

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 12

Appearing on behalf of the Parent:

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Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Are the Individualized Education Program (IEP) and placement offered by the Board of Education appropriate to Student's special education needs in the least restrictive environment?
2. If not, is placement at Eagle Hill in Greenwich appropriate?
3. If Eagle Hill is an appropriate placement, is the Board responsible for funding that placement?

PROCEDURAL HISTORY:

This hearing was requested on September 27, 2005, and the Hearing Officer was appointed on October 6, 2005. A pre-hearing conference was held October 17, 2005, and at that time the parties requested an opportunity to engage in settlement negotiations. Therefore, the deadline for mailing the final decision and order was extended from November 14 to December 14, 2005. The hearing was scheduled to convene on November 20, 2005, if mediation was not successful.

When the hearing convened on November 20 the parties requested additional hearing dates. The decision deadline was extended from December 14, 2005, to January 13, 2006, and thence to February 12, 2006. The additional sessions were scheduled for January 18, 25 and 26, 2006. On January 17, the Parents' attorney asked that the January 18 session be postponed because of a medical emergency, and that request was granted. When the hearing convened on January 25 with another attorney from the same firm representing the Parents, one of the Parents' witnesses was unavailable due to a family emergency, and the Board's attorney asked that the January 26 session be postponed because of a family emergency. This postponement was granted and additional hearing dates were scheduled for March 1, 6, and 10, 2006. The deadline for the decision was again extended, from February 12 to March 14 and thence to April 13, 2006. On March 6, 2006, the parties requested an additional day, and March 30, 2006 was selected. The deadline for the final decision and order was again extended, to April 30, 2006.

Witnesses who appeared for Parents were: Student's Mother and Father; a consulting psychologist who had evaluated Student in 2004; and Student's current Educational Advisor at Eagle Hill. The Board called Student's Third Grade Teacher in the Board's Elementary School (2002-2003); Student's Fourth Grade Teacher in the Board's Elementary School (2003-2004); and Student's Special Education Teacher in the Board's Resource Room and in Regular Education Classes, First through Fourth Grades (2000-2004). The Board's Director of Pupil Personnel Services was called by both parties.

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

SUMMARY:

Parents believe that the Board has not provided a free appropriate public education to their son, and have unilaterally enrolled him at Eagle Hill, a private school approved for special education by the Connecticut State Department of Education. The Board believes that its program has been appropriate and continues to be appropriate.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp.816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student is now twelve years of age (birth date March 2, 1994) and attending Eagle Hill School-Greenwich. He was identified as in need of speech/language (S/L) services in the Birth to Three program, and received services in that program. He was evaluated for pre-school services by the Board on February 28, 1997. The team recommended a program to address speech delays and personal-social development. (Exhibits B-1, B-2, B-3; Testimony, Mother)

2. An evaluation dated April 20 & 21, 1998, at the end of his first year in the Board's pre-school program, included a summary:

[Student's] Perceptual Discrimination skills, and his Conceptual Development skills are within average, while he displays some weakness in Memory, and Reasoning and Academics. He shows a 6-month delay in overall cognitive development.

Peer-interaction, pretend play, and social role are areas of weakness. He has some good adult interaction skills, as well as coping skills. He is attending to activities and participating regularly.

This student has made improvements in his fine motor and visual motor skills. His skills are now in the low average range for his age. [Student] attends better and accepts the assistance he is given.

and recommendations:

The REACH Team recommends that [Student] continue to attend REACH Preschool program for the 1998-1999 school year, with a three/half day week to address concerns with:

- Speech and Language delays
- Personal-social development
- Cognitive delays.

Indirect occupational therapy is recommended to enhance development of fine motor skills. [Student] continues to require speech therapy services in a direct manner. We also recommend placement in the Summer REACH Program to prevent regression. (Exhibit B-5)

3. A progress report from Student's teacher in the REACH program, dated March 31, 2000, while he was attending both kindergarten and REACH, documented both progress and continuing concerns:

[Student] has exhibited much improvement within the last three weeks in all areas of his special education program at REACH. He appears extremely comfortable and relaxed in his new class setting where class size has been reduced and opportunities for quiet play increased. In general, [Student] has shown the greatest improvement in his socialization in small groups. His friendliness has improved relations with others and he has shown a greater ability to cope with

problem solving in play. This relaxed affect has also transferred to our language circle where he has done well following class rules and showing an interest in reading and language activities.

[Student] has responded well to his behavior program in both settings. We have had no serious incidences of aggression, although non-compliance, at times, is still present. Transitions are still difficult for [Student] and he often avoids less pleasant tasks of clean up and ending circle. He often needs to be coaxed to do more academic tasks even though his work at the activity center is often excellent. A continuing area of concern is [Student's] fleeting attention during teacher-directed tasks. His resistance is distracting to his performance and he sometimes jumps into a task before listening to directions. It is interesting that although [Student] works better on a one-to-one or with a partner, he often resists the attention and prefers to stay in the larger group. During assessments, it is evident that [Student] has made nice progress in readiness areas within the last month. (Exhibits B-8, B-9-7)

4. The Board and Parents referred Student for an Interdisciplinary Evaluation at the Connecticut Children's Medical Center (CCMC). The report of this evaluation, dated May 8 and 18, 2000, included comments concerning language, behavioral and attentional issues and resistance to some testing tasks. Although Student's acquisition of general knowledge in science, social studies, and the humanities was "securely within average age expectations", he had weaknesses in basic readiness skills, written language, and acquisition of quantitative skills. The evaluators noted motivational and attentional factors that may have lowered Student's scores in formal testing. They reported a Verbal IQ of 90, a Performance IQ of 81 and a Full Scale IQ of 84. Student did well with social knowledge, social reasoning, and fine visual motor coordination, although he tested weaker in visual-perceptual-motor abilities and attention. An on-site observation of Student's school day and consultation with his teachers yielded additional comments about his behavior and school performance:
 - Significant impulsivity, unpredictable behavior, apparently unprovoked aggression towards teachers and peers – some improvements in behavior after interventions.
 - Notably distractible and inattentive. Attention and concentration problematic in all settings.
 - Restless in the classroom.
 - Speech and language difficulties.
 - Social difficulties: inconsistent eye contact, difficulty sharing items, does not normally initiate play with other students, and when he is playing with others, likes to be in charge.
 - Special education teacher reported that he "thrives on compliments" and does better in small groups. The behavior management program was no longer needed in his special education class.
 - Some difficulty generalizing rules of behavior.
 - Sensory issues, including problems with noise.
 - Acquisition of basic readiness skills lags. (Exhibit B-9)

5. The CCMC evaluation included many recommendations, including continuing the combination of mainstream placement with resource room support and individual support in the regular classroom. A transitional or K-1 program offering a lower pupil/teacher ratio or a collaboratively taught program was recommended. The report provided a list of recommended program components, including a structured behavior management plan to address attentional as well as behavioral issues; S/L therapy, occupational therapy (OT), special education to address weaknesses in acquisition of skills in reading/spelling and mathematics, accommodations and modifications in the classroom to address attention and concentration, paraprofessional support as needed, and participation in a social skills group. Also recommended were a specialized reading program, specialized math program, and specific classroom accommodations and modifications. The CCMC team provided specific S/L techniques to be used in therapy and specific behavior management suggestions, plus individual counseling, social skills training, and behavior consultation with a pediatric psychologist for Parents. CCMC also recommended ongoing monitoring of progress, with a formal assessment in 12 to 18 months. (Exhibit B-9)
6. The Board's Planning and Placement Team (PPT) met on June 13, 2000, to review Student's progress and to plan for the next year, Student's first grade year. The CCMC report had not yet arrived. Mother was present. Special education, S/L, OT, and social skills were to continue in the first grade classroom and the resource room. Student was listed as "uncategorized". The PPT developed the following goals and objectives for Student:
 - To improve interpersonal relations ...
 - To improve organizational skills ...
 - To improve attention and focus to comply with adult directive[s] ...
 - [Student] will develop beginning reading readiness skills ...
 - [Student] will improve visual perception to improve achievement with readiness skills ...
 - To increase speech intelligibility ...
 - Student will improve fine motor skills so that he can manipulate classroom materials more effectively and successfully participate in educational activities.
 - Student will improve visual motor skills so that he can successfully participate in educational activities including graphomotor tasks in the classroom.Student's school week would include 23-3/4 hours in a regular classroom (with individual support as needed), five hours in the resource room, 45 minutes of OT and 1/2 hour of S/L therapy. A variety of classroom modifications and adaptations were to be provided in all subjects as needed, and a classroom assistant would be provided full time to monitor behavior, attention, and to assist with lessons. (Exhibit B-10)
7. The record for this hearing did not include documentation for PPT meetings during Student's first and second grade years, when the CCMC evaluation would likely have been discussed. However, many of the CCMC suggestions were incorporated in Student's program. (Exhibits B-9, B-19)

8. During Student's second grade year (2001-2002), he was given the WISC-III by a clinical psychologist. The results of this May, 2002, evaluation showed a Verbal IQ of 108, a Performance IQ of 105, and a Full Scale IQ of 100, within the average range. This evaluator commented that Student's "abilities to sustain attention, concentrate, and exert mental control are a weakness relative to his [good] verbal reasoning abilities". Other assessments administered by his Special Education Teacher included percentile scores on the WIAT II in reading, 12; mathematics, 27; written language, 23; and oral language, 58. He scored in the 16th percentile on the Developmental Test of Visual Motor Integration; the 22nd percentile in Auditory Perception Skills by Gardner; and the 58th percentile in Visual Perception Skills by Gardner. (Exhibits B-12, B-13, B-14)
9. In May, 2002, Mother reported to Student's special education teacher that the clinical psychologist had confirmed a diagnosis of Attention Deficit Disorder (ADD) for Student. In her communication, Mother also mentioned that Student's medication would be increased. (Exhibit B-15)
10. Student's Resource Room Teacher provided a special education progress report dated June 2, 2002, with an overall effort grade of excellent. She reported improvement in reading and math, with variability in impulse control during unstructured times. Despite variability, his sharing, tolerance, and appropriate language toward peers had also improved. (Exhibit 16; Testimony, Special Education Teacher)
11. Student's Resource Room Teacher reported progress in special education on November 29, 2002, as excellent effort. She noted improvements in reading, math, and social skills, as well as a beginning in written language. (Exhibit B-18)
12. The Board's PPT convened on April 29, 2003, (Student's third grade year) with both Parents present. Student was identified as Speech or Language Impaired and his special education needs were summarized as:
Written expression, reading comprehension, and academic support for application of skills.
He was to have a paraprofessional full time in class. A triennial evaluation was discussed. A note on the PPT meeting summary page: "PPT recommends: add objective to or with social skills #3 Plan/Consult with school Psychologist for social skills". An extended year program was recommended. (Exhibit B-19)
13. The April 29, 2003, PPT listed Present Levels of Educational Performance in third grade as:
Health & Development: Other: (ADD – medicated).
Academic/Cognitive: Ability WISC III [scores from evaluation cited at Finding of Fact #8 and other scores, some illegible].
Social/Emotional/Behavioral: Other: attention focus, Test of Auditory Processing ss 79.
Motor: Other: Motor planning VMI ss 92; Visual perception TVPS ss 97, visual discrimination ss [illegible]; visual sequential memory ss 69.

Communication: Other: see report.

Activities of Daily Living: Age Appropriate.

Vocational: NA due to age.

Strengths: friendly, personable with adults; **Concerns/needs:** visually processing, freedom from distractions, attention, focus, reading comprehension, written composite, spelling and social skills. (Exhibit B-19-4)

14. Goals developed by the PPT on April 29, 2003, included:

Student will improve reading skills ...

Student will improve written expression skills, to ability level ...

Student will improve social skills

Student will improve auditory perception skills ...

Student will improve grade level achievement with mathematics application, reading application and other academic skills ...

To improve written communication through fine motor skills and improved visual motor skills, including motor planning skills.

To develop the understanding and correct use of implied meanings ...

To improve narrative skills by achieving ...

To develop listening skills ...

To develop vocabulary ...

To improve sentence structure ...

To improve speech intelligibility ...

Student was to receive 8½ hours of special education services per week, including direct reading instruction by the special education teacher or assistant, reading, writing and math instruction by the special education teacher or assistant, S/L therapy and OT. (Exhibit B-19, 5-21)

15. The objectives for Student's April 29, 2003, IEP written communication goal, to improve written communication through fine motor skills and improved visual motor skills, including motor planning skills, were:

(A) Student will use accurate fingering on the computer keyboard for all letter keys, with only occasional glancing at the keys, proceeding at a moderate pace.

(B) Student will write original paragraphs in printed writing with accurate letter formation, accurate sizing, and placement of letters on the line, utilizing a fingertip pencil grip, proceeding at a moderate pace with 80% accuracy.

(C) Student will write paragraphs in cursive writing with accurate letter formation, accurate sizing, and placement of letters on the line, utilizing a fingertip pencil grip, proceeding at a moderate pace with letter strip available for reference and 80% accuracy.

This goal and all three objectives were graded "satisfactory progress – Likely to achieve goal" in December 2003, March 2004, and June 2004. (Exhibit B-19, 13)

16. Program modifications and adaptations in Student's 2003-2004 IEP included:

Materials/Books/Equipment: modified worksheets as needed.

- Tests/Quizzes/Time:** extra time- tests; preview test procedures; rephrase test questions, directions; extra response time; simplify test wording; extra time-written work; and reduced reading.
- Grading:** no spelling penalty.
- Organization:** post routines; pocket folder for work; visual models.
- Environment:** preferential seating; study carrel.
- Behavior Management/Support:** daily feedback to student; positive reinforcement; break between tasks.
- Instructional strategies:** check work in progress; extra drill/practice; use manipulatives; monitor assignments; multi-sensory approach; number line; review sessions; concrete examples; pre-teach content; review directions; repeat instructions; visual reminders; have student restate information; support auditory presentations with visuals. (Exhibit B-19, 24)
17. Student's Resource Room Teacher's special education progress report dated June 7, 2003, (end of third grade year) again rated effort as excellent. She noted hard work in "a combination of inclusion, individualized and small group instruction". He showed progress in reading, writing, and mathematics. Although he was doing well working independently in his seat, attention and focus were problems, and he had "continued difficulty" with auditory information in class.
- [Student] has had intermittent difficulty with working cooperatively and self-control during unstructured times this marking period. At times, he has been more impulsive with his actions. We'll continue to monitor and encourage [Student] to use appropriate strategies to work with peers and make good choices with behavior. (Exhibit B-21, 1)
18. Student's third grade report card showed "modified grades/curriculum". He had "satisfactory" for effort, work habits and social skills in reading comprehension, language skills, written expression, mathematics, social studies and science. In these subjects he had grades of A (3); B (8) and C (13). In foreign language, art, music and physical education, he had "very good" effort, work habits, social skills, and ten A's and two B's. Under work habits and social skills, he had mostly "satisfactory" except for "completes assignments in reasonable time" (one satisfactory and two very goods) and "completes homework on time" (three very goods). (Exhibit B-22)
19. A November 23, 2003, Resource Room Teacher's Progress Report showed "Satisfactory +" effort. Progress was reported in reading, writing and mathematics. Social skills were improving, with more "flexible thinking" and shifting attention from one activity to another. Unstructured times were still a challenge. (Exhibit B-21, 2)
20. A March 10, 2004, Progress Report from Student's Resource Room Teacher showed excellent effort and improvement in reading, writing and mathematics. He still showed impulsivity and difficulty with self-control during unstructured times. (Exhibit B-23)

21. The PPT met on March 23, 2004, Student's fourth grade year, to review his progress. Mother attended this meeting with an advocate. Student was identified as Speech or Language Impaired. PPT recommendations:

- Provide (7½) hrs. week resource program – individualized reading, small group math, inclusion writing + academic support.
- OT recommended ½ hr. wk cont.
- Speech 1 hr week recommended
- Introduce (inclusion) reading group
- E[xtended] S[chool] Y[ear] recommended for reading, math, writing 4½ hr wk for 6 wk
- Evaluation recommended by PPT (with parent permission – forward copies of evaluations)
- Reconvene when eval. is completed.
- Social skills goal cont. consult with psychologist as needed.

Strengths: hard motivated; reading skills stringer; social skills improved; pleasant, cooperative; verbally strength. **Concerns:** [Student] continues to need remediation with math and reading; writing & academic support; frustrates easily; application of skills hard; he processes slowly and fatigues easily with writing and math (need small group); can be impulsive; auditory processing weak; improved social skills but still needs improvement. (Exhibit B-26)

22. A testing summary dated March 23, 2004, showed “some scatter” of standard scores in achievement by age. Reading had improved, but his written expression and written composite were below average. Math scores were weaker, and he had difficulty with processing auditory information and some isolated visual skills. (Exhibit B-24)

23. Student's April 29, 2003, IEP noted progress on goals and objectives on 6/03, 12/03, and 3/04, which may have been available to the March 23, 2004, PPT:

Reading skills 3/04: three Mastered (M); five Satisfactory Progress+ (S+); and one Satisfactory Progress (S). (Exhibit B-19, 5-7)

Written expression 3/04: one M; two S+. (Exhibit B-19, 8)

Social Skills 3/04: one M; two S+; and one S. (Exhibit B-19, 9-10)

Auditory perception 3/04: one S++; two S+. (Exhibit B-19, 11)

Grade level achievement in academic skills 3/04: two S+; one S. (Exhibit B-19, 12)

Written communication 3/04: two S; one S-. (Exhibit B-19, 13)

Implied meanings 3/04: one M; one S. (Exhibit B-19, 14)

Narrative skills 3/04: one S; two In Progress (O). (Exhibit B-19, 15)

Listening skills 3/04: two M. (Exhibit B-19, 16)

Vocabulary 3/04: three M; one S/M; one S; one O. (Exhibit B-19, 17)

Sentence structure 3/04: one S; two O. (Exhibit B-19, 19)

Speech Intelligibility 3/04: one S; two O. (Exhibit B-19, 20)

24. The March 23, 2004, PPT established goals and objectives for Student's fifth grade year. Goals were:

[Student] will improve written expression skills ...

[Student] will improve reading skills ...

[Student] will improve mathematics ...

[Student] will improve auditory perception skills ...

[Student] will improve grade level academic achievement, as well as application of academic skills ...

Student] will improve social skills ...

To improve speech intelligibility ...

To develop listening skills ...

To develop vocabulary ...

To improve narrative skills ...

Will improve written communication through improved fine motor and visual motor skills.

Student was to receive 8½ hours of special education services per week, to include ½ hour a day of direct reading instruction and one hour a day math and writing instruction, from a special education teacher or paraprofessional, one hour a week of S/L therapy, ½ hour a week of OT, and consultation with a psychologist for social skills. (Exhibit B-26)

25. Student's March 23, 2004, IEP was marked for progress 6/04:

Written expression: one S+; two S-. (Exhibit B-26, 5)

Reading skills: three S+; two S; one S-. (Exhibit B-26, 6)

Math skills: two S++; two S; two S-; two O+. (Exhibit B-26, 8-10)

Auditory Perception: two S+; one S. (Exhibit B-26, 11)

Grade level academics: one S-; two O+. (Exhibit B-26, 12)

Social Skills: two S-; two O+. (Exhibits B-26, 13-14)

Speech Intelligibility: one S; two O; one Not Introduced (NI). (Exhibit B-26, 15-16)

Listening Skills: one O. (Exhibit B-26, 17)

Vocabulary: one O. (Exhibit B-26, 18)

Narrative Skills: two O. (Exhibit B-26, 19)

Written communication: no progress report. (Exhibit B-26, 20)

26. Progress reports and evaluations of Student's Speech and Language issues included:

- February 25, 1997. He has made good progress in increasing his verbal output but continues to present with a mild-moderate delay in expressive language skills and a moderate speech disorder characterized by motor planning difficulties. The intelligibility of his speech is fair to good for a familiar listener in a known context and fair to poor for an unfamiliar listener. (Exhibit B-1)
- April 29, 2003. He does best with auditory information that includes a visual component. [Student] will continue to benefit from [S/L] with the focus on improving articulation skills, listening skills, vocabulary, sentence structure, narrative skills and implied meanings. (Exhibit B-20)
- March 23, 2004. [Student] continues to make slow and steady progress with his IEP goals and overall total test scores reflect low average-to-average receptive/expressive language skills. Although [Student] demonstrates

improvement in his language skills in a small group setting and on standardized tests, he continues to have some difficulty in a classroom setting. Articulation errors affect both intelligibility and his written expression. [Student] will continue to benefit from [S/L] with the focus on improving articulation skills, narrative skills, sentence structure, vocabulary and understanding of implied meanings.

Student's scores on the Clinical Evaluation of Language Fundamentals (CELF) improved from May 2001 to January 2004, with overall receptive/expressive language skills within the average range. He also scored within the average range on The Listening Test. (Exhibit B-25)

27. Student's Fourth Grade report card showed "modified grades/curriculum". In reading comprehension, he received grades of B and his effort grade rose from "Satisfactory +" in the first two terms to "Very Good -" in the third term. In Language Skills, Written Expression, Spelling and Mathematics, he earned almost all C's, with Satisfactory effort. In Social Studies, he received B's with Satisfactory and then Very Good effort in that third term. In Science, his grades were A, B, and C+, with Very Good Effort the first two terms and Satisfactory + the third term. He had Very Good effort in Foreign Language, Art, and Music, with grades of B+, A, and A respectively. He earned B+ in Physical Education. All his Work Habits and Social Skills were marked "Satisfactory" by his Regular Classroom teacher. (Exhibit B-31, 4)

28. Handwriting was frequently mentioned as a concern, and Student's IEPs included both OT to address fine motor and visual motor problems and keyboarding as early as 2003 (second and third grade IEPs were not included in the record).. Student's OT included help with handwriting. The March 23, 2004, PPT, toward the end of Student's fourth grade year, notes include "cursive [handwriting] is not a functional skill yet. Work on keyboarding now." The goal developed at that PPT meeting:

Student will improve written communication through improved fine motor and visual motor skills.

(A) Student will write original paragraphs in neat and legible print.

Letters will be formed correctly, placed on line and spaced accurately, for short paragraph writing sample (4 to 5 sentences). Writing will be done the appropriate size and with light to moderate pressure on the pencil and paper.

(B) Student will write original paragraphs in cursive [writing] with accurate letter formation of lower case letters, proceeding at a moderate pace, accurate sizing and pressure. (4 to 5 sentences, without a letter strip for reference)

(C) Student will type all letter keys on computer or word processor keyboard with only occasional glancing at his fingers, proceeding at a moderate pace. (Exhibits B-19, B-26, 2, 20)

29. The report of an OT evaluation performed before the June 20, 2005, PPT meeting included comments about Student's handwriting:

A handwriting sample was gathered during this evaluation session. [Student] uses printed writing primarily. His printing is heavy, dark and angular. It was legible but appeared as if a younger child produced it. [Student] remembered how to form 22 of 26 lower case cursive letters. His cursive writing was done more lightly and appeared more age appropriate, although it took longer to produce than his printing.

OT recommendation:

As [Student] enters the middle school years, it is essential that he develop efficient written communication. Handwriting continues to be labored. Keyboarding is expected to be the more efficient mode of output. Due to dyspraxia (poor motor planning), keyboarding skills are difficult for [Student] to acquire. Therefore [OT] services are recommended for 30 minutes per week to improve fine motor and visual motor skills, especially how they impact on written output, handwriting and keyboarding. (Exhibit B-37)

30. The June 20, 2005, PPT recommended an Assistive Technology evaluation. The Written Communication goal in this IEP was the same as the 2004 goal, except for the second objective, which was: "Student will utilize a cursive signature on all papers turned in at school." The "Assistive Technology" space on the modification page was blank, and there was no reference to access to a computer. There was to be "no handwriting penalty". (Exhibit B-38, 2, 11, 19)
31. The Board's Director of Pupil Personnel Services confirmed that while written communication goals and objectives had encouraged keyboarding and Student's OT had included addressing concerns about both handwriting and computer use, there was no specific documentation of Student's access to a computer in school. (Testimony, Director)
32. Because of their concern about Student's apparent lack of academic and social progress, Parents arranged for tutoring and counseling outside of school. Parents discussed their concerns with school staff members at PPT meetings, and in conferences that were not documented on the record of the hearing. (Testimony, Mother, Father)
33. Parents reported that Student had been teased on the playground and in lunch in first and second grades. He withdrew in third and fourth grades, and quit cub scouts. From time to time, he was referred for discipline concerning incidents on the school bus. Mother also reported bullying, but the Board's Director of Pupil Personnel Services stated that investigation did not confirm that bullying had taken place. Mother reported that by the end of Fourth Grade, Student "hated and feared" school. (Exhibits B-6, B-11, B-17, B-27; Testimony, Parents, Director of Pupil Personnel Services)
34. Student attended a Rumsey Hall (a private school) summer program in 2004, and was referred for a psychological evaluation as a candidate for admission to Rumsey Hall in the fall. Reports on Student's performance in the summer program included a

doubt about his readiness for fifth grade, attention problems, lack of math skills, and vocabulary problems. (Exhibits P-7, P-8, P-9; Testimony, Mother)

35. The report of the July and August, 2004, psychological evaluation by Randall Thomas, Ph.D., included a review of Student's educational history and noted both tutoring and counseling provided by the family. This evaluator found a Verbal IQ of 84, Performance IQ of 91, and a Full Scale IQ of 86. He noted "significant variability in his cognitive functioning, his performance ranging from the 2nd to the 63rd percentile". This evaluator identified auditory processing ability, short-term working memory, organizational (or executive) skills and his ADD as Student's weakest areas. He also noted Student's articulation difficulties and weaknesses in written language. Dr. Thomas did not observe Student in school nor did he consult with any of Student's current or former teachers. Many of the recommendations made by Dr. Thomas were already incorporated in Student's IEP and classroom modifications. (Exhibits P-10, B-29; Testimony, Mother; Testimony, Dr. Thomas)
36. Student attended a nearby Parochial School for fifth grade in 2004-2005. He was reported as receiving resource room services there. (Testimony, Mother)
37. Student was observed by the Board's School Psychologist in his Parochial School setting as part of an evaluation. This Psychologist's report is dated June 10, 2005. She observed Student in a class of 22 students, with no individualized support. Student had not completed his homework and did not volunteer during discussion. He was quiet and did not disturb the other students, but he did not participate in the lessons observed. (Exhibit B-31).
38. The Board's PPT met on June 20, 2005, to review Student's evaluations and plan for 2005-2006. Parents requested placement at Eagle Hill, which was denied. Student's Present Levels of Educational Performance were listed:
- Health & Development:** ADD medication.
- Academic/Cognitive:** WISC (FIQ) 86; (PIQ) 91; (VIQ) 84. Reading composite (SS 94) and Written language (SS 94).
- Social/Emotional/Behavioral:** [Both Age Appropriate and Other checked, no additional data noted]
- Motor:** [Both Age Appropriate and Other checked] Bruininks-Oseretsky Test of Motor Prof. Visual – motor control, Upper limb coordination.
- Communication:** CELF-3 (SS 92); Listening Test (SS 96); Word Test (SS 91); Arizona Articulations (SS 72); Expressive Language Test (SS 65); Language Processing Test (SS 93) Word Relationships; and Comprehensive Assessment of Spoken Language (SS 92).
- Strengths:** Verbal comprehension, perceptual organization mazes[sic]; Verbal/visual/memory; organize visual to whole; VMI (98) and Test of Visual (97).
- Concerns/Needs:** Attention/concentration; similarities; processing speed; arithmetic; freedom from distraction; digit span sequential; auditory memory; multi steps; processing auditory sequential information; working memory; language (expressive);

articulation; math (SS 89); numerical operations (SS 86); and Motor planning (Response speed). (Exhibit B-38, 4)

39. The IEP goals for 2005-2006 were:

To improve school survival skills ...

Student will improve written expression ...

Student will improve mathematics calculation skills, through academic support ...

Student will improve achievement through academic support ...

Student will improve written communication through improved fine motor and visual motor skills ... [objectives include keyboarding skills]

To improve the understanding and use of the language of classroom material ...

To improve speech intelligibility ...

To improve the recall of known vocabulary to improve expression of ideas in the classroom.

Student would receive 7.5 hours of special education per week, including writing and academic support and math instruction, plus ½ hour of OT and one hour of S/L therapy per week. Twenty-one hours per week would be in regular education. (Exhibit B-38, 5-16)

40. Program modifications/adaptations planned for 2005-2006:

Materials/books/equipment: calculator.

Tests/quizzes/time: extra time-tests; rephrase test questions/directions (repeat first); test study guides; shortened tasks; extra response time; reduction of work; extra time written work; cuing for attention.

Grading: no handwriting penalty.

Organization: provide study outlines; daily assignment list; folders to hold work; post routines; pocket folder for work.

Environment: preferential seating; study carrel.

Behavior Management/Support: daily feedback to Student; positive reinforcement; cue expected behavior; break between tasks; motor breaks when needed.

Instructional strategies: extra drill/practice; multi-sensory approach; highlight key words; concrete examples; repeat + rephrase (teacher); review directions; repeat instructions; visual reminders; have student restate information; support auditory presentations with visuals; display key vocabulary; provide student with vocabulary word bank. (Exhibit B-38, 19)

41. Student attended a 2005 summer program at Eagle Hill, and then enrolled there for the 2005-2006 school year. (Testimony, Mother)

42. Eagle Hill is a private school approved for special education by the Connecticut State Department of Education. The Eagle Hill program focuses on students with a wide variety of learning disabilities. Student is assigned to a social skills group and is seeing the school psychologist at Eagle Hill. He does not received S/L support. (Exhibit P-12; Testimony, Student's Educational Advisor at Eagle Hill)

CONCLUSIONS OF LAW AND DISCUSSION:

There is no dispute that Student qualifies for special education under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401 et seq. and §10-76 et seq., Connecticut General Statutes, and related regulations. There may be some disagreement as to his special education classification, although that is not at issue in this hearing. He received special education and related services in the Board's school to address reading, written expression, mathematics, speech and language, motor and behavior issues.

The standard for determining whether a board of education has provided a free appropriate public education (FAPE) to an individual student in need of special 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 IDEA. No evidence presented indicates that the Board failed to comply with the procedural requirements of the Act. The Board took all reasonable efforts to evaluate and identify the Student. The IEP contains all the required elements, including:

- (1) the child's present level of educational performance;
- (2) the annual goals for the child, including short-term instructional objectives;
- (3) the specific educational services to be provided to the child, and the extent to which the child will be able to participate in regular education programs;
- (4) the projected initiation date and duration for proposed services; and
- (5) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

M.S. v. Board of Education, 231 F.3d 96, 103 (2nd Cir. 2000)

The second *Rowley* test is whether the IEP was reasonably calculated to enable the child to receive some educational benefit. Since *Rowley*, courts have clarified the requirements of FAPE to hold that IEPs must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), Cert. Denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993)).

Connecticut Regulations provide that "the public agency has the burden of proving the appropriateness of the child's [special education] program or placement or of the program or placement proposed by the public agency." (RCSA §10-76h-14(a), see also *Walczak v. Florida Union Free School District*, 142 F.2d 119, 122 (2nd Cir. 1998)) Student's program in the Board's school included individualized and small group instruction in the Resource Room and supported regular classroom instruction. His "slow and steady" progress was reported regularly. While he struggled with mathematics and written language, he continued to progress. His teachers monitored his behavior, which gradually improved. His articulation problems were addressed. He made significant growth in most areas, each year. However, he remained "behind" in basic skills like math, and that became more important as he advanced through school. IEP goals and objectives have reflected Student's needs and concerns, and show progress from year to

year in most, if not all, areas. Classroom modifications/adaptations include many suggestions from Student's evaluations by Dr. Brown (2002) and Dr. Thomas (2004). The Board's programs and placements have been appropriate to Student's needs; the Board has met its burden.

A unilateral private school placement will receive public funding if the parent can prove 1) the local school district program and placement was not appropriate and 2) the unilateral placement is appropriate. *Burlington v. Department of Education*, 736 F.2d 773 (1st Cir. 1984). Unilateral placement may not be approved for special education placement if the hearing officer determines that the local district program and placement are appropriate (*Florence County School District Four v. Carter*, 510 U.S. 359 (1985)). Student's progress was slow, but it was more than "trivial", and his test scores reflect yearly gains. The consistency between the CCMC 2000 and Dr. Thomas's 2004 evaluations confirms that IEP goals were appropriate. The higher IQ scores on Dr. Brown's 2002 evaluation also confirm comments by evaluators that Student's various problems may depress his IQ scores. The Board's program and placement proposed for sixth grade were appropriate to Student's special education needs in the least restrictive environment. Specialized support in S/L and OT continued to be offered.

Student's particular problems with written communication have been addressed by the Board. However, it is important to note that the same issues that make handwriting difficult for him also interfere with his acquisition of keyboarding skills.

A finding that the Board is not required to fund this unilateral placement does not imply that the Eagle Hill placement is unsuitable as a parental option. Student's difficulties may indeed have been reasonably addressed by Parents' unilateral placement in a different kind of school setting.

FINAL DECISION AND ORDER:

The program and placement proposed by the Board for Student's sixth grade year (2005-2006) are appropriate to meet his special education needs. Since he has been out of the school system for almost two school years, the Board shall convene a PPT meeting to review his progress within two months of his re-entry into the Board's school. At that time, his IEP may be modified to reflect more up-to-date information gathered after his return.

Since the Board's program and placement are appropriate, it is not necessary to rule on the Eagle Hill program and placement, and the Board is not obligated to reimburse Parents for that placement.