

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Plainville Board of Education

Appearing on behalf of the Parents: Attorney Andrew A. Feinstein  
Law Office of David C. Shaw  
34 Jerome Avenue – Suite 210  
Bloomfield, Connecticut 06002

Appearing on behalf of the Board: Attorney Nicole Bernabo  
Sullivan, Schoen, Campana & Connon  
646 Prospect Avenue  
Hartford, Connecticut 06105

Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Does the program offered by the Board for the 2001-2002 school year provide the student with an appropriate program of special education and regular education in the least restrictive environment (LRE)?
2. Is the Board required to employ an outside educational consultant to the student's program mutually agreed upon by the Parents for the student to receive a free appropriate public education (FAPE)?
3. Does dismissal from school two hours early on Fridays deny the student FAPE?
4. Are the related services requested by the Parents including a sensory diet, and occupational therapy, necessary for the student to receive FAPE?
5. Are the related services/assistive technology requested by the Parents – bike, stroller and FM hearing aid system – required to be purchased for the student and maintained by the school in order for the student to receive FAPE?
6. Are the Parents entitled to reimbursement for the costs associated with the independent educational evaluation completed by Judy Itzkowitz?

7. Is a collaborative team building exercise such as MAPS/COACH a necessary component to the student's program in order for the student to receive FAPE?

### **PROCEDURAL HISTORY:**

The hearing request was filed by the Parents' attorney on August 6, 2001. Hearing Officer (hereinafter HO) Exhibit 1. A prehearing conference was held on August 15, at which time the hearing was scheduled on August 28. Additional hearing dates were September 5, 11, 14, 19, 20, 21 and 24. The parties called numerous witnesses including medical and educational experts. The Parents filed 41 exhibits, designated herein as (Exhibit P1-P41). The Board filed 136, designated herein as (Exhibit B1-B136). At the conclusion of the hearing, the parties requested 30 days to file simultaneous briefs. The decision deadline was extended to November 16, 2001 by agreement of the parties. The deadline was further extended by the Hearing Officer because of medical reasons.

### **SUMMARY:**

The student has multiple disabilities, including hearing impairment, mental retardation and other impairments due to a genetic disorder, which is regressive in nature. Her progress in her educational program has been inconsistent. The parties agree on the basic goals for the student's program, which are communication, self-help and social/play skills. The basic disagreement is that the Parents want the student mainstreamed as much as possible (80% is their goal) and they want the activities to be meaningful. The Board asserts that it has maximized mainstream time to the best of its ability and that it is necessary to provide special education services outside of the regular education classroom. The parties also disagree about the Board's responsibility to purchase and maintain some of the adaptive devices used by the student—hearing aids and FM system, special stroller and special bicycle. The Board also refused the Parents request to pay for an evaluation by Dr. Itzkowitz, to hire an expert to consult on program design and implementation and to provide occupational therapy, including a sensory diet. The disagreements were set forth in the minutes of the May 18 and June 15, 2001 Planning and Placement Team (PPT) meeting. (Exhibit B-1). The parties have set forth in great detail the entire history of the student's educational programming. The Parents do not challenge any program except the current (2001-02) school year, therefore, previous school years are mentioned only where relevant to the current program. The parties have filed nearly 100 pages of proposed findings of fact and conclusions of law. The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record.

### **FINDINGS OF FACT:**

1. The student is currently 9 years old (DOB 10/15/92) and has been enrolled in the LEA since kindergarten. She has been classified as eligible for special education and related services since age three under the categories of multiple disabilities and visual impairment. (Exhibit B-1 at 4). Student has a rare genetic disorder, which is characterized by developmental delay and physical problems. (Testimony of Mother

and Exhibit B-132). The disease is regressive and generally children do not survive past the age of 20. While the student had been able to speak approximately 30 words at around the age of three, she has lost her speech and is currently non-verbal. (Testimony of Mother).

2. Dr. Antonia Maxon is a certified audiologist who has known the student for five years. During that time the student has maintained a moderately severe hearing loss secondary to the primary condition and uses bilateral hearing aids. The hearing loss is a permanent sensorineural condition in the cochlea and cannot be medically treated. The student is subject to fluid build-up in the middle ear cavity, which requires tubes to be inserted to drain the fluid and interferes with the hearing aids at times. Ear infections can also cause the student to pull the hearing aids out of her ears. Sometimes the student has a condition where the skin of the outer ear becomes sensitive to the material which the hearing aid molds are made of and the ear becomes painful. The student will pull the hearing aids out if this condition occurs. Dr. Maxon sees her role as monitoring any changes in the student's hearing loss two to three times per year, reporting middle ear problems to the physicians, prescribing hearing aids and an FM amplification system. The student cannot hear normal sounds without hearing aids and cannot receive education without the FM system, which has a wireless microphone for the teacher to wear so that the sounds are directly sent by microtransmitter to the student's hearing aids. The equipment needs to be checked daily. The school staff needs training to operate the equipment, place the aids in the student's ears properly and check the batteries. Dr. Maxon recommended keeping a separate set of equipment at school. The student is difficult to assess because she is non-verbal, however, Dr. Maxon uses the techniques for testing infants, looking for automatic responses to sound, such as a blink or smile. She is very confident of the results of her assessments of this student. (Testimony of Dr. Maxon and Exhibit B-12).
3. Dr. Robert Murphy, Ph.D., Behavior Specialist, is a certified school psychologist licensed in New York and pending in Connecticut. He has a combined doctorate degree in clinical and school psychology. He was part of a multi-disciplinary (PEDAL) team at the Child Development Center of the Connecticut Children's Medical Center (CCMC), which completed an evaluation of the student in the Fall of 2000 and issued a report dated January 4, 2001. Testimony of Dr. Murphy and Exhibit B-16. This was for the 2000 triennial evaluation, which Parents asked to have done by an outside independent evaluator. The Board paid the cost. The PPT asked the PEDAL team a series of questions for programming for the student. Dr. Murphy administered the Vineland Adaptive Behavior Scales—Interview Edition and the Bayley Scales of Infant Development—Second Edition (BSID-II). He also conducted a clinical observation of the student at school and an interview with the Mother. The Vineland results are separated into three domains. In the communication domain, the student scored in the 1 year, 5 months age equivalent for receptive and 0 years, 6 months equivalent for expressive. In daily living skills domain, the student's overall functioning in such tasks as dressing and grooming, domestic task performance and community skills was 1 year, 5 months age equivalent. In the social functioning

domain, the student's age equivalent was 1 year, 1 month. On the BSID-II mental scale her overall functioning was age equivalent of 10 months with scattered skills up to the 12 month age level. Because the student has a deteriorating condition, it is difficult to know if the scores will remain stable. The student has significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. She meets the criteria for mental retardation and is functioning in what was termed the severely retarded range. Educational planning should be geared towards elemental self-help and communication skills. He recommended the Picture Exchange Communication System (PECS). (Testimony of Dr. Murphy and Exhibit B-16).

4. The other CCMC evaluation reports were physical therapy, speech and language, and occupational therapy and an interdisciplinary report by Dr. Murphy. Exhibit B-16. The other experts on the team did not testify. A summary of their reports as they relate to current functioning of the student and issues in the hearing is as follows. The occupational therapist, Paula Mushinski, OTR/L, reported that the student is generally hyposensitive to most sensory information. She has poor postural control and gravitational security. She craves deep proprioceptive input. Her fine motor skills are limited. There were several recommendations relevant to school, including a wedge cushion, Mozart and other music tapes for relaxation and calming, a touch window computer screen for cause and effect, an electric toothbrush and crunchy snacks for oral stimulation needs. (Id. at 20). The physical therapist, Matthew Luginbuhl, R.P.T., C.C.I., concluded that the student ambulates independently on flat surfaces, requires supervision on stairs and handhold assistance to negotiate curbs. She can negotiate simple obstacles, such as doors, without difficulty. She is not able to transfer to and from the floor. The student has decreased range of motion, increased orthopedic deformity, specifically in the feet, decreased postural strength and decreased static and dynamic balance functions. He recommended direct observation by a physical therapist at school to assess how the impairments and functional limitations affect the student's performance with the classroom and school environment. He also recommended direct and collaborative physical therapy services for a variety of reasons, continued adaptive physical education, facility based pediatric physical therapy programming, therapeutic horseback riding and swimming programs. (Id. at 8-11). . at 12-16). Cheryl Archer, M.S., Speech/Language Pathologist, conducted an evaluation with a review of records and intake information and classroom-based functional assessment/clinical observation. This was performed on September 20, 2000. Ms. Archer stated that quality of life considerations are of primary concern when programming for the student. Trying to promote optimal independence by offering a routine that provides adequate structure to ensure safety while allowing her a certain degree of control is important. She recommended developing a list of preferred objects, food, activities and people for the student and identifying target vocabulary that she will use to communicate through a picture or symbol; then, developing a list of routines and identified tasks that the student can perform and using PECS, determine opportunities when the student can request something she wants; then develop a yes/no response by using distracters (i.e., things the student doesn't want or like). Ms. Archer also recommended training student volunteers to

interact and play with the student so that she would have positive peer interactions. (Id)

5. The Board also conducted an assistive technology assessment evaluation at the request of the Mother in June 2000. The report, dated January 4, 2001, was done by Ms. Lori Susi, who is employed by the Board as a computer teacher for K-12 and works with faculty and students, including special education students, in the area of assistive technology. (Exhibit B-8). Ms. Susi noted that the student had an assistive technology implementation plan, which was established in October 1999 in the areas of hearing, communication and cognition. (Id.) The plan uses an approach very similar to the MAPS/COACH model. She did not explore options for augmented alternative communication, hearing or mobility since they were adequately implemented in the current plan. Instead, she focused on areas of concern addressed by the Mother. Ms. Susi evaluated several switches for use by the student, as well as the Touch Screen and some software programs. Ms. Susi found that teachers can continue to provide the student with opportunities to make choices through switch activated toys. A variety of these toys and switches had been purchased by the Board and were in use by the student currently. Several others were recommended. Computer programs can be used to provide opportunities for developing receptive vocabulary and social interactions, however, trials with the student did not indicate consistent attention or comprehension during computer activities. Annual review of switch access was recommended. (Id. and Testimony of Ms. Susi).
6. On January 19, 2001, the PPT met to discuss the PEDAL and assistive technology assessment evaluation to determine if changes in the student's current program were appropriate. (Exhibit B-2). Several changes and additions were discussed on January 19 and the PPT meeting was continued to February 1, 2001. The team agreed to hold off a decision on the communication approach (expressive signs, ABA or PECS) until Dr. Judy Itzkowitz visited the school and the Board had further consultation with Dr. Murphy. (Id.)
7. Mother claims that she requested an independent evaluation by an educational consultant and an ecological assessment on October 19, 2000. She referenced her recollection of the meeting in a letter dated October 26, 2000. (Exhibit B-85.) She further claims that it was refused by the PPT on November 9, 2000. The PPT met on November 9 for the stated purpose of reviewing Mother's letter. (Exhibit B-3.) The PPT minutes state that the "IEP was suspended" and "the School District is requesting mediation." (Id.) The request was for an "independent consultant to evaluate the program and be go between b/t school and [Mother]. The District feels Dr. Morgan can serve this purpose and did not agree to this request." The Parents claim that since the Board did not request due process they are automatically entitled to reimbursement for the evaluation done by Dr. Itzkowitz. (Exhibit B-14). The Parents do not refer to any evaluation done by the Board with which they disagreed. Both the PEDAL and assistive technology assessment evaluation were done at the Mother's request. It does not appear that she disagreed with either evaluation or that

Dr. Itzkowitz was requested to evaluate any area of disability not addressed in those evaluations.

8. Dr. Felicia Morgan, Ph.D. Clinical Psychology, is employed by the Center for Children with Special Needs and is a consultant to school districts and the PEDAL team. She works with three school districts currently, including this Board, providing services for students with autism spectrum disorders and mental retardation, including the student in this case. Dr. Morgan has known the student for five years and provides services to the PPT and the family to determine needs and implement the education program. She saw the student monthly in the last school year. This year she has increased her time to three visits of one hour per month. During these visits, Dr. Morgan works with staff, the Mother and the student to monitor her progress in her program and suggests techniques and strategies for implementing the student's program. (Exhibits B-30 through B-39 and Testimony of Dr. Morgan.) She has a different approach than Dr. Itzkowitz and disagreed with several aspects of her report. Dr. Morgan does not believe that full inclusion of the student is appropriate because skill acquisition is important and needs to be done outside of the mainstream. The student's goals are communication, self-help and inclusion to address social/play skills. Dr. Morgan disagreed to some extent with Dr. Murphy's belief that the student could master Phases I-III of PECS. The system had been tried in the past without success because the student had difficulty with abstract symbols, which is why the staff returned to using objects. They are using PECS currently, along with twin talk and signing. Dr. Morgan wants to collect data and evaluate the effectiveness of PECS. The Board has staff with knowledge of PECS, including Ann Walsh. Dr. Morgan also has knowledge of PECS and a staff member, Lisa Mule, is available to work with Board staff. (Testimony of Dr. Morgan).
9. Dr. Itzkowitz, Ph.D. in Special Education, is employed with a private consulting company which works with schools and families regarding supplemental aids and services for children with disabilities. The Mother contacted her in August 2000 for an ecological assessment, in which she "shadows" a person through a day. Dr. Itzkowitz spent the day with this student on March 13, 2001. She interviewed the Parents, Dr. Morgan and Ms. Maureen Schiffer, Director of Special Education. She also conducted a group interview of school staff who work with the student. She issued a 26-page report dated May 28, 2001. (Exhibit B-14 and Testimony of Dr. Itzkowitz.) Dr. Itzkowitz is capable of acting as a consultant to the student's program, however, the Board prefers to work with Dr. Morgan. Dr. Itzkowitz has worked with the District in the past, but the staff did not get along with her. (Testimony of Ms. Schiffer).
10. The PPT met on May 18 and June 15, 2001 to conduct an annual review and to develop goals and objectives for 2001-2002. Dr. Itzkowitz' report was discussed, but the District did not agree to pay for it. Ms. Schiffer testified that the report did offer the PPT new information, which was incorporated into the student's program. The PPT also attached a detailed response to the report to the minutes. (Exhibit B-1 at 34-35). The PPT also considered numerous requests from the Mother for additional

supports and services. Several, including purchase of a special bike, additional mainstreaming time, sensory diet, continuance of a case manager for the student for two hours per day, use of PECS as the exclusive communication device, were agreed to by the Board. The Board did not agree to provide occupational therapy, but agreed to do a screening. The Board agreed to include the hearing aid issues in an audiological plan. This was later resolved during the hearing. The Mother initially wanted Dr. Maxon to be the provider of services. The Board wanted to use its service provider, CREC. Mother accepted the CREC services and, therefore, this issue appears to be moot. CREC (Capitol Region Education Council) has qualified staff to provide the necessary equipment and services to the student and has, in fact, begun providing services since September 2001 under a contract. (Testimony of Jennifer Hulme, Director of Hearing-Impaired, CREC Soundbridge and Exhibit P-36.) The Board refused the Mother's request to purchase a special stroller and decided not to use the stroller owned by the Mother at school. Mother claimed that it was inconvenient for her to transport the stroller to school and it was subject to being damaged. The Board instead purchased a wheelchair with gel cushions and arm and foot supports fitted to the student. Although the chair does not have a neck support, the Board believes it is appropriate for the limited amount of time the student needs it. The Board agreed to further discuss the issue of early dismissal on Fridays. The student was initially dismissed at 1:00 p.m. then at 1:30 p.m. with the other developmental resource students. This is done so that the staff can convene team meetings. Monthly meetings are held for this student. Frequently the student is discussed at other meetings on Friday afternoons. (Testimony of Ann Sullivan and Ms. Schiffer.) One of the items rejected by the Board was the MAPS/COACH team building assessment exercise advocated by the Mother and Dr. Itzkowitz. COACH is an acronym for Choosing Outcomes and Accommodations for Children. MAPS is a similar tool which is more open-ended. Both are used for person centered future planning. The Parents completed a COACH assessment with Dr. Itzkowitz. The PPT felt that they were already using similar techniques in determining goal setting and priorities of the family for the student. (Testimony of Ms. Schiffer).

11. Dr. Angela Geddis, M.D. is the student's pediatrician since age one. She testified that she thought a standard wheelchair was not adequate for the student and that she should have occupational therapy to learn the pincer grasp. Dr. Geddis has never been to school to observe the chair used for the student or the services she receives regarding use of her hands and fingers. (Testimony of Dr. Geddis.)
12. Susan Freeman, licensed physical therapist and an employee of Easter Seals Rehabilitation Center, who is retained as a consultant to the Board, has worked with the student for four years. She testified that the wheelchair was adequate for the student's needs at school and further that the stroller did not serve any educational purpose in the student's program. Ms. Freeman works with the student on physical therapy goals in her IEP. (Testimony of Ms. Freeman).
13. Ann Sullivan, Special Education teacher for the student, testified that she has one to one instruction and supervision at all times. There is a paraprofessional assigned to

the student at all times in addition to the other staff, such as Ms. Sullivan and Ms. Freeman. The IEP sets forth the time in each activity for the student. (Exhibit B-1 at 21.) The student has 17.5 hours per week in the regular education/mainstream and the balance of 13.0 hours in special education, for a total of 30.5 per week. (Testimony of Ms. Sullivan.) The Parents complain that the numbers on the IEP are less – 28, than the actual on the matrix – 30.5, and that therefore, the Board has changed the IEP without convening a PPT in violation of IDEA. There is a detailed matrix of the student's activities daily, which identifies time with Susan Steele, the mainstream teacher, and Ms. Sullivan, the special education teacher. (Exhibit B-136.) Some activities, such as lunch are reverse mainstream activities, where non-disabled peers come to Ms. Steele's classroom and have lunch with the student. ( Id.) Ms. Sullivan works with the two paraprofessionals assigned to the student to help in assessing whether choices on the sensory diet list are needed to quiet or stimulate the student. The list includes an electric toothbrush or washcloth for chewing and oral stimulation, bolster, bike, musical beads and massage. (Id. and Exhibit B-1 at 46.) The student is in the mainstream as much as possible given her high level of distractibility. More mainstream time would make progress on PECS very difficult. (Testimony of Ms. Sullivan).

14. School staff has also reported a number of falls in recent months that are a cause of concern. (Testimony of Schiffer.) The Mother complains that the school staff are overly cautious about allowing the student to participate in activities and that they have exaggerated the significance of a fall at school when Mother was asked to take the student to her physician and the student missed a field trip. Mother, however, has advised the school in writing to be careful in working with the student, including admonishing them not to carry her on the stairs. (Exhibit P-24.) Stairs can be difficult for the student and she requires careful supervision. Ms. Freeman works with the student on the stairs as part of a physical therapy goal in the IEP. (Testimony of Ms. Sullivan and Exhibit B1.) Safety of the student is a primary goal of the student's program and the school cannot be faulted for exercising caution in this regard.
15. Although the Board was willing to develop a toilet training program as recommended by Dr. Murphy, the Mother had not requested that this be implemented until September 2001. (Testimony of Ms. Schiffer and Mother; Exhibit B-1.) Ms. Sullivan stated that it was being worked on as of September 19 when she testified. It is not a goal or objective in the IEP.
16. Virginia Sargent is a licensed occupational therapist and an employee of Easter Seals Rehabilitation Center, who is retained as a consultant to the Board, who has worked with the student for three years. Ms. Sargent screened the student in 1998 and is available to her teachers and physical therapist as needed. Ms. Sargent sees the student in the classroom on an ongoing basis. Last year the student was given a universal cuff, which assisted her in holding eating utensils and crayons. Ms. Sargent is screening the student in September 2001 at the request of the PPT. The student is able to put a fork with food on it to her mouth and to bring a "sippy" cup to her mouth. They are working on teaching the student to use a spoon with pudding on it

and bring it to her mouth. Once these skills are accomplished, she will progress to spearing food with a fork. The student cannot eat independently at this time. They have ordered a writer's cuff at the Mother's request to explore whether it can assist the student with holding a crayon for more extended periods of time. Ms. Sargent has never observed the student using a tripod grasp, which the writer's cuff is for. She has seen the student use only a power grasp or fist grasp, which meets her needs in the classroom and which is augmented with the universal cuff. The student has a pincer grasp to pick up objects such as blocks and puzzle pieces. The PEDAL evaluation did not recommend occupational therapy services. The other staff can meet the student's sensory needs. Ms. Sargent has consulted with Ms. Freeman to develop strategies for the student's sensory choices, including the bike, trampoline, bolster, music, dimming lights, vibrating toy, massage and washcloth for oral stimulation. (Exhibit B-1 at 46.) Occupational therapy is not needed at this time from an occupational therapist. The student's sensory needs are being adequately met by the paraprofessionals, Ms. Sullivan and Ms. Freeman in consultation with Ms. Sargent. (Testimony of Ms. Sargent.) The sensory menu is appropriate to meet the student's needs.

17. Susan Steele, the student's regular education classroom teacher, testified that the student could not benefit educationally from more mainstream time because she was unable to participate in the academic instruction, even with modifications to curriculum. The student needs to have one to one instruction on PECS, which is done in the special education classroom. She also has time for a break and leisure/free choice activity. This time is daily from 10:00 to 11:15 a.m. From 12:00 to 12:40 p.m. the student is in Ms. Sullivan's special education classroom for snack, PECS training and bolster (movement activity and massage). (Exhibit B-136.) The remainder of the day the student is in the regular education classroom with non-disabled peers. She has lunch in the regular education classroom with the "Lunch Bunch," a group of her classmates who volunteer and are trained to interact with the student by Jeri Turkowitz, School Psychologist employed by the Board. After lunch, the Lunch Bunch has recess activities with the student outside the regular education classroom. This was implemented from one of Dr. Murphy's recommendations. Every student in the class volunteered except one. Many wanted to sign up for more days. (Testimony of Ms. Turkowitz.) During the time the student is out of the regular education classroom, the other students are working on math and reading groups. The student is easily distracted by others. Ms. Steele does not believe she could keep the student in the regular classroom for an additional hour per day because of her abilities. (Testimony of Ms. Steele).
18. The Board hired Ann Walsh in September 2001 as a Special Education Program Specialist. She has had experience with PECS for several years. Ms. Walsh has done several observations of the student and found that the student requires a hand cue most of the time to do PECS and that she is still working at the basic Phase I level. It would not be appropriate for the student to work on PECS and eating skills in the regular education classroom. (Testimony of Ms. Walsh.)

19. Ms. Turkowitz maintains a home/school and school/home communication log, which contains a list of setting events, such as bedtime routine, mealtime, illness, medications, therapeutic tub, toileting and anything out of the ordinary. Regina Albee, one of the paraprofessionals, and Ms. Sullivan write the notes from school and Mother sends notes from home. Ms. Turkowitz is the recordkeeper and color-codes the day. Ms. Albee is the case manager for the student and spends two hours per day on various tasks associated with those responsibilities. The Parents have asked the Board to hire an outside consultant to oversee the student's program. They didn't think Ms. Albee was objective or that Dr. Morgan had enough time. They wanted Dr. Itzkowitz or another objective observer. Ms. Turkowitz tried to facilitate communication between the team and the Parents by having a pre-team meetings, one with the Mother on October 11, 2000 and another on October 19, 2000 with the Mother and an advocate from the Department of Mental Retardation, Lynda Faro. The meetings were discontinued when Ms. Turkowitz felt the Mother made inaccurate statements from their meeting regarding a request for an independent education evaluation and ecological assessment. Ms. Turkowitz's notes of the meeting indicated that the Mother wanted an "independent consultant/case manager" to be a "watch dog" to be "sure program things are done in a timely manner." (Exhibit B-86 and Testimony of Ms. Turkowitz. See also Exhibits B-85, B-87 and B-88).
20. Ms. Schiffer has 15 years of experience in special education programs, including training in the COACH method. She has supervised the student's program for the four years the student has been in the School District. She has attended most of the student's PPT meetings and has observed her numerous times in various settings. She has seen a noticeable decline in the student's skills and physical condition. In 2000-01, the student had 18 falls. The previous year, 1999-00, she had 5. Ms. Schiffer requested permission from the Parents for a gait assessment at the June 15, 2001 PPT, but the Parents refused to sign it. The District had previously purchased a stroller at Mother's request, but Ms. Freeman sent it back because it didn't fit the student and didn't keep her alert. The school nurse recommended the wheelchair, which is presently used for the student. In the 2000-01 school year, part of the student's schedule was 30-45 minutes in her stroller every afternoon. This was at Mother's request. This was discontinued sometime in April 2001 because it didn't meet any goals or objectives in the IEP. The early dismissal on Friday afternoons is needed because staff meet to discuss the students' needs in the developmental resource program, including this student. Mother had agreed to it because the student is tired and has an educational decline in the afternoon. Mother was made aware that CREC audiological services were available to the student, but until this school year, she didn't want them. The District did not agree to pay for Dr. Maxon's services. Toilet training was offered to the student, but Mother asked to put it on hold because of the time it took from the regular education program (20 minutes every hour). The District is willing to provide toilet training, as it does for other students in the developmental resource program. Ms. Schiffer called in the consulting psychiatrist for the District to meet with the student's team because they were getting very stressed out and emotional about the Mother's actions in agreeing to things at meetings and then

writing letters accusing them of not following up or getting things done. The team was helped by the psychiatrist's advice to leave emotions out of meetings as much as possible and to realize that the Parents are dealing with a devastating illness and the staff have never faced such a situation like this. (Testimony of Ms. Schiffer).

21. The amount of hours of instruction was incorrectly stated on the PPT forms. (Exhibit B-1.) The accurate number is 30.5, which is based on the schedule set forth in Exhibit B-136. Ms. Sullivan and Ms. Steele worked out the schedule. The Mother was informed about the schedule. (Exhibit B-55 and Testimony of Ms. Schiffer, Ms. Sullivan and Ms. Steele).

### **CONCLUSIONS OF LAW:**

1. The student qualifies for and is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. She meets the criteria for identification as a student with multiple disabilities. IDEA Section 1401(a); 34 C.F.R. Section 300.7(c)(7).
2. The Board has the burden of proof on the appropriateness of the program for 2001-02. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs. Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Id.* at 206-207. The Board must establish these by a preponderance of the evidence. Walczak v. Florida Union Free School District, *supra*.
3. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. §§300.550-300.556; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from the modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. (*Id.*) In this case, the student is non-verbal and is working on pre-academic skills. She functions at approximately the level of a one-year old. Her non-disabled peers are functioning at the third-grade level of average nine-year old children. The student is mainstreamed more than half of her day and has reverse mainstreaming with non-disabled peers for 45 minutes daily at lunch and recess time. Additional mainstreaming time would

negatively impact the student's skill acquisition in a special education setting. The IEP satisfies the Board's obligations under state and federal law to provide an appropriate IEP in the LRE.

4. The Regulations of Conn. State Agencies, which govern independent educational evaluations, provide in Section 10-76d-9(c)(2) in relevant part:

Parents have the right to an independent evaluation at public expense if the Parents disagree with an evaluation obtained by the board of education. However, the board of education may initiate a due process hearing conducted pursuant to Section 10-76h-1 of these regulations to show that its evaluation was appropriate. . . .

(Emphasis added.)

5. The Regulations implementing the IDEA provide in CFR Section 300.502 the rules regarding independent educational evaluations. The regulation provides in relevant part:

(b)(2) If a parent requests an independent education evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) Initiate a hearing under Section 300.507 to show that its evaluation is appropriate; or

(ii) Ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing under Section 300.507 that the evaluation obtained by the parent did not meet agency criteria.

6. The Board is obligated to evaluate a student for all suspected areas of disability. 34 C.F.R. Sections 300.320 and 532(g). The Board is, however, entitled to an evaluation to be performed by qualified professionals who are satisfactory to school officials. *Dubois v. Conn. State Board of Education*, 727 F.2d 44, 48 (2d Cir. 1984). The evaluations done by the Board here were the multi-disciplinary PEDAL team evaluation and the assistive technology evaluation, both of which were done at the Parent's request and all of which were performed by qualified professionals with appropriate state licenses and certifications. There is no requirement in IDEA that the District file due process every time it elects not to honor a Parent's request for an independent evaluation at public expense where, as here, there is no evaluation conducted by the Board with which the parents disagreed. The Board's evaluations assessed the student in all areas of need and the Board had an education consultant already--Dr. Morgan. Nor is there any requirement that the Board hire consultants selected by the Parents.

7. The Parents are entitled to have an independent evaluation done at any time, but not at public expense. Regulations of Conn. State Agencies, Section 10-76d-9(c)(2) and 34 C.F.R. Section 502.

8. The Board is obligated to consider any independent evaluation obtained by the Parents in any decision regarding FAPE for the student. (Id. at Section 502(c).) This was done in this case at the June 15, 2001 PPT. The Parents are not entitled to reimbursement for an independent educational evaluation.
9. The Board has also sustained its burden of proof with respect to the provision of a COACH/MAPS building exercise. The law is clear that methodology is not subject to dispute. Lachman v. Illinois State Board of Education, 852 F.2d 290, 297 (Cir. 1988). The IDEA guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2d Cir.1989).
10. The Board is required to provide related services and equipment "which enable a disabled child to remain in school during the day, provide the student with 'the meaningful access to 7th December 10, 2001 - - Final Decision and Order 01-265 11 education that Congress envisioned.'" Cedar Rapids Community School District v. Garret F., 119 S.Ct. 992 (1999). See also IDEA Section 1401(a). The hearing aids and FM system are required for the student to benefit from education. (Id. and 34 C.F.R. Sections 24 and 303.) The District has offered the services and now the Parents have accepted them. They should be incorporated into the IEP. The Board agreed to purchase a bike at the June 15 PPT and at the time of the hearing, the bike had been purchased for the student's use at school. While it is not clear from the record whether the bike is necessary for the student to have meaningful access to education, the issue is moot because the Board has provided it. The stroller does meet the standard set forth by the Supreme Court in that it is not necessary to enable the student to remain in school during the day. The Board, therefore, is not obligated to buy one or take responsibility for maintaining the stroller owned by the Parents. The Board has sustained its burden of proof that occupational therapy services, including a sensory diet beyond what is in the IEP, are not necessary to provide FAPE at this time.

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

1. The 2001-2002 program is appropriate in that the student is being mainstreamed to the maximum extent appropriate. The IEP should be amended, however, to incorporate the specific amount of hours of special education services and mainstream services currently provided to her and to incorporate audiological services, including hearing aids and FM system.
2. The early dismissal of the student on Friday afternoons, which is part of the student's IEP and which is needed for team meetings regarding the student's education program and needs, does not deny the student FAPE.
3. The Parents are not entitled to reimbursement for the costs associated with the evaluation completed by Dr. Judy Itzkowitz.

4. The issue regarding the bike is moot since the Board has purchased one already. The Board is not required to purchase a Convaid stroller since it is not needed for the student to receive FAPE.
5. The Board has adequately provided for occupational therapy consultation and screening by a licensed occupational therapist. The Board has shown that direct occupational therapy services and a sensory diet beyond what is already provided are not necessary to provide FAPE to the student.
6. Any other issues not specifically mentioned are found in favor of the Board.