AssistantPrincipal 12/20 Test. at 12; 86) She testified about her interactions with the Student and Mr. and Mrs. X as follows:
- a. Over the time the Student was at RDZ-HS, AssistantPrincipal had informal contacts with the Student – specifically conversations and interactions in the hallway, in the Ag-Ed program, in the cafeteria, at dances, after school at cross-country and occasionally in her office when the Student had questions about programs AssistantPrincipal was involved in. The Student would seek AssistantPrincipal out on some of these occasions. AssistantPrincipal does not recall the Student avoiding interaction with her. Her interactions with the Student were “fine.” When she did class observations of classes the Student was taking, including observations in Ag-Ed programs, AssistantPrincipal did not observe any negative behaviors or interactions involving the Student. AssistantPrincipal believes that the Student was able to read social cues appropriately and observed her engaged in positive interactions with teachers. Based on her interactions with the Student, AssistantPrincipal learned that the Student liked working with the animals in Ag-Ed and liked to run cross-country. AssistantPrincipal did not observe the Student having any negative interactions or “emotional outbursts” defined by AssistantPrincipal as shouting or having a temper tantrum.

AssistantPrincipal believes that the Student had several “close friends” among her peers based on AssistantPrincipal’s observations of the Student’s interactions with a group of peers which remained stable over time. She also believed that the Student had “good relations” with various teachers, particularly AgEdTeacher10/11, XCountryCoach9/10/11 and Title1Teacher10/11. (AssistantPrincipal 12/20 Test. at 22-28; 35-42; 113-114)

- b. The Student talks “fast” but not “incessantly.” Over time she became a more active participant in interactions with AssistantPrincipal. AssistantPrincipal did not observe instances in which the Student went off on tangents or introduced off-topic comments during a conversation. (AssistantPrincipal 12/20 Test. at 42-44)
- c. When the Student first entered RDZ-HS, Mrs. X called AssistantPrincipal to discuss the Student’s circumstances. AssistantPrincipal does not recall any other conversation in which Mrs. X raised concerns about the Student. (AssistantPrincipal 12/20 Test. at 118-119; 135-136)
- d. AssistantPrincipal was aware that the Student was seeing Psychotherapist and that some of her tardies were associated with therapy sessions. Psychotherapist never contacted AssistantPrincipal about the Student and AssistantPrincipal does not recall ever asking Mrs. X if AssistantPrincipal could contact Psychotherapist. No one ever reported any concern to AssistantPrincipal about the Student being at risk for hurting others or herself and AssistantPrincipal had no such concerns. (AssistantPrincipal 12/20 Test. at 44-48; 114-115)
- e. The Student could return to and do “well” at RDZ-HS with the supports available to her at RDZ-HS. She could go to college. (AssistantPrincipal 12/20 Test. at 60-63)
- f. The Student never reported to AssistantPrincipal that she was being “treated unfairly” by adults at RDZ-HS or bullied by peers. While the Student was attending RDZ-HS, Mr. and Mrs. X did not raise any concerns with AssistantPrincipal about the Student being bullied. The Student did not complain to AssistantPrincipal about her issue with EnglishTeacher11 or about any issue she was having on the JV basketball team. (AssistantPrincipal 12/20 Test. at 41; 93; 117-118) AssistantPrincipal first learned in connection with this hearing that the Student reportedly had threatened to punch another student, that the Student reportedly had been restrained by her basketball coach from punching a glass window and that the Student was reportedly pushed across a hallway by another student when she was a junior. (AssistantPrincipal 12/20 Test. at 66-76)
- g. As Assistant Principal, AssistantPrincipal shares responsibility with the Principal for student disciplinary issues. AssistantPrincipal may not be aware of all of the disciplinary referrals handled by Principal directly. (AssistantPrincipal 12/20 Test. at 12, 70-74) AssistantPrincipal is not aware that the Student had any detentions, suspensions or other disciplinary issues. Referrals to AssistantPrincipal or Principal was for serious infractions. Less substantial behavioral infractions and issues could be referred to the guidance office for resolution or could be dealt with by the teacher through in-class methods. AssistantPrincipal would not necessarily know or be informed about teacher detentions the Student may have earned. (AssistantPrincipal 12/20 Test. at 18-19; 73-75) B30 is the Student’s “disciplinary”

report. At that time, RDZ-HS tracked information regarding tardiness as well as commendations for positive behavior in the “disciplinary” report database. (AssistantPrincipal 12/20 Test. at 32-34)

- h. As described more fully subsequently herein, AssistantPrincipal was involved in the “Raggie Incident.” Other than that incident, AssistantPrincipal recalled an incident in which a female student (“FS2”) “accused” the Student of making an inappropriate comment. AssistantPrincipal concluded that the accusation was not true and that the Student had not actually been involved. She is not certain when this incident with FS2 occurred. (AssistantPrincipal 12/20 Test. at 20-22)
- i. No teacher ever reported to AssistantPrincipal that the Student was having trouble with attentional issues. (AssistantPrincipal 12/20 Test. at 116)

I. 2004/2005 SCHOOL YEAR (9TH GRADE)

1. Generally

87. During the 2004/2005 school year, the Student attended RDZ-HS as a 9th grader. She took the following courses, all of which were “G” level courses except for Science which was an “A” level class. A student must earn at 60 or better to pass the class and earns honors in the class if his/her final grade is 85 or better. (B31 at 1) The Student earned the following final grades, for an 83.3 (or B) average (as calculated by the Hearing Officer).

Course	Final Numeric Grade	Letter Grade Range ¹²
English 9G	82	B
Social Studies 9G	84	B
Pre-Algebra	84	B
Intro Science A lab	84	B
Intro Algebra I	W	n/a
Life Skills	79	C
Physical Education 9	87	B
8 th Grade Spanish	P	n/a

88. No testimony was offered as to why the Student was withdrawn from the Intro Algebra I class to a Pre-Algebra class and which of the two classes was the more advanced. No evidence was offered as to why the Student was taking an 8th grade Spanish class, and whether that was a mistake in the transcript. There is no evidence that the Student took Spanish while at E/MS and if so, whether she failed it and therefore had to repeat it in 9th grade. There is also no evidence that the Student

¹² The Transcript (B31 at 1) identifies the letter grade equivalent for a numeric grade as follows: A = 90 to 100; B = 80 to 89; C = 70 to 79; D = 60-69. The Transcript does not state the final grades as letter grade equivalents. The Hearing Officer assigned these letter grades based on the information in B31. No testimony was adduced as to whether or how RDZ-HS defines the numeric equivalent that would constitute, for example, a B- rather than a B or a B+ rather than a B.

took any foreign language class at E/MS. The Hearing Officer draws no conclusions from the fact that the Student was taking an 8th grade Spanish class in 9th grade (if she was in fact taking an 8th grade Spanish class).

89. The Student earned 32.5 credits in the 9th grade and was on target to graduate in due course in terms of completion of credit requirements. (AssistantPrincipal 12/20 Test. at 55; Mrs. X 11/8 Test. at 369; B31) There is no claim or evidence of attendance problems or issues. The Student did not fail any of her courses in 9th grade.
90. Section504Coordinator, was the Student's 9th grade guidance counselor. (SpecEdDirector 2/8 Test. at 42-43)
91. On April 7, 2005, DCF advised RDZ that guardianship of the Student had transferred to Mr. and Mrs. X. (B1; P26) Accordingly, as of April 7, 2005, RDZ became the nexus LEA and assumed sole responsibility for the Student's educational programming.
92. Mrs. X's testimony about the Student's 9th grade year, other than with respect to the Raggie Incident, indicates that the Student adjusted satisfactorily to RDZ-HS and that the year was relatively uneventful. Mrs. X testified as follows about the Student's 9th grade year (Mrs. X 11/8/07 Test. at 165-175, 179-191, 331-334, 377-378):
 - a. Mrs. X understands that "G" or "general level" classes are for students who are not going on to college or are having difficulty in certain subjects and need a "less intense program." The Student "struggled" academically but maintained a C grade throughout the year in each subject. The Student's 9th grade grades were "OK" or "fine" for "G" level classes but Mrs. X was concerned that the Student was taking "G" rather than "A" level classes.
 - b. The Student was "nervous" about going to RDZ-HS but OS was also attending RDZ-HS and that made the Student "feel safe." She had some issues with peers on the tennis and cross country teams. When asked if the Student had any "social difficulties" in the 9th grade, Mrs. X stated that the Student could not "make and keep friends."¹³
 - c. At some point around the Student's entry to the 9th grade, Mr. and Mrs. X were learning about additional events of significance in the Student's life prior to the time she came to live with them in 1998. Among other things, the Student reported that while on an out of state trip with BirthMother she had been raped by a male cousin and chased by a man, and that BirthMother punished her by among other things making her kneel on uncooked rice and hitting her across the hands with a wooden spoon.

2. The "Raggie Incident"

93. One of the examples that Mrs. X identified as illustrating the Student's inappropriate behavior with peers and lack of social skills is an incident in the 9th grade referred to at the hearing as the

¹³ Mrs. X did not specifically report that the Student was having peer conflicts in the 9th grade other than the Raggie Incident.

“Raggie Incident.” In that incident, the Student called another female student (“FS1”) a “raggie.” In the RDZ-HS community that term is considered to be a derogatory comment regarding a person’s socioeconomic status.

94. [OMITTED]
95. AssistantPrincipal became involved in the Raggie Incident, and testified as follows: The Student called FS1 a “raggie.” FS1 complained to AssistantPrincipal who met with the Student. This was not a disciplinary referral. The Student acknowledged that she had called FS1 a “raggie” and after interviewing her, AssistantPrincipal referred the Student to SchoolPsychologist and CCSW. (AssistantPrincipal 12/20 Test. at 13-14; 19)
96. SchoolPsychologist testified as follows about the Raggie Incident:
- a. When the Student was in the 9th grade (“later in the year”), AssistantPrincipal referred the Student to SchoolPsychologist and CCSW following an incident in which the Student called a female peer (“FS1”) a “raggie.” AssistantPrincipal reported to SchoolPsychologist that the Student and FS1 had had a “verbal back and forth” about the incident and the Student was “very upset.” Based on his meeting with the Student, SchoolPsychologist concluded that the Student had heard the term “raggie” at some point, did not understand the connotation of the remark and therefore did not understand or appreciate that what she had done was inappropriate or wrong, or why FS1 was so upset about the Student calling her a “raggie.” “I mean I think she was generally [sic] surprised as to why [FS1] was so upset with her. I – I don’t think she understood the connotation of those – of that kind of remark.” “I don’t think she was being derogatory in any way. I think she had heard it somewhere and just said it.” The Student’s reaction was “not unusual” in SchoolPsychologist’s opinion and she did not do anything that was “inappropriate” in her interaction with SchoolPsychologist. (SchoolPsychologist 1/23 Test. at 94-100)
 - b. After the Student returned to class, SchoolPsychologist contacted Mrs. X to report the incident to her as part of standard protocol. Mrs. X advised that she did not want SchoolPsychologist or CCSW to follow through regarding the event and that Mrs. X would talk to the Student’s outside counselor. SchoolPsychologist did not see a need to follow-up with the Student regarding the incident and had no further contact with her. (SchoolPsychologist 1/23 Test. at 94-100) SchoolPsychologist did not ask to speak with Psychotherapist after the Raggie Incident and based on this conversation and his conversation earlier in the year with Mrs. X regarding in-school counseling was “operating on the assumption that I was uninvited in being involved in that by [Mrs. X].” (SchoolPsychologist 1/23 Test. at 195-196)
 - c. Following the Raggie Incident, and during the remainder of her career at RDZ-HS, the Student was not referred to SchoolPsychologist or CCSW to SchoolPsychologist’s knowledge. (SchoolPsychologist 1/23 Test. at 101-102)

3. June 8, 2005 IEP Team Meeting

97. Mrs. X testified that: District staff did not voice any concerns regarding the Student to her during

the 9th grade. Based on the reports provided to her by the Student and the fact that District Staff was not communicating with her as specified in the Section 504 plan, Mrs. X concluded that the Student was not receiving the services outlined in the Section 504 plan during the 9th grade year and requested a PPT at the end of the 9th grade year to address those issues. Among other things, over the year, Mrs. X noted that the Title 1 support the Student attended was a “basic study hall,” and that she was not getting assistance with her work and did not have access to an aide in her classes. (Mrs. X 11/8/07 Test. at 131-161)¹⁴ Mrs. X was also concerned about the Student’s entry into 10th grade. The Student was expressing a desire to move out of “G” level classes. Mrs. X had attempted to address these concerns to the Student’s guidance counselor “without any results.” (Mrs. X 11/8 Test. at 181-191, 331-334, 377-378).

98. The PPT meeting requested by Mrs. X convened on June 8, 2005. SpecEdDirector, Mrs. X., SchoolPsychologist, Section504Coordinator and the surrogate parent attended, among others. Among other things, the minutes (P27) indicate that: (a) Mrs. X is “not pleased with the 504 plan developed for [the Student] based on the communication with classroom teachers” and wants to “have close communication with the school to keep [the Student] on target.” (b) Mrs. X reported that the Student “feels everything/everybody is out to get her or report on her.” (c) Mrs. X reported that the Student was taking Luvox for anxiety and “incessant talking.”
99. The Student’s eligibility status was not changed at this IEP team meeting. The minutes indicate further that the Safeguards were made available to Mrs. X at the meeting. No claim has been made and there is no evidence to support a claim that Mrs. X was not timely provided the Safeguards in connection with this IEP team meeting. Mrs. X did not commence due process regarding this IEP team meeting.
100. Mrs. X testified that the District affirmed at the meeting that they “would do better” with respect to the Section 504 plan in the 10th grade. (Mrs. X 11/8/07 Test. at 181-191, 331-334, 377-378)
101. Regarding this IEP team meeting, SpecEdDirector testified that: Mrs. X was always interested in having the Student identified as IDEIA-eligible, but the primary purpose of the meeting as presented by Mrs. X was concern about the communication with classroom teachers as part of the implementation of the Section 504 plan. At that meeting, the issue of the Student’s transition from “G” to “A” level courses was discussed. The courses identified in the PPT minutes were selected by the Student. No additional supports were offered to enable the Student to make that transition and none were requested. SpecEdDirector does not know if a Section 504 meeting was convened afterward to discuss that issue. The statement “The parent reports that the student feels everybody is out to get her or report on her” was recorded by SpecEdDirector as a statement of what Mrs. X reported the Student was telling Mrs. X. Mrs. X discussed her concerns regarding communication with the classroom teachers and her desire to “make sure she knew everything that was going on and wanted that communicated to her.” (SpecEdDirector 1/25 Test. at 206-207; SpecEdDirector 2/8 Test. at 57-64)

¹⁴ During the Student’s 9th grade year, Title1Teacher9 rather than Title1Teacher10/11 was the Title 1 teacher.

J. 2005/2006 SCHOOL YEAR (10TH GRADE)

1. Generally

- 102. The Student entered the 10th grade at RDZ-HS in September 2005. GuidanceCounselor10/11 became her guidance counselor and Title1Teacher10/11 became her Title 1 teacher. The Student had 5 unexcused tardies. She had no attendance problems other than that, and no disciplinary referrals. (B30)
- 103. The Section 504 plan developed in October 2004 was reviewed on September 6, 2005 and remained in place unchanged during the 10th grade. (B2)
- 104. The Student transitioned from “G” to “A” level courses. (Title1Teacher10/11 12/20 Test. at 303) A student must earn at 60 or better to pass a class and earns honors in the class if his/her final grade is 85 or better. (B31 at 1) The Student earned the following final grades:

Course	Final Numeric Grade	Letter Grade ¹⁵
English 10A	76	C
World History A	69	D
Algebra 1	66	D
Chemistry Lab	83	B
Drawing 1 / 2	76 / 67	C / D
Veterinary Science 1	82	B
Physical Education 10	77	C
Health 10	74	C

- 105. The Student attained a 74 or a C average (as computed by the Hearing Officer). The Student did not fail any classes. Her strongest performance was in two science classes (Chemistry and Veterinary Science 1) and her weakest in Algebra 1. She earned an additional 33.75 credits toward high school and remained on track to graduate in due course in terms of credits completed. (AssistantPrincipal 12/20 Test. at 55-56) (B31; B33) As of the end of the 10th grade, the Student’s cumulative GPA (i.e., 9th and 10th grades) was 80.46, which would have been above a C grade of any kind (i.e., at the bottom of the B grade range). (B31 at 1)
- 106. Approximately 15 to 20% of students taking Algebra 1 at RDZ-HS fail it the first time they take it. (MathDeptChair 1/11 Test. at 291-293, 378)
- 107. Neither the Staff nor Mr. and Mrs. X referred the Student for an IDEIA eligibility determination or requested an IEP team meeting for her during this year. (SpecEdDirector 1/25 Test. at 207)

¹⁵ The Transcript (B31 at 1) identifies the letter grade equivalent for a numeric grade as follows: A = 90 to 100; B = 80 to 89; C = 70 to 79; D = 60-69. The Transcript does not state the final grades as letter grade equivalents. The Hearing Officer assigned these letter grades based on the information in B31. No testimony was adduced as to whether or how RDZ-HS defines the numeric equivalent that would constitute, for example, a B- rather than a B or a B+ rather than a B.

2. Staff Testimony Regarding the Student's 10th Grade Year Generally

108. AgEdTeacher10/11 had some contact with Mrs. X regarding anxiety the Student was experiencing in connection with various Ag-Ed projects. The contacts were to coordinate support for the Student between the home and AgEdTeacher10/11. One event was picking a topic for a 6-8 page paper. The anxiety that AgEdTeacher10/11 observed was "typical high school ... worries" about a project like that. (AgEdTeacher10/11 1/25 Test. at 32-35)¹⁶ AgEdTeacher10/11 is aware that Mr. and Mrs. X provided support to the Student for this project at home, but the Student also did a lot of the writing while at school. (AgEdTeacher10/11 1/25 Test. at 83)
109. Title1Teacher10/11 observed the Student become "upset" once during this year and offered to send her to guidance for support. (Title1Teacher10/11 1/11 Test. at 178-179) She reviewed Dr. Black's report and discussed it with SchoolPsychologist when she started working with the Student. (Title1Teacher 1/11 Test. at 41)
110. AssistantPrincipal observed the Student giving her oral presentation on horse grooming as part of the Ag-Ed Open House and thought that the Student did a "great job," and manifested a "sense of strength or assertiveness, because she definitely had the knowledge behind what she was doing." (AssistantPrincipal 12/20 Test. at 27)

3. Mrs. X's Testimony Regarding the Student's 10th Grade Year Generally

111. Mrs. X testified as follows about the Student's 10th grade experience at RDZ-HS (*Unless otherwise noted* - Mrs. X 11/8/07 Test. at 191-195; 197-208; 212-221)
- a. The school year started "reasonably well." Early on in the year, however, the Student began to have peer problems and was the "target of some pretty nasty jokes, mean jokes" by her peers, one of which was the incident involving Chocolate Chip the Chick.¹⁷ The Student was the subject of "constant" taunting and teasing from peers who knew how to push her buttons. The Student was not happy in the 10th grade. The Student continued to report peer difficulties to Mrs. X over the course of the year but stopped reporting them to school staff because she concluded there was "no point" to doing so. "It got to the point where things would happen and [the Student] would come home and talk to me about them because she said to me there's no point in my going to talk to anybody [at RDZ-HS], they don't believe anything I say anyway. She was constantly in arguments with other kids. Whether who got into whose face, I don't know. All I know is I never heard about them. I heard about them from [the Student]." (Mrs. X 11/8 Test. at 206) In January and February of 2006 the Student's "personality" began to change.

¹⁶ AgEdTeacher10/11 does not recall any similar contacts or issues during the 11th grade.

¹⁷ This incident is discussed more fully subsequently herein.

- b. The Student went to school regularly, every day, had no disciplinary referrals that Mrs. X knew about, and participated in sports as an extracurricular activity. The Student ran cross country in the Fall.
- c. The Student was on the junior varsity basketball team (“JVTeam”) in 10th grade. She did not have the social skills to be a player on a team like that. “She was taunted, she was sworn at, she was – they tried to engage her in fighting, they wrote nasty things about her on the back of a vehicle.” The basketball coach was aware of this but did not do anything about it other than calling Mrs. X and telling her that the Student was trying to start a fight.¹⁸ The Student spoke to Principal about the incident and was told the Student “could either find another sport, suck it up and deal with it, or quit sports all together. So what was happening to [the Student] at that point was nobody was listening to her, nobody was believing anything that she had to say.”
- d. The Student was attending school regularly and did not fail any of her courses. There was some “resistance” from her teachers to the change from “G” to “A” level classes because of concerns about whether she could succeed in those classes. The Student was struggling academically. Title I Teacher 10/11 was trying to coordinate communication with the Student’s other teachers, but reported to Mrs. X that she could not get cooperation from the other teachers to provide the support the Student needed. “There was still no set plan.” The teachers were not communicating with Mrs. X as provided in the Section 504 plan. Mrs. X believes that the Student was not getting the services required under the Section 504 plan in the 10th grade.
- e. The Student was continuing to see Psychotherapist and was prescribed both Concerta (54 mg p.o. q.d) and Luvox for part of the year. Psychotherapist did not ask to consult with the school and Mrs. X does not know if there were any communications between the school and Psychotherapist in that school year.
- f. Mrs. X relied on the communication protocol that had been established with Title I Teacher 10/11. She attempted to express her concerns directly with teachers over the course of the high school years, primarily by trying to schedule conferences which was not always possible or successful. Mrs. X felt like she was being “blown off” by the Student’s teachers who reported no concerns with the Student. (Mrs. X 11/30 Test. at 166-167; 184-186)¹⁹

4. The Incident Involving “Chocolate Chip” the Chick

112. As part of her Ag-Ed program, the Student and her class were raising chicks at school. The Student named her chick “Chocolate Chip” and became very attached to it. The following

¹⁸ These incidents are described more fully below.

¹⁹ In this part of her testimony, Mrs. X referred specifically to Assistant Principal and Principal, neither of whom were the Student’s teachers.

incident involving Chocolate Chip occurred.

113. According to Mrs. X: The Student's peers told her that her chick had died. They did this to upset her and kept from her most of the day that they had hidden the chick and it was alive. The Student was very upset about this and reported it to the teacher who "blew it off" and treated the incident as "inconsequential." (Mrs. X 11/8/07 Test. at 191-195; 197-208; 212-221) AgEdTeacher10/11 was involved in the incident, which occurred at the Town Fair in September 2006. (Mrs. X 1/25 at 3-4)
114. AgEdTeacher10/11 testified that the Chocolate Chip the Chick Incident occurred in the Spring of 2006 (when she was in the 10th grade) rather than in September 2006 (when she was in the 11th grade), and occurred in class at RDZ-HS rather than at the Town Fair. On entering class, AgEdTeacher10/11 saw that the Student was upset and crying and became aware that a student with a disability in the class had told the Student that there was something wrong with her chick and had been saying "mean" things to the Student about the chick. "Some kids were very supportive of [the Student] and other kids were, you know, trying to hush up the one boy. I don't really remember anybody being nasty to her that day at all about this." AgEdTeacher10/11 ascertained with the class that all chicks were accounted for, at which point the class was able to proceed. Afterward, AgEdTeacher10/11 talked to the instigating student and also spoke to the Student. (AgEdTeacher10/11 1/25 Test. at 47-51) "Well after we talked about the fact that kids aren't always nice and fair, and she knew this young man pretty well and could understand that. I know her feelings were hurt, because it got to a point where, obviously, she was crying, so, obviously, it set her off." The Student was "angry" with the instigating student and crying and yelling at him that "it's not fair kind of thing, and she was right." (AgEdTeacher10/11 1/25 Test. at 51, 53, 86-87)
115. Psychotherapist reported that: The Student discussed the incident with Chocolate Chip over "many sessions" because it was "very upsetting to her." Psychotherapist's understanding of this event was that a "little circle of kids came around her and they told her that her chick had died during the night. And she responded as [the Student] would expect to respond with crying and screaming, and yelling ... And it was obviously within half an hour that in fact the chick was fine, that the child had just – I think they knew that she would overreact or react in a really extreme way and thought it would be entertaining." (Psychotherapist 11/20 Test. at 76-77)

5. The Student's JVTeam Experience According to Mrs. X

116. Mrs. X testified as follows about the Student's JV Team experience: (Mrs. X 11/8 Test. at 396; Mrs. X 11/20 Test. at 6-9)
 - a. The "Window Writing" Incident: At some point during the season, the Student's teammates wrote in the dirt on the back of JVTeamCoach10's truck after a basketball practice that the Student was a "loser" and "when [the Student] questioned it and asked the coach who wrote it, he said what difference does it make, it's not a big deal, let it go." According to Mrs. X:

Well it made a difference to [the Student] because nobody has the right to tell her she's a loser. She's already – she was already feeling this way anyway because of the life that she lived. And nobody would come to her aid on that particular issue. So she started again to – she would [try] to talk to people but she wasn't getting anywhere, so she just stopped talking to people about things. She would come home and talk to me and we'd ...talk our way through it and get her to try to ignore it and walk away, and you, know, ride above it, but it was still taking its toll on [her].

(Mrs. X 11/8 Test. at 194-195) Mrs. X cannot recall if she spoke to Principal about this incident. (Mrs. X 11/20 Test. at 9-10)

- b. The “Glass Punching” Incident: After the Window Writing Incident, JVTeamCoach10 contacted Mrs. X to report another incident involving the Student, which Mrs. X described as follows:

The girls – I have to clarify what I was told. I was not there, so this is based on what I was told. That it was – after a game – and oh, no it was practice and there were two girls on the team that were sisters. And one girl [the Student] was playing wound up on the floor and got hurt. The other sister comes and gets in [the Student's] face and the girl threatened to hit [the Student], and [the Student] said go ahead hit me, go ahead. And she – you know this turned into – and then [the Student] threatened if they didn't stop doing this, that she was going to call the police ... [The Student] the one girl said to [the Student] – was getting in her face and threatening her and [the Student] said go ahead and hit me. And then they were getting – there were three girls against [the Student] and she told them if it doesn't stop, I'm going to call the police. Now the coach knew nothing about any of this. I got this from [the Student]. What I got from the coach was that [the Student] was so angry and so upset that nobody was paying attention – and she was in the hallway and she went – she was going to go punch the wall and he grabbed her hand to stop her from punching – it wasn't a wall, it was actually glass. And he called me to talk to me about that incident and how [the Student] was disrupting the basketball team and that she had problems with the players; you know, that she's a good basketball player, but she's got to learn to control her emotions and you know—and I talked to [coach's first name] about that and it didn't really go any further.

(Mrs. X 11/8 Test. at 204-205)

- c. The Student continued to be taunted by her team mates and reported these incidents to Principal because JVTeamCoach10 would not do anything about the situation. (Mrs. X 11/8 Test. at 205-206)

7. The Student's JVTeam Experience According to the Coach

117. JVTeamCoach10 was the JVTeam coach when the Student was on the team. (JVTeamCoach10 1/23 Test. at 232) JVTeamCoach10 had coached the Student prior to that for two seasons on a travel basketball team. (JVTeamCoach10 1/23 Test. at 235) He testified as follows about the

Student's experience on the JV team during her 10th grade year:

- a. The team practiced four to six times per week. (JVTeamCoach10 1/23 Test. at 251)
- b. The Student was not a "starter" but rather was on the "second team" and played as much as any other player on the second team. Players on the starter team get more play time during games. Players on the second team can get more play time as they improve their play. The Student "didn't earn a position to play more because of her play on the court." The Student did not always follow the plays that JVTeamCoach10 directed the team to play, but rather would "play her own" plays. JVTeamCoach10 spoke to the Student about the issue but her playing did not improve and by the end of the season she was getting less play time. As her play time diminished, the Student became more frustrated with JVTeamCoach10 centered around wanting to play more. The limitations on the Student's playing time did not reflect problems with peers on the court. The Student never "stormed" off the court, or refused to participate in practice or a game. (JVTeamCoach10 1/23 Test. at 253-255, 274-276, 282-283) The Student would get "angry" during practice on occasions. She would "leave the playing area and either go off to a corner of the gym or go get a drink of water. The other players did not say anything to her when she became angry. I always watched her, and, as soon as she seemed to have refocused herself and calmed down, I would get her back on the court with the other players." (B36)
- c. JVTeamCoach10 testified as follows about the Window Writing Incident: Players on the team would write things in the dirt or snow on JVTeamCoach10's truck after practices or games while they were waiting to be picked up, including comments on basketball shooting styles and about JVTeamCoach10. On one occasion, the Student was waiting to be picked up along with other team members who were in JVTeamCoach10's car. The students inside the car were playing the radio very loudly and the Student was outside dancing to the music. At some point, JVTeamCoach10 noticed that someone had written "[The Student] dances weird" on the back windshield. He does not know who wrote the words and erased them when he saw them. He did not "get the impression that the players meant anything vicious by any of these remarks" and that they were just "fooling around." He stated that he did speak to the other students and told them that what they had written about the Student was "inappropriate." He did not believe that the Student had even seen the remark. (B36) She did not tell him about the statement that day but did tell him about the statement for the first time at the time of the Glass Punching Incident. (JVTeamCoach10 1/23 Test. at 236-237, 245-246)
- e. JVTeamCoach10 had opportunities to observe the Student interacting with peers pre- and post-practice and games, and what he observed was "fairly normal" interactions. The Student was receptive to interactions with peers that she knew. (JVTeamCoach10 1/23 Test. at 268-269)
- f. Prior to the Glass Punching Incident, the Student reported to JVTeamCoach10 that other girls on the team "were talking about her." JVTeamCoach10 did not view the report as anything outside of the ordinary for children of that age ("it was like anybody else that's talked about anybody else"). He interpreted the Student reporting this to him as a request to

talk to the other players. In response, JVTeamCoach10 talked with the entire team about how to play on a team and get along with each. He had these types of conversations with the team frequently, particularly after bad games. (JVTeamCoach10 1/23 Test. at 264-266; 283-284)

- g. During practices the Student “would handle herself pretty good” but during games or practice with the varsity team her personality would “change.” (JVTeamCoach10 1/23 Test. at 265-269) “You couldn’t say hi to [the Student] ... Well, she’d get mad at any kind of conversation somewhat.”²⁰ “So a lot of the kids didn’t like playing with the varsity [because the varsity was better than they were] and I have had practices where everybody would start crying because they were going to practice against varsity.” (JVTeamCoach10 1/23 Test. at 268) JVTeamCoach10 also noted that all of his players would get mad or frustrated at one time or another. “You can have some days where nobody wanted to talk to me, see me.” (JVTeamCoach10 1/23 Test. at 270)

118. The hearing was held in a conference room in a part of RDZ-HS near the basketball gym. During breaks in the hearing, the Hearing Officer had opportunities to walk in hallways in the area. In the hallway between the hearing room and the gym there are several floor to ceiling trophy cases that are fronted with plate glass. This hallway is short, traverses the length of the basketball gym, and then ends. At the end of this short hallway, another hallway running perpendicular to it leading to the rest of the school building opens up. Approximately 30 feet down that perpendicular hallway there is an exit door next to which is a window. The glass in the window and the door is reinforced with wire mesh embedded in the glass. The window is approximately 35 feet from the nearest trophy case. Some confusion was inserted into the record regarding the Glass Punching Incident described below when Ms. Spencer asked JVTeamCoach10 a question which suggested that he had to restrain the Student from punching the plate glass in a trophy case. *See* 1/23 Tr. at 239-240, 244-245, 280-281.
119. JVTeamCoach10 testified as follows about the Glass Punching Incident.
- a. During a drill in a practice, the Student tripped, fell and landed on her bottom and players on the sidelines “giggled” at her. JVTeamCoach10 believes that those players did not do anything inappropriate and would have laughed at any player who had stumbled in this manner. The Student was “angry” that the other players had laughed at her. (B36)
- b. After the practice, as JVTeamCoach10 was putting equipment away, a female student (“SISTER A”) came to him and said that the Student was threatening to call the police and “wanted to punch” the girl’s sister (“SISTER B”). Sister B was a player on the team and had laughed at the Student when she fell. JVTeamCoach10 went into the hallway outside of the gym to talk to the Student. He found the Student “pacing up and down” the hallway. JVTeamCoach10 started talking with the Student and “calmed her down.” “She just said she was ready to call the cops because the girl laughed at her. She wanted to punch this one girl and I kept calming her down because ... I knew she had made a phone call to get picked up.”

²⁰ In the context of the testimony, JVTeamCoach10 was reporting that the Student was very serious at these times and easily frustrated with her performance.

The Student was at a window “banging on the window sill” with her cell phone in her hand.²¹ JVTeamCoach10 was “afraid that she was going to hurt herself when she was ... at the window sill.” He did not physically restrain her. It took a “while” for the Student to calm down as JVTeamCoach10 was speaking with her. She paced while they were talking. They went outside to talk and Mr. X came to pick her up. JVTeamCoach10 had never witnessed any type of incident similar to this with the Student. JVTeamCoach10 concluded that the Student was “having a bad day” and “went off the deep end a little bit.” (JVTeamCoach10 1/23 Test. at 238-245; 280-281)

- c. JVTeamCoach10 did not actually observe the Student threatening to punch anybody. SISTER B was not in the area where the Student was when the Student was making these statements according to SISTER A. SISTER A did not report that the Student had taken any actions to actually physically punch SISTER B. When JVTeamCoach10 went to talk to the Student, the Student told him that she “wanted to punch somebody.” (JVTeamCoach10 1/23 Test. at 289-292)
- d. The next day, Principal reported to JVTeamCoach10 that she had spoken to the Student about the incident and to the other girls who were involved. (JVTeamCoach10 1/23 Test. at 247-251; 279-280)
- e. JVTeamCoach10 advised Mrs. X that the Student could not play on the team if she was threatening to punch another player. During this conversation, Mrs. X remarked that the Student wanted to play basketball but that Mrs. X had concerns about the Student’s ability to participate in a team sport like basketball. During this conversation, JVTeamCoach10 never told Mrs. X that the Student should stop playing. The Student wanted to continue to play and Mrs. X was asking whether JVTeamCoach10 thought she should stop. (JVTeamCoach10 1/23 Test. at 255-263)

8. The Referral to the Department of Children and Families

120. In February 2006 an RDZ-HS teacher referred the family to the DCF. That referral related to events occurring outside of school reported to the teacher. District staff members did not investigate the event that led to the referral beyond complying with their obligations as mandated reporters to DCF of such information under state law. AgEdTeacher10/11 was involved indirectly, in that the staff member who made the referral sought guidance from AgEdTeacher10/11. (Stipulation, 2/8 Tr. at 174-176) Both parties agree that this incident was the subject of testimony Ms. Spencer attempted to elicit from Mrs. X at the November 8 hearing at transcript pages 208-213 and was “not a school issue.” (2/8 Tr. at 16-20) AgEdTeacher10/11 stated that the concerns reported to her by the reporting staff member were not “academic.” (AgEdTeacher10/11 1/25 Test. at 57-58).

9. The Student’s Performance on the CAPT – April 2006

²¹ The Student was not near the glass-enclosed trophy cases that are in the hallway outside of the gym but rather was in the other hallway.

121. The Student took the standardized Connecticut Academic Performance Test (“CAPT”) in April 2006. The CAPT is administered to all 10th grade students. Mr. and Mrs. X report that the Student “failed” the CAPT and point to her performance on the CAPT as evidence of her disabilities. (Mrs. X. 11/8 Test. at 223)
122. A student cannot “fail” the CAPT because the test is designed to give a rating of the level of a student’s performance. (SpecEdDirector 1/25 Test. at 212) A student taking the CAPT can earn a score at the Advanced, Goal, Proficient, Basic or Below Basic levels. “Advanced” is the highest performance level and “Below Basic” is the lowest. The CTDOE performance target (“TARGET”) for each student is a result at the Goal or Advanced levels.
123. The Student performed below TARGET and below the RDZ-HS/District average scores on all areas assessed by the CAPT when she took it in April 2006, as follows. (B3 at 1-2):
- a. **Mathematics:** The Student scored at the Basic Level. A student scoring at the Basic level “demonstrate[s] a limited understanding of the concepts and skills expected of Connecticut high school students” and has “difficulty solving problems and communicating their understanding.”
 - b. **Science:** The Student scored at the Proficient Level. A student scoring at the Proficient level “demonstrate[s] an adequate understanding of the science knowledge and skills expected of Connecticut high school students” and generally will “show some success at applying what they know to complex problems and communicating their understanding.”
 - d. **Reading Across the Disciplines:** The Student scored at the Proficient Level. The Reading Across the Disciplines results reflects two subtests, Response Literature and Reading for Information. The Student’s score on Response to Literature indicates that she can demonstrate an “adequate understanding of the text with some evidence of reflecting, revising, reshaping and/or deepening initial understanding.” Responses of students at this level “typically contain judgments about the literary quality of the text and/or experience” and their “interpretation of the text is usually plausible with some connections between the text and other experiences or sources.” The Student’s score on Reading for Information reflects a “limited understanding of the text.” Students scoring in this range “may include some inferences and judgments about the text and make weak connections among ideas in the text.”
 - e. **Writing Across the Disciplines:** The Student scored at the Proficient Level. The Writing Across the Disciplines portion consists of three assessments. Her score on the Interdisciplinary Writing 1 and 2 portions indicates that she may “take a position but [her] responses generally are not clearly developed” and will “typically contain[...] limited support from the source materials” and will be “somewhat organized by lack fluency and transitions.” Her score on the Editing and Revising portion indicates “some of the skills necessary to apply the conventions of English” and “some understanding of revision and such writing conventions as capitalization, punctuation, usage and spelling.”

K. 2006/2007 SCHOOL YEAR THROUGH JANUARY 2007 (11TH

GRADE) AT RDZ-HS

1. The 11th Grade at RDZ-HS Generally

124. The Student returned to RDZ-HS in September 2006 as an 11th grader and attended RDZ-HS until March 23, 2007, at which point Mr. and Mrs. X withdrew the Student from RDZ-HS and she began attending KSchool.
125. While at RDZ-HS in this year, the Student took the following courses:

English 11A
US Hist A
Geometry A (withdrawn)
Algebra 1 (audited)
Biology A
Spanish 1
Vet Science 2
Physical Education
Title 1

All of these courses were “A” level and on grade level. (Title1Teacher10/11 12/20 Test. at 303) She had no reported attendance issues. She received a positive report described as a “rising above the ordinary” commendation earned on September 15, 2006 for “hard work & dedication by participating in “Promoting Agriculture and Farmland Preservation” day. (B30)

126. The Section 504 plan that was developed in October 2004 and that had been in place for the Student’s 9th and 10th grade years at RDZ-HS, was continued again in her 11th grade year without modification. (B2)

2. The September 13, 2006 E-Mail Exchange

127. The Student resumed working with Title1Teacher10/11 in her Title 1 support class. On September 13, 2006, Title1Teacher10/11 sent an e-mail (B37) to Mrs. X in which she stated as follows:

Just a quick note ... [The Student] needs to review her Spanish vocab each day. Math homework is posted on the school web site. She also needs a folder and a notebook for Spanish. Finally, I overheard her tell my teaching assistant that she took a zero for the day in vet science. Can you ask her about that for me and let me know if I need to do anything on my end? [...]

Title1Teacher10/11 and Mrs. X exchanged information like this regularly by e-mail and this is an example of a routine e-mail exchange between them.

128. Later in the day on September 13, 2006, Mrs. X responded to Title1Teacher10/11’s e-mail (B37)

as follows:

[The Student] is up to her old tricks again. She came to me at the last minute with a list that she “needed” for school supplies. I tried to explain to her that I would not be able to get to the store until this week-end. As for why she took a zero in Vet Science, I am totally clueless.

As you know that I am very willing to help [the Student], but unless she starts to accept responsibility for some things I will not get involved with her schooling. ***She put this family through **** last year and I will not allow myself or my family to be that vulnerable again.*** When she decides that she wants to make something of herself, we are here, but we will not keep putting all of our energy into someone is not willing to work to help herself. Now that she has new teacher, she has a new audiences. The best thing for you to do is let them know what she is all about. Sorry to burden you with all this, but I have very little left to give her. She has to make it on her own.

You were wonderful last year, and she is very lucky she has you again. Unfortunately, your colleagues let us down and now I am a little gun shy!

Keep me posted as you see necessary – I look forward to hearing from you. Thank you for all you have tried to do. [...]

(Emphasis added.)

129. Title1Teacher10/11 interpreted Mrs. X’s September 13, 2006 e-mail to mean that there was a change in direction at home regarding the support Mrs. X was providing to the Student associated with her “frustration” with the Student. The comments in the e-mail did not cause Title1Teacher10/11 to change her approach to the Student. The Student’s transition from 10th to 11th grade was “fine.” (Title1Teacher10/11 12/20 Test. at 214-234) The level of e-mail communication between Title1Teacher10/11 and Mrs. X in the 11th grade was lower in comparison to the level in the 10th grade. (Title1Teacher10/11 1/11 Test. at 223)
130. The asterisks in the e-mail were intended to convey the word “hell” and the e-mail reflects Mrs. X’s frustration at the time. Referring to the Student’s sophomore year, Mrs. X testified about “A tremendous amount of emotional frustration, emotional issues. We have a child that we absolutely love that are trying to get the best for, and we would take two steps forward and one step back, and it can be very frustrating when you have a child with any kind of emotional disability. So, yes, we as a family, went through hell, all six of us.” (Mrs. X 2/8 Test. at 181-184).
131. On direct, Mrs. X testified further as follows:

We had a rather tumultuous sophomore year – the end of the sophomore year into her junior year, with some pretty heavy issues for [the Student]. And we overcame them and she relaxed and realized that we loved her.” By the summer between 10th and 11th grades, “it had settled down.”

(Mrs. X 11/8 Test. at 210) On direct, Mrs. X could not state with certainty whether the events that made the sophomore year “tumultuous” were school or home events. (Mrs. X 11/8 Test. at 211-213) However, on rebuttal Mrs. X testified that the September 13, 2006 e-mail reflects primarily or only school issues and that the Student’s sophomore year was “a tough year all the way through for her, for us, for a variety of issues, mostly academic issues ... trying to get her a little bit more organized and focused on her school work.” She also testified further on rebuttal that when the Student returned to school in September 2006, she did not want to be in the Title 1 room, was “fighting” with Title1Teacher10/11” and did not want to “work within the guidelines” established for her by Mrs. X. (Mrs. X 2/8 Test. at 181-184).

132. Based on this evidence, when considered together with other evidence regarding the Student’s 10th grade year, the Hearing Officer finds that there was significant turmoil in the home during the second half of the Student’s 10th grade year, that any difficulties that the Student was having at home with school work may have aggravated that turmoil, and that any difficulties the Student was having at school were not the cause of that turmoil.

3. The October 5-6 2006 E-Mail Exchange

133. Exhibit P49 at 4-5 includes a series of e-mails exchanged between Mrs. X and Title1Teacher10/11 in October 2006. The e-mails illustrate the type of communications between them as they tried to support the Student, and some of the day to day manifestations of the Student’s issues. After Title1Teacher10/11 advised Mrs. X about an English assignment (the Puritan Journal) that the Student needed to turn in, Mrs. X sent the following e-mail to Title1Teacher10/11:

According to the [Student] she turned [the Puritan Journal] in on time. I have told [the Student] that I want a note from her teacher confirming that she did indeed turn it in and that it was on time – I told [the Student] I would not accept an e-mail for this, but a hand written note. thanks [sic] so much. I [spoke] with [Psychotherapist] today and she is more than willing to talk to you about [the Student]. You can call her at [telephone number] and she will return your call. You may have to give her your home phone though, as you are not always easy to reach through the schools [sic] phone system.

As to the Puritan Journal, Title1Teacher10/11 responded on October 6, 2006 by e-mail to Mrs. X, reporting that EnglishTeacher11 confirmed receipt of the Puritan Journal and indicating that Title1Teacher10/11 will “check for feedback early next week” and was “eager to hear how she did on her Geometry test.” (P49 at 4) In an e-mail dated October 17, 2006, Title1Teacher10/11 reported to Mrs. X that the Student has to “redo” the Puritan Journal because “she did not correctly follow the directions for the assignment.” (P49 at 5)

134. As to communication with Psychotherapist, Title1Teacher10/11 testified that she asked Mrs. X to provide a written authorization to permit Title1Teacher10/11 to communicate with Psychotherapist and that although Mrs. X agreed to do so she never did. (Title1Teacher10/11 1/11 Test. at 199-202; 210-212; 261-263)

4. The Incident with EnglishTeacher11

135. Mrs. X reported that the Student had complaints about “control issues” in the classroom, and illustrated that claim by describing an incident that occurred in the 11th grade involving her English teacher (EnglishTeacher11) which she described as follows:

[The Student] talks excessively. For [the Student to be quiet] you would think something was wrong. So [the Student] was in class and she was just feeling – she didn’t feel like talking that day. And the kids were arguing with the teacher about a test or something that they were going to have. And [the Student] just said to the kids – she said look why are you arguing, you know we’re going to have to take the test anyway, so why don’t we just take the test and get it over with. And then [the Student] didn’t say anything else, she just sat there, she was very quiet. And the teacher said [Student] what’s wrong. And [Student] said nothing is wrong, I’m just quiet today.

They then went back and forth like that until the teacher stated that she would talk to the Student after class and the Student said that she did not want to talk because nothing was wrong, and the teacher told her to go out into the hall and the Student picked up her books and said “Jesus freakin’ Christ I’m not – there’s nothing wrong” at which point the teacher sent her to the AssistantPrincipal. (Mrs. X 11/8 Test. at 201-202, 290-291, 345, 348; Mrs. X 11/20 Test. at 10-11)²² Mrs. X reported that she heard about this incident from several peers of the Student “who came to the house [and] were telling me about this.” (Mrs. X 11/8 Test. at 201-203)

5. The Student Fails Geometry in the 1st Marking Period

136. MathTeacher11 was the Student’s 11th grade Geometry teacher. He did not testify and according to SpecEdEvaluator is no longer at RDZ-HS. (SpecEdEvaluator 1/25 Test. at 123)
137. By October 26, 2006 (the end of the first marking period), the Student was failing Geometry with a grade of 45. P49 at 7-11 are a series of e-mail communications between MathTeacher11, Mrs. X and Mrs. Title1Teacher10/11 regarding this situation.

10/26/06 MathTeacher11 advised Mrs. X and Title1Teacher10/11 that the Student had a 45 in geometry, that he was “extremely concerned” about her progress. That although the Student could in MathTeacher11’s opinion “work a little harder,” he concludes that “her lack of progress is not directly related to a lack of effort” but rather “is related to the poor foundation in Algebra 1, which can be seen in her low grades last year.” MathTeacher11 suggested a meeting with Mrs. X, GuidanceCounselor10/11, Title1Teacher10/11 and himself to discuss ways to “sure [sic] up [the Student’s] poor Algebra foundation,” and specifically the possibility of having the Student audit MathTeacher11’s Algebra 1 class (which he reported had

²² Mrs. X initially identified this incident as occurring in the 10th grade and as involving EnglishTeacher11. EnglishTeacher11, however, was the Student’s 11th grade English teacher. The Hearing Officer notes that this was the only illustration of the “control” issues the Student was purportedly exhibiting in the classroom provided by Mrs. X.

12 students and met in G block), which he acknowledged may not work given her schedule.

10/26/06 Mrs. X responded as follows to MathTeacher11's e-mail:

Thank you for writing to me. [The Student's] inability is related to the many gaps in her learning over the years. She has dreams of going to college and studying in vet sciences. If you think she should drop Geometry and possibly audit algebra I and then taking [sic] the geometry over the summer or next year. I really do not want [the Student] to feel that she has failed – Her self esteem is very important and this is a situation that has to be handled very gently. My schedule is very flexible and I can meet whenever it is convenient for you. I would prefer that our meeting not include [GuidanceCounselor10/11]. Thank you so much for your concern.

(Emphasis in original)

10/27/06 MathTeacher11 advised Mrs. X as follows:

I have spoken with [the Student, Title1Teacher10/11, GuidanceCounselor10/11 and MathDeptChair] today and we have come up with the following proposal which we think will be most beneficial to [the Student] as she prepares for life after RDZ-HS. We were able to switch her classes so that she could begin auditing my algebra 1 class starting a week from next Tuesday when the second quarter begins. However, we would like to see [the Student] stay in the Geometry class at least through the end of the second quarter in hopes that the Algebra review will give her the necessary skills to be successful in geometry this year enabling her to take Algebra 2 next year in preparation for college. However, if we find at the end of the second quarter that [the Student's] slow start in Geometry is just too much to overcome, we would be willing to allow her to withdraw from Geometry at that time in order to pick up a Title 1 support block. The proposed changes are as follows: Biology will move to A-Block to open up E-Block for History which would free up G-Block for her to audit Algebra 1. She will also need to move her second semester Gym/Health classes [to] H-Block leaving her without support for the second half of the year. Remember, that she could pick up a support during D-Block if [we] decide to have her withdraw from Geometry at that point. Please talk with [the Student] this weekend about the proposed changes and feel free to e-mail me with any questions or concerns. Remember, that in order to go through with these changes, you or [the Student] will need to contact [GuidanceCounselor10/11].

10/27/06 Mrs. X responded to MathTeacher11's e-mail as follows:

I am not comfortable with [the Student] adding anything more to her

schedule. She will not be able to handle the extra – she has enough trouble handling what she has now. I would rather see her repeat Algebra 1, focus on that and then take geometry in the summer or next year if necessary. Rearranging her schedule to such a great extent would not be healthy for her – it would take her a full term to adjust to the change and we would accomplish nothing. I know [the Student's] strengths and weaknesses better than anyone and I know she would not be able to cope with the amount [sic] of pressure this added task would addbring [sic] to her life. I appreciate your concern and want to work for what is best for [the Student]. ***I would appreciate it if you would discuss any possible changes to my child's schedule with me before her.*** Hopefully we can come to a successful solution ...

(Emphasis added.)

10/28/06 MathTeacher11 responded to the prior e-mail as follows:

Thank you once again for your quick response. I will talk to [MathDeptChair] and [GuidanceCounselor10/11] about your concern of adding Algebra without dropping Geometry on Monday while [the Student] is out at the State Cross Country meet. I believe that our first priority must be to strengthen [the Student's] foundation in Algebra 1 and if you are OK with her not receiving any credit for math this year (she already has two and could get her third next year) I am willing to support the parental decision. Whether or not she should receive any credit for taking a Geometry course over the summer is something you would have to discuss and arrange with [MathDeptChair] and [GuidanceCounselor10/11] yourself. On the note of talking with [the Student], ***I would be willing to tell her in the future if she approaches me (which is what happened) that you have requested that I talk with you first.*** Thank you again for working with us to help ensure that [the Student] can see success in math this year.

(Emphasis added.)

11/6/06 The Student earned a teacher detention from MathTeacher11 for failing to turn in an assignment. She refused to serve the detention, as reflected in the following e-mail from MathTeacher11 to Mrs. X (P49 at 11) as follows:

[The Student] informed me today that you had told her she was not to serve her detention and that I should contact you with any questions. In the future I must ask that you email me directly or send [the Student] to school with a written excuss [sic] in order for her absense [sic] from a scheduled detention to be excused [sic]. As I see it at this time, [the Student] still owes me a detention because she is missing three assignments (if you need further clarification of my homework policy please see my expectations letter which is attached). If your reason for not having [the Student] serve

the detention was because you would like her to withdraw from the class I must inform you that [the Student] will be held accountable to all of the expectations of this course until she is officially signed out. Therefore, I am rescheduling [the Student's] detention for this Wednesday at 2:30. As stated in my hw policy if [the Student] hands in the missing work (see below) before the end of the day on Wednesday she will be excused from the detention. [Missing assignments identified; e-mail references an attachment]

138. Mrs. X testified that:
- a. MathTeacher11's report to Mr. and Mrs. X in October 2006 that the Student was failing geometry "was the final straw for us and what actually had my husband request the PPT for the evaluation." (Mrs. X 11/8 Test. at 224)
 - b. In the process of rearranging her classes, on November 7, 2006, GuidanceCounselor10/11 "yelled" at the Student for not following the proper procedure with respect to switching classes. GuidanceCounselor10/11 subsequently apologized to Mrs. X for her conduct. (Mrs. X 11/8 Test. at 228)
 - c. Mrs. X consulted with Psychotherapist and reported that Psychotherapist advised that she did not support certain of the proposals to rearrange the Student's schedule. Mrs. X does not recall if she ever asked Psychotherapist to advise the school or if she advised the school of Psychotherapist's concerns. (Mrs. X 11/8 Test. at 228-230)
139. Mrs. X testified that she signed a release to enable Psychotherapist to talk to the school on "anything always." (Mrs. X 11/8 Test. at 228-230) However, she did not actually provide a release to RDZ to contact Psychotherapist.
140. Title1Teacher10/11 testified as follows about the Student's difficulties with Geometry and the District's response:
- a. Based on discussions with MathTeacher11, Title1Teacher10/11 understood that the Student's difficulties in Geometry reflected a lack of a strong foundation in Algebra 1 the prior year. (Title1Teacher10/11 1/11 Test. at 87-89) Title1Teacher10/11 concurred with Mrs. X's statement to her that the Student's difficulties with math reflected to some extent gaps in her learning. (Title1Teacher10/11 12/20 Test. at 202-203; 212-214)
 - b. The proposal that the Student continue in Geometry and audit Algebra 1 at the same time would not have resulted in her loss of the Title 1 support block. Because of the scheduling issues involved in that proposal, the Student would not be able to continue her current Title 1 support block but would have continued to receive Title 1 support in a "free block" during the day at which time she would receive 1:1 Title 1 support although it would not appear on her schedule as Title 1 support time. Title1Teacher10/11 supported applying the entire scheduled Title 1 block to providing geometry support until the semester break. MathTeacher11 wanted to determine if the more intensive support

he and Title1Teacher10/11 would provide through using the Title 1 class in this way would improve the Student's performance. This plan was not implemented. Mr. and Mrs. X decided that the Student should stop taking Geometry and audit Algebra 1 instead. (Title1Teacher10/11 1/11 Test. at 89-100; P49 at 14 [e-mail of November 27, 2006])

- c. If the Student withdrew from Geometry she would need to complete another math course in her senior year to satisfy the graduation requirements for math. (Title1Teacher10/11 1/11 Test. at 116-117)
- d. Title1Teacher10/11 discussed MathTeacher11's detention with the Student who confirmed that Mrs. X had told her she did not need to serve the detention. (Title1Teacher10/11 1/11 Test. at 120-122; 128-130)
- e. While scheduling issues were being sorted out, Title1Teacher10/11 and MathTeacher11 implemented a plan in which Title1Teacher10/11 would monitor the Student's math work in the Title 1 class and advise MathTeacher11 if she was having difficulty so he could work with her in the Title 1 class as needed. Between October and November 2006, MathTeacher11 provided direct support to the Student in geometry in the Title 1 class approximately a half a dozen times. Prior to that he was working directly with the Student in his own classroom. A peer tutor was assigned to the Student to further support her math. (Title1Teacher10/11 1/11 Test. at 140, 146-151)

6. AgEdTeacher10/11's Testimony About 11th Grade Generally

141. AgEdTeacher10/11 testified generally about the Student's 11th grade year as follows:
- a. Starting in the spring of the Student's 10th grade year and continuing into the 11th grade (and including the summer between 10th and 11th grade), Mr. and Mrs. X were less responsive to contacts from AgEdTeacher10/11 who was trying to arrange visits to supervise the Student's SAE activities and to discuss the Student's performance. (AgEdTeacher10/11 1/25 Test. at 28-29, 56-58)
 - b. AgEdTeacher10/11 does not recall the Student talking with her about issues the Student was having with her peers. (AgEdTeacher10/11 1/25 Test. at 85)
 - c. The Student volunteered for a leadership position in the FFA organization and was elected to that position by her peers. (AgEdTeacher10/11 1/25 Test. at 106)

7. Title1Teacher10/11's Testimony About 11th Grade Generally

142. Title1Teacher10/11 testified generally about the Student's 11th grade year as follows:
- a. The Student was doing well and keeping up with her assignments for the beginning part of the year, but did not do so well starting in November. AgEdTeacher10/11 reported to

Title1Teacher10/11 that the Student was having “tremendous success.” Some teachers reported problems with homework completion and typing papers. SpanishTeacher11 reported that the Student stopped doing the assignments and had reported to SpanishTeacher11 that Mrs. X had told her that “it was okay and she wasn’t going to do [the work]” because the Student “wasn’t going to be here or something like that” which Title1Teacher10/11 understood to mean that the Student would be leaving RDZ-HS. (Title1Teacher10/11 1/11 Test. at 160-163; 166)

- b. Mrs. X voiced frustration to Title1Teacher10/11 about her “inability to get effective responses” from staff at RDZ-HS. (Title1Teacher10/11 1/11 Test. at 230)
- c. In her English class, the Student found the content of one of the books the class was required to read to be traumatic and she was given the option to read a different book. The Student ultimately completed the assignment and Title1Teacher10/11 later learned that she was reading it with her therapist as well. *The Student brought this issue to Title1Teacher10/11’s attention.* (Title1Teacher10/11 1/11 Test. at 136-138)

8. The Student’s First Marking Period Grades (November 2006)

- 143. The first marking period at RDZ-HS ends in November. (SpecEdDirector 11/8 Test. at 289-290). The Student attained the following grades in the 1st marking period:

Course	Teacher	1 st Marking	Letter Grade Equivalent ²³
English 11A	EnglishTeacher11	83	B
US Hist A	HistoryTeacher11	73	C
Geometry A	MathTeacher11	50	F
Algebra 1	MathTeacher11	--	--
Biology A	ScienceTeacher11	88	B
Spanish 1	SpanishTeacher11	81	B
Vet Science 2	AgEdTeacher10/11	82	B
PE	XCountrCoach9-11	--	--
Title 1	Title1Teacher10/11	--	--

- 144. The Student’s average in this marking period was a 76 or C (as calculated by the Hearing Officer). If her failing grade of 50 in Geometry A is removed from that calculation, her average grade would be an 82 or a B. Exclusive of the Geometry A grade, these grades are higher on average than the grades the Student had earned the prior year in her “A” level courses, and demonstrate that other than in Geometry A, the Student started off the school year doing very well overall.

²³ The Transcript (B31 at 1) identifies the letter grade equivalent for a numeric grade as follows: A = 90 to 100; B = 80 to 89; C = 70 to 79; D = 60-69. The Transcript does not state the final grades as letter grade equivalents. The Hearing Officer assigned these letter grades based on the information. No testimony was adduced as to whether or how RDZ-HS defines the numeric equivalent that would constitute, for example, a B- rather than a B or a B+ rather than a B.

L. THE ROAD TO LITIGATION

1. Mrs. X's Testimony Generally

145. Mrs. X testified that the following events prompted Mr. and Mrs. X to request an IDEIA-eligibility determination. (Mrs. X 11/8/07 Test. at 208, 221-231; 11/20 Test. at 13):
- a. The Student was reporting peer conflicts and “issues in the school” to Mrs. X. At home, she “didn’t seem to be focusing on the school work. She didn’t seem to be able to sit down and do the school work. She was up and down, up and down, up and down, which was were [sic] we used to be with her.”
 - b. “At the beginning of her junior year, [Mr. and Mrs. X] ... didn’t feel that [she] was getting – we – we had talked about it because we just didn’t feel that [the Student] was progressing at the level – what we were seeing at home just from having regular communication with her and talking to her about some of the academics that she was doing, we didn’t see where she was progressing at all. We felt that she was almost just staying at a level and not – not moving forward. And that we didn’t feel that she was prepared for a future.” (Mrs. X 11/8 Test. at 223)
 - c. “I would say that it was pretty much an uneventful year for the first half of the year, but I could see [the Student] changing her personality ... she was more guarded at the end of the [calendar] year. And she was more emotionally reactive I guess would be – even at home. Things that we’d never seen before.” (Mrs. X 11/8 Test. at 222, Mrs. X 11/20 Test. at 13)
 - d. In October 2006, MathTeacher11 contacted Mrs. X to advise that the Student was failing Geometry and to discuss a proposal in which the Student would repeat Algebra I and then Geometry. MathTeacher11 subsequently proposed that the Student continue to take Geometry and audit Algebra I. This issue remained unresolved for several weeks. The District began looking at a change in her schedule that would have resulted in the loss of the Title I services. As these events unfolded, the Student reported an altercation with GuidanceCounselor10/11 for which GuidanceCounselor10/11 contacted Mrs. X to apologize for her conduct.
 - e. Mr. and Mrs. X learned that the Student had “failed” the April 2006 CAPT. (Mrs. X 11/8 Test. at 223)

2. November-December 2006

146. By November 30, 2006, Mr. and Mrs. X had retained Ms. Spencer’s firm to represent them with respect to the Student’s educational issues. (P28)
147. In December of 2006, AgEdTeacher10/11 found the Student “visibly upset.” The Student told AgEdTeacher10/11 that for “my parents want me to go to a private school.” She was crying in a “quiet, calm” way. “She was just kind of hugging her knees, and it bothered me, because I didn’t

know what was going on, and, for a long time, we sat in silence, and then it just kind of popped out.” AgEdTeacher10/11 had never seen the Student that upset before. She stated to AgEdTeacher10/11 that she did not want to go to the private school or “leave her friends” or the animals at RDZ-HS but that her parents were “making” her go and were “looking at these different schools.” AgEdTeacher10/11 asked if she could call Mr. and Mrs. X, but the Student said not to call “I don’t want to get in trouble kind of thing.” (AgEdTeacher10/11 1/25 Test. at 44- 47; 52; 95-96)

148. On December 12, 2006, in a routine e-mail “status report” to Mrs. X (B38), Title1Teacher10/11 advised Mrs. X that:

[The Student] seemed a bit “antsy” today but said she “couldn’t talk about it” with me so we didn’t. Do you want me to hook her up with someone here or is she seeing [Psychotherapist] soon? Please let me know or have [the Student] let me know. I will wait to hear from you.

Mrs. X responded by e-mail later that day (B38) as follows:

[The Student] will be seeing [Psychotherapist] on Thursday – I do not want anyone at the school talking to her – They have already done enough damage. You have been terrific through all of her transitions, but she is having a very difficult time now and I want the school to stay out of it. Thank you for your concern. [Mrs. X]

149. In connection with this event, Title1Teacher10/11 testified that the Student was more “emotionally energized than normal.” When Title1Teacher10/11 attempted to ascertain from the Student what was happening, the Student advised that she had been directed by Mrs. X not to speak with Title1Teacher10/11 or anyone else at the school about these issues. Title1Teacher10/11 discussed this with Mrs. X who advised that the Student discussed those issues with Psychotherapist and was not to discuss them with guidance staff at school because the guidance staff had “already done enough damage.” (Title1Teacher10/11 12/20 Test. at 236-248; 263)

3. January 2007 – The Student’s First Semester Grades

150. The first semester at RDZ-HS ends in the middle of January and report cards go out at the end of January. (Title1Teacher10/11 1/11 Test. at 78-79) At the end of the first semester of the Student’s 11th grade year at RDZ-HS (approximately January 2007), her grades were as follows (B34):

Course	Teacher	1 st Marking	2 nd Marking	Exam	First Semester	Letter Grade Equivalent ²⁴
English 11A	EnglishTeacher11	83	74	51	73	C

²⁴ The Transcript (B31 at 1) identifies the letter grade equivalent for a numeric grade as follows: A = 90 to 100; B = 80 to 89; C = 70 to 79; D = 60-69. The Transcript does not state the final grades as letter grade equivalents. The Hearing Officer assigned these letter grades based on the information in B31. No testimony was adduced as to whether or how RDZ-HS defines the numeric equivalent that would constitute, for example, a B- rather than a B or a B+ rather than a B.

Course	Teacher	1 st Marking	2 nd Marking	Exam	First Semester	Letter Grade Equivalent ²⁴
US Hist A	HistoryTeacher11	73	73	88	76	C
Geometry A	MathTeacher11	50	W	W	W	--
Algebra 1	MathTeacher11	--	67	65	66	D
Biology A	ScienceTeacher11	88	83	73	83	B
Spanish 1	SpanishTeacher11	81	76	50	73	C
Vet	AgEdTeacher10/11	82	90	81	85	B
Science 2 PE	XCountryCoach9- 11	--	91	--	91	A
Title 1	Title1Teacher10/11	--	--	--	--	

151. Exclusive of her PE grade, the Student’s attained a 76 or C average (as calculated by the Hearing Officer), including considering her Algebra 1 grade. This report card reflects that the Student failed Geometry A in the 1st marking period, was allowed to withdraw from the class and began “auditing” Algebra 1. The grades for Algebra 1 reflect the work that she performed in the class but are not for credit, however. She was receiving grades of D in Algebra 1.
152. On reviewing the Student’s 1st semester report card, Mrs. X was “startled” by the Student’s English grade which Mrs. X believes “overstates” her actual abilities, and did not believe that the history grade accurately reflects what the Student can do because of the Student’s history of problems with retaining the material. (Mrs. X 11/8/07 Test. at 285-291, 371-375)

4. The February 9, 2007 IEP Team Meeting

153. On January 17, 2007, Mr. and Mrs. X requested a PPT meeting, identifying their concerns as follows:
- The Student “is not advancing at the rate she should be;”
 The Student “is not getting feedback from individual teachers;”
 The Student is being “bullied;”
 The Student is “not getting the education that will prepare her” and needs to get it either at the “high school” or a “private school.”
- (P29; Mrs. X 11/20 Test. at 15; SpecEdDirector 1/25 Test. at 207-211)
154. The Hearing Officer finds the claim that the Student is “not advancing at the rate she should be” is belied by the 1st marking period grades and her overall grades in the first semester. Her grades were commensurate with her intellectual abilities. The Hearing Officer finds the claim that the Student is “not getting the education that will prepare her” for life after high school lacks merit. The Student was attending mainstream classes in a public high school taking “A” level courses. The claims that Mr. and Mrs. X were not receiving feedback from teachers has nothing to do with the Student’s disabilities or academic performance. The Hearing Officer finds that the claim that Mr. and Mrs. X were not getting feedback from individual teachers relates to the implementation

of the Student's Section 504 plan and has nothing to do with the Student's IDEIA-eligibility. The relevance of the claim of purported "bullying" is discussed subsequently herein.

155. An IEP team meeting convened on February 9, 2007. The attendees were SpecEdDirector, Mr. and Mrs. X, MathTeacher11, SpecEdEvaluator, SchoolPsychologist, GuidanceCounselor10/11, Title1Teacher10/11, Ms. Spencer and Mr. Meuser. (B3) The parties agree that this IEP team meeting was "unpleasant" and that at this IEP team meeting:
- Mr. and Mrs. X did not ask for an out-of-district placement.
 - Mr. and Mrs. X asked that the Student be evaluated for IDEIA-eligibility.
 - The District agreed to do an evaluation.
 - The District proposed to include a psychiatric evaluation as part of its evaluation although Mr. and Mrs. X did not request a psychiatric evaluation.
 - The District did not agree to have a neuropsychological evaluation done as requested by Mr. and Mrs. X.
156. According to Mrs. X: This IEP team meeting was a "nasty" and "very negative" experience that became "combative." District staff reported no problems or concerns with the Student or her progress and Mrs. X concluded that the staff "did not know [the Student], they had no idea who they were talking about." Staff claimed that the Student's performance on the CAPT test and Dr. Black's report were not "relevant." Mrs. X stated her view that the Section 504 plan was not being implemented, reported that Title1Teacher10/11 could not get cooperation from the Student's other teachers to provide the support required under the Section 504 plan, and that she "accused" the team of not implementing the Section 504 plan. The District agreed to do further testing but not a neuropsychological evaluation. Mrs. X asked that the Student be identified as IDEIA-eligible but did not request a private placement. (Mrs. X 11/20 Test. at 17; Mrs. X 11/8/07 Test. at 233-238). The District did not "refuse to do testing. They said they would do some testing ... I requested further testing. I wanted a complete battery of tests done on [the Student]. I didn't want to do just academic testing. I wanted a neuropsych exam done on [the Student] ... They would not do that." (Mrs. X 11/8 Test. at 237) Because the District did not agree to the testing requested by Mrs. X, Mr. and Mrs. X left the PPT meeting concluding that they needed to get their own testing done. (Mrs. X 11/8 Test. at 236-237)
157. According to SpecEdEvaluator: SpecEdEvaluator had not taught or evaluated the Student, but knew who she was from Ag-Ed activities in which they both participated. (SpecEdEvaluator 1/25 Test. at 127-128) Based on MathTeacher11's report at the meeting, it was SpecEdEvaluator's understanding that the Student was struggling in math and had "some holes in her basic knowledge." MathTeacher11 was not recommending that the Student withdraw from Geometry and reported that some of the recommendations made by the District to address the Student's Geometry issues had been rejected by either the family or the Student. (SpecEdEvaluator 1/25 Test. at 121-122) Mrs. X disagreed with the Staff's reports about how the Student was doing. (SpecEdEvaluator 1/11 Test. at 405-406) There was a discussion of Dr. Black's report and whether a more in depth look at the Student was needed to determine if she needed more services. The tone and tenor of the meeting became "anxious" when the staff were "accused of not knowing the student, not looking at [Dr. Black's] report, not knowing why we were there, what we were doing." SpecEdEvaluator found that these claims were not "warranted." Ms. Spencer "had

several discussions and arguments with [Mr. Meuser] and people in the room over the reports, words used, things that were said, and then [Mrs. X] took it upon herself to confront some members of the staff that were there . . . about not having read reports or being familiar enough with her child to make any true assessment of her.” (SpecEdEvaluator 1/11 Test. at 399-400) Evaluations were suggested but Mrs. X was not in agreement with allowing the District do all of the testing and there was a suggestion of outside testing being arranged. (SpecEdEvaluator 1/11 Test. at 400-402)

158. According to SchoolPsychologist: The issue of evaluation to reconsider the Student’s IDEIA-eligibility was discussed. The meeting was “unsettled” with a difference of opinion and “contention” over whether the Student was making progress or being provided the proper services and whether the Section 504 accommodations were being followed. (SchoolPsychologist 1/23 Test. at 110-112) At this IEP team meeting, he discussed the testing he would do. (SchoolPsychologist 1/23 Test. at 116)²⁵
159. According to Title1Teacher10/11: The IEP team meeting was “tense” with Mr. and Mrs. X being “accusatory.” (Title1Teacher10/11 12/20 Test. at 274-276) The meeting was tense and accusatory “because of the way the questions were put to us as already having an answer to them irrelevant to what we said” and “Honestly, Attorney Spencer’s approach to us I felt was not conducive to not really communicating positively.” (Title1Teacher10/11 1/11 Test. at 236)
160. According to SpecEdDirector (SpecEdDirector 1/25 Test. at 212-223, 227; SpecEdDirector 2/8 Test. at 69-73, 75-80, 145, 158):
- a. The PPT meeting was “adversarial” and a “bit hostile.” Among other things, Ms. Spencer became “assertive” or “aggressive” with respect to MathTeacher11. Some of the teachers were “distressed” by the comment from Mrs. X that Staff “didn’t know the Student.” The PPT lasted about an hour, with approximately half of the time spent in dialogue between the attorneys.
 - b. Mr. and Mrs. X requested an eligibility determination but did not state the exceptionality that they thought the Student had. Mr. and Mrs. X did not request special education services “directly” at this IEP team meeting.
 - c. Dr. Black’s evaluation was reviewed. SpecEdDirector believes that GuidanceCounselor10/11 and SpecEdEvaluator had not read Dr. Black’s report. There was a discussion about whether Dr. Black’s evaluation was stale and “we all decided it would be better to have another evaluation done to up[date]” the prior evaluations.
 - d. The District proposed doing an evaluation but there was no agreement on that reached at the meeting. Mr. and Mrs. X did not consent to the proposed evaluations at the PPT meeting.

²⁵ Had the consent-to-evaluate forms as proposed by the District been executed, SchoolPsychologist would have started his assessment with the Woodcock-Johnson Test of Cognitive Abilities and a Wechsler intelligence scale, and then determine if further evaluations should be done based on the results.

- e. Mr. and Mrs. X wanted to have a neuropsychological evaluation at District expense. The District considered the referral a new referral and wanted to do a psychological and achievement evaluation first.
 - f. The potential evaluations that the District wanted to do were discussed, including a psychiatric evaluation. The District did not propose to have Dr. Black do the psychiatric evaluation because Mr. Klebanoff's office "doesn't usually approve" of Dr. Black's evaluations. Mr. and Mrs. X did not object to having a psychiatric evaluation done.
 - g. Title1Teacher10/11 reported that the Student was making "good progress." There was a discussion about Geometry and Algebra. SchoolPsychologist, Title1Teacher10/11 and MathTeacher11 discussed the growth that they had seen in the Student over time.
161. The minutes of the meeting (B3) note, among other things, that Mr. and Mrs. X expressed concerns about the Student's emotional state and indicated that she continued to work with Psychotherapist. The District requested permission to speak with Psychotherapist and a consent form was provided to Mr. and Mrs. X. The documentation indicates that the Safeguards were provided at the meeting.

5. The Aftermath of the February 9, 2007 IEP Team Meeting; The Locker Shoving Incident

162. Title1Teacher10/11 testified that after the February 9, 2007 IEP team meeting:
- a. The Student's demeanor changed. She stopped completing assignments and became more confrontational about assignment completion. She also removed her papers from the "Wall of Fame" in the Title 1 room. She reported to Title1Teacher10/11 that "things were going on at home" that she could not talk to Title1Teacher10/11 about. During this period, the Student advised the paraprofessional working in the Title 1 support room with Title1Teacher10/11 that Mrs. X had instructed her to write down "everything bad that had happened to her at [RDZ-HS] and every bad memory that she had of our school." (Title1Teacher10/11 12/20 Test. at 265-270) The Student was not exhibiting defiant or maladaptive behaviors. (Title1Teacher10/11 1/11 Test. at 245; 250-251)
 - b. Title1Teacher10/11 had a custom of greeting students as they arrived for school in the mornings and doing "check ins" with them. She routinely did this with the Student in the 10th and 11th grades. "Every day [the Student] would stop by and chat with me on her way in. We got along fairly well." "She was really communicative." Title1Teacher10/11 believes that the Student benefited from the morning check-in because the Student typically initiated the contact. The Student stopped interacting with Title1Teacher10/11 at this morning check-in after the February 2007 IEP team meeting. (Title1Teacher10/11 12/20 Test. at 249-254)
163. Mr. and Mrs. X first contacted Dr. Ciocca on February 12, 2007 to arrange an evaluation. (Ciocca 12/14 Test. at 120; Mrs. X 11/20 Test. at 20)

164. Attached to the IEP meeting minutes sent on February 16, 2007 to Mr. and Mrs. X (B3) were consent forms dated February 15, 2007 for Mrs. X to execute as follows: One consent for school personnel to administer cognitive, attention/focus, achievement and written expression, and mathematics assessments. One consent for Gurender Sahani, M.D. to perform a psychiatric evaluation and a consent to release records to him. One consent form to allow an exchange of information between District staff and Psychotherapist. Mrs. X stated that she agreed to let the District do the testing the District wanted to do and did not “reject” any of the testing that the District proposed to do. (Mrs. X 11/20 Test. at 17-21) However, she ultimately did not execute the consent forms required to permit the District to do the testing it was asking to do.
165. By letter dated February 15, 2007, the District advised Mr. and Mrs. X that because of her performance on the April 2006 CAPT, the Student would need to retake the CAPT in its entirety. (P30) The letter states further that retaking the CAPT was not optional and that “[m]eeting the goal on the CAPT is one way that a student can meet [RDZ-HS’s] basic skills graduation requirement.” (P30)
166. Following the February 2007 IEP team meeting, Mrs. X claims that the Student reported to Mrs. X that she had been at her locker when she was confronted by a female peer (“FS4”) who shoved the Student “across the hallway”. The event was witnessed by MathDeptChair who sent the Student back to her class and referred FS4 to AssistantPrincipal’s Office. Mrs. X learned of the “locker shoving” incident that night from the Student, who Mrs. X reported was curled up in a “fetal position” and stating that she would refuse to go back to RDZ-HS. Mrs. X testified that based on the Student’s statement that she would not return to RDZ-HS, Mr. and Mrs. X knew that this was “something very serious” and that they needed to find another place for the Student to attend school. (Mrs. X 11/8 Test. at 238-240)
167. Regarding the locker shoving incident, MathDeptChair testified that during passing time between classes when he was monitoring the hallway he observed the Student and a peer in the hallway starting to shove and push each other. “At the time I perceived it to be nothing more than two teenagers doing something they probably shouldn’t be doing in the hallway, so I yelled and they stopped.” He concluded that the peer was the instigator, told the peer to report to the central office and told the Student to go to her next class. The Student did not appear to be hurt in that incident. The Student asked MathDeptChair not to report the incident – “that she didn’t want me to do anything about it, that it was no big deal.” MathDeptChair met Mr. X the next day when he came to the school, but does not recall telling Mr. X that he had witnessed the Student being shoved across the hallway as described by Mrs. X. (MathDeptChair 1/11 Test. at 381-390)
168. On the day after the Locker Shoving Incident, Mr. and Mrs. X and the Student met with Principal. At that time they saw MathDeptChair who confirmed the Student’s story, reporting that he had not seen the Student do anything that would have prompted that event. Principal concluded that this was not an instance of bullying and assigned an aide to escort the Student for that school day. Mrs. X reported that FS4 received a one hour detention. The Student and FS4 had a history of problematic interactions while at RDZ-HS, including instances in which FS4 taunted the Student. Mrs. X believes that the District staff were aware of this because the Student reported these

incidents to the teachers. (Mrs. X 11/8/07 Test. at 237-243)²⁶

6. Withdrawal from RDZ-HS

169. Mrs. X testified that the family began seeking another school for the Student following the Locker Shoving Incident. (Mrs. X 11/30 Test. at 179-180). Within one or two days of the Locker Shoving Incident, Mrs. X called Ms. Spencer and “we had decided that we were going to talk to KSchool.” (Mrs. X 11/8 Test. at 243) “[W]e were just looking into the following year. We had no intentions of putting her in [another] school right then and there, but we knew we had to do something to help this child.” When [Mr. and Mrs. X] called KSchool initially, they were told that KSchool does not accept admissions in the spring of a school year. When they filled out the application in March 2007 it was for the 2007/2008 school year. (Mrs. X 11/30 Test. at 178-181)²⁷ Mr. and Mrs. X had no intention of placing the Student at KSchool in the Spring of 2007, but decided to do so when they were notified that KSchool had an “immediate” opening for the Student. When asked further about the decision to place the Student at KSchool in March 2007, Mrs. X stated as follows: “It was not a matter of not putting her there. We didn’t – we didn’t consider putting her there in the spring [of 2007].” (Mrs. X 11/8 Test. at 313)
170. It was decided jointly by KSchool and Mr. and Mrs. X that the Student should repeat the 11th grade for the 2007/2008 school year, which meant that she entered KSchool in the Spring of 2006/2007 as a 10th grader. According to Mrs. X, that decision reflected the Student’s grades on the RDZ-HS curriculum and a comparison of the RDZ-HS and the KSchool curricula. (Mrs. X 11/8/07 Test. at 291-294)
171. The Student could have attended KSchool as a day rather than residential student. Mr. and Mrs. X decided to place the Student residentially to “incorporate the social piece with the educational piece” so that she could learn life skills and how to work with and get along with other people, and develop some independence. (Mrs. X 11/8/07 Test. at 311-314; Mrs. X 11/30 Test. at 148-149; 178-182)
172. In making the decision to place the Student at KSchool, Mrs. X considered that “It was close enough that I could be there if she needed me in a flash, but far enough away where she could develop some independence and work on the skills that she needed to work on.” (Mrs. X 11/30 Test. at 149)
173. By letter dated March 22, 2007 to Principal, Mr. and Mrs. X reported that KSchool was “offering an immediate placement” for the Student and that her last day at RDZ-HS would be March 23, 2007. They state further: “While we had not planned on removing [the Student] from [RDZ-HS] this year, we feel that based on the most recent incident and her poor academic performance that this is what is in [the Student’s] best interest.” (B4)

²⁶ The Hearing Officer observes that this testimony seems inconsistent with Mrs. X’s testimony that the Student had stopped reporting incidents like this to District staff in the prior year.

²⁷ Through Ms. Spencer, Mrs. X attempted to introduce evidence that the date of the application to KSchool was March 19, 2007. (1/11 Tr. at 246; 2/8 Tr. at 12)

174. Mrs. X claims that they notified RDZ-HS the day after they received notification by KSchool that the Student was accepted to attend KSchool. They requested a PPT to formally request placement at KSchool but were told it was not necessary to convene a PPT for that purpose at that time and given the pendency of the evaluations (referencing B4, P33). (Mrs. X 11/8/07 Test. at 243-247; 311-314; 11/30 Test. at 148-149, 178-182)
175. In October 2007, after she was withdrawn from RDZ-HS and while she was at KSchool, the Student took the PSAT/NMSQT. She attained a score in Critical Reading which was higher than 70% of juniors taking the test, a score in Writing Skills which was higher than 37% of juniors and a score in Mathematics that was higher than 15% of juniors. (P47)

7. Efforts by the District to Complete Its Evaluations

176. After the February 9, 2007 IEP Team meeting, Mrs. X contacted SpecEdDirector to report that Mr. and Mrs. X had retained an outside evaluator and identified for SpecEdDirector the assessments the District would be allowed to perform. (SpecEdDirector 1/25 Test. at 225-226; SpecEdDirector 2/8 Test. at 163-165)
177. Mrs. X did not want the Student to miss any classes at KSchool for the District's assessments. (SpecEdDirector 1/25 Test. at 229)
178. SpecEdDirector asked Mrs. X to complete the parent rating forms for the Connors as part of SchoolPsychologist's evaluation. (SpecEdDirector 1/25 Test. at 231-232)
179. On March 24, 2007, Mr. and Mrs. X returned executed consents that had been requested on February 16, 2007 for District personnel and Dr. Sahani to perform their assessments. Mr. and Mrs. X did not give Staff consent to complete cognitive or achievement assessments of the Student. (B5)
180. The Hearing Officer finds that Mr. and Mrs. X did not provide authorization for District staff to communicate with Psychotherapist while the Student attended RDZ-HS. Mrs. X states that she had given Psychotherapist "carte blanche" to contact RDZ-HS as necessary but does not know if Psychotherapist ever did. Prior to March 2008 and while the Student was attending RDZ-HS, Mrs. X does not recall whether she gave anyone at the District permission or authorization to communicate with Psychotherapist. (Mrs. X 11/8 Test. at 321-322) Mrs. X claims she and Mr. X have never denied District staff permission to speak with Psychotherapist. (Mrs. X 11/8 Test. at 320-321; 11/30 Test. at 149-150) While that may be true, the Hearing Officer also finds that Mrs. X has also never completed the forms necessary to authorize District staff to speak with Psychotherapist thereby preventing them from doing so. In connection with the evaluations to determine eligibility giving rise to this due process case, Mr. and Mrs. X did not return an executed release authorizing District staff to speak with Psychotherapist as had been requested at the February 2007 IEP team meeting. (SpecEdDirector 1/25 Test. at 226-227; 262-264) The District wanted to speak with Psychotherapist given the concerns and issues raised by Mrs. X at the February 2007 IEP team meeting. (SpecEdDirector 2/8 Test. at 82-91; 156) Mrs. X claims

that in March 2007 she executed a consent form authorizing District staff to have written but not verbal communication with Psychotherapist. (Mrs. X 11/8 Test. at 319) SpecEdDirector testified that she never received an executed release form authorizing communication with Psychotherapist. Mr. and Mrs. X were not able to provide any evidence that they had in fact submitted the form. Mrs. X suggested, through Ms. Spencer, that an executed release form allowing written but not oral communications was faxed to SpecEdDirector. They cannot locate the original of the document, however, or any fax confirmation sheet. (SpecEdDirector 2/8 Test. at 82-91; 156)

181. By letter dated March 28, 2007, the Principal responded to the March 22, 2007 letter from Mr. and Mrs. X, seeking clarification as to whether Mr. and Mrs. X were “foregoing” the IEP team meeting’s recommended evaluations. (B6)
182. The Student had her first evaluation session with Dr. Ciocca on April 4, 2007. (P37)
183. By letter dated April 9, 2007, Mr. and Mrs. X (through Ms. Spencer) advised the District (through Mr. Meuser) as follows: “As you and your client are aware, my client has placed her daughter [sic] at KSchool. Although she provided written notice the day that [the Student] was accepted, my client would like to schedule a PPT to formally request that the District place [the Student] at KSchool.” (P31) Mr. Meuser responded by letter dated April 12, 2007 indicating that the District did not believe there was a need to schedule an IEP team meeting prior to completion of the evaluations provided for in the February 9, 2007 IEP team meeting, and rather that the District will plan to schedule an IEP team meeting in May. He stated further that Mr. and Mrs. X did not provide any “prior written notice” of their intent to place the Student at KSchool before doing so. (P33)
184. The Student had her second evaluation session with Dr. Ciocca on April 10, 2007. (P32)
185. By letter dated April 12, 2007, the District advised Mr. and Mrs. X that Dr. Sahani was scheduled to perform the psychiatric evaluation of the Student on April 30, 2007. The District requested that Mr. and Mrs. X execute a release to permit Dr. Black to speak with Dr. Sahani, and defined arrangements for Mr. and Mrs. X to complete their assessment instruments. (P32) Mr. and Mrs. X did not return signed consent forms for the evaluation by Dr. Sahani until April 2007. Dr. Sahani had requested permission to speak to Dr. Black but Mr. and Mrs. X did not provide consent for him to do so to SpecEdDirector’s knowledge. (SpecEdDirector 1/25 Test. at 223-224) SpecEdDirector asked Mr. and Mrs. X for a release to authorize Dr. Sahani to speak to Dr. Black but they did not provide the release. Dr. Sahani did not ask to speak with Psychotherapist. Mr. and Mrs. X did not ask to have Dr. Sahani speak to Psychotherapist. (SpecEdDirector 2/8 Test. at 80-82)
186. The Student had her third evaluation session with Dr. Ciocca on April 25, 2007. (P37)
187. By letter dated April 25, 2007, Psychotherapist advised the District as follows: She has been working with the Student since 1998. The Student had a “difficult” year at RDZ-HS this year. The Student is “an emotionally intense and immature girl who has, by history, some difficulty adjusting to changes. She is a highly anxious girl, with chronic ADHD symptoms, and ongoing difficulties negotiating the ups and downs of close relationships. She tends to become highly

engaged with whatever is her current focus and disconnects from previous, uncomfortable experiences.” Psychotherapist expressed concern that the Student has become “sensitized” to prior testing at [E/MS], and that that plus her anxiety and her negativity regarding her recent experiences at RDZ-HS would affect her testing performance and could lead to invalid results. Psychotherapist recommended that the assessments be done at KSchool where she is more comfortable. (P34)

188. The Hearing Officer finds that nothing in Psychotherapist’s letter reflects any recommendation for placement at KSchool.
189. SpecEdDirector did not agree with Psychotherapist’s recommendation that the assessments proposed by the District not be performed at RDZ-HS, but honored the request. (SpecEdDirector 1/25 Test. at 228) The request to have the evaluations done at KSchool delayed completion of Dr. Sahani’s evaluation. (SpecEdDirector 1/25 Test. at 229)

8. The Student’s Performance On The April 2007 CAPT

190. The Student took the CAPT for a second time in April 2007. The report (B33) notes the following:
- a. She again scored below TARGET level in all areas assessed.
 - b. **Mathematics:** The Student scored at the Proficient Level (231), which although below TARGET is an *improvement* over her April 2006 result (Basic). Her score was below the RDZ-HS average of 244.4 and the District average of 244.4.²⁸
 - c. **Science:** The Student scored at the Proficient Level (251). This is below TARGET, with *no change* from the prior result. However, her score was the same as the RDZ-HS average (250.6) and the District average (249.6).²⁹
 - d. **Reading Across the Disciplines:** The Student scored at the Proficient Level (226). This is below TARGET with *no change* from the prior administration. Her score was below the RDZ-HS average (230.9) and the District average (229.4).
 - e. **Writing Across the Disciplines:** The Student’s score was reported to be “*Not Valid.*” The Student’s score on the Interdisciplinary Writing 1 portion “demonstrate a persuasive position that is well supported with accurate and relevant information from both authentic,

²⁸ According to the CTDOE, students scoring at this level “demonstrate an adequate understanding of the concepts and skills expected of Connecticut high school students” and “possess an ability to use problem-solving skills and communicate their understanding.”

²⁹ According to the CTDOE, students scoring at this level “demonstrate an adequate understanding of the science knowledge and skills expected of Connecticut high school students” and generally “possess an ability to use problem-solving skills and communicate their understanding of the natural world.”

nonfiction texts” with responses that are “clear, generally fluent, and organization with transitions” and an “awareness of audience.” In contrast, her score on the Interdisciplinary Writing 2 demonstrates “a position that is minimally supported with information from one or both authentic, nonfiction texts” and responses that “are generally not clear, fluent or organized with transitions” and a “limited” awareness of audience.” No score was reported for the Editing and Revising portion. (B33 at 4)

- 190A. Based on her scores on the April 2007 CAPT, the Student would not need to retake the CAPT to graduate if she were to return to HVRHS. (MathDeptChair 1/11 Test. at 362)

M. THE SPECEDEVALUATOR EVALUATION

191. SpecEdEvaluator is a Connecticut certified special education and regular education teacher, and has worked at RDZ-HS for ten years. She is currently a special education teacher at RDZ-HS. She is not a psychologist, psychiatrist or social worker. (SpecEdEvaluator 1/25 Test. at 134) Prior to working at RDZ-HS she worked in a private school whose student population was IDEIA-eligible. (SpecEdEvaluator 1/11 Test. at 393-398) She testified as follows about her evaluation of the Student.

- a. The date on her Evaluation Report (B14) is not correct. SpecEdEvaluator went to KSchool on May 9, 2007 to do the testing as agreed, but the Student was not available. The actual date of the testing was May 16th or 17th 2007. (SpecEdEvaluator 1/25 Test. at 133) When SpecEdEvaluator returned the second time, the Student was waiting for her. “She was eager, she was ready, she had her pencils, she was all comfortable, she had a drink, she helped me find the room we were assigned to use.” (SpecEdEvaluator 1/11 Test. at 407-409) The Student recognized SpecEdEvaluator from Ag-Ed activities in which they both participated but did not know SpecEdEvaluator’s name. (SpecEdEvaluator 1/11 Test. at 409-410; SpecEdEvaluator 1/25 Test. at 128) Prior to commencing the testing, the Student and SpecEdEvaluator “chit-chatted” about KSchool, about the Student being on the KSchool tennis team, her new friends, some of her classes and going to a dance or prom. The Student asked about Ag-Ed activities at RDZ-HS. (SpecEdEvaluator 1/11 Test. at 410-411)
- b. SpecEdEvaluator administered the Keymath-Revised (“KM-R”) and states the following results in her Evaluation Report (B14):

Subtest	Skills Assessed	Student’s Performance
Basic Concepts	Foundations of mathematical knowledge.	Above Average or Average on all areas assessed.
Operations	Computational skills in addition, subtraction, multiplication, division and mental computation.	Low Average (multiplication, division and mental computation) Below Average (subtraction) Markedly Below Average (addition)

Applications	Ability to make practical use of mathematical knowledge and skills.	Average on all areas assessed.
--------------	---	--------------------------------

- c. In doing the KM-R, the Student was “very positive,” “self-assured”, “understood the questions” and “dived right in to every set of questions.” She asked for clarification as it was allowed, and completed the test in “good time” and “good spirits.” (SpecEdEvaluator 1/11 Test. at 413-414) She stopped when the problems became “too difficult and she just didn’t feel she could continue.” (SpecEdEvaluator 1/11 Test. at 415-417) The test is administered on a timed basis, without the use of a calculator. The Student had no problem with completing the test within the time parameters until she hit her ceiling on the test. (SpecEdEvaluator 1/11 Test. at 416; 418)
- d. The KM-R will identify areas in which a student is having difficulties but will not explain the nature of the difficulties. (SpecEdEvaluator 1/25 Test. at 171-172) The cause of the difficulty can be determined by examining the results on the individual problems. On the KM-R, the Student did “very well with mental computation” but had problems with items at the “high end of the scale in the area of rational numbers” where the test problem required the Student to do “restructure[ing], reorder[ing], regroup[ing].” In order to do those problems without a calculator, a person would need to have “competent working memory and executive functioning skills.” (SpecEdEvaluator 1/25 Test. at 141-143) “It wasn’t the fact that she didn’t understand the concept. She knows how to multiply, divide, subtract and add ... It’s just that setting up a problem that involves several steps of reordering or regrouping were difficult.” (SpecEdEvaluator 1/25 Test. at 144; 164) Dr. Ciocca’s findings and SpecEdEvaluator’s findings regarding “weaknesses in math, in organization and problem solving” are “fairly similar.” (SpecEdEvaluator 1/25 Test. at 145-146) The Student would have gotten the support she needed to address these weaknesses at RDZ-HS through extra help, Title 1 support, and extra practice homework. (SpecEdEvaluator 1/25 Test. at 145)
- e. SpecEdEvaluator administered the WJ-III Writing Sample and Writing Fluency subtests. The Student scored at the “Above Average” level on both subtests. In the Writing Fluency test, the student is given a word or set of words and needs to compose a few sentences using those words correctly. On the Writing Sample, the student has to write a 5 or 6 sentence paragraph or fill in a sequence off a prompt that is provided. (SpecEdEvaluator 1/25 Test. at 165-169) SpecEdEvaluator’s report (B14) notes that these two subtests assess the Student’s writing speed in a timed situation and ability to complete a prescribed writing task.
- f. SpecEdEvaluator recommended that:
- (1) The Student be allowed the use of a calculator for all math operations.
 - (2) The Student be allowed extended time to complete math tests, quizzes, SATs and an opportunity to take them in an alternative setting.

- (3) Information be presented in small increments.
 - (4) The Student be allowed to use a computer to learn new skills on a self-paced basis or to review already acquired skills.
 - (5) Review and re-teaching be used to support the Student’s functioning in math.
192. The Hearing Officer finds that none of these recommendations are special instruction or related services. Rather all are accommodations.
193. SpecEdEvaluator testified further that at SpecEdDirector’s direction, SpecEdEvaluator advised the Student of the legal transfer of rights at age of majority and of the procedural safeguards. SpecEdEvaluator had that discussion with the Student after the testing was concluded. At that point the Student’s “demeanor” changed “markedly.” The Student “got quiet,” put her head down, appeared “burdened” and stated at that point that “I don’t make those decisions. That’s my mother’s job.” (SpecEdEvaluator 1/25 Test. at 135-137) SpecEdEvaluator observed that the Student appeared “anxious” and “it obviously was something that bothered her, worrying about that.” The Student did not do anything inappropriate during that conversation or the testing. The Student walked SpecEdEvaluator out and they said goodbye. (SpecEdEvaluator 1/11 Test. at 411-413).

N. THE SCHOOLPSYCHOLOGIST EVALUATION

194. SchoolPsychologist’s assessment consisted of an administration of the Conners Teacher Rating Scale-Revised (“CTRS”), which was completed by some of the Student’s 11th grade RDZ-HS teachers. Given the consent forms ultimately executed and returned by Mrs. X, SchoolPsychologist’s evaluation ultimately consisted only of an assessment for ADHD using the CTRS. SchoolPsychologist gave Mrs. X the Connors long form parent evaluation to complete but it was never returned. (SchoolPsychologist 1/23 Test. at 113-114) SchoolPsychologist’s report (B15) indicates the following teacher ratings of the Student on the CTRS. The 1st semester grades assigned by each teacher are also included:

Course	Teacher	Oppositional	Ratings on Domain			1 st Semester Grades
			Cognitive/ Inattention	Hyperactivity	ADHD Index	
Vet Science II	AgEdTeacher10/11	55	45	78*	51	85 (B)
US Hist A	HistoryTeacher11	46	56	62	68*	76 (C)
Biology A	ScienceTeacher11	64	49	78*	73*	83 (B)
Math	MathTeacher11	46	54	81*	73*	W/66 (W/D)
English 11A	EnglishTeacher11	64	77*	81*	89*	73 (C)
Title 1	Title1Teacher10/11					n/a
Spanish 1	SpanishTeacher11					73 (C)
Physical Education	XCountryCoach9-11					91 (A)

- a. Items marked with an asterisk reflect “High Risk” for the characteristic (T score of 65 and higher). Collectively, the teachers rated the Student as at “High Risk” for ADHD. A person at High Risk is at more of a risk than High Average Risk. Students at high risk for ADHD would have attentional issues which would manifest in problems paying attention, getting instructions, directions, homework assignments and missing pieces of the lecture. (SchoolPsychologist 1/23 Test. at 217-233)
 - b. SchoolPsychologist made no specific recommendations in his report other than that the information in the report be considered as part of the determination of the Student’s eligibility.³⁰
195. SchoolPsychologist testified that a person scoring at High Risk on the Oppositional domain as measured by the Conners is likely to break rules, have problems with persons in authority and be more easily annoyed and angered than most individuals their own age. A person scoring at High Risk on the Cognitive Problems/Inattention domain as measured by the Conners may be inattentive, have more academic difficulties than their same age peers, have problems organizing their work, completing tasks or school work, and have trouble concentrating on tasks that require sustained mental effort. (B15) A student at “High Risk” on the Hyperactivity domain as measured by the Conners would have difficulty sitting still, would feel more restless and impulsive than most individuals their own age, and have the need to always be on the go. (SchoolPsychologist 1/23 Test. at 217-233)
196. Dr. Ciocca testified that: The “Oppositional” domain of the Connors Scales assesses response to authority figures, frustration and behavioral reactions. The Cognitive and Inattentive Domain assesses distractibility and capacity for sustained attention. The Hyperactivity domain assesses motor restlessness. The ADHD Index is a conglomeration of the other indices. (Ciocca 12/14 Test. at 75-77) A score of 50 indicates no clinically significant difficulties on that item. The higher the T score is above the more clinically significant the rating becomes. (Ciocca 12/14 Test. at 137-139)
197. The results of SchoolPsychologist’s assessment show that no Oppositional and no significant Cognitive/Inattention factors were manifesting at school but that motor features of the Student’s ADHD were.

O. THE SAHANI EVALUATION

198. Gurender Singh Sahani, M.D., performed a psychiatric evaluation of the Student. Dr. Sahani was identified by the Board as a potential witness but did not appear to testify and was represented to be unavailable. Review of Dr. Sahani’s report (B16) indicates the following, among other things:
- a. Dr. Sahani reflected in his report information he received from Mrs. X. Dr. Sahani noted

³⁰ The failure of Mrs. X to provide her Connors ratings scale to SchoolPsychologist prevented SchoolPsychologist from concluding that the Student had ADHD, since the diagnosis requires evidence of manifestations of the condition across settings. For the same reason, absent having the CTRS results from the SchoolPsychologist evaluation, Dr. Ciocca could not make the diagnosis because she only gave the Connors ratings scale to Mrs. X.

Mrs. X's report that the Student had a history of "decreased frustration tolerance and increased irritability along with being oppositional and defiant," and that she has "difficulty trusting others," "lacks social skills and has difficulty initiating and maintaining meaningful social relationships." He noted Mrs. X's report that the Student has "difficulties with peers," that the Student reports being "picked on by peers" and that the Student has made "inappropriate and derogatory remarks toward peers." He also noted Mrs. X's report that the Student is not a "major behavioral problem" at school, has "struggled academically" and is "calmer and less clingy this year."

- b. Dr. Sahani noted that there is no history of inpatient psychiatric care and that the Student has received outpatient psychotherapy from Psychotherapist. He reported that she was currently taking Concerta (54 mg p.o. q.a.m.) for ADHD, and has previously been treated with Ritalin and Paxil. She was previously diagnosed with anxiety disorder, not otherwise specified.
- c. Dr. Sahani noted, among other things, a report from Mrs. X that "Intense behavioral and social difficulties have improved over the course that [the Student has] lived with [Mr. and Mrs. X]."
- d. Dr. Sahani interviewed the Student and made the following observations: The Student denies any history of hallucinations or drug or alcohol abuse. She presented as anxious but was cooperative, dressed casually, appeared her stated age and maintained "fair" eye contact. Her speech was "rapid in rate." No abnormal motor activity was noted. She defined her mood as "all right." Her thought content and processes appeared "organized" and she was alert and oriented. Her concentration was "fair," memory was "intact," fund of knowledge age appropriate, and insight, judgment and impulsivity "fair." The Student described her distrust of the school system and her anxiety. She reported that she had authorized Mr. and Mrs. X to make educational decisions for her because she was afraid that the "school system would not do the right things for her." She reported a history of "significant interpersonal relationship difficulties with peers" at RDZ-HS and that she has done better since going to KSchool although she also reported having some difficulties with some female peers there.
- e. Dr. Sahani identified the Student as having ADHD, AD-NOS, RAD and PTSD (by history), as defined by the DSM-IV-TR criteria. Dr. Sahani gave the Student a DSM-IV-TR Axis IV rating of "Severe" and identified her current level of functioning on the Global Assessment of Functioning ("GAF") at 40 to 45.³¹

³¹ Axis V of the DSM-IV-TR classification is the Global Assessment of Functioning or "GAF" scale, which reflects the clinician's judgment of the individual's "overall level of functioning" with respect to psychological, social and occupational functioning as applicable, including school functioning. The scale ranges from 100 (no impairment; highest level of functioning) to 0 (greatest impairment; lowest level of functioning), and is divided into ten 10 point deciles. The clinician rates based on an assessment of the severity of the symptoms and/or level of functioning over a defined period of time. Dr. Sahani rated the Student at 45 on the GAF. A rating in the 41-50 range describes the individual as follows: "Serious Symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational or school functioning (e.g., no friends, unable to keep a job)."

- f. Dr. Sahani stated that the Student “appears to be struggling with the issues of identity formation, peer pressure, interpersonal relationship difficulties compound[ed] with low self-esteem, poor social and coping skills, education difficulties along with issues of attachment and abandonment.”
- g. In a section of his report entitled “Recommendations to School,” Dr. Sahani stated that the Student should be “considered for a special education program through [an OHI] designation with an IEP that meets both her educational and emotional needs without affecting her self-esteem negatively.”³² Dr. Sahani recommended various classroom accommodations that would be appropriate to support her functioning.³³ Dr. Sahani recommended that a “Teaching aide can also help her during transitions in between classes to avoid interpersonal relationship difficulties with peers. She should also be involved in social skills and coping skills group in school to improve interpersonal relationship difficulties and communication with peers.”
- h. In a section of his report entitled “Recommendations to Parents,” Dr. Sahani recommended that the Student should continue with Concerta and that some consideration should be given to treatment with an SSRI or Cymbalta to address anxiety. He recommended that she “continue in therapy both individual and family system being involved to address psychosocial issues along with interpersonal relationship difficulties and improve her self-esteem with social and coping skills.” He stated further that:

Issues of attachment and abandonment also need to be addressed. Apart from issues of attachment there also might be issue of enmeshment between [Mrs. X] and [the Student]. Building on her self-esteem to assist an 18 year old teenager to independent decision making is also recommended.

199. SchoolPsychologist did not speak with Dr. Sahani. SchoolPsychologist understands the concept of “enmeshment” to refer to a circumstance in which one person in a relationship is more dominant and the other person “acquiesces their own personality and their own self to allow that other person to kind of take over for them.” In SchoolPsychologist’s opinion, Mrs. X was the dominant person in the relationship with the Student and “call[ed] the shots” regarding the Student, and the Student acted to obtain Mrs. X’s approval and at school was reflecting Mrs. X’s wishes. Examples in SchoolPsychologist’s opinion include the Student’s reports that she was being bullied at RDZ-HS, that RDZ-HS was “not good for her” and that she could not return to RDZ-HS. SchoolPsychologist came to that conclusion based on conversations and reports from various teachers, including Title1Teacher10/11 and XCountryCoach9/10/11 among others. (SchoolPsychologist 1/23 Test. at 130-136; 188-192) Another example was SpecEdEvaluator’s report that the Student had told her that Mrs. X had told the Student the RDZ-HS was “bad for her, people were mean to [her] there, you can’t go back and that kind of stuff.” (SchoolPsychologist

³² The Hearing Officer notes that Dr. Sahani’s report does not, however, identify what educational needs were at issue.

³³ The Hearing Officer notes that many of these were the same supports that she was already being provided under Section 504.

1/23 Test. at 194-195) Another example is the report of the Title 1 paraprofessional to SchoolPsychologist that right before the Student left RDZ-HS, she had been instructed by Mrs. X to “make a list of all the terrible things that have happened to [her] at [RDZ-HS] since [her] freshman year.” (SchoolPsychologist 1/23 Test. at 193)

Q. THE JULY 25, 2007 IEP TEAM MEETING

200. By letter dated on her 18th birthday in May 2007 to SpecEdDirector, the Student asked that all school-related communications be directed to Mrs. X. (HO5)
201. By notice dated May 25, 2007, RDZ-HS noticed an IEP team meeting for June 12, 2007 to review evaluation results to “determine continuing eligibility for special education and related services.” (B7) The Student, Mr. and Mrs. X, SchoolPsychologist, SpecEdEvaluator, Title1Teacher10/11, and one of the Student’s 11th grade biology teachers, were identified as invited attendees.
202. This IEP team meeting ultimately did not take place on June 12, 2007.
203. On June 13, 2007, SpecEdDirector contacted Mrs. X to remind her to complete the Connors scales. Mrs. X advised that she had forgotten to complete the forms but would do so and drop them off. She also advised that she had spoken with Dr. Sahani. (B8)
204. On June 20, 2007, the Student had her last evaluation session with Dr. Ciocca. (B9; P37)
205. Counsel for the Board and for Mr. and Mrs. X exchanged several e-mails during the period May 16, 2007 through July 27, 2007 regarding the scheduling of the IEP team meeting that is the subject of the May 25, 2007 notice and the completion of evaluations. The documents in the record indicate collectively that the scheduling of the IEP team meeting was complicated in part by the need to coordinate the schedules of the attorneys for the respective parties. The proposed June 12, 2007 IEP team meeting was rescheduled first to July 24, 2007 after offers by the Board to reschedule it for various dates earlier in July were not successful. Although aware that Dr. Ciocca’s evaluation was not yet completed and that Mr. and Mrs. X desired to wait until the results of Dr. Ciocca’s evaluation could be available to the IEP team, the District citing its obligation to conduct an IEP meeting to review the evaluation results, went forward with an IEP team meeting on July 25, 2007. *See generally* B9, B10, B11, B12, B13, B17, B18, B19, B20, B21, B26, P35, P36, P38, P39, P40; Mrs. X 11/8/07 Test. at 248-259; SpecEdDirector 1/25 Test. at 232-233.
206. Ciocca had not finished her evaluation of the Student as of July 5th. (Mrs. X 11/8 Test. at 252)
207. On July 11, 2007, SpecEdDirector sent the Student directly a copy of a notice of the PPT meeting scheduled for July 24, 2007, inviting her to attend. (B13 at 2; SpecEdDirector 2/8 Test. at 99-105) The notice advised that the purpose of the meeting was to review evaluation results and determine eligibility, and that SpecEdDirector, MathDeptChair (as a regular education teacher), Mr. and Mrs. X, SchoolPsychologist, AssistantPrincipal, Title1Teacher10/11, a special education teacher and Mr. Meuser were invited to attend, among other staff. The notice indicates

further that a copy of the Safeguards were being provided. A cover letter attached to the notice indicates that copies of the SpecEdEvaluator, SchoolPsychologist and Sahani evaluation reports were enclosed. The letter sent by SpecEdDirector invited the Student to contact her if the Student had any questions or wished to discuss her rights under the law. (B13) These materials were also provided directly to counsel for Mr. and Mrs. X on that date as well.

208. Mrs. X received the July 11, 2007 notice regarding the PPT and the attached evaluation reports which were sent to the Student. (Mrs. X 11/8 Test. at 250-251)
209. The SpecEdEvaluator, SchoolPsychologist and Sahani evaluation reports were reviewed by Dr. Ciocca and discussed in her evaluation report. (P37) The District did not provide those reports to Dr. Ciocca. Mrs. X offered no testimony that she asked the District to do so.
210. Prior to the July 2007 IEP team meeting, SpecEdDirector, SchoolPsychologist and SpecEdEvaluator met to discuss the results of the evaluations performed by the District. They were aware at the time that there was a neuropsychological evaluation report outstanding. (SpecEdDirector 2/8 Test. at 96-97)
211. Due to the unexpected unavailability of Mr. and Mrs. X's counsel, the July 24, 2007 IEP team meeting was rescheduled on short notice to July 25, 2007.³⁴ On July 24, 2007 SpecEdDirector gave Mr. and Mrs. X and the Student verbal notice of the change in date and time to July 25, 2007 by leaving a message on their answering machine. (SpecEdDirector 2/8 Test. at 99-105)
212. Regarding the July 25, 2007 IEP team meeting:
 - a. The attendees were the following District staff: SpecEdDirector, MathDeptChair (identified as the "student's regular education teacher"), a special education teacher, SchoolPsychologist, Title1Teacher10/11, and AssistantPrincipal. (B22) SpecEdEvaluator did not attend. Neither Mr. X, Mrs. X, the Student, Ms. Spencer or any other representative of the family attended. Mr. Meuser did not attend. (SpecEdDirector 1/25 Test. at 241-242) Title1Teacher10/11 was the only staff member attending that meeting who had directly taught the Student, albeit not a substantive course.
 - b. The attendees reviewed and discussed the SchoolPsychologist, SpecEdEvaluator and Sahani evaluation reports, as well as records from the time that the Student attended RDZ-HS. (AssistantPrincipal 12/20 Test. at 124-125; Title1Teacher10/11 12/20 Test. at 277; SchoolPsychologist 1/23 Test. at 118, 16; SpecEdDirector 1/25 Test. at 233; SpecEdDirector 2/8 Test. at 99-105)
 - c. The minutes (B22) state as follows: After reviewing the evaluations, report cards, attendance and disciplinary record, school performance and participation, and previous evaluations, the District staff members of the IEP team did not find that the Student required special education instruction to meet her attentional difficulties, math computation deficiencies, and emotional needs. "Based on this information, her math performance is not

³⁴ Ms. Spencer reported that she had a medical emergency that prevented her from attending.

a cognitive issue, and can be addressed through accommodations and the regular education math classes. Having considered Dr. Sahani's report, the team feels that the accommodations for her ADHD are appropriate, but she does not need to be considered for [IDEIA] special education instruction under [OHI] to receive these accommodations. The team considered the exceptionality of [ED], but [the Student] does not meet the criteria." The District staff determined the Student was not IDEIA-eligible but that her "attentional difficulties and history warrant continued services and accommodations under a 504 plan with regular education instruction."

- d. The minutes (B22) state further that: "When the Board receives a copy of the outside evaluation and copies of [the Student's] report card or other information from KSchool school, another PPT meeting will be scheduled to review that information."
213. By letter dated July 27, 2007 from SpecEdDirector to the Student, SpecEdDirector transmitted a copy of the minutes of the July 25, 2007 IEP team meeting to the family, and offered the Student the opportunity to submit additional materials and request a further IEP team meeting. SpecEdDirector offered several dates in late August when staff would be available, but also indicated that if the Student desired to have an IEP team meeting sooner that she should contact SpecEdDirector who would see if alternative arrangements to satisfy that request could be made. (B23) The Safeguards were provided with this letter.
214. On July 27, 2007, Mrs. X advised SpecEdDirector that "we cannot schedule a PPT until the results of all testing is available." (Emphasis in original.) In this communication, Mrs. X reported that Mr. and Mrs. X had had a final meeting with Dr. Ciocca on **July 24, 2007** and that Dr. Ciocca had advised that she would send her "formal report" on August 14, 2007. (P40)
215. Dr. Ciocca's report (P37) stated that the feedback session with Mr. and Mrs. X was on July 25, 2007 not on July 24, 2007.

R. DR. CIOCCA'S NEUROPSYCHOLOGICAL EVALUATION

216. Dr. Ciocca is a clinical neuropsychologist by training, with a Psy.D. degree, and is a Connecticut-licensed clinical psychologist. Over the past ten years, she has evaluated approximately eight to ten children per week and has participated in the development of IEPs with goals and objectives reflecting neuropsychological issues. (Ciocca 12/14 Test. at 10-14) Her neuropsychological evaluation report (the "Ciocca Report") (P37) indicates the following, among other things:

- a. Dr. Ciocca reviewed the following documents, which were provided by Mr. and Mrs. X:

Dr. Black's May 19, 2004 evaluation report; (P4)
the Student's 11/9/06 report card;
the January 17, 2007 referral for evaluation; (P29)
the February 9, 2007 IEP team meeting minutes; (B3)
Principal's March 28, 2007 letter; (B6)
SchoolPsychologist's April 2007 evaluation report; (B15)
SpecEdEvaluator's May 9, 2007 evaluation report; (B15) and

Dr. Sahani’s May 21, 2007 evaluation report. (B16)

- b. Dr. Ciocca interviewed the Student and Mrs. X. She noted Mrs. X’s report that the Student was “just being pushed through the system and that her difficulties were simply escalating” and that her Section 504 plan was not being “consistently implemented.” (P37 at 6)
- c. Dr. Ciocca reported the following about her interactions with the Student: “Her speech was fluent and conversationally functional. She understood questions in general. However, she evidenced indiscriminate disclosure of information. She was tangential and hypervocal in conversation. She frequently transitioned to irrelevant topics and was difficult to redirect. She appeared immature for her age. [She] exhibited poor boundaries and limited judgment, which was curtailed slightly in the company of her family who redirected often. She demonstrated variable trust transitioning from excessively indiscriminate to being completely absent. She was unable to fully appreciate the dynamics that guided her behavior . . . [She] wished to be liked on the one hand, but was suspicious of others’ intentions on the other. She was markedly verbal between tasks . . . She was excessively demonstrative with a markedly labile affect. She shifted quickly from being calm to irritable . . . She viewed everything in a negative light, anticipating the worse. She seemed to project a belief that good things are not permanent and she expected to be let down. While she wanted to do well and be accepted, she was unable to apprise how others perceived her. She lacked any sense of measure of when to stop. She appeared overwhelming for others likely unconsciously precipitating what she attempted to avoid – their distancing from her. She was excessively needy . . . [She] demonstrated a particularly low self-esteem. She was hard on herself [*i.e.*, self-critical] She made many complaints and intruded many excuses for her performance. She was easily overwhelmed and reacted emotionally. She looked for positive reinforcement to provide her with an inkling of her level of functioning. [She] was able to work for extended periods of time with minimal breaks. While not markedly distractible, incidental stories and comments prompted numerous interruptions . . . [She] worked very hard on each item, and genuinely wanted to do well.” (P37 at 10-11)
- d. Mrs. X completed the Connors Parent Rating Scale-Revised Long Version (“CPRS”). The Ciocca Report notes that Mrs. X rated the Student as being at clinically significant levels in a cluster of areas assessed by this scale which collectively reflect “problematic functioning with particular concerns being conceptually related to cognitive and attentional problems, all of which will directly influence social functioning.” (P37 at 12) Mrs. X rated the Student as follows on the CPRS. Items marked with an asterisk reflect “significantly elevated” scores.

Scale –Domain	T Score
Oppositional	64
Cognitive Problems/ Inattention	90*
Hyperactivity	81*
Anxious-Shy	62
Perfectionism	40
Social Problems	90*
Psychosomatic	58
Connors ADHD Index	76*

Connors Global Index: Restless-Impulsive	82*
Connors Global Index: Emotional Lability	54
Connors Global Index: Total	73*
DSM-IV: Inattentive	83*
DSM-IV: Hyperactive-Impulsive	82*
DSM IV: Total	87*

- e. On the Wechsler Intelligence Scale – Third Edition (“WAIS”), the Student attained a VIQ of 101 (Average Range); a PIQ of 106 (Average Range) and a FSIQ of 103 (Average Range). The Student’s results were “slightly higher than previous assessments though still within the same range.” The Student’s results reflected “solidly Average intellectual capacity across domains” with the lowest score on the Working Memory Index (a 95 which is still within the Average Range) The Report notes that comparison of the Student VIQ and PIQ scores revealed no statistically significant differences, and that comparing her Index scores to each other reveals no statistically significant differences except for the Perceptual Organization-Working Memory score and Working-Memory Processing Speed scores at which some statistical differences “began to emerge” not at the .05 level but rather “only at the .15 level.” (P37 at 13) Considering her performance on the WAIS and the Kaufman Brief Intelligence Test (“KBIT”), the Student’s “intellectual prowess was solidly at the Average range with limited variability among skills. Her verbal and nonverbal scores were equally developed. There was no statistically significant difference between the Student’s performance on WAIS subscales assessing verbal and nonverbal skills. Processing speed issues were not detected, though Working Memory appeared to be slightly lower when compared to her other skills.” (P37 at 13-14, 16)
- f. The Student demonstrated “fairly sound attentional skills for both visual and auditory domain,” a pattern of false positive errors “indicative of response modulation difficulties and impulsivity,” a systematic approach to the task which increased accuracy coupled with a tendency to not review her work; and use of verbal mediation strategies. (P37 at 14) On the Tower of London Test – 2d Edition, the Student “displayed a generally fast and impulsive approach interfering with her ability to complete the items within the allotted moves [and] difficulty with planning.” However, “[d]espite her impulsive initiation time, her execution and problem solving times were both at the Average range.” (P37 at 15)
- g. On assessments of verbal and language based skills, the Student demonstrated “no formal language based issues with the exception of working memory weaknesses when provided with excessive information and inconsistent attention ...” (P37 at 16)
- h. The Student “showed marked difficulty with new learning and memory tasks. [She] was particularly overwhelmed by the amount of stimuli. [H]er executive dysfunction (perseverations and intrusions) impeded the efficiency of her learning. She had difficulty learning both auditory and visual information, even with repetition.” (P37 at 17) When exposed to a shopping list of 16 items, her overall learning score was in the Impaired range. (P37 at 17) The Student “demonstrated difficulties tracking the items she had already provided. She made several perseverative errors. She also intruded items on the list that were not provided both during spontaneous and cued trials.” (P37 at 18)

- i. On the Wechsler Individual Achievement Test-II (“WIAT”) the Student’s Reading and Written Language Composite scores were in the Average range and her Mathematics Composite score was in the Low Average range. The Student (then 18 years old) attained the following results on individual subtests constituting those Composites:

Subtest	Age Equivalent	Grade Equivalent
Word Reading	15:0	9:4
Reading Comprehension	17:0-19:11	12:6
Pseudoword Decoding	12:4	6:0
Numerical Operations	14:0	8:8
Math Reasoning	12:8	7:7
Spelling	17:0-19:11	10:4
Written Expression	14:0	8:8

On the math components, the Student had difficulties with quantities less than a whole, mental computations involving addition/division, using theoretical and experimental probability to draw conclusions, and using graphs to make comparisons. (P37 at 19)

- j. Dr. Ciocca’s report includes a chart which compares the Student’s performance on the Reading, Mathematics and Written Language composites of the WIAT to *each other*. The results show that there is no statistically significant difference between the Reading and Written Language Composite Index Scores, but that there are differences at the 0.15 level of statistical significance between her Reading and Mathematics Composite Index Scores and her Mathematics and Written Language Composite Scores. (P37 at 20)
- k. On the Minnesota Multiphasic Personality Inventory – Adolescent Version (“MMPI”), the Student’s results on the “validity scale indicated that she cooperated fully with the evaluation yielding useful clinical information” but that “her response style also depicted a tendency to deny difficulties and look on the bright side of things even in the face of problems.” Dr. Ciocca concluded that that tendency “seemed to suppress the clinical significance of her clinical scales . . . Specifically, [the Student’s] denial prompted her to endorse limited symptoms.” (P37 at 20) Dr. Ciocca concluded further that “She showed no evidence of [DSM-IV-TR] Axis 1 symptoms in protocol” but endorsed items reflecting impulsivity, problems with authority and “some strange thoughts and experiences.” She “seemed to project a desire to be viewed as self-confident, making her behave in such a way as to sometimes overestimate her own capabilities or overextending herself with projects that she has difficulty completing . . . She appeared to enjoy taking risks. In social interchanges, a self-centered style with limited introspection encouraged interpersonal conflict with peers. She was not particularly insightful to her contribution to these difficulties. Her relationships are further inhibited by a general distrust of others and their motives.” (P37 at 20)
- l. On projective personality tests, the Student evidenced “greater unconscious conflict and trauma than she is willing to endorse on the surface.” Her underlying “suspiciousness and paranoia are prevalent in her interaction with the external environment in general. She is wrought with conflicting thoughts and feelings that promote great anxiety and concern of

others [sic] intentions.” “She was secretive and withdrew from stressors or reacted with an overwhelming flow of affect, at times, inconsistent to the circumstances at hand. Her emotional lability resulted in rapid shifts in affect. Moreover, her suspiciousness interfered with the accurate interpretation of events and others’ intentions . . . She struggled with inhibiting her thoughts and conflicts from surfacing. She focused on her excessive communications exacerbated by anxiety. People were viewed as dangerous and potentially harmful.” (P37 at 20-21)

217. Overall, Dr. Ciocca concluded (P37 at 22) that:
- a. “[The Student] depicted inconsistent attentional and mental control issues within the rubric of executive dysfunction. [She] employed compensatory skills such as slowing down and verbal mediation to avoid making cognitive errors in set shifting tasks. She was prone to impulsive responding interfering with accurate planning and problem solving skills. Her abstract conceptualization was below expectation and marked by numerous errors prior to establishing the first category, loses of set and limited learning to learn. Her executive compromise also interfered with the efficiency of her new learning and memory. She made an excessive amount of perseverations and intrusions while learning novel information. She struggled with retention and carry over of learned concepts. [She] was also particularly concrete and literal in her interpretation of certain concepts and events.” (P37 at 21-22) Dr. Ciocca concluded further that her: “Her mathematics deficits were related to her attention, working memory, and executive dysfunction deficits.” (P37 at 22)
 - b. The Student’s test results were consistent with prior diagnoses of ADHD and are also consistent with RAD, PTSD, GAD and a “Mathematics Learning Deficit.” (P37 at 22)
218. Dr. Ciocca’s report stated 17 numbered recommendations, including the following (which are numbered as they are in the Report). All of these recommendations are “proposed for consideration.”
2. Special education services under the exceptionality of multiple disabilities including both cognitive ([ADHD] with Executive Dysfunction, Mathematics Learning Deficit) and psychological (PTSD [GAD, [RAD]/Adoption Child Syndrome) factors.
 3. “A comprehensive, specialized program to provide rigid structure, supports, and intensive treatment to target not only the impact of attention/executive functioning in learning/carry over of novel information in school, mathematics learning deficits, but also her psychiatric symptoms that influence her day to day functioning and social interactions in general. The intensity of a residential program would be most fruitful in addressing these issues 24/7; otherwise, it would be relatively simple for her to revert to maladaptive behaviors in the absence of constant structure.”
 4. A behavior management program in the “form of a token economy or similar principles” to “reduce the frequency of negative, angry outbursts, inappropriate comportment for the circumstances, and enhance response to authority figures.”

5. Regulating of the “pace and breadth” of educational materials to focus on main points, insure multimodal exposure to circumvent memory deficits, and redirection as necessary “within a smaller academic milieu.”
6. Preferential seating to address distracting and competing stimuli as well as peer conflicts.
8. Modeling of ways to “diffuse frustration, delay gratification, and make appropriate judgment decisions as well as direct intervention to target the same given that they are not part of her current repertoire.”
9. “Direct instruction on organizational strategies, planning, time management, and work completion. Strategies and guided sequences must be explicitly taught.”
10. Identify technological supports that can ameliorate cognitive and learning weaknesses “specifically in math.”
11. “Social skills training to enhance appropriate and accurate interpretation of social interchanges, improve reciprocity in relationships and use of more effective communication strategies. Mentoring may be necessary to observe behaviors to target and discussed in a supportive environment.”
12. Assess vocational training and support needs to “prepare her for functioning in an unstructured environment.”
13. “Life skills training to enhance self-reliance and individualized skills for independent living and safety.”
14. Continued psychotherapy.
15. Further assess medication management of her anxiety.
16. Family therapy.
17. “Consistent and reciprocal communication between the home and educational team to address important issues, progress, and appropriate intervention.”

S. The August 31, 2007 IEP Team Meeting

219. After the July 25, 2007 IEP team meeting, SpecEdDirector invited the Student and Mr. and Mrs. X to an IEP team meeting to be scheduled on August 29, 30 or 31 (B23) (SpecEdDirector 1/25 Test. at 241; SpecEdDirector 2/8 Test. at 101-102) SpecEdDirector identified the notice for the August 31, 2007 IEP team meeting as B26. (SpecEdDirector 2/8 Test. at 160)
220. Counsel for the parties exchanged e-mails between August 7 and August 30, 2007 regarding the timetable for completion of Dr. Ciocca’s Evaluation Report and the scheduling of an IEP team meeting to review that Report. (B24, B25) By August 23, 2007, the IEP team meeting had been

scheduled for August 31, 2007 but Mr. and Mrs. X had not yet provided the District with either Dr. Ciocca's Evaluation Report or reports from KSchool. (B26) Ms. Spencer faxed a copy of Dr. Ciocca's Evaluation Report to Mr. Meuser on August 28, 2007, who subsequently advised that the District would proceed with the scheduled August 31, 2007 IEP team meeting notwithstanding the timing of receipt of the Report, again asked about KSchool documents, and asked for a release authorizing District personnel to communicate with Dr. Ciocca about her Report. (B27) The Student's KSchool grade reports (P41) were received by facsimile during the meeting.

221. The minutes of the August 31, 2007 IEP team meeting indicate that the Safeguards were provided to Mr. and Mrs. X on August 15, 2007. (B28)
222. The release to communicate with Dr. Ciocca was not provided and she did not attend the meeting.
223. SpecEdDirector, Title1Teacher10/11, SchoolPsychologist, MathDeptChair and SpecEdEvaluator met to review the Ciocca Report before the IEP team meeting. This group concluded not to recommend that the Student be found to be IDEIA-eligible. (SpecEdEvaluator 1/25 Test. at 149-151; SpecEdDirector 1/25 Test. at 234-237)
224. Mrs. X, Ms. Spencer, Mr. Meuser, SpecEdDirector, MathDeptChair, SpecEdEvaluator, Title1Teacher10/11, AssistantPrincipal and SchoolPsychologist attended the August 31, 2007 IEP team meeting. The Student did not attend. (B28) The parties agree that:
 - a. At this meeting, Mr. and Mrs. X requested that the Student be identified as IDEIA-eligible, and that the District pay for her placement at KSchool for the 2006/2007 and 2007/2008 school years, and pay for Dr. Ciocca's evaluation.
 - b. District staff members concluded that the Student was not IDEIA-eligible and declined to fund her attendance at KSchool or to pay for Dr. Ciocca's evaluation as requested.
225. As to the August 31, 2007 IEP Team meeting, Mrs. X testified as follows:
 - a. Mr. and Mrs. X's goals for the meeting were: (1) to obtain a determination that the Student was IDEIA-eligible; (2) to "get the school" to cover the cost of the placement at KSchool in the 2006/2007 and 2007/2008 school years; and (3) to have the District pay for Dr. Ciocca's evaluation. Those requests were denied at the meeting. (Mrs. X 11/8 Test. at 261-262; Mrs. X 11/20 Test. at 34)
 - b. Mr. and Mrs. X advised the District that for the 2007/2008 school year they were going to place the Student at KSchool and she would not be returning to RDZ-HS. (Mrs. X 11/30 Test. at 186-187)
 - c. District staff disagreed with Mr. and Mrs. X that the Student was IDEIA-eligible "because they didn't see the problems, and ...they thought [the Student] was doing well ..." (Mrs. X 11/30 Test. at 188)
 - d. The meeting lasted between 1.5 and 2.5 hours. (Mrs. X 11/8 Test. at 264-265)

- e. "I wanted them to read Dr. Ciocca's report the way it was written and come to the realization that this child has a problem." (Mrs. X 11/8 Test. at 263) "[E]verything" that Mr. and Mrs. X brought up at the meeting was met with "resistance" by the District which "didn't want to discuss and have a civil discussion with us about anything. And it was like everything that we brought up it was an argument." "It was a battle." (Mrs. X 11/8 Test. at 264) The District staff at this PPT "balked" at reviewing Dr. Ciocca's report. "They fought it every step of the way ... they just did not want to read it." (Mrs. X 11/8/07 Test. at 260-273) District staff disagreed with specific items in the Ciocca Evaluation Report but did not disagree with the diagnoses. (Mrs. X 11/8 Test. at 265-266) The discussion of Dr. Ciocca's recommendations was "difficult" because the District staff "didn't want to talk about it." (Mrs. X 11/20 Test. at 31-34, 36) District staff reviewed "each and every one" of the recommendations stated in Dr. Ciocca's report at the meeting. (Mrs. X 11/8 Test. at 266-267) Mrs. X testified first that she did not recall whether there was any discussion as to whether or how recommendations in Dr. Ciocca's evaluation report would be implemented if the Student were to return to RDZ-HS in the 2007/2008 school year, and then testified that there was no such discussion at the meeting. (Mrs. X 11/8 Test. at 302-303) District staff had questions about Dr. Ciocca's evaluation report which were referred to Ms. Spencer. Mrs. X does not know if the questions were ever answered. (Mrs. X 11/20 Test. at 31-32)
- f. Dr. Sahani's evaluation was reviewed. Mrs. X agrees with that evaluation and stated that the District staff at the meeting did not disagree with that evaluation. (Mrs. X 11/8 Test. at 267)
- g. School Psychologist's evaluation was reviewed. In Mrs. X's opinion, that evaluation showed that the Student was "severely ADHD." (Mrs. X 11/8 Test. at 269)
- h. Mrs. X testified that there was a discussion of the OHI criteria. (Mrs. X 11/20 Test. at 31-34, 36) She also testified that District staff did not explain the criteria for OHI, SED or SLD or the criteria for IDEIA-eligibility. (Mrs. X 11/30 Test. at 175-177)
- i. There was a discussion about "math disability." (Mrs. X 11/20 Test. at 33) Ms. SpecEd Evaluator stated that the Student's performance on the KM-R reflects her inability to use a calculator on the test and that the weaknesses identified in the test "shouldn't affect her too much" because she can use a calculator in other circumstances. (Mrs. X 11/30 Test. at 175-177; 186-187) The District did not agree with the "math disability label." (Mrs. X 11/20 Test. at 31-34, 36)
- j. Mrs. X did not recall if Section 504 issues were discussed. Mr. and Mrs. X were seeking to have the Student identified as IDEIA-eligible. There was a "discussion of counseling and behavior management that could be provided in the context of a 504 plan." Mr. and Mrs. X requested "direct instruction in social skills and organizational skills." (Mrs. X 11/20 Test. at 31-34, 36) The District did not advise Mrs. X specifically the supports that would be provided to the Student if she returned to RDZ-HS or create a "plan" for her. (Mrs. X 11/30 Test. at 175-177)
- k. Mr. and Mrs. X asked the District to design an IEP for the Student at RDZ-HS but were told

by SpecEdDirector that she did not qualify under the IDEIA. (Mrs. X 11/20 Test. at 34)

- l. District staff found that she was not eligible on the basis of SED. (Mrs. X 11/8 Test. at 268)
- m. The SpecEdEvaluator, SchoolPsychologist and Sahani evaluations were discussed at the meeting, but in Mrs. X's opinion the District did not want to engage in a meaningful discussion of those evaluation reports. (Mrs. X 11/8 Test. at 262-263)

226. SpecEdEvaluator testified as follows about the August 31, 2007 IEP team meeting:

- a. The IEP team reviewed the reports by Dr. Ciocca, SchoolPsychologist, SpecEdEvaluator and Dr. Sahani. MathDeptChair discussed the CAPT. "Quite a bit of time" was spent going over Dr. Ciocca's report, including the testing she administered and the recommendations. The recommendations made by both Dr. Sahani and Dr. Ciocca for in-school supports were compared to the existing Section 504 plan. There was a discussion of modifying the Section 504 plan to address Dr. Ciocca's recommendation regarding social skills training. The Student had not been receiving counseling at RDZ-HS and adding counseling might have been discussed. The District staff stated its conclusion that a behavior management plan was not necessary given the Student's presentation at school. (SpecEdEvaluator 1/11 Test. at 420-437; SpecEdEvaluator 1/25 Test. at 118-119) As to the social skills group, the District team members described what was available but did not feel it was necessary for the Student. (SpecEdEvaluator 1/25 Test. at 147-149) A new Section 504 plan was not written. (SpecEdEvaluator 1/25 Test. at 125-126; 155-156)
- b. SpecEdEvaluator stated her opinion that "In the classroom, [the Student] uses a calculator, or all the students use a calculator, so some of these [math] skills that needed to be strengthened were showing as weaknesses on [SpecEdEvaluator's assessment] because you can't use a calculator." (SpecEdEvaluator 1/25 Test. at 122) SpecEdEvaluator recommended that the Student review certain mathematics skills involving rational numbers without a calculator because those were the areas she was weak in during the assessment. The Student did not need special instruction, but rather tutoring and re-teaching in a support study hall environment. (SpecEdEvaluator 1/25 Test. at 119-120)
- c. Mrs. X indicated that the purpose of the meeting was to "determine whether [the District was] going to continue to pay for [the Student] to go [to KSchool] after we reviewed the assessments." (SpecEdEvaluator 1/25 Test. at 158) Mrs. X reported that the Student was "upset" with RDZ-HS and found being at RDZ-HS "a terrible experience, and that she was stressed and would not be coming back." (SpecEdEvaluator 1/25 Test. at 124)
- d. No transition plan was developed or offered for her return to RDZ-HS. "[I]t was very clear that the family was not happy with [the option of returning to RDZ-HS] and that was not even thought of to be done... They did not want her to come back." (SpecEdEvaluator 1/25 Test. at 156)

227. In addition to being chair of the Math Department at RDZ-HS, Dr. MathDeptChair serves on the CAPT Advisory Committee for Math for the CTDOE which is responsible for reviewing CAPT

items and student responses for scoring. (MathDeptChair 1/11 Test. at 297-300) MathDeptChair testified as follows about the August 31, 2007 IEP team meeting:

- a. MathDeptChair reviewed reports prepared by Dr. Ciocca and SpecEdEvaluator, the Student's CAPT test results and her report cards from RDZ-HS. In speaking with SpecEdEvaluator about the results of the KM-R prior to the meeting, Dr. MathDeptChair understood that the Student's difficulties resulted from inability to use a calculator, that she was showing weaknesses in areas that many students show weaknesses in and that her difficulties could be addressed as part of the regular math class curriculum. He believes he discussed his conclusions on these matters at the IEP team meeting. (MathDeptChair 1/11 Test. at 295-297; 308-312)
- b. The Student's weaknesses reflected in the KM-R would manifest as difficulties with some portions of the Algebra I curriculum and to a lesser extent in Geometry. (MathDeptChair 1/11 Test. at 371-372) He does not recall Mrs. X asking that the Student be deemed eligible on the basis of a math learning disability. He does not recall discussion regarding a math learning disability or learning deficit but recalls there was discussion of a mathematics learning deficit in Dr. Ciocca's Report. (MathDeptChair 1/11 Test. at 313-315)
- c. MathDeptChair discussed the Student's CAPT performance. (MathDeptChair 1/11 Test. at 305-309)
- d. The meeting lasted approximately 1.5 to 2 hours. (MathDeptChair 1/11 Test. at 315) A "significant amount of the time" perhaps half of the meeting was spent reviewing Dr. Ciocca's report on a page by page, line by line basis including the recommendations. (MathDeptChair 1/11 Test. at 316, 326-327, 359) SchoolPsychologist reported on his testing and asked questions regarding aspects of Dr. Ciocca's report. (MathDeptChair 1/11 Test. at 324) AssistantPrincipal asked questions about Dr. Ciocca's report and presented information regarding discipline and attendance. (MathDeptChair 1/11 Test. at 324) The questioning seemed to be "mostly one attorney to another attorney." (MathDeptChair 1/11 Test. at 325)
- e. Had the Student returned to RDZ-HS, she would have been recommended to take a Geometry "A" level class and a life skills math class. (MathDeptChair 1/11 Test. at 329-330)
- f. Mrs. X asked about the Locker Shoving Incident and MathDeptChair discussed what happened. Mrs. X did not offer her view of the event at the meeting and MathDeptChair does not recall Mrs. X stating that the Student was "terrified" of RDZ-HS after that event. (MathDeptChair 1/11 Test. at 381-390)

228. SchoolPsychologist testified as follows about the August 31, 2007 IEP team meeting:

- a. SchoolPsychologist discussed and was asked questions about his report by Mrs. X and Ms. Spencer. In response to their comments, he revised his report to correct an inaccuracy. His report had stated that the Student's teachers had rated her at the "average to *low* average"

range on a characteristic of the Connors scale, when in fact the rating was “average to *high* average.” (SchoolPsychologist 1/23 Test. at 117-120)

- b. The IEP meeting lasted 2 to 2.5 hours. (SchoolPsychologist 1/23 Test. at 117-120)
 - c. There was a discussion of whether the Student was eligible on the basis of a math disability. (SchoolPsychologist 1/23 Test. at 137-138) SpecEdEvaluator’s Report was reviewed. (SchoolPsychologist 1/23 Test. at 117-120) MathDeptChair and SpecEdEvaluator discussed classroom accommodations that could be implemented to address math issues. (SchoolPsychologist 1/23 Test. at 126, 128-129)
 - d. Dr. Sahani’s report was discussed. (SchoolPsychologist 1/23 Test. at 126-128)
 - e. There was a discussion of supports that could be provided to the Student if she were to return to RDZ-HS, including social skills supports and classroom modifications. There was a discussion of the need for specialized instruction. (SchoolPsychologist 1/23 Test. at 128, 140-141, 183-187)
 - f. There was a discussion of OHI eligibility. SchoolPsychologist agreed with Dr. Sahani’s diagnoses but not his OHI-eligibility recommendation. (SchoolPsychologist 1/23 Test. at 207-208, 215)
 - g. Dr. Ciocca’s Report was reviewed. The discussion regarding that Report started with Ms. Spencer asking if staff had reviewed the Report and whether staff had learned anything “new.” Staff responded that they had read the Report but had not learned anything “new” from it, at which point Ms. Spencer “expressed surprise.” At SpecEdDirector’s and Mr. Meuser’s suggestion, District staff then began a page by page review of Dr. Ciocca’s Report. During that discussion, staff identified issues, questions and concerns that they had with the Report and formulated questions for Ms. Spencer to ask Dr. Ciocca. Among other things, staff questioned the source of information for Dr. Ciocca’s comment regarding the Student experiencing bullying at RDZ-HS and not getting along with peers and raised technical questions about the validity and purpose of the comparisons that Dr. Ciocca made between subtests as illustrated at page 20 of her Report. SchoolPsychologist agrees with Dr. Ciocca’s conclusions that the Student has multiple disabilities but does not agree that she required special education because of those disabilities, and does not agree with all of Dr. Ciocca’s conclusions or recommendations. (SchoolPsychologist 1/23 Test. at 138, 207) SchoolPsychologist found that the manner in which some information was presented in her report and the words used “seemed confusing.” (SchoolPsychologist 1/23 Test. at 121-125; 171-172)
 - h. There was nothing in Dr. Ciocca’s report that indicated to SchoolPsychologist that the Student was a danger to herself or to others, and there was no discussion on that point at the meeting. (SchoolPsychologist 1/23 Test. at 138-139)
229. In reaching his conclusion that the Student was not IDEIA-eligible on the basis of an SED, SchoolPsychologist considered that the Student’s impairments did not interfere with her ability to

learn or be successful in her regular education curriculum and considered further that her interactions with peers were not “disruptive,” “out of character,” “out of line,” or “exceptional” but rather were “pretty [sic] within bounds of this high school.” (SchoolPsychologist 1/23 Test. at 141-143) The fact that the Student moved from G level to A level classes from 9th to 10th grade also indicated that she was experiencing success in the mainstream. (SchoolPsychologist 1/23 Test. at 202-203)

230. SpecEdDirector testified as follows about the August 31, 2007 IEP team meeting:
- a. The District had requested reports from KSchool prior to the meeting. Those reports were sent by facsimile while the meeting was underway and were reviewed at the meeting. (SpecEdDirector 1/25 Test. at 236-238)
 - b. All documents reviewed at the July 25, 2007 IEP team meeting were reviewed at the August 31, 2007 IEP team meeting. (SpecEdDirector 1/25 Test. at 240)
 - c. There was a discussion of OHI eligibility on the basis of ADHD, RAD, and anxiety-based disorders. In SpecEdDirector’s opinion, the Student was not IDEIA-eligible under the OHI category on the basis of any of these disorders. (SpecEdDirector 1/25 Test. at 246)
 - d. The meeting was more than 2 hours long. Approximately 30 percent of the time was spent in attorney “dialogues.” (SpecEdDirector 1/25 Test. at 247-238)
 - e. SpecEdDirector understood the request that the District pay for the Student to attend KSchool as an indication that Mr. and Mrs. X would not be returning the Student to RDZ-HS. (SpecEdDirector 1/25 Test. at 249)
 - f. The Ciocca Report was reviewed in detail, including the recommendations. The District staff considered the Ciocca Report to be reiterating what had been shown by some of the past evaluations rather than presenting new information. The District staff had questions about information in the report and asked why Dr. Ciocca had not contacted anyone at the school to obtain information. (SpecEdDirector 1/25 Test. at 251-252)
 - g. There was a discussion of the Locker Shoving Incident. The District staff did not agree with Dr. Ciocca’s statement that the Student was experiencing bullying at RDZ-HS. (SpecEdDirector 1/25 Test. at 252-258)
 - h. No Section 504 plan was developed at the meeting because the Student was not returning to RDZ-HS. There was a discussion of modifications that could be made to her Section 504 plan to address recommendations in the reports if she were to return. (SpecEdDirector 2/8 Test. at 111-112) If she were to return, her Section 504 plan would be adjusted to reflect some of the results and recommendations of the evaluations. (SpecEdDirector 1/25 Test. at 248)
 - i. Had the IEP team found the Student to be IDEIA-eligible, an IEP would have been developed and offered even if the District knew she was not returning to RDZ-HS.

(SpecEdDirector 2/8 Test. at 129-130)

231. AssistantPrincipal testified as follows about the August 31, 2007 IEP team meeting: The IEP team determined that the Student was not IDEIA-eligible under an SED designation. AssistantPrincipal does not recall if any other eligibility categories were considered. The IEP team reviewed the Ciocca, Black, SchoolPsychologist and SpecEdEvaluator Reports and the KSchool documents. The IEP team reviewed the recommendations and conclusions in Dr. Ciocca's Report. The Ciocca Report did not provide a "lot of new information" and Staff concluded that the Student's needs were being met adequately through her Section 504 plan. (AssistantPrincipal 12/20 Test. at 56-60, 80-87; 116-117)
232. Title1Teacher10/11 testified as follows about the August 31, 2007 IEP team meeting: The SchoolPsychologist, SpecEdEvaluator, Ciocca and Sahani Reports were discussed. The IEP team did review the recommendations in the Ciocca Report. However, not much time was spent reviewing the Ciocca Report because, in Title1Teacher10/11's opinion, "dialogue wasn't beneficial at that point." Title1Teacher10/11 felt "attacked" at the meeting. (Title1Teacher10/11 12/20 Test. at 278-282; 291) Based on the Student's presentation at school, Title1Teacher10/11 does not agree with Dr. Ciocca's recommendations for life skills training, a token economy or a residential placement. The Student's behaviors were "within normal parameters when she was with us." (Title1Teacher10/11 12/20 Test. at 292-294)
233. The minutes of the August 31, 2007 IEP team meeting (B28) indicate, among other things, that Mr. and Mrs. X disagreed with the District's July 25, 2007 "conclusion that [the Student] made appropriate academic and social progress at RDZ-HS under a Section 504 plan" and "disagreed with the team's July 25th conclusion that [the Student] does not meet the criteria for OHI or ED under the law and that [the Student] does not require special education and related services."

T. Dr. Ciocca's Testimony

234. Dr. Ciocca did not contact either RDZ-HS or KSchool as part of her evaluation. (Ciocca 12/14 Test. at 15)
235. Dr. Ciocca is not a teacher, has never taught high school and has not visited or evaluated RDZ-HS or KSchool. (Ciocca 12/14 Test. at 115-116)
236. Dr. Ciocca was not asked by Mr. and Mrs. X to attend any IEP team meetings. (Ciocca 12/14 Test. at 160)
237. At the time of her assessment, it was Dr. Ciocca's understanding that the Student was taking Concerta (to manage her ADHD), Wellbutrin (an antidepressant), Luvox and Vitamin B12. Luvox can be used to manage obsessive compulsive disorder symptoms among other things and Dr. Ciocca was not able to state why Luvox has been prescribed for the Student. (Ciocca 12/14 Test. at 147-148) Dr. Ciocca did not contact the Student's prescribing physician.
238. [OMITTED]

239. Dr. Ciocca did not find any inconsistencies between Dr. Black's conclusions and findings and her own, but did not understand what Dr. Black meant when he stated in his report "Psychotherapy is essential to [to the Student's] psychological wellbeing but is not necessary for satisfactory educational programming." (Ciocca 12/14 Test. at 19, 21, 178-179)
240. Dr. Sahani's findings and conclusions are consistent with Dr. Ciocca's findings and conclusions. (Ciocca 12/14 Test. at 20-21) Dr. Ciocca did not contact Dr. Sahani.
241. Dr. Ciocca was asked no questions about and offered no testimony about the SpecEdEvaluator evaluation.
242. The results of the SchoolPsychologist evaluation are consistent with Dr. Ciocca's findings. (Ciocca 12/14 Test. at 74)
243. The Student attained results in the "average range of intelligence generally" on the cognitive and intellectual assessments. (Ciocca 12/14 Test. at 41) Her performance on the academic achievement assessments was "relatively comparable" to her performance on the intellectual capacity assessments in most skill areas. She was "excellent" in reading and reading comprehension, average on writing as measured through spelling, and average on a writing prompt. Qualitative review of her writing sample indicates that she has "difficulty ... putting her thoughts together" and her writing was "sometimes" redundant and perseverative. Her spelling itself was "poor." (Ciocca 12/14 Test. at 46-47)
244. Dr. Ciocca did not speak with Psychotherapist about the Student.
245. Dr. Ciocca described her interactions with the Student during the assessment in part as follows:
 - a. The Student was "extremely verbal" and "articulate." "Sometimes she spoke so fast that she seemed pressured in her speech, and sometimes it was hard to understand her because it just seemed like she was going really fast." The Student "was trying to say so many things at the one time that sometimes she just kind of forgot the word that she was trying to use. But eventually she'd come back around to it. She had no insight into the fact of how extensive her responding was, and how sometimes she just deviated from what the original question was. And when I kind of tried to redirected back in [sic], she was like kind of taken aback by that and just seemed to have no insight into how it was affecting the session." The Student ultimately responded to redirection and as the Student became more "comfortable" would "accept" the redirection "to some degree. But she always kept trying to come back to the points that she was trying to make. It was almost like she really needed you to hear what she had to say." (Ciocca 12/14 Test. at 26-30)
 - b. The Student "shifted readily in her presentation" and manifested a "mood lability" or "changing affect" throughout the session. "Like one minute she could be really happy and contented, and then the next minute she could be really upset, and agitated, and angry, and frustrated about what she was doing." (Ciocca 12/14 Test. at 31)
 - c. The Student verbalized self-derogatory comments about her performance that were "not

always consistent with reality in the sense that you know, she was doing relatively well.” The Student “wanted to do well” and “did her absolute best during the assessment” and there was “not any time that [Dr. Ciocca] felt that [the Student] was not performing to her ability level.” (Ciocca 12/14 Test. at 31-32)

- d. The Student “really looked put together, until you started talking to her and really listening to things that she said and some of the cognitive distortions, and things of that nature, and where she started to fall apart. And so she really wanted to project that you know, I [sic] don’t have that many difficulties.” (Ciocca 12/14 Test. at 49)

246. Dr. Ciocca diagnosed the Student as having ADHD with Executive Dysfunction. (Ciocca 12/14 Test. at 22) She testified as follows regarding that diagnosis:

- a. The Student did not meet the “full criteria” under the DSM-TR-IV for an ADHD diagnosis because she did “relatively well in the attentional measures.” Dr. Ciocca included the ADHD diagnosis on the basis of the Student’s executive dysfunction, the results of School Psychologist’s evaluation, the Student’s presentation during the assessment and results indicating evidence of difficulties with response modulation, executive dysfunction and impulse control. Her performance was impacted by distractibility and difficulties with executive functioning, but the effects of these difficulties may have been mitigated by the fact that she was on stimulant medication at the time of the assessment and the environment was “very controlled.” (Ciocca 12/14 Test. at 53-55; 143-145)
- b. As to the nature and impact of the Student’s executive dysfunction difficulties: The Student manifested “a lot of loss of set [errors]. In other words she would establish a category and all of a sudden she would lose it. And this is very consistent with what we see in her presentation, is that she will start off with something and all of a sudden she’ll lose her train of thought and go in a totally different direction.” (Ciocca 12/14 Test. at 42) The Student demonstrated difficulty with “Learning to learn [which] means is that when she learns basic categories, or ideas, or rules, she has a really hard time reapply [sic] them again even in similar situations. So therefore, there’s no like cause and effect relationship. She doesn’t seem to carry it with her.” This difficulty “could play a role in all different areas [and] particularly in the social arena.” (Ciocca 12/14 Test. at 42-43) Goal direction in terms of problem solving efforts is “often interrupted.” (Ciocca 12/14 Test. at 42) She manifested weaker performance on an assessment of planning and complex problem solving associated in part with an “extremely fast” initiation time and impulsivity. Successful performance on the task requires taking the time to create a mental plan of how to complete the task. (Ciocca 12/14 Test. at 43-44) Other indications of difficulty with executive functioning were manifested in memory assessments which require organizing material you are trying to recall mentally and putting the information into categories for retrieval. The Student in her “learning trials” on these assessments manifested perseveration errors – “she’d give you the same item over and over again and not realize she had already given it” and “had a difficult time kind of tracking those [items] in her mind.” (Ciocca 12/14 Test. at 44).
- c. The Student “was able to get around some of her executive difficulties” on easier task items by using verbal mediation - a compensatory strategy in which she talks herself through the

task so that she would not lose set or sequencing. (Ciocca 12/14 Test. at 44; 196-198)

- d. The Student also manifested “intrusion” errors, which means that she was including items in the list that were not presented as part of the list. (Ciocca 12/14 Test. at 45) Her memory performance did improve over time and trials, but was adversely impacted by these issues. (Ciocca 12/14 Test. at 46)
247. Dr. Ciocca diagnosed the Student as having RAD, PTSD by history and GAD. (Ciocca 12/14 Test. at 22) She testified as follows regarding these diagnoses:
- a. On the MMPI, an objective measure of personality, the results were valid and indicate that the Student “was trying to project herself as you know, a lot more together than she actually was ...” Even with that approach, however, the profile indicates difficulties with interpersonal relationships in terms of “appreciating” what others intended from her in the relationship, as well as “difficulties with her thinking” reflected in some suspicious and paranoid themes in her responses that did not rise to the level of warranting a DSM-IV-TR Axis I diagnosis. (Ciocca 12/14 Test. at 49-50; 199-201)
 - b. In contrast to the objective personality assessment, a projective personality assessment elicits “unconscious material.” On projective personality assessments (the House-Tree-Person drawing test and Kinetic Family Drawing Test), the Student’s “difficulties really became prevalent” and her “unconscious trauma really became apparent.” “She had great anxiety and worry, she was concerned about interpersonal relationships in her family drawing.” The drawings showed “distinct evidence of trauma ... and really a lot of concern, and ruminations and fantasy around that she really tries very, very hard to keep under wraps because she doesn’t want anybody to know that she’s struggling with all of this.” The Student’s “worries and concerns are always ever present” and could be reflected in inattention and distractibility that would impact her academic functioning. Dr. Ciocca found the Student’s drawings to be so “poignant” that she shared them with her colleagues for teaching purposes. (Ciocca 12/14 Test. at 50-51, 58-59, 198-199)
 - c. The Student’s presentation is consistent with a RAD – Inhibited Type under the DSM-IV-TR criteria. People with this diagnosis “have serious social deficits in terms of relatedness to other individuals” and tend to approach others with a “certain degree of intensity” which may result in others avoiding them. (Ciocca 12/14 Test. at 27-28, 34, 52, 62)
 - d. PTSD is a disorder associated with being exposed to a traumatic event or significant stressor, in the Student’s case both physical and sexual abuse. The Student’s PTSD symptoms are not so severe as to render her dysfunctional, but will interfere with her ability to form and maintain relationships. (Ciocca 12/14 Test. at 60-63)
 - e. With respect to social skills, the Student “appeared very immature in her presentation.” (Ciocca 12/14 Test. at 77-82)
248. Although she used the term “mathematics learning deficit” in her Report, Dr. Ciocca testified that that term was intended to mean “mathematics learning disability.” (Ciocca 12/14 Test. at 129-

130) She testified as follows regarding this diagnosis:

- a. The Student had difficulties on the achievement assessment with mathematics reasoning, which entails solving problems mentally as opposed to in writing. That result was consistent with her performance on math related subtests of the intellectual assessment.³⁵ On “many times she needed the question repeated for her to be able to fully encode it and appreciate what it was that she had to do. Her working memory and executive functioning issues adversely impacted her performance on mathematics assessments. (Ciocca 12/14 Test. at 47-48)
- b. There was a statistically significant variance between the Student’s intellectual functioning and achievement levels with respect to mathematics skills which would be characteristic of a mathematics learning disability. (Ciocca 12/14 Test. at 63-64) From a “functional” perspective, the Student’s math scores are “strong in terms of being able to manipulate herself in the community whether it be, you know, running a checkbook, or making change in a store ...” Her mathematics difficulties may cause her to perform poorly on college entrance exams such as the PSAT and SAT and impact her performance in college courses where math is required. (Ciocca 12/14 Test. at 64)
- c. The Student’s math difficulties reflect more than lack of exposure to materials. She has “the capacity and the potential through repetition and guided directly [sic] study that she would be able to improve” her performance on arithmetic tasks. (Ciocca 12/14 Test. at 73-74)

249. Recommendation 3 of the Ciocca Evaluation Report states as follows:

A comprehensive, specialized program to provide rigid structure, supports and intensive treatment to target not only the impact of attention/executive functioning in learning/carry over of novel information in school, mathematics learning deficits, but also her psychiatric symptoms that influence her day to day functioning in social interactions in general. The intensity of a residential program would be most fruitful in addressing these issues 24/7; otherwise, it would be relatively simple for her to revert to maladaptive behaviors in the absence of constant structure.

With respect to this recommendation, Dr. Ciocca testified as follows:

- a. Dr. Ciocca testified as that with respect to her recommendations, including Recommendation 3, “I’m not saying that it’s required; recommendations are never required, they are recommendations based on findings.” (Ciocca 12/14 Test. at 132) On re-direct, she stated that her use of the term “fruitful” could be “misconstrued” but that what she was trying to convey was that residential placement was “necessary for [the Student] to make appropriate academic progress.” (Ciocca 12/14 Test. at 184)
- b. The term “maladaptive behaviors” refers to the Student’s interpersonal issues, attachment

³⁵ In other words, there was no discrepancy in her performance on these measures.

problems, lying, “difficulties evaluating impressions accurately to the situation,” judgment issues, acting out behaviors and defiance of authority. (Ciocca 12/14 Test. at 133)

- c. The recommendation for placement in a residential setting was “extremely important because of the significance of the internal turmoil” being experienced by the Student which could be triggered and result in acting out. (Ciocca 12/14 Test. at 90) To address that concern, Dr. Ciocca recommended that the Student be placed in a residential setting where she could be “supervised” around the clock. (Ciocca 12/14 Test. at 90; 210-213; 216-217) “[I]f therapy would be part of that residential program, absolutely. Therapeutic interaction, you know, somebody that she could relate to, somebody that would be available to put out fires when things arose before they escalated.” (Ciocca 12/14 Test. at 91) The provision of psychotherapy and identification of goals and objectives addressing the “psychological realm” would be important to address the dynamics of concern. (Ciocca 12/14 Test. at 92) A program that did not provide these features would not be “complete” – the program needs to provide supervision, therapeutic interactions and therapy but the therapy can be provided by an outside therapist. (Ciocca 12/14 Test. at 92-98)
 - d. The basis for Dr. Ciocca’s recommendation for a residential placement was a concern of the Student’s potential to act out aggressively toward other people. The Student did not state or do anything that led Dr. Ciocca to conclude that she presented an imminent threat to others. Dr. Ciocca’s conclusion reflects her clinical judgment regarding the Student’s psychological profile. Dr. Ciocca was not concerned that the Student presented a danger to herself. Dr. Ciocca is not recommending placement in a psychiatric facility. (Ciocca 12/14 Test. at 96, 167-172)
250. Dr. Ciocca expressed concern about a return of the Student to RDZ-HS given her negative view of the environment and her “significant psychiatric issues.” A “sense of negativism” about her experience at RDZ-HS was evident in her “thoughts and feelings.” That negativism was about the school experience itself rather than any particular individual. (Ciocca 12/14 Test. at 28) The Student reported feeling that “nobody” at RDZ-HS did anything to help her and she was very angry about that. The Student reported a perception that she was being bullied by her peers at RDZ-HS. The Student would be at risk for dropping out of school if she had to return to RDZ-HS and would require “intensive supervision” to manage her issues at RDZ-HS were she to return. (Ciocca 12/14 Test. at 110-115)

U. TESTIMONY OF PSYCHOTHERAPIST

251. Psychotherapist has a Ph.D. in clinical psychology and has been providing direct clinical services to children since 1974. She is currently employed in a private practice and at a residential treatment center for children with emotional and behavioral disturbances, including children with sexual behavioral issues. (Psychotherapist 11/20 Test. at 44-45) Psychotherapist was testifying as a fact and expert witness in her capacity as the Student’s treating therapist, did testify on direct as to any “educational need,” is not familiar with the IDEIA, and was testifying only as to “social and emotional function.” (Statement 11/20 Tr. at 40-42, 132) Psychotherapist testified as follows, among other things:

- a. Psychotherapist began treating the Student approximately 9.5 years ago when the Student first began residing with Mr. and Mrs. X and has seen her regularly since then except during the period May 1999 to April 2002 when DCF placed the Student elsewhere. (Psychotherapist 11/20 Test. at 45-46 65, 102-103) While the Student was attending RDZ-HS, Psychotherapist met with her on average more than twice per month. (Psychotherapist 11/20 Test. at 102) Since the Student has been attending KSchool, the frequency of her therapy sessions was reduced because KSchool was meeting her “emotional and social needs” effectively. (Psychotherapist 11/20 Test. at 135)

- b. The focus of Psychotherapist’s treatment with the Student is emotional regulation and decision making. (Psychotherapist 11/20 Test. at 46) The Student is an “intense young woman,” “emotionally volatile” and can frequently and unexpectedly switch her emotions from one state to another. She “speaks very rapidly and with a lot of concerns, easily brought to tears,” with “erratic” judgment associated with being “very reactive” to her social environment. At times her decisions are “impulsive and ... based on her strong feelings at the moment.” At other times, she can be “quite insightful.” She “distorts reality, particularly around her relationships” and tends to either “idealize her peers or reject” them and can switch back and forth in terms of loyalty such that her interpersonal relationships can be “chaotic.” With adults, the Student wants to do the right thing and be responsible and wants to try hard. If, however, she perceives that it would be in her best interest to avoid being honest with adults or even lie or manipulate, she may do so. In any situation, she can be “very reactive to imagined insults and is also quick to offend or aggravate people.” She does not have any psychotic process and is suspicious but does not have a paranoid disorder. She presents frequently with concerns about her “body and her functioning.” Some of the complaints of aches and pains were attention seeking, others avoidance. She “misunderstands social cues,” tends to be obsessive” and “broods on certain ideas or certain concerns.” “Her thoughts are – can be highly repetitive. They can have a ritual quality about them, they will totally absorb her thinking and attention” for varying periods of time. This “involves all aspects of her functioning” and her symptoms will be exhibited in “every setting.” Her thoughts can also be tangential and unfocused. (Psychotherapist 11/20 Test. at 46-51; 111; 116; 136) She may be perceived as “annoying because she asks questions that somehow don’t make sense” or will “get stuck on a topic.” She reported that people would tell her to “be quiet, or slow down, or to leave them alone.” She has issues with trust and fairness. Her symptoms are “fairly evident in her everyday life.” (Psychotherapist 11/20 Test. at 53-54; 115) She has “tremendous” concerns that she is not going to be successful “in the world.” (Psychotherapist 11/20 Test. at 62) She would not be able to “manage well independently at this point in time in her life.” She is not an imminent risk to herself or others. Psychotherapist has not previously recommended inpatient psychiatric treatment. (Psychotherapist 11/20 Test. at 64-65) The Student’s anxiety symptoms have included sleep disturbances, nightmares and panic attacks, and she sometimes manifests “tic like . . . actions in her eyes and her mouth.” (Psychotherapist 11/20 Test. at 68) The Student is able to organize objects within a space and can keep her school binder neat and compartmentalized, but is “not able to organize priorities, needs and demands, and things that need to get done and accomplished.” In comparison to “typical teenagers,” the Student’s reactions are “extreme.” (Psychotherapist 11/20 Test. at 140) The Student’s abstract thinking skills are not as well developed as those of her peers. (Psychotherapist 11/20 Test. at 142)

- c. Psychotherapist does not agree with KSchool's statement that the Student's organizational skills were "good." (Psychotherapist 11/20 Test. at 118-120; 140-141)
- d. Psychotherapist initially identified the Student as having an Adjustment Disorder. Psychotherapist subsequently identified her as having ADHD which was "impacting all of her ... everyday activities." In connection with the DCF reunification efforts, Psychotherapist determined that the Student was experiencing PTSD and a "residual reactive attachment disorder." (Psychotherapist 11/20 Test. at 51-52)
- e. Psychotherapist has reviewed the reports by Dr. Sahani, Dr. Black and Dr. Ciocca. Dr. Sahani's and Dr. Black's report each pick up a "certain quality" of the Student manifesting at the time. She agrees with their conclusions and with Dr. Ciocca's conclusions as stated in Dr. Ciocca's Report. (Psychotherapist 11/20 Test. at 55-58)
- f. Consistency of response from those in her environment is "very important and very critical" to the Student. An adult should be checking in with her several times daily to assure that she is feeling a level of comfort and if distressed to have an opportunity to discuss what is distressing her, and also to assure that she is on target in terms of completing required activities. A once hourly or nearly twice hourly check in would be "ideal" and "maximize her ability to be productive." A small group setting to talk about daily issues and misunderstandings would also be appropriate. Supervision "is a really strong need for [the Student] in terms of guidance related to" decisions she makes on a daily basis. (Psychotherapist 11/20 Test. at 59-62; 70)
- g. The Student has reported to Psychotherapist that she's had "difficulty actually meeting all of her obligations to get work done and to do the adequate studying that was necessary to be successful as a student." (Psychotherapist 11/20 Test. at 70)
- h. The Student was "pleased" to enter RDZ-HS in 9th grade but felt that the courses she was taking were "too simple" and was "insulted" by that. She would also report that she had studied hard for a test and failed the test, and would have "absolutely no clue about why she had failed" the test. She also reported having trouble completing longer term projects. The Student became less positive about RDZ-HS in the 10th grade and was experiencing more difficulty at the beginning of 11th grade. During this period she continued to manifest her prior pattern of peer relationships and as a result lost some "significant" friendships. She discussed one incident involving the hatching of a chick in which her peers hid the chick and told her it had died. She reported that some female peers had threatened to beat her up. She sometimes reacted to those events by being afraid. At other times she had ideas of going in to hurt those people because they had no right to say those things to her. She reported being taunted by peers for her inability to be an effective student and because of making mistakes during athletic events. (Psychotherapist 11/20 Test. at 74-79; 141)
- i. At the time that she left RDZ-HS, the Student was on a "downward spiral," had "disengaged" from the educational process, and was reporting more "dissatisfaction" with teachers and conflict with peers. (Psychotherapist 11/20 Test. at 89-91; 95-98; 145) The

Student would perceive being a student at RDZ-HS as a “negative experience” and Psychotherapist would not recommend that the Student return to RDZ-HS at this time. (Psychotherapist 11/20 Test. at 89-91, 96-98, 140) She has advised Psychotherapist that if she has to return to public school she will consider dropping out and moving on in her life in other ways. (Psychotherapist 11/20 Test. at 80-83)

- j. Psychotherapist did not recommend KSchool and was not “instrumental” in helping the family to make the decision that the Student would attend KSchool. (Psychotherapist 11/20 Test. at 94) “I did not recommend [KSchool] or --- I basically just listened to her concerns about it or her issues about it and helped her work through her feelings about it. I wouldn’t say I was instrumental in making that decision, or helping --- assisting them to make that decision.” (Psychotherapist 11/20 Test. at 94) Psychotherapist would not recommend that the Student come back to RDZ-HS at this time because of the risk that she will terminate her education if she had to return to RDZ-HS because of her negative view of her experiences there. (Psychotherapist 11/20 Test. at 96-98) “She would be devastated by that and given that I want whatever is the best experience for her, I would say it is not a reasonable plan” to bring her back to RDZ-HS at this time. (Psychotherapist 11/20 Test. at 140)
- k. Psychotherapist is not familiar with the IDEIA and does not know the criteria for classifying somebody as having an SED under that law. (Psychotherapist 11/20 Test. at 96)
- l. Psychotherapist is not familiar with the curriculum at RDZ-HS. (Psychotherapist 11/20 Test. at 99-100)
- m. The Student had some genuine and close relationships with peers at RDZ-HS# and has come away from RDZ-HS with two friends. (Psychotherapist 11/20 Test. at 142) There were times when the Student felt “very comfortable in her interactions with her teachers” at RDZ-HS. (Psychotherapist 11/20 Test. at 109)
- n. The Student has been treated with anti-depressant and anti-anxiety medication over the time that Psychotherapist has been working with her, and at the time that Psychotherapist testified it was Psychotherapist’s understanding that the Student was taking Luvox, which Psychotherapist identified as a “mood stabilizer” medication. (Psychotherapist 11/20 Test. at 64-66)
- o. Psychotherapist has not had any contact with RDZ-HS staff since the October 2004 IEP team meeting and did not contact RDZ-HS because she did not perceive it to be her role to “advocate” for the Student in connection with issues arising at RDZ-HS that the Student was reporting to her. (Psychotherapist 11/20 Test. at 79, 85)
- p. Mr. and Mrs. X have at times felt “overwhelmed” by the Student’s needs. (Psychotherapist 11/20 Test. at 84)
- q. The Student does not present an imminent risk to herself or others, and has “never threatened or acted out in a harmful or dangerous aggressive way towards any person.” (Psychotherapist 11/20 Test. at 64)

- r. From a clinical perspective, the Student needs a “great deal” of “caretaking” to facilitate her decision-making. Caretaking is not the same as therapy or counseling. (Psychotherapist 11/20 Test. at 70-71)
- s. It is Psychotherapist’s understanding, in part from the Student, that the Student never had any disciplinary referrals while at RDZ-HS. (Psychotherapist 11/20 Test. at 109)
- t. Psychotherapist was asked if KSchool was “appropriate” and whether RDZ-HS can meet her social and emotional needs. Psychotherapist was not asked about whether the Student needed to be placed in KSchool to obtain an educational benefit or whether she was obtaining educational benefits at RDZ-HS. *See, e.g.*, Psychotherapist 11/20 Test. at 90-91.
- u. When asked if she believed that KSchool is the “appropriate placement to meet [the Student’s] social and emotional functioning at this time,” Psychotherapist responded that she has not “evaluated” KSchool and bases her answer on the Student’s report of “satisfaction” with her experience there. (Psychotherapist 11/20 Test. at 89-91) Psychotherapist stated that KSchool is meeting the Student’s “social” and “emotional” needs at a level such that the frequency of therapy sessions Psychotherapist provides has been reduced since she has begun attending KSchool. (Psychotherapist 11/20 Test. at 135)
- v. Although not a licensed family therapist, Psychotherapist has involved the Student’s family in therapy and believes that she is providing the family therapy recommended by Dr. Ciocca. (Psychotherapist 11/20 Test. at 122)
- w. In Psychotherapist’s opinion, the Student is “beyond benefiting from a behavioral management plan in terms of a token economy.” (Psychotherapist 11/20 Test. at 59)

V. KSCHOOL

- 252. Mr. and Mrs. X reside approximately 25 miles from KSchool. (Mrs. X 11/20 Test. at 12)
- 253. A one page description of KSchool submitted by Mr. and Mrs. X (P42) describes KSchool as a college preparatory boarding school for students in grades 9-12 who have not previously been able to perform to their capabilities. The document states that KSchool helps its students learn by offering small classes with individual attention, by adapting teaching styles as necessary, by emphasizing experiential learning and community service, by reinforcing constructive behavior with public recognition, by discouraging unproductive behavior with immediate, appropriate consequences, and by hiring and training faculty who are committed to spending time, energy and emotion on helping young people grow into well-educated, happy adults who will serve their families and communities responsibly and with integrity. (P42) There is no reference in this description that KSchool provides individual, group or family therapy services or is a program that combines therapy with educational services. There is no indication in this material that KSchool is certified as a provider of mental health services.

254. The number of Student's attending KSchool is approximately one-quarter the number of Student's attending RDZ-HS. Two-thirds of the Student attending KSchool are male, 10 students attend on a non-residential basis and approximately 1/3rd are identified as disabled, as reflected in either an IEP or testing results with the primary disability being a learning disability. Average class size is 12-14 students. There is a fall, winter and spring term, each approximately 9 to 10 weeks long and divided into three periods. KSchool is not certified as a special education school by the CTDOE. Class periods for each subject range from 40 to 60 minutes on a rotating schedule. There are approximately 50 faculty members. A day student can participate in all activities except for the evening study hall. (KSchool(06/07Advisor) 11/20 Test. at 157; 161; 170-171; 217-218; 223; 241-245; 248; 261)
255. The Student could "access her education as a day student at KSchool." (KSchool(06/07Advisor) 11/20 Test. at 261)
256. There are no specific programs addressing social skills implemented in the dormitory. (KSchool(06/07Advisor) 11/20 Test. at 254)
257. Mrs. X did not know whether KSchool did any "screening or achievement testing" as part of its admission process. (Mrs. X 11/20 Test. at 22; 24-25)
258. In the 2007/2008 school year, the Student is attending KSchool as a junior. (Mrs. X 11/20 Test. at 39)
259. The Chair of KSchool's "Support Unit"³⁶ reviews each student's file and prepares a two page sheet outlining strengths and weaknesses, and accommodations the student needs to function in both academic and nonacademic/social areas at KSchool. Teachers are required to read the Support Unit sheet. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 43-44; 58-59; 61; 70-71; 121-122; KSchool(06/07Advisor) 11/20 Test. at 240) Based on the testimony of KSchool staff who testified, the Hearing Officer concludes that the Support Unit sheet is essentially the equivalent of a Section 504 plan rather than an IEP.
260. Not all students attending KSchool are assigned to the Support Unit class. The Student was assigned to the Support Unit. (KSchool(06/07Advisor) 11/20 Test. at 177-178) The Support Unit class is part of the Student's regular academic day meeting 4 times/week and provides her with 1:1 support with academics and direct instruction on organization, time management and work completion. (KSchool(06/07Advisor) 11/20 Test. at 162-168, 177) The Support Unit teacher re-teaches math for the Student who is having trouble completing math projects and homework. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 36-37)
261. The Student continues to have peer relationship issues at KSchool, but not the kind of "in your face" issues that she had at RDZ-HS. (Mrs. X 11/30 Test. at 148) The Student has not reported to Mrs. X that she is having any difficulties with female peers at KSchool. (Mrs. X 11/20 Test. at 26) One teacher reported that approximately one day out of three the Student is distracted by an

³⁶ This is a pseudonym. The Hearing Officer believes the actual name of this unit of KSchool is sufficiently unique as to make KSchool readily identifiable.

emotional concern to the point that she cannot focus on her work. (Mrs. X 11/8/07 Test. at 274-285; Mrs. X 11/20 Test. at 25-26)

262. KSchool(07/08Advisor/DormParent) has been employed at KSchool for 21 years. She attained a Master's Degree in Special Education in 1997. She has no state teaching certifications. She primarily teaches Biology, Environmental and Animal Sciences (KSchool(07/08Advisor/DormParent) 11/30 Test. at 15-16; 102-103; 110) In the 2007/2008 school year, KSchool(07/08Advisor/DormParent) is the Student's science teacher, advisor and dorm parent. In those capacities she has daily interactions with the Student and provides her support on academic, social and emotional issues in the dorm. The Student needs more assistance than her peers with getting started on and staying focused on her assignments. Her English and Math teachers also work with her in the evening when they have dorm duty. She accesses her English teacher once per week on average in the evening and her math teacher two to three times per week. The Student struggles with getting started on and then completing writing assignments. She is not able to complete independently multi-step writing projects at an 11th grade level. Her other teachers have reported similar issues with writing assignments. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 17-31; 33-35; 56)
263. Through her interactions with the Student, KSchool(07/08Advisor/DormParent) is aware that the Student is having emotional and peer relationship issues in the school setting, the dormitory setting and in soccer. "Part of the problem is that she has a hard time listening to what others are saying." She can be "unfocused" and will "just be talking non-stop about these issues" and it is "very difficult" to try to focus her to the task at hand. She sometimes shuts down in response to constructive criticism. She ultimately had a "temper tantrum" on the soccer field in response to criticism from the coach and quit the team. It took her five hours to calm down from that incident. KSchool(07/08Advisor/DormParent) has been working with the Student on addressing that type of behavioral issue and has made some progress with her with respect to participation on the basketball team and receptiveness to criticism from peers and the coach. Her other teachers have "commented that they really had to make the expectations very clear before they can get her to stop [talking], but it usually takes five to 10 minutes of class time just to get her engaged and focused." (KSchool(07/08Advisor/DormParent) 11/30 Test. at 49-53) She does not read social cues well and this has created problems with her peers in the dorm. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 55) She has a tendency to talk "very fast." (KSchool(07/08Advisor/DormParent) 11/30 Test. at 89) She manifests ADHD characteristics, problems with executive functioning and anxiety. KSchool(07/08Advisor/DormParent) cannot comment on math difficulties other than observing that the Student gets anxious about her math homework. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 92-93) KSchool(07/08Advisor/DormParent) has observed on several occasions when she is checking in with the Student that the Student is "rocking because she's just very angry and anxious about just this whole workload and not sure where to begin." (KSchool(07/08Advisor/DormParent) 11/30 Test. at 97)
264. "She pretty much has an issue every single day but the nature of the issues vary, so it could be small, it could be a quick fix, or it could be a longer fix." KSchool(07/08Advisor/DormParent) typically spends two to three hours a week with the Student in the evening working on various issues. If the Student has a large issue, it could take several days of working with her to resolve it.

(KSchool(07/08Advisor/DormParent) 11/30 Test. at 19-24, 56)

265. In classes, directions are broken down and simplified for the Student. She is given extended time and other accommodations. She is not good at receiving oral instructions.
(KSchool(07/08Advisor/DormParent) 11/30 Test. at 56-60)
266. KSchool does not utilize a token economy but does apply principles of positive reinforcement. KSchool does not provide a social skills group per se because staff is constantly working on social skills in a group setting with students as issues arise. KSchool does not offer formal group therapy services. The Student does not require a formal social skills or a coping group program but rather requires ongoing counseling. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 65; 68-70; 76; 81-83)
267. As her advisor, KSchool(07/08Advisor/DormParent) at the beginning of the year identified with the Student things to work on in the dorm “academically, socially and athletically.” KSchool(07/08Advisor/DormParent) developed these goals based on the Support Unit worksheet but without input from KSchool(CounselingDirector). The goals and activities worked on in the dorm are not reported formally as part of the KSchool report card.
(KSchool(07/08Advisor/DormParent) 11/30 Test. at 71-74)
268. On staff at KSchool is the KSchool(CounselingDirector), who has a Master’s Degree in Counseling, resides on campus and is available to any student. Currently, the Student speaks with the “school psychologist” twice weekly to work on social skills. KSchool(07/08Advisor/DormParent) does not know the extent to which that reflects a formally established program for the Student. To KSchool(07/08Advisor/DormParent)’s knowledge, the Student is working on social skills issues with KSchool(CounselingDirector). If a student is having difficulty in the classroom, the teacher has the option of sending the student to KSchool(CounselingDirector) as an intervention. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 74-75; 117; KSchool(06/07Advisor) 11/20 Test. at 168)
269. The Student does not present disciplinary issues in the sense that she is a “trouble maker” but rather is distracting to peers in the classroom and dorm. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 85-88; 123-127)
270. With peers, the Student does not “always read the cues.” Her reactions to conflict with peers range from tears, to anger to “throwing up her hands and walking away.” She can initiate peer relationships in an “age appropriate” manner “sometimes.” Her “demand for attention and her need to have something resolved” interfere with her ability to participate in class.
(KSchool(06/07Advisor) 11/20 Test. at 179-181) “[Its] fairly obvious when those issues are happening with [the Student] ... because she brings it to your attention by her anger or her emotion.” This type of issue happens weekly. (KSchool(06/07Advisor) 11/20 Test. at 185-188) The Student manifests attentional difficulties in the classroom. She will lose her focus and start talking about something “completely off topic” and need to be redirected. That type of problem happens a “couple of times” per week. (KSchool(06/07Advisor) 11/20 Test. at 190) In comparison to her peers, the Student’s emotional response to events “would be over the top” meaning that the intensity of her emotional response is too strong. Occasionally, the actual

emotional response is not the appropriate one in KSchool(06/07Advisor)'s opinion. The Student becomes "upset more readily than her peers" and this emotionality sometimes adversely impacts her educational performance. (KSchool(06/07Advisor) 11/20 Test. at 198-199; 201-203; 239; KSchool(07/08Advisor/DormParent) 11/30 Test. at 98-101) A "lot of the flare ups that [the Student] experiences usually are outside of the academic building." (KSchool(06/07Advisor) 11/20 Test. at 202) The Student's "emotional issues" impact all of her achievement grades as well as her effort grades and make it difficult for her to focus on schoolwork. (KSchool(06/07Advisor) 11/20 Test. at 204-205)

271. KSchool(06/07Advisor) has not had any communications with Psychotherapist in either the 2006/2007 or 2007/2008 school years, and to her knowledge Psychotherapist has not communicated with any of the Student's teachers. (KSchool(06/07Advisor) 11/20 Test. at 246, 249)
272. KSchool(07/08Advisor/DormParent) has not had any contact with Psychotherapist. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 74-75; 117)
273. KSchool(07/08Advisor/DormParent) could not comment on whether there are family therapy groups at KSchool, but knows that the Student is not participating in any family therapy through KSchool. (KSchool(07/08Advisor/DormParent) 11/30 Test. at 116-117)
274. All teaching staff working with a student at KSchool are expected to read evaluation reports and any Support Unit sheet regarding the student in the student's file. KSchool(07/08Advisor/DormParent) recalls reviewing Dr. Sahani's report and Dr. Ciocca's report, and obtained a copy of Dr. Ciocca's report from KSchool(CounselingDirector). (KSchool(06/07Advisor) 11/20 Test. at 240; KSchool(07/08Advisor/DormParent) 11/30 Test. at 44-47, 78, 80, 106-107)