

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Westport Board of Education v. Student

Appearing on Behalf of the Parent: Parent, Pro Se

Appearing on Behalf of the Board: Attorney Marsha Belman Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing Before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the Board entitled to conduct a psychiatric evaluation of the Student?
2. Should the Student be placed at Cooperative Educational Services (“CES”) for diagnostic purposes?

PROCEDURAL HISTORY:

This hearing was requested on April 29, 2003. It was preceded by unsuccessful mediation in April, 2003. The prehearing conference was convened on May 7, 2003. The hearing convened on the following dates: June 5, June 19, July 11, July 18, July 23 and July 31, 2003. Parents began the hearing with counsel. Their counsel became ill and, on June 17, 2003, notified the hearing officer that their office was no longer representing the Student. The Parents proceeded pro se with the Student’s Mother representing the Parents. On July 7, 2003, the Parents filed a request for due process seeking an out of district placement at the Forman School and an order that the Board had violated applicable law and caused harm and damage. The Parents’ request for hearing was assigned to Hearing Officer Stacy M. Owens as Case No. 03-212. On July 9, 2003, the Parents filed a motion to consolidate the two hearings. The Board filed an objection to the consolidation motion on July 11, 2003. On July 28, 2003, Hearing Officer Owens denied the motion for consolidation with the agreement of this hearing officer. On July 20, 2003, the Parents filed a motion to dismiss this hearing claiming that the Board had

failed to prove the validity of their allegations. On July 21, 2003, the Parents made a motion to include as a new issue in this hearing, whether placement at the Forman School was appropriate. On July 22, 2003, the Parents made a motion to dismiss this hearing based upon their belief that a PPT convened on January 2, 2003 was illegal. These motions were argued on July 23, 2003 and denied. The Board presented the following witnesses: Karyn Morgan, Board Administrator of Pupil Services; Dr. Daniel French, Cooperative Educational Services ("CES") Program Administrator; and Dr. Barbara Anne Fischetti, Board School Psychologist. The Parents presented the following witnesses: Dr. Beth Hapke, the Student's pediatrician; Patricia Glatman, a friend of the Student's family; Dr. William Koch, psychiatrist; and the Student's Mother. Briefs were originally due on August 7, 2003. On August 5, 2003, the Mother requested an extension of several weeks for the filing of her brief. An extension was granted until August 11, 2003. On August 6, 2003, the Parents requested another extension based upon a family illness. An extension was granted until August 26, 2003 on which date briefs were received.

SUMMARY:

The Student was sixteen years old at the time of this hearing. She was identified with a learning disability in first grade and has received special education services since that time. She has a long history of poor school attendance and multiple periods of ill health. During her ninth grade year, the Student experienced several bouts of illness and extended absences from school during which she fell behind in her classes. This led to feelings of anxiety and a period of time during which the Student would not get out of bed. The Student did not attend school for the last few months of ninth grade; the school district provided homebound tutoring from mid-May through the end of July, 2002 and requested permission to perform a psychiatric evaluation. The Mother took the Student to several medical professionals including two psychiatrists during 2002 but refused to allow the school district to obtain a psychiatric evaluation by a school district-appointed psychiatrist. During the beginning of tenth grade, the 2002-2003 school year, the Student again experienced periods of illness. Although there was no medical reason why she could not attend school after mid-October, 2002, the Student did not attend school from that time through the remainder of the school year. In January, 2003, the school district recommended a diagnostic placement at CES; the Parents refused. Since October, 2002, the school district has not provided the Student with any educational services and it is not clear what, if any, educational program the Student has received since then.

FINDINGS OF FACT:

1. The Student was born on February 8, 1987. During first grade, she was diagnosed with a learning disability and began receiving special education services with the goals of improving her reading, basic math and writing skills. Throughout her elementary and middle school experience, the Student continued to receive special education services and made at least acceptable progress. She received most of her education in the mainstream classroom with resource room support and collaborative support in her middle school academic subjects. She was considered a quiet, cooperative student who put forth great

effort but whose progress through the curriculum was compromised by excessive absences and tardies. (Exhibits B-6, B-8, B-11, B-13, B-23, B-26, B-29, B-33, B-35, B-37, B-38, B-44, B-46, B-50, B-57, Testimony of Mother)

2. During a triennial assessment in grade four, the Student was administered the WISC-III receiving a verbal score of 114 (high average), performance score of 99 (average), and a full scale score of 107 (average). The significant difference found between verbal and performance scores was considered indicative of a processing deficit. In addition, weakness was seen in the area of freedom from distractibility. The special education teacher also noted a processing weakness when the Student had to incorporate a motor response (e.g. writing) with visual or auditory input. (Exhibits B-21, B-25)

3. The triennial assessment administered during the Student's seventh grade year again revealed a significant discrepancy between verbal and performance scores (a verbal score of 107, performance score of 89 and full scale score of 97 on the WISC III). On the Woodcock-Johnson Tests of Achievement-Revised, the Student tested within the average range in reading, but below average in mechanical writing skills and math problems. (Exhibits B-40, B-45)

4. On the eighth grade Connecticut Mastery Test, the Student scored above the state goals in writing and reading but below the state goal in math. (Exhibit B-49)

5. During second grade, the Student was absent 20 days and had 25 tardies. In grade three, the Student had 23 absences and 23 tardies. During fourth grade, the Student was absent on 28 days, some of which was due to mononucleosis. In fifth grade, the Student experienced bouts of chronic mononucleosis as well as anemia resulting in 26 absences and 8 tardies. Modifications were added to her IEP to address the frequent absences. In sixth grade, the Student was absent 31 times and tardy on 11 days. There were 47 absences and 48 tardies in seventh grade. During eighth grade, the Student was absent on 58 days and tardy on 54 days. (Exhibits B-9, B-17, B-27, B-31, B-32, B-36, B-47, B-58)

6. There is no doubt that the Student has experienced multiple periods of ill health. In addition to mononucleosis in fourth grade and the continuing effects of chronic mononucleosis (including chronic fatigue), she has suffered from respiratory infections, sinusitis, coxsackie, strep and other infections, orthopedic problems, headaches, stomachaches, and, during eighth grade, a reaction to an insect bite, surgery to remove a tumor from her shoulder, and a tonsillectomy as a result of which the Student received modified work and grades for the final quarter of eighth grade. At some point, she also had a sleep study performed. The record contains few explanations for absences written by doctors or other health professionals; the Mother testified that there were several but she did not produce them during this hearing. (Exhibits B-51, B-52, B-53, B-54, B-55, Testimony of Mother and Dr. Beth Hapke)

7. On August 28, 2001, a PPT was convened to plan for the Student's 9th grade year at the school district's high school. The Student's Mother was very concerned that the PPT was not attended by anyone from the middle school and felt that the high school staff did not really know the Student and were therefore not prepared to plan an appropriate IEP. It was finally agreed that the Student would take algebra, western humanities, English,

physical education, biology and 3.5 hours per week of study skills. The IEP also included modifications such as extra time for tests, use of a calculator, removal of any spelling penalty and the provision of study outlines. The PPT originally recommended that the Student take earth science instead of biology due to biology's math content, but the Student and her Mother insisted on biology. Counseling was also recommended; the Student and her Mother felt it was unnecessary. During this PPT, attendance policies in the high school were also explained and discussed. (Exhibit B-60)

8. In a progress report dated October 4, 2001, it was noted that the Student was performing well with good effort and a positive attitude. But by November, the PPT met to discuss the Student's excessive absences and her falling behind in her classes. The special education teacher felt that the concepts covered in biology were too difficult for her; the Student's Mother requested a different biology teacher but scheduling conflicts prevented the change. The Student agreed to use her free time to access the academic resource centers but refused additional time in study skills. (Exhibits B-62, B-65)

9. Poor attendance was again addressed by the PPT in a meeting convened on January 17, 2002. Excessive absence was causing the Student to fall farther behind in her work; the Student felt stressed and anxious about the amount of work that needed to be made up. The PPT discussed state mandatory school attendance policies and explained that while the Parent had reported most absences as being due to medical reasons, the medical excuse notes were too vague. The team requested permission to contact the Student's doctors and perform a health assessment; the Student's Mother refused to grant permission. (Exhibit B-71, Testimony of Mother)

10. The Student's poor attendance continued through the winter and spring of 2002. After a bout of bronchitis in March, 2002, the Student found it difficult to make up the work she had missed and became anxious and depressed. In a letter dated April 5, 2002, the Dean of Students at the high school expressed concern about the number of absences and requested doctors' notes to verify illness and specific dates of absence. By May 17, 2002, the Student had missed English and Western Humanities 51 times each. Although the Student attended a PPT on April 29, 2002, she was absent prior to the PPT for two consecutive weeks during which she spent most of her time in bed. Without success, her Parents tried to convince her to attend school both through persuasion and physical force. After April 29, the Student did not attend school again during the 2001-2002 school year. Her refusal to attend school led to a great deal of family stress and caused a rift between the Student and her father. (Exhibits B-72, B-87, B-90, Testimony of Mother)

11. At the PPT dated April 29, 2002, additional study skills classes were added to the Student's schedule and math was dropped. To help the Student meet the requirements of her other academics and to reduce her anxiety with regard to making up the work, it was agreed that the Student would work with the school social worker during the remainder of the school year who would assist in developing an appointment schedule that would enable the Student to meet with her teachers and make up the missed assignments. The Student's Mother agreed to allow the school nurse to conduct a health assessment. It was expected that the Student would attend school the next day, but she did not return to school. Shortly after this meeting, and based upon the Student's continued absences, the school district filed a Family with Service Needs petition with the Juvenile Court. The

Mother believed that this was retaliatory and stopped reporting her daughter's absences. (Exhibits B-79, B-80, Testimony of Mother, Karyn Morgan)

12. Due to her seeming inability to attend school, the Student met with Dr. Frank Safran on April 10, 2002. The Student reported to Dr. Safran that she was so far behind in school that she had no hope of passing so had no motivation to attend school or do any work. Dr. Safran planned to recommend limited tutoring, a psychiatric evaluation, regular psychotherapy and family counseling, but the Student never saw Dr. Safran again due to health insurance issues. School personnel were able to talk to Dr. Safran who agreed with the provision of social work services and felt that the Student could attend school. On May 7, 2002, the Student began meeting with Darren McGregor, a therapist at The New Learning Therapy Center; Mr. McGregor diagnosed depression. (Exhibits B-75, B-83, B-86, Testimony of Karyn Morgan)

13. The school district health assessment was completed on May 13, 2002. The school nurse contacted many of the Student's treating physicians but was unable to determine her current health status as many physicians had only seen the Student briefly and could not provide an in depth assessment of her health. (Exhibit B-87)

14. In a letter dated May 15, 2002, Dr. Beth Hapke described repeated respiratory infections due to the Student's lack of antibodies to a common pathogen. She recommended that the Student receive the pneumovax and flu vaccines in the fall. Dr. Hapke also noted that the Student was anxious about going to school because she had fallen so far behind in her work. Dr. Hapke diagnosed school phobia and recommended that the Student receive home based tutoring until she could catch up with her work; she did not recommend psychotherapy. Dr. Hapke never spoke with any employees of the school district. She testified that from May 15, 2002 through the end of June, 2002, there was no medical reason why the Student could not attend school. (Exhibit B-88, B-89, Testimony of Dr. Beth Hapke)

15. On May 16, 2002, the PPT and the Student's Mother agreed to a psychiatric evaluation. The PPT also agreed to provide the Student with a tutor 10 hours per week in English, Western Humanities and biology. An appointment for the psychiatric evaluation was made with Dr. Stubbe which the Parent was unable to keep. Thinking that another appointment with Dr. Stubbe would be impossible to obtain in the very near future, the Mother obtained an appointment at her own expense with Dr. Ilana Karpenos. The school district was able to reschedule the appointment with Dr. Stubbe but the Mother refused to bring the Student believing that an evaluation by Dr. Karpenos was sufficient. On June 3, 2002, the Student's Mother revoked her consent for a psychiatric evaluation by a school district-appointed psychiatrist. (Exhibits B-89, 91, B-92, B-93, B-94, B-95, B-97, B-100, B-103, P-9, Testimony of Mother)

16. Dr. Karpenos saw the Student on May 29 and 31, 2002. She diagnosed the Student with Adjustment Disorder with Depressed Mood. She recommended continued educational tutoring, psychological testing, implementation of the IEP through a combination of mainstream classes and individual help in the following school year, support for the Student when she missed school, and meetings with the guidance counselor to assure adherence to the IEP. Dr. Karpenos noted that no major psychiatric

diagnosis should preclude the Student from attending school in the fall. It is not clear what educational documents Dr. Karpenos reviewed with regard to the Student; her evaluation does not incorporate any current or past school records. Dr. Karpenos never spoke to any employees of the school district. (Exhibits B-98, P-1, Testimony of Karyn Morgan, Dr. Barbara Fischetti)

17. The PPT reviewed Dr. Karpenos' evaluation on June 18, 2002. Dr. Fischetti explained that Dr. Karpenos' diagnosis of adjustment disorder usually refers to a temporary reaction to a stressor that can last up to six months; the Student's condition seemed more chronic and long term. The team concluded that more information as well as concrete educational recommendations were needed. They requested permission from the Parents to speak to Dr. Karpenos; permission was not given. Because there was still no clear diagnosis to explain the Student's extended absences, the PPT again requested a psychiatric evaluation by a school district psychiatrist; the Student's Mother continued to refuse permission. (Exhibit B-106, Testimony of Dr. Fischetti)

18. The Student received tutoring through the end of July, 2002. Her tutor reported that the work was completed satisfactorily. The tutor also noted that the Student's effort varied; she often looked for shortcuts in the curriculum and attempted to control the study structure. However, the Student did receive credit and a "pass" grade for the subjects she covered during tutoring. She finished ninth grade with 3 3/4 credits (normally, ninth graders complete 7 to 8 credits). (Exhibits B-102, B-107, B-109, B-110, B-111, B-112, Testimony of Karyn Morgan)

19. The Student began tenth grade with good attendance. Her IEP included 3 hours per week of study skills and one half hour per week of social work and classroom modifications. At a PPT convened on September 3, 2002, the Student's Mother expressed her desire to remove the Student from special education and also stated that the Student's therapists felt emotional assistance was no longer necessary. Members of the PPT stated that the triennial evaluation needed to be scheduled. The Student's Mother agreed to wait for the results of the triennial before removing the Student from special education, but stated that the goals and objectives of the IEP were inappropriate and no longer necessary. (Exhibit B-117)

20. As confirmed by a doctor's note, the Student missed school on September 10, 2002 for sinusitis, on September 19, 2002 for a stomach virus, and on September 30, 2002 for a viral syndrome (coxsackie). During the month of October, 2002, the Student missed English class 13 times, algebra 11 times, physical science 9 times, U.S. History 13 times, drawing 13 times and study skills 15 times. On some days, the Student attended school for a portion of the day. On November 8, 2002, Dr. Hapke provided a medical excuse (sinusitis and bronchitis) for October 11, October 15 and October 18, 2002, although on October 16 and 17, 2002, the Student attended an overnight field trip to Philadelphia with her German class; this was approved by her doctor who felt it was better to be up and about than lying in bed. Medical documentation was not provided for the other October absences. Based upon the Student's continuing absences, the school district filed another Family with Service Needs petition. (Exhibits B-118, B-121, B-123, B-133, B-136, B-138, B-139, B-144, Testimony of Dr. Beth Hapke)

21. The triennial evaluation was completed during September and October, 2002. On the WISC-III, the Student received a verbal score of 110, performance score of 99 and a full scale score of 105 (average range). The Student's overall level of achievement fell within the average range although her math calculation skills fell within the low average range and her basic writing skills were significantly lower than would be predicted by her oral language ability. Processing deficits within the executive function system were also noted as well as somewhat weak fine motor skills. On Child Behavior Checklists, the Student presented herself as well adjusted; her teachers noted no significant social-emotional issues although they were all concerned about her absenteeism and withdrawn behavior. The Student's Mother testified that the triennial presented what she felt was an accurate picture of her daughter. (Exhibits B-119, B-125, Testimony of Dr. Fischetti, Mother)

22. The triennial evaluation was reviewed by the PPT on November 7, 2002. The school psychologist agreed to conduct a staffing with the Student's teachers to review the testing results. The Mother reported that the Student had met with Dr. Fischler of the Mid-Fairfield Child Guidance Clinic that morning and that he had recommended family counseling and that the Student not be forced to attend school. The Mother also stated that the Student had received the pneumovax and flu virus injections and that recent absences had not been due to illness although Parents continued to notify the school that the Student was excused. The PPT again requested a psychiatric evaluation in order to obtain additional information and to determine what educational supports were needed; the Mother again refused permission and rejected the IEP as not adequately addressing the Student's learning issues. (Exhibits B-132, P-23)

23. The Parents obtained counsel in November, 2002. A PPT was convened on January 2, 2003; Parents' attorney was unable to attend but the Parents agreed to go forward with the PPT solely to discuss the issue of homebound tutoring. Parents notified the PPT that they had obtained a neuropsychiatric evaluation by Dr. Koch and that he recommended that the Student not attend the school district's high school. School district members of the PPT stated that homebound tutoring was not recommended as it had not been successful in returning the Student to school and would address neither her educational nor her emotional needs. The PPT recommended a diagnostic placement at a therapeutic setting. Although the Parents angrily left the PPT when homebound tutoring was denied, the PPT continued to discuss possible placements. The PPT recommended Cooperative Educational Services ("CES") as a diagnostic placement and formulated questions to be answered by a psychiatric evaluation. (Exhibits B-142, B-143, B-146, B-147, B-149, B-151, P-22, Testimony of Karyn Morgan)

24. CES is a regional educational service center that is part of the public school system. The school serves students in grades one through twelve who have demonstrated emotional and behavioral difficulties and/or mild to serious psychiatric issues. The high school serves 40 to 46 students in six self contained classrooms with a staff consisting of special education teachers, social workers and school psychologists, a reading specialist, and speech and language and occupational therapists. A consulting psychiatrist provides direct service and medication monitoring as needed. Dr. Daniel French reviewed some of the Student's records and testified that CES would be an appropriate placement for the Student. (Testimony of Dr. Daniel French)

25. Although the school district filed for due process on April 29, 2003, they offered to provide 15 hours of tutoring for 10 weeks on the condition that the Parents consent to a psychiatric evaluation by the Board's psychiatrist. Parents refused but requested that homebound tutoring begin immediately; homebound tutoring was not provided. (Exhibits B-152, B-153, B-154, P-5)

26. At the Parents' request, Dr. William Koch performed a neuropsychiatric evaluation in November, 2002. After a two hour examination, Dr. Koch diagnosed a central auditory processing disorder, receptive and expressive language disorder, visual-motor dysfunction, dyslexia, dyscalcula, attention deficit disorder, depression and school avoidance disorder. These diagnoses were based upon interviews with the Student and her Mother, a review of educational documents provided by the Parent, administration of the Bender-Gestalt Test, Gray Oral Reading Test, a non-standardized test for central auditory processing and memory, and a "house-tree-person" drawing test. He never spoke to any school district employees. Dr. Koch concluded that the Student's primary problems were her learning disabilities and that her depression and school avoidance were secondary, situational and the result of her learning difficulties. Dr. Koch believes that if the learning disabilities are properly addressed, the emotional problems will disappear. He recommended psychotherapy, a central auditory processing evaluation, an appropriate out of district placement and tutoring until the placement is made. Dr. Koch testified that he also recommended a trial of ritalin but that the Student refused. Dr. Koch met with the Student again on July 22, 2003 at which time he found her to be functioning quite well and to have no significant social-emotional problems other than her unwillingness to return to the school district high school. He testified that due to her humiliation and his belief that her learning difficulties were not appropriately addressed by the school district, the Student should not return to the high school under any circumstances and should also not be placed in a school for emotionally disturbed students. The Student is aware of Dr. Koch's recommendations. (Exhibits B-158, P-2, P-6, Testimony of Dr. William Koch)

27. In March, 2003, the Parents obtained an Auditory and Language Processing Evaluation by Dr. Donna Geffner, Director of the Speech and Hearing Center at St. John's University. Dr. Geffner diagnosed significant auditory and language processing deficits and recommended placement with normal students in small classes. She also recommended preferential seating, extended time for testing, accommodations in foreign language requirements, a program to address phonemic awareness, computer software to assist with writing, counseling, and reconsideration of pharmacological intervention. (Exhibits P-3, P-24)

28. The Student has not attended school since mid-October, 2002. Dr. Hapke testified that there have been no medical issues that would have kept the Student out of school since October, 2002. Dr. Hapke also testified that she has not spoken to any of the Student's therapists or evaluators. During the 2002-2003 school year, the school district has not had parent permission to speak to any of the Student's health providers. The school district has not provided any direct educational services or homebound tutoring since October, 2002 nor is it clear what, if any tutoring or educational program the Student has received since then. (Testimony of Mother, Karyn Morgan, Dr. Beth Hapke)

CONCLUSIONS OF LAW:

1. Both parties agree that the Student, who has been identified as having learning disabilities, is entitled to a free and appropriate public education (“FAPE”) with special education and related services as provided for under the provisions of Connecticut General Statutes Sections 10-76 et seq. and the Individuals with Disabilities Education Act (“IDEA”) 20 U.S.C. 1401 et seq.
2. The evaluation issue was raised by the school district which requested that the hearing officer order a psychiatric evaluation by the school district’s choice of psychiatrist after the Parents refused consent. 20 U.S.C. Section 1414(a)(2) states that an educational agency shall ensure that a reevaluation of each child with a disability is conducted if conditions warrant a reevaluation or if the child’s parent or teacher requests a reevaluation, but that a reevaluation must occur at least every 3 years. Therefore, the school district is obligated to conduct evaluations.
3. 20 U.S.C. Section 1414(c)(3) requires the educational agency to obtain informed parental consent before conducting such reevaluation. Absent such consent, the school district may, as here, request due process and seek an order from a hearing officer. (C.G.S. Section 10-76(d)(1)).
4. 20 U.S.C. Section 1414(b) requires that a school district provide the parents with notice of the evaluation procedures proposed. Such notice was provided here. The school district’s desire to conduct a psychiatric evaluation was brought up at several PPT meetings. The Parents clearly understood what was being requested and based upon that understanding, refused their consent.
5. Case law supports the right of a school district to choose its own evaluators as long as the evaluations and evaluators meet the requirements of 34 C.F.R. Section 300.532(c)(ii). This section requires that standardized tests be administered by trained and knowledgeable personnel. The Parents have not disputed the qualifications of the school district’s proposed evaluators.
6. In Vander Malle v. Ambach, 673 F.2d 49 (1982), the Second Circuit held that the local educational agency, in determining the appropriate placement, was entitled to an evaluation by an evaluator of their own choosing. In Dubois v. Connecticut State Board of Education, 727 F.2d 44 (1984), the Court cited Vander Malle in holding that a school system may insist on an evaluation by qualified professionals satisfactory to the school officials. In Andress v. Cleveland Independent School District, 22 IDELR 1134 (1995), the Fifth District held in a case involving reevaluation that if a student’s parents want him or her to receive special education under IDEA, they must allow the school to reevaluate the student; parents cannot force the school to rely solely on independent evaluations.
7. The Parents here clearly believed that a psychiatric evaluation was in order; they sought at least two such evaluations on their own. They claim, however, that another

psychiatric evaluation is unnecessary and would be redundant. Parents believe that the school district would now have sufficient information on which to rely if they had only properly considered the evaluations obtained by the Parents; but that is not the case.

8. While there is no doubt that both Dr. Koch and Dr. Karpenos are qualified and competent, their evaluations were completed after only one or two visits with the Student, without input from any school district personnel, and with only the educational records and information deemed relevant by the Mother. The Mother claims that she asked the PPT to provide further questions that she would then convey to her evaluators, but she never provided the PPT with direct access so that school employees could have the kind of “give and take” communication necessary in such a complex situation. While both reports provide some insight into the Student, neither evaluation provides data that translates into information usable for purposes of preparing an IEP with appropriate goals and specific objectives. In addition, neither evaluation specifically addresses the real issue here: that is, how to get the Student to attend school on a regular basis. Dr. Koch totally dismissed the possibility of the Student ever attending the school district’s high school again. (It is highly possible that her knowledge of this recommendation has only strengthened the Student’s decision not to attend the school district’s high school.) The general recommendations made by Dr. Karpenos were actually followed by the school but did not result in reduced absenteeism.

9. Therefore, the school district, in accordance with 20 U.S.C. Section 1414(a)(2), must be allowed to obtain a psychiatric evaluation. Conditions clearly warrant this evaluation. While there is no doubt that many of the Student’s absences have a legitimate basis, the long term, chronic nature of her absenteeism and health issues require an in-depth investigation. Dr. Hapke testified that many of the Student’s recurring infections did not require that she stay home until she was totally cured nor did she recommend this course of treatment. In fact, from mid-October, 2002 to the present, Dr. Hapke knew of no medical reason why the Student could not attend school. How was the Student able to participate in an overnight field trip to Philadelphia while in the middle of a bout of sinusitis and bronchitis serious enough to keep her at home immediately before and after the field trip? A good explanation for the extended nature of many of these absences simply does not exist, but it certainly appears to be more than medical. From second grade through the end of eighth grade, the Student missed at least 213 days, more than a full school year (and this does not include the many days she arrived late). In ninth grade, the Student missed over two months of school; and in tenth grade she attended school for less than a month and a half. This level of absenteeism is beyond anxiety about falling behind in one’s work or allegations of inappropriate IEP’s. This behavior, whether it is called school phobia, school avoidance or adjustment disorder with depressed mood, is atypical and requires that a psychiatrist perform an evaluation based upon full access to all school and medical records as well as unfettered communication with family and school personnel.

10. While it is hoped that a complete psychiatric evaluation will yield some explanations for the Student’s behavior, the goal of the evaluation should be a comprehensive plan that will return the Student to school and keep her there. The evaluation must specifically detail a plan that provides the supports the Student will need to re-enter school and maintain an acceptable pattern of attendance. This plan must be explicitly explained to

the Student, her family, and all school personnel working with her. In addition, oversight of the plan's implementation must be maintained to prevent any regression. It will require the full cooperation and understanding of the Student, her family and the school.

11. The Mother has argued that inappropriate educational programming is the real issue. While the Student was relatively successful in elementary and middle school, the Mother claims that high school IEP's did not effectively program for the Student's learning difficulties and did not provide appropriate assistance when she returned to school after an illness, thus causing her to fall behind in her classes. This made the Student so anxious and hopeless about her ability to catch up that she made the decision not to attend school. It is difficult to determine the validity of this claim. In ninth grade, the PPT made educational recommendations that the Student and Mother refused to follow (see Finding of Fact No. 7). After an extended absence, the PPT proposed a plan to support the Student's re-entry into school (See Finding of Fact No. 11). This plan may not have been sufficiently comprehensive, but we will never know as the Student did not return to school that year so the plan could never be implemented. During tenth grade, the Student was absent a number of days before mid-October, at which point she completely stopped attending school. Based on this attendance record, it is almost impossible to determine if any IEP ever had any chance of success.

12. Despite the Student's abysmal attendance record, it appears that the school district has very reliable information with regard to the Student's educational needs. The triennial evaluation yielded a good picture of the Student, one that even the Student's Mother felt was accurate (See Finding of Fact No. 22). Most people who have worked with the Student have found her to be cooperative, creative, intelligent and interested in learning. Combined with other evaluations performed by the school district and the evaluations of Dr. Koch, Dr. Karpenos and Dr. Geffner, there is no reason why the school district should not be able to design an appropriate IEP for the Student. What is missing is the psychiatric piece, that information that could help determine what is holding the Student back from a successful high school career.

13. Based upon what the school district knows about the Student, their request for a diagnostic placement at CES is not appropriate. CES accepts students who have displayed emotional and behavioral difficulties in school. The Student has displayed neither of these *in* school. She just refuses to come *to* school. The school district has a good understanding of the Student's educational needs but they do not understand how to support the Student appropriately so she will attend school. This information is best obtained through a thorough psychiatric evaluation rather than a disruptive diagnostic placement in a totally different school (which might even exacerbate the Student's school refusal behaviors). The school district must focus on returning the Student to the school district's high school; sending the Student to CES unnecessarily changes that focus.

14. The school district based its refusal to provide homebound tutoring during the 2003-2003 school year upon their belief that tutoring would not address the Student's educational or emotional needs and had not been successful in returning her to school. Actually, the Student did return to school in September, 2002 after tutoring during the spring and summer of 2002, albeit not for long. Even assuming the PPT was correct in their thinking, their decision not to provide the Student with any educational services

throughout the winter and spring of 2003 was unreasonable. Although the school district was correct in their request for a psychiatric evaluation, and were correct from the first time they made the request, there was certainly enough information available for the school district to conclude that the Student had some serious issues. As such, educational services should have been provided to the Student during this period. While this was not an issue in the hearing, this is a serious lapse. The school district should examine its procedures in this regard.

15. As stated above, the refusal of the school district to provide tutoring was not an issue in this hearing. However, since the central situation here is the Student's refusal to attend school, her lack of educational services can not be ignored. Therefore, while the psychiatric evaluation is taking place and a plan is being formulated to assist the Student in returning to school, the school district shall provide appropriate homebound tutoring if, at the time this decision is issued, the Student is still not attending school regularly. Homebound tutoring shall continue until the Student has returned to school on a regular basis. The decision to discontinue tutoring shall be made by the PPT in consultation with the psychiatrist, and only with the psychiatrist's agreement.

16. The Mother also argued that the PPT of January 2, 2003 was illegal because the meeting was not confined solely to the issue of homebound tutoring as she requested and because the meeting continued after the Parents left. While disregard of the Parents' wishes is certainly not in the spirit of the IDEA, the Parents can not require a meeting to end because they choose to leave. Similarly, Parents can not decree that only one issue may be discussed at a PPT and then claim that the PPT is illegal if any other issues are raised. While the school district's actions at this PPT certainly did not further the relationship of the Parents and the school district, it did not violate any statute or regulation.

17. The Mother is to be commended not only for her obvious devotion to her daughter, but for her remarkable efforts in representing her during this hearing. Although she is not an attorney, the Mother presented her case competently and effectively. She took on a task that is difficult even for experienced attorneys and did an extraordinary job.

FINAL DECISION AND ORDER:

1. A comprehensive psychiatric evaluation of the Student by the school district's psychiatrist is hereby ordered. The psychiatrist shall be directed to create a plan as described in Conclusion of Law number 10. Parents shall make the Student available for the evaluation.
2. Homebound tutoring shall be provided by the school district in accordance with Conclusion of Law number 15.
3. Diagnostic placement of the Student at CES is neither necessary nor appropriate.