

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

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Appearing on behalf of the Board: Attorney Susan C. Freedman
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Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Whether the Board's program for the Student for the 2002-2003 school year is appropriate.

If not, whether the Parent's placement of the Student at Eagle Hill – Greenwich is appropriate.

Whether the Student requires residential placement in order to benefit from the educational program.

PROCEDURAL HISTORY:

The Parents requested this hearing on September 3, 2002. While this hearing occurred over many months, a time period that may appear extraordinary, the extensions, postponements and cancellations were reasonable in light of the circumstances. The mailing date of the decision was initially extended so that the parties could submit the matter for mediation. An additional extension was granted so that a neuropsychological evaluation could be completed on the Student. Additional extensions were granted

based on counsels' assertion that additional hearing dates were necessary to present their case.

Several cancellations occurred of hearings due to family medical issues and attendance at family funerals of the Parents and counsel.

The hearing was held on 12 days: December 2, January 13, February 6, February 10, February 12, February 13, February 26, March 6, March 24, March 26, April 30 and May 12.

The Parents' witnesses included the Mother; Robert Breakell, Educational Advisor at Eagle Hill School – Greenwich; Helen Donaher, Board Pupil Services Department Supervisor; Dr. Gary Isenberg, Pediatric Neuropsychologist; Marjorie Abel, the Student's private mathematics tutor; the Father; Dr. Eric David Cohen, psychiatrist; the Student and Christine Welch-Meier, Board school social worker.

The Board's witnesses included Kathleen Hayes, Board special education teacher; Diana Newman, Board speech pathologist; Dr. Anne Higgins, Board school psychologist; and Susan Henneberry, Board science teacher.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993)

SUMMARY:

The Student, diagnosed with a non-verbal learning disability, attended the Board schools from kindergarten through sixth grade. The Student has been eligible for special education and related services since the first grade. In her sixth grade year, the Student attended the Board middle school, with a program which included placement on a regular education sixth grade team at the Board middle school, with participation in regular education classes for English, science and specials such as art, technology education, music and physical education. She participated in the adjusted curriculum program for math and language arts, and received appropriate modifications, accommodations and related services.

At the beginning of the Student's seventh grade year, the Parents placed the Student at Eagle Hill School – Greenwich, a private school for students with learning disabilities, and also enrolled the Student in the five-day boarding program at the school. The Parents filed this request for a due process hearing to determine the appropriateness of the Board's program for the Student's seventh grade year, and to determine the appropriateness of their private placement for the Student.

FINDINGS OF FACT:

1. The Student is 13 years old and is currently attending Eagle Hill School in Greenwich, Connecticut. The Parent placed the Student in this school in the fall 2002. Eagle Hill is a private school for children with learning disabilities. [Exhibit P-23]
2. The Student attended the Board schools from kindergarten through sixth grade. [Exhibits B-63, B-64] She has been eligible for special education and related services since 1996, when she was in first grade. [Exhibit B-10] There is no dispute over the Student's eligibility for special education. [Testimony Mother, Exhibit B-65]
3. The Student is described as a friendly, quiet, and motivated student. [Testimony Ms. Hayes, Ms. Henneberry] She loves animals and enjoys participating in 4-H. [Testimony Mother, Ms. Hayes] In many ways, she presents as a typical teenage girl, with some anxious characteristics when others around her may be boisterous or noisy. [Testimony Ms. Donaher]
4. The Student was diagnosed with a nonverbal learning disability in 1999. [Exhibit B-37] There is no dispute about this diagnosis. [Testimony Ms. Hayes, Dr. Higgins, Exhibit P-12A]
5. The Student has been identified as eligible for special education services under the categories of learning disabled and language impaired, as the term nonverbal learning disability is not one recognized under the IDEA as an eligibility category. [Testimony Dr. Higgins, Ms. Donaher, Exhibit B-36] Due to her progress in speech and language, however, the Student is no longer categorized as language impaired, although all evaluators agree that she continues to have difficulty with pragmatic, social language. [Exhibits B-60, B-65] Students with nonverbal learning disabilities may have similar characteristics but do not necessarily have the same learning profile. [Testimony Ms. Donaher]
6. The Parents have been actively involved in the planning of the Student's educational programs. [Testimony Mother]. The Parents were provided with notice of every planning and placement team ("PPT") meeting held during the 2000-01 and 2001-02 school years. [Testimony Mother, Exhibits B-44, B-47, B-52, B-62] The Parents received their procedural safeguards during or before each meeting. [Testimony Mother] At least one and often both parents attended each PPT held for the Student. [Exhibits B-48, B-55, B-65] The Parents were accompanied by legal counsel at the two PPT meetings held during the Student's sixth grade year (2001-02). [Exhibit B-45, B-48, B-55, B-65]

7. In addition to regularly scheduled PPT meetings, the Parents have had regular contact with the Board staff regarding the Student's educational programs. [Testimony Ms. Hayes, Exhibit B-32]. In elementary school, this contact included formal monthly consultations and frequent informal communication with Dr. Nancy Jensen, the school psychologist to coordinate home strategies with school interventions. [Exhibit B-27]
8. During the Student's sixth grade year, the Parents spoke with Ms. Hayes, the Student's case manager and special education teacher, on a weekly basis regarding the Student's progress and any concerns related to her educational programming. [Testimony Ms. Hayes]. In the past, the Parents have requested a PPT to discuss questions regarding the Student's IEP, program or proposed testing. [Exhibit B-30]
9. From 1994 until 2001, the Student attended Webster Hill School, a Board elementary school. [Exhibit B-8]. As early as kindergarten, there were concerns regarding apparent delays in the Student's fine motor coordination and overall readiness skills. [Exhibit B-8] The Student was formally referred for a comprehensive assessment to determine special education eligibility during the first grade. [Exhibits B-3, B-4] At that time, the Board staff observed that the Student exhibited delayed response time, distractibility during class, difficulty following directions, poor fine motor coordination and required one-to-one teacher assistance. [Exhibits B-2, B-3]. Results from subsequent intelligence, speech/language and achievement testing revealed that the Student had a full scale IQ of 97, with generally average to above average scores in the areas of thinking, reasoning and problem solving. The Student exhibited deficits in her ability to visually and motorically arrange and integrate information. The Student's strengths were found to be vocabulary, long term memory and reading. Weaknesses were noted in math and in her ability to maintain eye contact. Despite these weaknesses the Student made steady growth and gains in academic mastery. [Exhibits B-7, B-8, B-9].
10. In first grade, a PPT found the Student eligible for special education due to a specific learning disability and language impairment. [Exhibits B-9, B-10, B-11]
11. Subsequent evaluations during the 1996-97 school year confirmed prior observations regarding the Student's avoidance of eye contact, need for one-to-one adult assistance and reliance on prompting to engage in "interactive conversation that is not on a topic of her choice." The evaluator also indicated that the Student was conversational and spontaneous when in a one on one situation with a familiar adult or with friends in a comfortable setting and that she was making continuous progress in mastering academic skills. [Exhibit B-13]
12. In March 1997, the PPT recommended an increase in the Student's special education services and a consultation with a psychiatrist to address concerns related to social inhibition, and lack of eye contact. [Exhibit B-17]

13. Dr. James Black evaluated the Student in April 1997. His psychiatric evaluation indicated that the Student displayed some characteristics of a Pervasive Developmental Disorder, such as avoidance of eye contact and social inhibitions. However, due to the absence of other characteristics, Dr. Black concluded that it was more likely that the Student was experiencing an extreme measure of shyness, and a fear of stranger situations. He recommended continuation of the Student's current educational placement and suggested that her family pursue family oriented psychotherapy to focus on her extreme shyness, high level performance anxiety, and her proclivity for withdrawal in challenging situations. Dr. Black commented that such psychotherapy was essential to the Student's psychological well-being, but not necessary for educational programming. [Exhibit B-19]
14. Following Dr. Black's evaluation, the Parents attended approximately ten family therapy sessions with Dr. Magin. [Testimony Mother]
15. In the second grade, the Parents reported that the Student had made excellent growth and gains in reading and language arts skills. [Exhibit B-21] She had even made slow and steady progress in mathematics, despite the fact that this had been an identified area of weakness for the Student. [Exhibit B-24] In the areas of social skills, the Student had also made excellent gains in the area of body posture and eye contact. [Exhibit B-24] Due to concerns regarding handwriting, the PPT added occupational therapy as a related service in second grade. [Exhibits B-21, B-24]
16. The Board conducted a triennial evaluation of the Student in 1999, during her third grade year at Webster Hill. [Exhibits B-27, B-28, B-31, B-32, B-34] As of February 1999, the Student was responsive to educational strategies and was making gains within the classroom. [Exhibit B-27] The PPT recommended a continuation of 3.5 hours per weeks of special education support in the resource room with 1.5 hours of speech/language therapy and additional OT services. The PPT also recommended regular consultation between the Parents and the school psychologist, Dr. Nancy Jensen, for one hour per month. [Exhibit B-27]
17. At the time of her 1999 triennial, the PPT clarified with the Parents the scope of the Board's proposed testing and the Parents' rights concerning independent evaluations. [Exhibit B-30]
18. Results from the 1999 triennial testing revealed that the Student had strengths in the areas of reading comprehension, understanding vocabulary and small motor skills. Areas of weakness included written language arts, math skills, use of language in new and unfamiliar situations, and visual spatial relationships and visual motor integration manifested by difficulty with handwriting. [Exhibit B-36]
19. The Student's 1999 speech/language evaluation confirmed her eligibility for services under the category of language impaired. The Student was identified as having particular weaknesses in following multi-step directions, using and forming language, problem solving, predicting and concluding. Her evaluation also noted

lack of eye contact. As a result, it was recommended that the Student be provided with cues, models, explanations, checks on progress, wait time and one-to-one assistance to complete classroom tasks. [Exhibit B-34]

20. Dr. Jensen conducted a psychological evaluation of the Student in 1999. Results of intelligence testing using the WISC-III revealed average overall competencies, with a full scale IQ of 91, a performance IQ of 83 and a verbal IQ of 99. Dr. Jensen's testing supported prior observations of inattentiveness and distractibility, poor eye contact, difficulty with social expectations in unfamiliar environments and withdrawal during "spontaneous social interchange." [Exhibit B-32]
21. Dr. Jensen described the Student as "a concrete thinker who requires a model or demonstration; a cue to get started." She noted the Student's need for guidance and structure and that use of strategies in these areas relieves her anxiety. Dr. Jensen recommended that the Parents consult with their pediatrician regarding the Student's anxiety and psychosomatic concerns. [Exhibit B-32]
22. At a PPT in June 1999, the PPT recommended adding physical therapy to her Individualized Educational Program. [Exhibit B-36] Because the Parents requested that the Student not be pulled out of mainstream classes for PT, services were provided after school. [Testimony Mother]
23. As of the end of the Student's third grade year, the Parents agreed with her diagnosis as language disabled/language impaired, agreed with the goals and objectives in her IEP, and agreed with the program and placement provided by the Board. [Testimony Mother]
24. During the summer of 1999, prior to the Student's fourth grade year at Webster Hill, the Parents obtained an outside evaluation from Michele Affrunti, M.Ed., an educational specialist from the Child Development Center of the Connecticut Children's Medical Center ("CCMC"). [Exhibit B-37]
25. The CCMC evaluation relied largely on evaluations provided by the Parents from the Board and from Dr. Black, although Ms. Affrunti did conduct some supplementary educational and processing testing. [Testimony Mother, Dr. Higgins, Exhibit B-37]
26. The CCMC evaluation was consistent with prior evaluations conducted by the Board. [Testimony Mother, Dr. Higgins; Exhibits B-32, 37] As in the Board's prior evaluation, Ms. Affrunti's evaluation indicated a discrepancy between the Student's relatively strong language and memory skills and weaker visual processing and social skills. These differences manifested themselves in the Student's relatively greater success in reading and language arts, and continued difficulties in mathematics, as both evaluations had noted. [Exhibit B-32, B-37]

27. The only actual distinction between the CCMC evaluation and prior evaluations was that Ms. Affrunti categorized the Student's disability as a nonverbal learning disability. [Testimony Mother, Dr. Higgins, Exhibits B-32, 37]
28. Typically, a student with a nonverbal learning disability demonstrates difficulties in three general areas: 1) motor skills; 2) visual spatial/organization skills; and 3) social skills. [Exhibit B-37] This disability is one that becomes increasingly apparent as the child progresses in school due to increased demands for written work, more advanced organizational skills as well as for increased generalization. [Testimony Dr. Higgins, Exhibit B-37]
29. The Parent testified that, by the time they had received the CCMC evaluation, results of the Board's initial and triennial testing had already identified the Student's areas of strengths and weaknesses. [Testimony Mother]
30. As a result of her evaluation, Ms. Affrunti recommended continued placement in a mainstream setting, special education support, and related services in speech/language, occupational therapy and physical therapy. [Exhibit B-37]
31. Upon receiving Ms. Affrunti's evaluation, the Parents acknowledged that the Board had already integrated many of the strategies and recommendations made in the CCMC evaluation. [Testimony Mother, Exhibit B-37]
32. The Board held two PPT meetings during the Student's fourth grade year to discuss her program and to evaluate her progress. [Exhibits B-39; B-41]
33. On November 1, 1999, the PPT reviewed the CCMC evaluation and revised the necessary strategies, modifications and accommodations for the Student. The Parents did not disagree with any of the goals and objectives contained in the Student's fourth grade IEP, nor did they request additional modifications, accommodations or services beyond those recommended by the PPT. [Exhibit B-39]
34. The PPT convened again in February 2000. At that time, the Student continued to make academic progress, meeting most of her IEP goals and objectives. Her teachers reported that she was more socially independent and was extending her circle of friends. In addition, the Student had made consistent progress in gross motor skills and gains in learning conversation skills. Reports indicated that she continued to have difficulties in math, math problem solving and writing skills. [Exhibit B-41].
35. At the February 2000 PPT, the Team recommended an assistive technology screening to investigate whether the Student would benefit from the use of a hand held recorder or other computer aided assistance. [Exhibit B-41]

36. During the 2000-01 school year, the Student attended fifth grade at the Board elementary school. [Exhibits B-45, B-48, B-51] The Student's program consisted of placement in the regular education fifth grade class. In addition, the school provided her with resource room support for 3.5 hours per week; language services for 1.5 hours per week; occupational therapy for .5 hours per week; and physical therapy for .5 hours per week. In February 2001, the PPT recommended adding 1 hour/week of counseling with Dr. Jensen. [Exhibit B-45] In total, by the end of the Student's fifth grade year, she was spending twenty-four hours per week in her regular education class, while receiving seven hours of special education. [Exhibit B-45] The Parents agreed with all IEPs for the 2000-01 school year. [Exhibits B-45, B-48].
37. The Board held PPT meetings on February 26, and May 14, 2001, during the Student's fifth grade year at the Board elementary school. [Exhibits B-45, B-48] At the February 2001 PPT, the teachers indicated that the Student was progressing with support. [Exhibit B-45] She was reading on grade level and, while her math and writing skills were one year below grade level, she showed continuous growth in these areas. [Exhibit B-45].
38. The Parents appeared to concur with reports of progress, as they noted that the Student seemed to have made a good adjustment during her fifth grade year. [Exhibit B-45]
39. In response to concerns over homework, the teachers modified the Student's homework assignments in fifth grade. [Testimony Father]
40. In order to improve her social skills, the Student participated in a structured lunch time social group, referred to as the "lunch bunch." This was part of her weekly counseling with Dr. Jensen. Social skills were also addressed in other settings, such as the regular education classroom and the playground during recess time with the Student's physical therapist. [Exhibit B-45]
41. The Student's Father noted that in fifth grade, the Student had about three close friends. [Testimony Father]
42. A PPT was convened on May 14, 2001 to review the Student's program and plan an appropriate transition to the sixth grade at the Board middle school. The PPT included appropriate educational staff from the Board elementary school, including the Student's regular and special education teachers, her occupational and physical therapists, Dr. Jensen and Helen Donaher, the Pupil Services Supervisor for the Board middle school. Dr. Anne Higgins, the school psychologist from the Board middle school, was also present. The PPT provided Dr. Higgins with a comprehensive review of the Student's progress and educational needs. [Exhibit B-48] Dr. Higgins was, therefore, aware of the Student's particular strengths in reading and written language arts and weaknesses in abstract inferencing skills, math and certain social situations. [Testimony Dr. Higgins, Exhibit B-48]

43. Dr. Higgins's testimony is found to be credible. The certified school psychologist has seventeen years of experience in West Hartford. Dr. Higgins was one of nine doctoral candidates awarded a national fellowship in psychology. She received her doctorate from the University of Minnesota. She has extensive experience in both clinical and school settings, has taught at the college level and published in national educational publications. [Testimony Dr. Higgins, Exhibit B-77]
44. It was the regular practice in the Board schools to invite parents of prospective middle school students to visit the school prior to the start of the school year to learn about the curriculum and for prospective students to come for a tour. [Testimony Dr. Higgins] The Student and the Father visited the middle school prior to her enrollment in sixth grade. [Testimony Father].
45. At the May 2001 PPT, the Student's regular education teacher reported that she had made progress. [Exhibit B-48]
46. By the end of her fifth grade year, the Student had mastered all of her occupational therapy goals and objectives and no longer required direct OT services. It was therefore recommended that OT be provided on a consultation basis only for the beginning of the Student's sixth grade year. [Exhibit B-48] The Parents agreed that she no longer required OT. [Testimony Mother]
47. The Parents brought with them to the May 2001 PPT meeting a three-page letter outlining their specific requests for services and accommodations for the Student for her sixth grade year. These requests included, among others, specified amounts of special education and related services, a full time accommodator, a foreign language waiver, counseling during lunch hour to address social skills training, physical therapy after school, a resource teacher available during study hall, use of Alpha Smart, an extra set of textbooks for home, homework modification, and the teaching of a variety of compensation strategies. [Exhibit B-50] The PPT considered these requests and incorporated most of them into the Student's IEP for the 2001-02 school year. [Testimony Ms. Hayes, Ms. Donaher; Exhibits B-48, B-50] The Mother acknowledged that there was nothing that they specifically requested that the PPT denied at that meeting. [Testimony Mother]
48. In accordance with the Parents' request, physical therapy was provided after school to avoid pulling the Student out of class and a resource teacher was made available for the Student during study hall. [Testimony Ms. Hayes, Exhibit B-50]
49. The PPT recommended that the Student's program for sixth grade include placement on a regular education sixth grade team at the Board middle school, with participation in regular education classes for English, science and specials, such as art, technology education, music and physical education. Due to weaknesses in the area of language and math, the PPT recommended that the Student participate in the Adjusted Curriculum Program for math and language arts. Direct services in

speech and language would be provided for .7 hours per week; physical therapy for .5 hours per week and counseling for 1 hour per week. Overall, the Student would participate in regular education for 20.9 hours per week, with 12.1 hours of special education services. [Exhibit B-48]

50. There were no disputes regarding the goals and objectives contained in the proposed IEP for the 2001-02 school year. [Testimony Ms. Donaher, Exhibit B-48] The Parents also did not disagree with the Board's proposed program for the Student for 2001-02 as outlined in the May 2001 IEP. [Exhibit B-48]. At that time, no evaluator recommended that the Student be placed in a more restrictive setting in order for her to be educated. [Testimony Mother]
51. At the May 2001 PPT, the Parents consented to have the Board conduct the Student's triennial evaluations the following year and the PPT discussed the scope of necessary testing. [Exhibit B-49]
52. During the 2001-02 school year, the Student attended sixth grade at the Board middle school. [Exhibits B-48, B-55, B-65] The Board conducted two PPT meetings during the 2001-02 school year to discuss the Student's program, evaluate her educational needs and plan for triennial assessments. [Exhibits B-55, B-65]
53. The Parents chose not to have a math tutor for the Student during her sixth grade year, as they felt that her Adjusted Curriculum math class at the Board middle school provided sufficient modifications. [Testimony Ms. Abel, Father]
54. The teachers and educational staff who worked directly with the Student were aware of the scope and specific nature of the Student's disabilities. In particular, Ms. Hayes, Ms. Henneberry, Ms. Welch-Meier, and Dr. Higgins all testified that they were familiar with the characteristics of nonverbal learning disabilities and had specific training in working with students who displayed traits characteristic of this disability. [Testimony Ms. Hayes, Ms. Henneberry, Dr. Higgins, Ms. Newman, Ms. Welch-Meier].
55. At the Board middle school, the sixth grade is divided into teams of approximately 100-120 students. There are six teachers assigned to a team: five academic teachers and one special education teacher. Students take all of their courses with their team and the only time they are not with the team teachers is for art, music, physical education and health. Team teachers hold 40-minute daily meetings to discuss various students on their team. [Testimony Ms. Donaher, Ms. Hayes, Ms. Henneberry]. All academic classes are located along the same hallway. The only time a student leaves his "team" area is for specials and lunch. [Testimony Ms. Henneberry]
56. Throughout the 2001-02 school year, the Student was provided with an "accommodator" who provided one-on-one assistance in academic classes and aided her in transitions. [Testimony Ms. Hayes, Exhibits B-48, B-55]. Her

accommodator, Mrs. Kennedy, was specifically selected to work with the Student based on her education, effectiveness with special education students and familiarity with the sixth grade curriculum. [Testimony Ms. Donaher] As the year progressed, the accommodator allowed the Student to become more independent by fading back her level of assistance. [Testimony Ms. Hayes] The Student demonstrated that she was able to handle this transition to fading back in a small structured environment and relied less on her accommodator to help her navigate the hallways by the end of the year. [Testimony Ms. Hayes]

57. The Board appropriately planned for the Student's transition to the Board middle school for the 2001-02 school year. [Testimony Ms. Donaher, Exhibit B-48] Dr. Higgins attended the PPT at the end of the Student's fifth grade year and was able to relay all relevant information about the Student's progress, educational needs, aptitudes, weaknesses and interests to the Student's team of teachers at Board middle school. [Testimony Dr. Higgins] The team discussed the Student in August before the start of the 2001-02 school year. Paul Clemens, the special education teacher at the time, spoke to the team about appropriate modifications for the Student and other information needed to prepare for her transition. [Testimony Ms. Henneberry] The team was given a copy of the Student's IEP, including classroom strategies and specifically discussed the impact of her nonverbal learning disability. [Testimony Ms. Henneberry]
58. During sixth grade, the Student's goals and objectives relating to improving social skills were addressed in a variety of settings. [Testimony Ms. Hayes, Exhibit B-55] Ms. Hayes, her special education teacher, provided opportunities for cooperative learning in small groups and she used metacognitive skills training to assist the Student in thinking through how to handle certain situations. Ms. Hayes observed the Student using strategies that they had worked on. [Testimony Ms. Hayes]
59. The Student also participated in a structured pragmatic language group with 2 to 3 other students as part of her speech and language therapy. Diana Newman, the Student's speech therapist, has worked with more than twelve other students in the last five years who have been diagnosed with a nonverbal learning disability. [Testimony Ms. Newman]
60. Susan Henneberry, the Student's homeroom and regular education science teacher, is one of three finalists for Board schools Teacher of the Year for the 2002-03 school year. She has over seventeen years of teaching experience and has been awarded the Presidential Award for Excellence in Science and Mathematics teaching. [Testimony Ms. Henneberry, Exhibit B-75]
61. During homeroom, the Student participated in "circle time," which provided an opportunity for students to feel comfortable in a smaller group setting and to discuss issues not directly related to the curriculum. [Testimony Ms. Henneberry]

62. There were approximately 22 students in the Student's regular education homeroom and, with prompting, she did well in terms of participating in the morning meeting. Homeroom time was also used to prepare the Student for any schedule changes and need for transitions for that day. [Testimony Ms. Henneberry].
63. Ms. Henneberry has experience educating students with disabilities in her regular education classroom who have displayed characteristics similar to those of the Student, such as difficulties with organization, difficulties with social skills and executive functioning. [Testimony Ms. Henneberry]
64. Teachers were always told in advance of any fire drills in order to plan for the Student. During fire drills, Mrs. Kennedy, the Student's accommodator would come get the Student before the alarm and begin to head out of the building before the alarm went off. The Student was generally fine with fire drills. [Testimony Ms. Henneberry]
65. Tardiness to homeroom was occasionally an issue for the Student. Therefore, around mid-year, her teachers and Parents came up with a plan to have the Student be responsible for watering the class plants in order to get her to homeroom on time. This strategy appeared to work well as the Student was tardy only three times all year. It was not uncommon to come up with ways to assist students in getting to school on time. [Testimony Ms. Henneberry]
66. The Student received a Giant Leaps award during sixth grade. This is an award given monthly to a student by her team for progress. [Testimony Ms. Hayes]
67. Ms. Henneberry modified the Student's tests, and limited the amount of writing she would be required to do. She also provided uncluttered worksheets and extended time, reduced the amount of given for the Student and did not provide repetitive, rote assignments. [Testimony Ms. Henneberry]
68. The Student studied the traditional sixth grade curriculum and her grades reflected actually content learning. [Testimony Ms. Henneberry] Although her teachers could have graded the Student on a pass/fail basis in her regular education classes, the Student earned very appropriate grades and did not require this modification. [Testimony Ms. Donaher] In science, the Student had the most difficulty in the chemistry unit of her science class because it is more theoretical and involves a great deal of math. [Testimony Ms. Henneberry]
69. The Student was able to participate in projects, tests, quizzes and daily assignments in her science class. She also participated in two oral projects, which involved presentations in front of her class. At the end of the year, the Student designed and conducted an experiment on bubbles and presented her project in front of her class of approximately 21 students. The Student refused Ms. Henneberry's offer to stand with her during her presentation and she did well on her presentation. According to

Ms. Henneberry, the Student looked confident and pleased with her presentation.
[Testimony Ms. Henneberry]

70. Ms. Henneberry spoke with the Parents a few times about the Student, mostly regarding the science project. When issues were raised regarding the Student's difficulty with homework completion, the sixth grade team decided to reduce her homework load. [Testimony Ms. Henneberry] The Parents agreed to limit the amount of time the Student spent on homework at home and the team agreed that she should focus on completing most of her difficult homework during resource room time. [Testimony Ms. Hayes, Father]
71. On one occasion, the parents called to complain to Ms. Henneberry about a homework assignment. However, there at been some miscommunication about what had been expected and the Student had actually done a more elaborate project than Ms. Henneberry had requested. Ms. Henneberry called the parents and discussed the fact that the Student did not need to do that amount of work. [Testimony Ms. Henneberry]
72. The Parents testified that they spent an enormous amount of effort helping the Student with her homework and that they often rewrote her work. It was their general practice to have the Student come home right after school and start her homework at the table. Even though homework requirements were waived for the Student and teachers told the Parents to limit the amount of time spent on homework, her father testified that he felt it was important for the Student to complete her work and he made sure things were done. [Testimony Father]
73. The Student grew in the social skill area during sixth grade. [Testimony Ms. Hayes] She participated in a coeducational homeroom based intramural volleyball team and had a close friend whom she met after school, usually on Wednesdays. [Testimony Ms. Henneberry, Ms. Hayes]
74. Dr. Higgins testified that she saw good evidence that things were going well for the Student by spring. Specifically, she saw improvement in the way the Student handled herself in the hallways between classes and noted that she was spontaneously greeted by peers as we walked in the hallway. Dr. Higgins described one occasion when she was with the Student in the hall as they walked by the auditorium where choir practice was about to take place. The Student looked into the auditorium, handed Dr. Higgins her books and said that she needed to go in for practice. Although Dr. Higgins asked her if she wanted to wait for Mrs. Kennedy before going in, the Student said no, and that she was fine. Normally, this would have been the type of atmosphere that would have been socially difficult for the Student given that there were at least one hundred students in the auditorium, milling about trying to find their placed in the risers. Her willingness to march into choir rehearsal unaccompanied showed a lot of strength and persistence. [Testimony Dr. Higgins]

75. Kathleen Hayes, the Student's special education teacher and case manager during sixth grade, first began her career teaching at the Eagle Hill School in Greenwich. At the time, she was not certified in special education. Although she was responsible for the dormitory component of the program, she received no specific training in preparation for these responsibilities. During her first and second years at Eagle Hill, she felt unprepared for the responsibilities that she was given. As a teacher at Eagle Hill, she did not have direct access to the IEPs of her students. [Testimony Ms. Hayes, Exhibit B-78]
76. Ms. Hayes assumed the position of the Student's special education teacher and case manager when Paul Clemens was promoted in January 2003. Ms. Hayes is an experienced and certified special education teacher. [Testimony Ms. Hayes, Exhibit B-78]
77. To prepare for the transition in teachers, Ms. Hayes spent time with Mr. Clemens in December and in January observing classes and reviewing files of all her students. She reviewed individual IEPs and the goals and objectives of each of her students. Ms. Hayes also conferred with Ms. Donaher, the Pupil Services Director, Christine Welch-Meier, the Student's social worker, Diana Newman, the Student's speech therapist, Mrs. Kennedy, her accommodator and the occupational and physical therapists regarding the Student's needs and programs. Before beginning work with the Student, Ms. Hayes attended a conference regarding nonverbal learning disabilities and individually researched material on the subject. Ms. Hayes specifically contacted the Student's Parents prior to working with her to address any concerns and/or questions. [Testimony Ms. Hayes]
78. The Student did not have any difficulties with the change in teachers and the Parents informed Ms. Hayes that they believed the transition was going well. The Parents did not request any changes in the Student's program. [Testimony Ms. Hayes].
79. The Student's team appropriately handled unexpected changes in teaching staff throughout the 2001-02 school year. [Testimony Ms. Henneberry, Ms. Hayes]
80. Throughout the 2001-02 school year, Ms. Hayes maintained weekly contact with the Parents. They generally discussed homework and class work, the nature of assignments, upcoming quizzes, tests and organization. Mrs. Kennedy, the Student's accommodator, used a notebook to communicate with the Parents on a regular basis. The Parents never requested additional communication from the school. [Testimony Ms. Hayes]
81. During sixth grade, the Student participated in an Adjusted Curriculum Math class taught by Ms. Hayes. There were approximately seven students in this class, although they often split into smaller groups within the class. The class focused on basic math skills and provided hands on learning. The math class provided a structured small group atmosphere and one-to-one attention. To accommodate the

Student's needs, particularly in the area of visual and spatial skills, Ms. Hayes used graph paper, highlighting and uncluttered worksheets. She would also rely on verbal rehearsal to verbally break down the steps needed to complete a problem. [Testimony Ms. Hayes]

82. Ms. Hayes also taught the Student's Adjusted Curriculum Language Arts class. There were three or four students in this class, depending on the day. The language arts class served as support for her regular education English class and provided the Student with individualized instruction in basic writing skills and the use of computer software such as Alpha Smart. Ms. Hayes noted improvement in the Student's ability to use graphic organizers, move independently from a rough draft to a final draft and generally demonstrated progress in language arts. [Testimony Ms. Hayes]
83. The Student received resource room support five days per week. There were approximately three to seven students in her group and her accommodator was with her during this time to assist her. [Testimony Ms. Hayes]
84. The Student was evaluated by Dr. Eric D. Cohen, a child psychiatrist from the Institute of Living, on October 16, 2001 in response to the Parents' concerns regarding her anxiety, obsessive-compulsive behavior and difficulty with social relationships. Dr. Cohen noted that, as of that date, the Student had no history whatsoever of depression, self-injurious behavior, aggression, abuse or neglect, or drug or alcohol use. In fact, the Student denied any overt anxiety or depression or changes in sleep, appetite, energy level, health or other function. [Testimony Dr. Cohen, Exhibit P-30]
85. As of October 2001, while the Student was attending the Board middle school, Dr. Cohen diagnosed her with an Adjustment Disorder with anxious mood, rule-out dysthymia and a nonverbal learning disability. [Exhibit P-50]. A rule-out means that she did not present with the full degree of symptoms necessary for a diagnosis of dysthymia, or low grade depression. [Testimony Dr. Cohen, Exhibit P-50]. This diagnosis was made based on his review of the Student's records, and information supplied by the Parents and the Student. [Exhibit P-50] Dr. Cohen has never observed the Student in a classroom setting, nor has he ever spoken with any of the teachers, staff, school psychologist or social worker who have worked directly with the Student. [Testimony Dr. Cohen]
86. When Dr. Cohen met with the Student in October 2001, she was doing well in school. He did not recommend any medications, or any changes to her academic program. However, Dr. Cohen did recommend that the Parents consider group therapy and consult Marcie Swift, an educational specialist who works with students diagnosed with learning problems and emotional issues. [Exhibit P-50]

87. The Parents never met with Ms. Swift and Dr. Cohen is unaware of whether they made any attempt to pursue the group therapy referrals recommended by him in October 2001. [Testimony Dr. Cohen]
88. During the Student's sixth grade year at the Board middle school, the Student was subjected to multiple stressors unrelated to school and homework issues. Parent testimony indicated that around March 2002, the Mother underwent surgery for a melanoma; the Student's grandfather and aunt had both been hospitalized, requiring her Father to make frequent visits to Virginia; and the Student expressed considerable anxiety regarding an upcoming overnight visit to Eagle Hill. [Testimony Father, Ms. Hayes] The Father also testified that she was anxious over her decision of whether she was going to stay at the Board middle school or be going to Eagle Hill next year. [Testimony Father]
89. In February 2002, Ms. Hayes had a conference with the Parents to discuss the Student's progress. At that point, the Parents did not raise any concerns regarding her progress, nor did they request to have a PPT or request changes in the Student's program or her IEP. [Testimony Ms. Hayes] The Parents have testified that they understood their right to request a PPT if they felt uncomfortable with the Student's educational program. [Testimony Mother] There were no indications that the Parents were unhappy with the sixth grade program, only that they were generally concerned about the Student's program for seventh grade. [Testimony Mother]
90. On February 16, 2002, the Board notified the Parents that a PPT would be convened on April 4, 2002 to discuss the Student's program and review triennial evaluations. [Exhibit B-52]
91. On March 7, 2002, the Board received notice that the Parents were revoking their consent for any triennial evaluations. Although a PPT had already been scheduled, the Parents requested a PPT to discuss triennial testing. [Exhibit B-53).
92. On March 18, 2002, the Board sent a notice reminding the Parents that a PPT had already been scheduled for April 4, 2002. [Exhibit B-54]
93. At the April 2002 PPT, the Team discussed the Student's academic progress while at the Board middle school. Reports indicated the Student had been doing well in her classes. Although the Parents questioned whether the Student's good grades reflected true learning or merely the support the Student receives at home and at school, the Student's teacher testified that her grades reflect actual knowledge of sixth grade curriculum. [Testimony Ms. Henneberry] The Mother subsequently testified that the Student was graded in the same way as all other students. [Testimony Mother]
94. At the April 2002 PPT, reports indicated that the Student had made progress in the area of social skills. Reports noted that the Student seemed more animated and confident, although she does not normally initiate contact with her peers. She had

shown improvement in her ability to go to her locker while other students were around, had recently volunteered to do board work in her math class and had successfully completed a science presentation in front of her regular education sixth grade science class. [Testimony Ms. Hayes, Ms. Henneberry; Exhibit B-55]

95. The April 2002 PPT added new objectives to the Student's IEP, including participation in the Circle of Friends group and a new physical therapy goal. [Testimony Ms. Donaher, Exhibit B-55]. The Circle of Friends was a social skills group involving disabled and nondisabled students, started by Ms. Welch-Meier in the spring of 2002. It met once a month after school from about 3:00 until 4:15 and the students participated in a variety of social activities. [Testimony Ms. Welch-Meier]
96. The Parents have never disagreed with the goals and objectives contained in the Student's IEPs for the 2001-02 school year. They also did not disagree with the Student's sixth grade program as outlined in any of the IEPs for that year. [Exhibits B-48, B-55]
97. The Parents acknowledged in testimony that the Student was making progress, yet they believed that sixth grade year had been difficult for her, as they were concerned about social gaps, depression and anxiety. The Parents had consulted with their pediatrician who did not find that the Student was depressed and did not recommend medication nor refer the Student to a psychologist. [Testimony Mother]
98. At the April 2002 PPT, the Board denied the Parents' request for an independent neuropsychological evaluation because the Board had not yet had an opportunity to complete a comprehensive re-evaluation of the Student due to the Parents' revoked consent for evaluation. The Board agreed to reconsider the request for an independent evaluation upon completion of its own assessments. [Exhibit B-55]
99. The Parents indicated at the April 4, 2002 PPT that they wanted the Student to attend the Eagle Hill School in Greenwich, CT, for the 2002-03 school year. [Exhibit B-55] Nothing in the record indicates that the Parents requested a change in placement for the Student prior to this PPT meeting.
100. As of April 2002, there was no recommendation from anyone who directly worked with the Student that her disabilities were so severe that she required a residential placement in order to be educated. [Testimony Ms. Donaher, Ms. Hayes]
101. Ms. Henneberry was surprised at the Parents' general comments that it had been a frustrating year for the Student since she believed the Student had showed progress and growth and had benefited from being at the Board middle school by building her self confidence. [Testimony Ms. Henneberry]

102. After providing the Parents with extensive descriptions of the types of testing the Board wished to conduct as part of the Student's triennial evaluation, the Parents finally consented to a series of re-evaluations. The Parents, however, continued to object to the administration of a WISC-III IQ test by the Board. [Exhibit B-56]
103. The Board conducted a comprehensive triennial evaluation of the Student during April and May of 2002 including cognitive, academic achievement, attention, executive functioning, and socio-emotional skills assessments. [Exhibits B-58, B-59, B-60, B-61, B-63, B-64]
104. Diana Newman, the Student's speech/language therapist, reported that standardized testing revealed that the Student has made very good gains in verbal language skills, especially in receptive language, since her last assessment in third grade. As of May 2002, the Student's overall verbal language ability was within the solid average range. The Student has shown growth in the organization of expressive language and verbal problem solving and reasoning skills. [Exhibit B-60]
105. Ms. Newman reported that the Student continued to display weakness in pragmatic language skills and therefore, recommended continued practice in this area. [Exhibit B-60]
106. Ms. Hayes reported that the Student's academic achievement test results as of May 2002 were consistent with her daily class performance, third grade triennial testing and Connecticut Mastery Test [CMT] results. The Student had scored at goal for reading and within the intervention level for math and writing in the CMT. The Student exhibited good decoding skills and the ability to answer comprehension questions at a literal level. Math continued to be an area of difficulty for her. She scored within the average range in the areas of broad reading, written language and general knowledge and in the low average range for broad math skills. [Exhibit B-61] Indeed, standardized test results show that her writing samples were above average, indicating a grasp of the written language. Given the results of her testing, Ms. Hayes testified that the Student showed average sixth grade knowledge in content areas such as science, social studies and humanities. All testing indicated that she had made progress since her last triennial. Ms. Hayes was appropriately trained to administer the educational testing for the Student. [Testimony Ms. Hayes]
107. Dr. Anne Higgins conducted a psychological evaluation of the Student in May 2002. Results indicated strengths in the area of language comprehension, phonemic awareness and reasoning based on verbal and/or visual stimuli. Processing speed and working memory were identified as areas of weaknesses as were skills relating to executive function, such as planning and organization. The Student's visual-spatial processing was low average and visual-motor integration was also weak. Consistent with earlier observations and evaluations, Dr. Higgins noted that the Student exhibited attentional deficits. [Exhibit B-64]

108. Dr. Higgins agreed with the evaluations of Michelle Affrunti, Dr. Eric Cohen and Dr. Isenberg that the Student has a nonverbal learning disability. [Testimony Dr. Higgins].
109. At the time the Student was evaluated in May 2002, Dr. Higgins reported that it was probable, but not certain, that the Student had an attention disorder. As of May 2002, the Student did not meet the clinical criteria for depression. [Testimony Dr. Higgins, Exhibit B-64]
110. Dr. Jensen's 1999 psychological evaluation of the Student was substantially similar to Dr. Higgins' May 2002 evaluation. Although they used slightly different instruments, the presentation of the Student's profile was the same and there were no major differences between the two evaluations. In fact, the conceptualization of the Student's learning disability, her strengths and weaknesses and how they affected her at school, her diagnosis and explanation of executive processing issues were all viewed consistently among the various evaluations, including those by Dr. Jensen, Ms. Affrunti, Dr. Higgins and Dr. Isenberg. [Testimony Dr. Higgins]
111. A PPT was convened on June 10, 2002 to discuss the results of the Student's triennial evaluations and to plan the Student's program for the 2002-03 school year. The Parents did not disagree with any of the results of the Board's triennial evaluations. [Testimony Mother, Exhibit B-65]
112. At the June 10th PPT, the team recommended placement in a regular education seventh grade classes, with participation in Adjusted Curriculum Math and Language Arts classes and resource room support for 2.1 hours per week. The team further recommended continued physical therapy for .5 hours per week; individual counseling for .5 hours per week; and participation in a six week social skills group, with continued participation as needed. In addition, the PPT recommended ongoing one to one support from an adult accommodator. In total, the Student would receive 9.1 hours of special education services. [Exhibit B-65] All of the Student's teachers, related services providers and evaluators agreed that the Board's proposed program at Sedgwick was appropriate for her. [Testimony Dr. Higgins, Ms. Hayes, Ms. Newman; Exhibit B-65]
113. The Student's grades for the 2002-03 school year included all A's, B's and one C, in science, for the fourth quarter. [Exhibit B-7] The Student was on the honor roll during the sixth grade year. Ms. Henneberry testified that the Student had "mastered" sixth grade science. [Testimony Ms. Henneberry]
114. At no time during the sixth grade year did the Student's teachers or special education administrators recommend making the Student's program more restrictive. [Testimony Ms. Hayes, Ms. Newman]

115. Results from the Grade 6 Connecticut Mastery Test (CMT) indicate that the Student scored at goal in reading and at intervention level for writing and math. [Exhibit B-72]
116. The Student seemed a little more relaxed by the end of the school year as she was able to move in and out of classes more easily and was more comfortable going to her locker while other students were around. [Testimony Ms. Henneberry].
117. The proposed IEP for 2002-03 contains numerous accommodations and modifications to support the Student's placement within regular education. For example, the PPT recommended continued use of assistive technology, grid paper and an extra set of textbooks for home use. It also required modified testing, shortened tasks, no penalty for spelling errors, and a variety of organizational modifications. The Student was to receive prompting and cueing, breaks between tasks and assistance with transitions. The PPT also recommended the use of a scribe, pre-teaching of subject matter, and a variety of other instructional strategies particularly suited to address the Student's disability. [Exhibit B-65]
118. According to the proposed 2002-03 IEP, the speech and language portion of the Student's program contemplated gradually moving her from a small group of two to three students to a larger setting where she could generalize some of her pragmatic language skills. Ms. Newman, the speech therapist, believed this transition would be appropriate for the Student. [Testimony Ms. Newman]
119. There were no disagreements with the proposed goals and objectives or with the PPT's program recommendations at the June 10, 2002 PPT meeting. [Exhibit B-65] The Parents testified that they also did not disagree with the results of any of the Board's triennial evaluations. [Testimony Mother, Exhibit B-65, B-67] Nevertheless, the Parents informed the Board at this PPT of their intent to pursue additional evaluations and possible alternative placements for the Student. [Exhibit B-65] The Parents made their decision to place the Student at Eagle Hill School before getting an evaluation that supported such placement. [Testimony Mother]
120. There is no evidence that the Student is incapable of living at home and she has never shown indications of harming herself or others, nor has she ever attempted to run away from home. [Testimony Dr. Isenberg, Mother]
121. None of the Student's teachers, including Ms. Hayes who had previously taught at Eagle Hill, recommended that the Student required placement in a restrictive setting like Eagle Hill in order to be educated. [Testimony Ms. Hayes, Ms. Newman] Dr. Higgins, who has years of experience making program recommendations for disabled students, would not recommend a restrictive setting outside of the mainstream for a student who is reading on grade level, able to communicate, but has difficulties in social situations. [Testimony Dr. Higgins].

122. On August 19, 2002, the Parents informed the Board of their intention to place the Student in the residential program at Eagle Hill School in Greenwich, CT for the 2002-03 school year. [Exhibit B-69]
123. The Board's proposed program appropriately addresses the Parents' concerns regarding the Student's 7th grade program. [Exhibits B-65, B-69] The seventh grade is divided into smaller teams, as was the sixth grade the previous year. This team concept allows students to operate in a smaller educational environment within the larger school atmosphere. With the exception of labs and some specials, classes are located next to one another. Because the Board middle school operates on a "block" schedule, each team's schedule remains consistent. [Testimony Ms. Donaher]
124. The proposed IEP for 2002-03 contained appropriate goals relating to the development of social skills. It specifically included participation in a social skills group and the assistance of a one-to-one accommodator. [Exhibit B-65] The social skills group would be run by a social worker and would have no more than three or four children in the group. Lessons would be tailored to the needs and interests of those particular students. [Testimony Ms. Donaher, Dr. Higgins] At the end of the six weeks, this group would be continued as needed. [Testimony Dr. Higgins] Had the Student continued at the Board Middle School, she would have also continued to participate in the Circle of Friends group with Ms. Welch-Meier. [Testimony Ms. Welch-Meier]
125. Participation in regular education classes, particularly in subject areas of particular strength and interest for the Student is appropriate. [Testimony Ms. Donaher, Ms. Hayes] The Student took a great deal of pride in her work and when she got good grades. [Testimony Ms. Hayes] Due to the Student's disabilities, she showed particular weakness in math and language arts. Therefore, continued participation in Adjusted Curriculum Math and Language Arts classes is appropriate. [Testimony Dr. Higgins, Exhibits P-12A, B-61]
126. The Student would continue to benefit from exposure and opportunity to participate with nondisabled peers at the Board middle school. [Testimony Dr. Higgins, Ms. Henneberry] Peer modeling is an important tool in learning how to generalize social skills, how to communicate with peers, learn organizational skills and learn appropriate classroom responses. [Testimony Ms. Hayes, Dr. Higgins] Dr. Higgins expressed particular concern over reducing opportunities for the Student to interact with typical peers, particularly in a neighborhood setting, since she is of an age where she is forming the basis of identity and, therefore, it's very important that she learn to form her identity based more on her strengths and her similarities to other people than to form her identity as a person who is disabled or has weaknesses. [Testimony Dr. Higgins]
127. It is important for the Student to be in regular education classes because she is academically capable of handling the content material if provided with appropriate

support, as is evidenced by her grades from her sixth grade year at the Board middle school. [Exhibit B-72] Access and communication with typical peers is necessary in order to provide opportunities to practice social skills in a natural setting. [Testimony Ms. Hayes, Ms. Henneberry]

128. Dr. Cohen conducted a follow-up visit with the Student in July 2002. [Exhibits P-6, P-51] At this meeting, the Parents informed him that they had already decided to place the Student at the Eagle Hill School in Greenwich, CT, and that it was likely that Dr. Cohen would be asked to testify in a due process hearing. [Testimony Dr. Cohen]
129. In July 2002, Dr. Cohen changed his diagnosis of the Student to “a generalized anxiety disorder with evidence of an underlying non-verbal learning disability.” [Exhibit P-6] He testified that this change was based on the recent triennial evaluations performed by the Board and additional clinical information. [Testimony Dr. Cohen] Although he had previously reported that the Student had been doing relatively well at the Board middle school, his most recent summary concluded that the Student would benefit from the removal from the Board middle school because of the “larger and more crowded nature of the classrooms and overall environment” and that her educational needs “might be better served in a smaller environment, such as the Eagle Hill School in Massachusetts.” [Exhibit P-6] The conclusions of Dr. Cohen’s evaluations are contained in letters separately addressed to the Parents and to their attorneys. The Parents did not submit any evaluation reports from Dr. Cohen. [Exhibits P-6, P-50, P-51]
130. At the time Dr. Cohen wrote his July 2002 letter to the Parents, he was fully aware that they had retained legal counsel and “certainly understood that it might lead to due process.” [Testimony Dr. Cohen, Exhibit P-6, 51]
131. Although Dr. Cohen recommended that the Board middle school was not appropriate for the Student, he was not fully aware of the type of program provided for the Student at the Board middle school. He did not know how large her classes were, where they were located, the structure or content of her curriculum, nor the number of students in any of her classes. Dr. Cohen also did not visit Eagle Hill School in Greenwich. When Dr. Cohen saw the Student in July 2002 upon completion of her sixth grade at the Board middle school, he testified that there were indications that she had made good gains in verbal language skills, particularly in receptive language. Therefore, Dr. Cohen’s conclusion that the Board middle school was not appropriate is not persuasive, as he saw indications that the Student had made good gains, and his was unfamiliar with the program provided for the Student at the Board middle school. [Testimony Dr. Cohen]
132. Even as of July 2002, Dr. Cohen did not recommend any medication for the Student. [Testimony Dr. Cohen]

133. The Student was not on any medication while she was a student in the Board schools. Even though evaluations had raised concerns regarding potential attention issues as far back as first grade, the first time she began taking any medication for possible attention deficits was in August 2002, when she started on Concerta, as prescribed by her pediatrician. [Testimony Mother, Father] The Student was on Concerta for about one month, including the first two weeks that she was at Eagle Hill. [Testimony Mother] She stopped taking the Concerta in mid-September because she was having difficulty swallowing the pill. [Testimony Father]
134. Dr. Gary Isenberg, a pediatric neuropsychologist, evaluated the Student on October 21, 2002, two months after the Student had been placed at Eagle Hill. [Exhibit P-12A] Based upon his evaluation, he diagnosed the Student with a neurological processing impairment, commonly referred to as a nonverbal learning disability, and noted that she met the criteria for Attention Deficit Disorder, anxiety and a low grade depression, referred to as dysthymia. [Exhibit P-12A]
135. Dr. Isenberg's findings and recommendations are remarkably consistent with Dr. Jensen's findings in 1999. Isenberg testified that the Student's areas of weaknesses identified by the Board correlated strongly with his own findings. Specifically, he agreed with Dr. Higgins that the Student showed strengths in one-to-one interactions with familiar adults, language comprehension, and phonemic awareness. [Testimony Dr. Isenberg] Dr. Isenberg also agreed with Dr. Higgins that the Student showed deficits in processing speed, visual spatial processing, executive functioning, attention, and social relatedness. [Testimony Dr. Isenberg, Dr. Higgins]
136. The discrepancy in IQ scores found by Dr. Jensen in 1999 were "remarkably consistent and predictable" of how the Student scored when Dr. Isenberg evaluated her. [Testimony Dr. Isenberg; Exhibits B-32, P-12A] Dr. Isenberg noted that remedial work "wouldn't necessarily help the I.Q. scores" and it is typical that IQ scores for a neurologically impaired child to "drop as they get older." [Testimony Dr. Isenberg]
137. Regarding the Student's weakness in math, Dr. Isenberg noted that math will become "an increased area of difficulty and probably not something that will respond very well to remediation." [Testimony Dr. Isenberg]. In fact, according to Dr. Isenberg, the Student's math skills "are not likely to improve dramatically," and therefore, the Student should be provided with a functional math curriculum. [Testimony Dr. Isenberg, Exhibit P-12A]
138. Dr. Isenberg recommended that the Parents consider using medication for the Student to improve her attentional skills as well as a trial of medication for anxiety and depression. At the time he saw the Student in October 2002, she appeared to be struggling with social anxiety and depressive symptoms. [Testimony Dr. Isenberg]

139. The recommendations of Dr. Isenberg included, among others: 1) a highly structured program with well-established routines; 2) a small number of teachers with whom she is familiar; 3) opportunities for 1:1 instruction and tutoring; 4) a co-taught classroom or shared teaching assistant for prompting when participating in mainstream learning activities; 5) small group learning, particularly in areas of weakness such as math; 6) pre-teaching and strategies to bolster learning; 7) ongoing modifications to curriculum materials; 8) speech and language therapy to address pragmatic language deficits; 9) allowing extra time on tasks; 10) 1:1 counseling to assist her with anxiety management; 11) some type of social group; 12) opportunities for supported interaction with her peers so she can receive on-the-spot coaching and practice in natural environments; 13) modified curriculum in math, and 14) direct instruction in study and organizational skills. [Testimony Dr. Isenberg, Exhibit P-12A]
140. Dr. Isenberg acknowledged that he is “not an educational specialist” and therefore, did not evaluate educational programs for the Student. He therefore did not recommend that the Student be placed in a restrictive, residential program. However, he did testify that going to Eagle Hill, a residential school, for the first time could be stressful, particularly in the context that new environments are challenging for the Student, and he opined that the Student would experience anxious apprehension in such an environment. [Testimony Dr. Isenberg]
141. At the time Dr. Isenberg evaluated the Student in October 2002, she was not receiving any ongoing counseling, as recommended in the Board’s IEP for 2002-03. [Testimony Dr. Isenberg, Exhibit B-65].
142. Eagle Hill is a private school for students with learning disabilities. [Exhibit P-23]. There are currently 203 students at Eagle Hill. Of the thirty-two students in the dormitory, 24 are boys and 8 are girls. The school offers a five-day boarding program. All of the students at Eagle Hill have some type of learning disability, including students who have been diagnosed as autistic and socially emotionally disturbed. [Testimony Mr. Breakell]
143. When the Student first enrolled at Eagle Hill, the school did not do any pre-admission testing in math to determine placement. [Testimony Mr. Breakell]
144. Robert Breakell, her educational advisor, administered three reading tests to the Student. Mr. Breakell, however, is not certified as a special education administrator and has not received formal training in educational testing. Results of these initial reading tests revealed that the Student was two years above grade level. Mr. Breakell testified that it was surprising to him that the Student was that skilled. [Testimony Mr. Breakell]
145. In determining placement, Eagle Hill relied on results of the Student’s prior testing, including the Board’s recent triennial examinations. However, Mr. Breakell did not

review any documents from the Board schools, nor did he speak with anyone who had previously worked with the Student. [Testimony Mr. Breakell]

146. Eagle Hill does not rely on any educational programming documents that resemble an IEP. [Testimony Mr. Breakell]
147. Eagle Hill does not have an occupational therapist or a physical therapist. Not all of its teachers are certified in special education and the residential staff members are not certified in special education. The school psychologist does not conduct sessions after school hours. [Testimony Mr. Breakell]
148. The social skills group in which the Student currently participates in is not taught by a psychologist, social worker or guidance counselor. Rather, it is taught by a married couple not certified in special education. [Testimony Mr. Breakell]
149. What Eagle Hill does in its residential component is “in line with a parent’s responsibility.” When boarding students require assistance with homework, they leave a paper outside the door and a staff member comes to help. [Testimony Mr. Breakell]
150. Eagle Hill does not follow the state guidelines for curriculum and thus do not offer science and history each year for every student. Many students from Eagle Hill do not transition back to public school. [Testimony Mr. Breakell]
151. The Student’s speech and language program, as well as her social pragmatics group at Eagle Hill, did not start until the third or fourth week of school. Her social pragmatics group meets for 20 minutes per week. She does not receive any physical or occupational therapy. [Testimony Mr. Breakell]
152. There are currently thirteen students in the Student’s science class, seven in her math class, six in her literature class and three in her tutorial and study skills group. [Testimony Mr. Breakell] The Student is not yet in a functional math class, even though this had been recommended by Dr. Isenberg. [Testimony Mr. Breakell, Exhibit P-12A] The instructional materials used in her tutorial are written on a sixth to seventh grade reading level, below the Student’s current abilities as shown by testing. [Testimony Mr. Breakell, Exhibit P-56]
153. The Student’s basic program at Eagle Hill is provided during the school day. After 4 p.m., the Student engages in activities such as cooking, making trips to do recycling or going to a movie. There is no clinical residential program at Eagle Hill. [Testimony Mr. Breakell]
154. The Student began individual counseling with the school psychologist at Eagle Hill sometime during January 2003 to deal with dormitory issues such as socialization and dealing with demands in the dorm. She continues to be enrolled in the program at Eagle Hill, including the five-day boarding program. [Testimony Mr. Breakell,]

CONCLUSIONS OF LAW:

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14. The Board has met its burden in this case.
3. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
4. As to the first inquiry, nothing in the record supports any claim for a violation of the Parents' procedural rights. Therefore, the Board complied with the procedural requirements of the Act.
5. The second inquiry is the determination of whether the IEP is reasonably calculated to enable the child to receive educational benefits. The Individuals with Disabilities Education Act (IDEA) does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2d Cir. 1998), citing *Rowley, supra*. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* The goal of IDEA is not to maximize a special education child's potential, but rather to provide access to public education for such children. *K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995).
6. The appropriate standard is whether the Student can derive meaningful educational benefit from the proposed program, not everything that might be thought desirable by loving parents. *Tucker v. Bay Shore Union Free School District*, 873 F. 2d 563, 567 (2d Cir. 1989) While the Parents have been active participants in the Student's educational program, and appear to truly want to maximize her educational experience, that is not the appropriate standard. The Board's proposed program is carefully drafted so that the Student can derive such meaningful educational benefit.
7. In addition to the free appropriate public education requirement, IDEA's preference is for disabled children to be educated in the least restrictive environment capable of

meeting their needs. *Walczak, supra*. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms. *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a disability can be educated in a regular classroom if provided with supplementary aids and services. *Oberti*, 995 F.2d at 1216, *Mavis v. Sobol*, 839 F. Supp. 968, 985-986. The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti*, 995 F. 2d at 1217 The Student can be educated in the regular classroom for a substantial portion of the week with appropriate supports, modifications, accommodations as set forth in the Board's IEP. Moreover, the Student would truly benefit from the peer modeling and experiences of the regular education setting.

8. The program proposed by the Board is appropriate for the Student, considers her strengths and weaknesses, is developed so that the Student can derive meaningful educational benefit, and will be delivered in the least restrictive environment. The Student's program was individually designed after careful review of all evaluations, to place the Student in regular classes with resource room support, adjusted curriculum classes, and appropriate modifications, accommodations and related services.
9. As the Board's program is appropriate, it is not necessary to determine the appropriateness of Parents' placement. *See, Burlington School Committee v. Dept. of Ed.*, 471 U.S. 359 (1985), *Florence Co. School District v. Carter*, 114 S.Ct. 361 (1993) (Reimbursement for private school placement is only awarded when the *district's program was not appropriate* and that the private placement could provide an appropriate educational program for the child).

FINAL DECISION AND ORDER:

1. The Board's program for the 2002-2003 school year is appropriate.
2. As the Board's program is appropriate it is not necessary to determine the appropriateness of the Parents' placement of the Student at Eagle Hill School – Greenwich.
3. The Student does not require residential placement in order to benefit from her educational program.