

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Easton Board of Education

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Appearing Before: Attorney Justino Rosado, Hearing Officer

ISSUES:

1. Was the program offered by the Board for the 2010-2011 school year appropriate and did it provide the Student with a free and appropriate education (FAPE) in the least restrictive environment (LRE)? If not;
2. Does the Program at Villa Maria provide the Student with FAPE in the LRE?
3. Should the Board reimburse the Parents for their unilateral placement of the Student at Villa Maria for the 2010-2011 school year?
4. Should the Board reimburse the Parents for the Student's private speech and language, occupational therapy and physical therapy services during the 2010-2011 school year?
5. Should the Board reimburse the Parents for the cost of the extended school year program for the summer of 2010?

FINAL DECISION AND ORDER

SUMMARY:

The Student has been as identified with Multiple Disabilities and is entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a, et seq. At a PPT meeting, the Parents rejected the program offered by the Board for the 2010-2011 school year. The Parents requested placement at Villa Maria for the 2010-2011 school year at the Board's expense. The Board refused the Parents' request.

PROCEDURAL HISTORY:

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

On or about July 1, 2011, the Board received notice of the Parents' request for due process. The parties agreed to go to mediation in place of a resolution meeting. An impartial hearing officer was appointed on July 13, 2011 and a pre-hearing conference was held on July 20, 2011. Hearing dates of September 15, 20, 19, October 25, November 15, 17, 18, December 2, 5, 6, 9, and 12, 2011 were chosen by the parties. The November 15, 17 and 18, 2011 hearing dates were cancelled. The Board submitted Board Exhibits 1 through 51, 54 through 59 and 61 through 65. The Parents submitted Parent Exhibits 1 through 17 and 20 through 25; Parent Exhibit 18 was only received for identification.

The Parents' attorney filed a Motion for Telephonic Testimony but the motion was withdrawn by the Parents' attorney.

The date for the mailing of the Final Decision and Order was extended to accommodate the parties' mediation, hearing dates and Post Trial Briefs. The date for mailing the Final Decision and Order is March 15, 2012.

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 in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. SAS Institute Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and Bonnie Ann F.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACT:

1. The Student is diagnosed with Multiple Disabilities. She has been found eligible to receive special education and related services under IDEA. The Student has global developmental apraxia, attention deficit disorder, learning disabilities, sensory integration issues and anxiety. (Testimony of Parent, Board's Exhibit¹ No. 14)
2. In 2008, the Student received a neuropsychological evaluation. The evaluator recommended additional hours in a regular education setting. The Parents were in disagreement with this recommendation because they were of the opinion that this would increase the Student's frustration. (Testimony of Father)

¹ Hereafter Parent's Exhibits will be noted as "P" followed by the exhibit number and Board Exhibits will be noted with a "B" followed by the exhibit number.

3. The Student had difficulties with transitions and presents with extremely slow processing speed and deficits in working memory. The Student exhibits a pattern of learning disability which impacts her progress in reading, spelling and number sense, which reflects a complicated interaction of her deficits in phonological development, motor planning, and visual perception and scanning. She works better with cues. (Testimony of Father, Board Speech and Language Pathologist [BSLP])
4. On or about May 2008, a neuropsychological evaluation was administered to the Student. The evaluation and evaluator were mutually agreed upon by the parties. The evaluator made various recommendations with which the Parent was in agreement. The evaluator recommended:
 - a. Ongoing speech and language, occupational, and physical therapy services with individual and a classroom consultation component;
 - b. Training meetings to review the Student's progress and classroom materials modifications;
 - c. An assistive technology evaluation;
 - d. A structured, multi-sensory, sequential approach to reading that emphasizes phonemic awareness and the development of alphabet principles;
 - e. The Student is a candidate for a slant board;
 - f. Modified worksheet;
 - g. Additional time to formulate her responses and to express herself;
 - h. Breaks in teaching and time to regroup;
 - i. Extracurricular activity as the student is at risk for poor self-esteem and frustration;
 - j. The student should be involved in a school based social skills group.(Testimony of Parent, B-16)
5. On or about March 17 through April 3, 2008, a Comprehensive Academic Achievement Evaluation was conducted of the Student. The Student was found to have deficits in Phonological Processing. The evaluator recommended small group instruction that focused on these deficits and incorporation of such instruction in her systematic explicit phonics instruction. The evaluator recommended a multisensory approach and frequent practice/drill to build fluency with the academic skills she currently had in place. (B-12)
6. On or about June, 2008, the Board had an assistive technology assessment conducted. The evaluator recommended a slant board and found that the Student could benefit from computer use with a possible color coded keyboard. The Student's skills improved with the use of the slant board and a better organized work space. (Testimony of Board's Occupational Therapist [BOT], B-18)
7. At the June 11, 2008 PPT (planning and placement team) meeting, the team reviewed the evaluations of the Student that were conducted by the Board. The assistive technology therapist (ATT) recommended a consultative model of

services. The IEP does not reflect any AT consultative services. The PPT wanted additional information regarding the Student's current motor skills speech. (Testimony of ATT. Parent and B-19)

8. On or about September 22, 2008 the neuropsychologist, who had evaluated the Student, observed the Student in her 1st grade classroom. The evaluator was impressed with the Student's participation and motivation in the classroom setting. He recommended significant modifications to the classroom setting. The Student demonstrated the language and cognitive skills necessary to comprehend the content presented in the classroom but her capability was limited because of her visual, motor processing speed and working memory limitations in traditional classroom activities and homework assignments. Any task requiring writing would be a challenge to the Student. The evaluator recommended allowing the Student to verbalize her responses and allow a scribe to write her responses. The evaluator recommended consistency across all domains and providers and stepwise sequential learning with regular team meetings, significant pre-planning and modifications of materials. (B-23)
9. In September 2008, the Parents' private occupational therapist evaluated the Student and recommended the need for the Student to have consistency across all areas of her school day. Consistency will help her gain independence. The Student had push in and pull out services for occupational therapy. The therapist worked on developing handwriting skills, sensory processing and addressed self help issues. (B-24)
10. On or about October 10, 2008, a PPT meeting was held to review the evaluations that were conducted and review a revised IEP. The Parents were concerned that the Student's use of syntax posed a significant interference in her communication skills and should be targeted. The team was of the opinion that the Student required work on literacy skills before syntax and grammar. The Parents were not in agreement with the revised IEP and it was recommended that the Student's speech and language functioning be reevaluated in the areas of syntax and grammar. The Parents were looking for more direct services. (B-25, Testimony of CREC Consultant)
11. The Student was receiving additional speech and language and occupational therapy services from private providers. These services were being provided before the beginning of the school day. These early services impacted the Student's school day in that she arrived late for morning activities; the early services also fatigued the Student. (Testimony of CREC Consultant)
12. The PPT team met again to discuss implementation of the IEP offered at the October 10, 2008 PPT. The Parents submitted a two page letter outlining their disagreement with the proposed IEP. Among the concerns raised by the Parents was the lack of any behavioral intervention plan (BIP) for the Student. The Parents requested that a functional behavioral assessment (FBA) be conducted. The Parents

- were also in disagreement with many of the goals and objectives being offered and were concerned that the speech and language services were being reduced. (B-31)
13. In February 2009, a functional behavioral assessment was done of the Student. The Parents had input into the plan. The behaviors noted by the evaluator were aggression, screaming and throwing or ripping objects. Fatigue appeared to impact the Student's success. A plan was developed to address these behaviors. The behaviors demonstrated were not a factor in the Student making progress in her program. (B-33, Testimony of CREC Consultant)
 14. On February 19, 2009, the PPT met to review the functional behavioral assessment administered by the board certified behavioral analyst (BCBA). The PPT added two goals to the Student's IEP to address her social and behavioral issues. The BCBA was of the opinion that the Student's BIP can be appropriately delivered in the Board's school with a collaborative team model. The CREC Consultant noted that the Student was making progress based on the data that was available. The Parents continued to express that the Student's IEP could not meet her academic, social and behavioral needs. The Parents were not opposed to the program being at the Board's school but it needed to provide FAPE to the Student. The Student attended Brownie meetings at the Board's school approximately 2 times a week. (P-24, Testimony of Father)
 15. In March 2009, the Parents unilaterally placed the Student at Villa Maria School because of their concern that the Student's IEP was inadequate. They chose Villa Maria because it was a small environment with a low student to teacher ratio and there would not be pull-out services. The Parents are satisfied with their decision because the Student's negative behavior and level of stress had been reduced. Through the mediation process the Board and the Parents entered into a confidential agreement and the Student remained at Villa Maria for the 2009-2010 school year. (Testimony of Father)
 16. At the commencement of the Student attendance at Villa Maria, the administrator of Villa Maria (AVM) observed the Student's behavioral issues and limited to 10 minutes of work at the beginning of the school day. The Student's handwriting was mostly lines. The AVM noted that the Student had verbal aphaxia problems with fine and gross motor skills, muscle tone issues and gastrointestinal problems. (Testimony of AVM)
 17. The Student's private occupational therapist has worked with the Student since 2008. The Student is seen 3 times a week for a one hour session. During the 2008-2009 school year she was contacted by the Board's special education teacher and occupational therapist. They were seeking feedback to help the Student. The Student showed low self esteem during the 2008-2009 school year. During her 2009-2010 school year she talked about her school year and seemed happier. (Testimony of Private Occupational Therapist)

18. During the last quarter of the 2008-2009 school year at Villa Maria, the Student made progress in developing age appropriate skills. The Student became a more independent learner and sought help when it was needed. The Student required breaks during the school day. (P-2)
19. The Student's mid-term report at Villa Maria showed that the student made a good transition to the 1st grade. The Student made slow but steady progress and was able to decode simple CVC words. The Student's strength was in comprehension but it would take several attempts to read words correctly. The Student used modified paper, slant board and special pencil grips to assist with handwriting. In math the Student needed a great amount of teacher assistance. The Student needed to slow down and improve her basic number sense in order to progress to more difficult levels of math. She is able to solve basic addition and subtraction with the use of manipulatives. (P-4)
20. The Student's 2009-2010 Villa Maria IEP contained two social and behavioral goals which addressed the Student's social interactions with peers, behaviors in the school environment and coping solutions in conflict situations. The Student was making satisfactory progress with these goals. The Student made satisfactory progress in all her goals in her Villa Maria IEP but mastered none. Of the 32 objectives in her IEP she mastered 5, made satisfactory progress in 24 and limited progress in 3. She made limited progress in gross/fine motor objectives. (P-9)
21. During the 2009-2010 school year, the Student received speech and language services at home twice a week for 45 minutes each session. The Student continues to struggle with motor planning and coordination of her articulators to produce intelligible speech. The Student demonstrated progress with articulation of error sounds at the word and sentence levels and she continues to exhibit intelligibility in conversation. An informal language sample revealed that the Student also exhibits expressive language errors with syntax and grammar. (P-7, Testimony of Private Speech and Language Therapist)
22. During the second semester of the Student's 2009-2010 school year, she occasionally received one to one instruction by a tutor to support her classroom instruction. This aided the Student in making excellent progress in reading and decoding. The Student made progress in her language class. Her handwriting has shown some improvement, however she tires easily after writing more than a few sentences. It was recommended that the Student use an Alpha Smart or lap top to make writing less stressful. In math the Student received one to one tutoring through the second semester for approximately half of her math class. The Student was focusing on writing numbers to thirty. Speech and language goals are not included in the Student's IEP; services are provided by a speech and language pathologist and a report is written by the pathologist and shared with the Parents. Occupational therapy can be provided at Villa Maria but the student does not receive it there; the Parents provide private occupational therapy services. (P-10, Testimony of AVM)

23. In planning for the 2010-2011 school year, the Board requested permission to conduct evaluations. The Board presented to the Parents and Villa Maria the evaluators that would conduct the evaluations. Villa Maria objected to the number of people doing the observations. Only the special education teacher, speech and language pathologist and the occupational therapist evaluated and observed the Student. The Parents agreed to the evaluations and observations the Board requested. (B-39 pg 4, Testimony of CREC Consultant)
24. The Board's speech and language pathologist (BSLP) observed the Student at Villa Maria. The Student did not show any signs of stress or anxiety during the observation; the observer did not see the Student as a self advocate. The Student was observed during a snack time and was concentrating on eating; she did not initiate interaction with her peers. The Student was able to count by 5's verbally, but appeared to have difficulty in visually scanning the numbers and identifying them. When the teacher moved to work with another student, the Student just sat there rather than try to work independently. (Testimony of BSLP, B-41)
25. The BSLP performed a Comprehensive Assessment of Spoken Language (CASL). The test demonstrated that the Student's language skills were below age level expectations. The Student was also given a Comprehensive Test of Phonological Processing (CTOPP). This test had been previously given to the Student in 2008. A comparison of the two tests showed an increase in accuracy of blending words, but the overall composite scores remained similar, indicating that phonological awareness skills were still an area of difficulty for the Student. The Student's score in the Phonological Memory composite was compared with the previous composite score, which indicated little evidence of progress. The Rapid Name composite score indicated growth from the last report. This indicated that the Student's ability to retrieve information has improved from the last assessment. Student's scores in the speech and language evaluation are in line with what was seen by the Private Speech and Language Pathologist. (B-41, Testimony of Private Speech and Language Therapist)
26. In May 2010 an occupational therapy evaluation was done by the Board's occupational therapist. The evaluator noted that the Student had difficulty in processing sensory information, particularly with visual, movement and touch input. These difficulties impact the Student's ability to produce written work. The Student's visual motor and visual perception skills are below age level. The Parents were concerned about how the evaluator was able to complete all the testing in one hour. (B-42, Testimony of Father)
27. The BOT observed the Student for one hour at Villa Maria. The observer noted that the Student's written product and the letters were not connected; during snack, the Student had difficulty opening the container. The Student demonstrated fatigue and rested her head on her hands. For sensory integration the only strategy observed was the wedge cushion. It was reported that breaks were also offered as additional

- sensory strategy but was not offered during the observation. The evaluator wanted to perform the Bruininks-Osersky Test of Motor Proficiency but the Parents wanted their evaluator to perform this test. (Testimony of BOT)
28. In June 2010, the Parents had the private occupational therapist conduct the Bruininks-Osersky Test of Motor Proficiency of the Student. The evaluator found that the Student demonstrated significant delays in her fine motor skill development across a variety of areas but most notably in her Response Speed. The subtest looks at a child's ability to respond to an immediate visual by stopping it with their hand. The Student was unable to react in time to the visual and scored a zero on this subset. In the other 2 subtests of this test the Student performed better but still demonstrated significant delays. The evaluator compared the Student's prior test score, but the comparison was not reliable as the year of the prior test was incorrect and it was unclear what time span the improvements reflected. (P-8)
 29. The Board's special education teacher performed an observation of the Student in preparation for her return to the Board's school. The Student was using a 1st grade level book and required prompting for all observed activities. The Student was able to remain focused during the lesson. She demonstrated skills in comprehension but struggled with deciphering. The Student had prior behavior problems but during the observation, her behavior was not an issue. The evaluator only utilized one instrument for testing because the Student had been widely tested and wanted to use the allotted time to test the Student wisely. The special education teacher felt that the Student would be successful in the Board's school because of the program the Board had prepared for the Student. The class size would be small and the Student would benefit from being with non-disabled peers. (Testimony of Special Education Teacher)
 30. The special education teacher conducted the Weschler Individual Achievement Test-3rd Edition (WIAT III) for the purpose of planning and developing an IEP for the 2010-2011 school year. The Student demonstrated strength in the area of oral language. The test indicated that the Student's achievement in the areas of writing, reading and mathematics were below what would be expected of her child her age. The Student had been held back in grade one and her scores appeared below what would be expected from a student finishing her 1st grade. The Parents did not disagree with this evaluation. (B-43, Testimony of Father)
 31. The Board conducted a physical therapy evaluation of the Student in preparation for her return to the Board's school for the 2010-2011 school year. The evaluation showed that the Student's gross motor ability fell into the low range. She demonstrated more confidence which allowed her to want to repeat and practice a skill in order to better perform it. The Student moved around the room with control and maintained a positive attitude throughout the evaluation. The Parents did not disagree with the evaluation. (P-48, Testimony of Father)

32. The Parents sought an independent neuropsychological evaluation of the Student in order to ascertain her progress, document any continued cognitive/learning difficulties, and determine appropriate interventions to target her needs. The observations at Villa Maria and the testing occurred on November 18, 2010, December 2, 2010, February 24, 2011 and March 7, 2011. The evaluator who performed the observations determined that based upon these observations, some updated testing was required to comply with the Parents' request. These evaluations were conducted after the PPT where the Parents rejected the IEP proposed by the Board. (P-14, Testimony of Parents' Neuro-psychologist)
33. Villa Maria created an IEP for the 2010-2011 school year. The administrator was of the opinion that the Student needs a small structured program where she will feel confident. The Student's language program was modified by having her write different words than the other students, but words that used the same sounds. It was recommended that the Student use a laptop. (Testimony of AVM)
34. On June 21, 2010, the PPT met to review the evaluations administered to the Student and present an appropriate educational program. A draft IEP had been sent to the Parents prior to the PPT date. Villa Maria teachers participated in the PPT via telephonic conference. Goals and objectives have been written to address the areas of weakness that were noted in the Student from the evaluations and observations. The goals addressed the Student's reading comprehension, vocabulary and syntax. (B-51)
35. The speech and language pathologist would work with the Student on goals 1 through 7 of her 2010-2011 IEP. The pathologist would be going into the regular education classroom and address any needs the Student would be having in a real life situation. One of the purposes of working with the Student in the regular education setting is to teach the Student to work through distractions as she would need to do in the real life setting. The 2010-2011 would be appropriate for the Student because it would meet her needs based on testing, observations and the neuropsychological report from the Board's psychologist. (B-5, Testimony of BSLP)
36. The Student's educational program at the Board would utilize assistants who are an extension of the BSLP. The assistant or para cannot do evaluations. They would implement what has been designed by the BSLP. They cannot implement anything new and are strictly supervised by the BSLP. The State Department of Education has guidelines for speech assistants. They cannot provide initial instructions. The Student's behavior impacts how instructions are delivered, but the environment can be adapted so the Student can be successful. The Student's behaviors were not inappropriate but she was making progress during the 2008-2009 school year. (Testimony of CREC Consultant)

DISCUSSION AND CONCLUSIONS OF LAW:

1. The Student qualifies for, and is entitled to receive, a free and appropriate public education with special education and related services under the provisions of state and federal laws. CGS § 10-76, et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. § 1401, et seq.
2. The Easton Board of Education has the burden of proving the appropriateness of the child's program or placement, which burden must be met by a preponderance of the evidence. Conn. Reg. § 10-76h-14(a); *P. ex rel. Mr. P. v. Newington Bd. of Educ.*, 512 F.Supp.2d 89, 99 (D.Conn. 2007).
3. A parent or a public agency may file a due process complaint on any of the matters described in 34 C.F.R. §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section. 34 C.F.R. §300.507.
4. IDEA opens the door of public education to children with disabilities. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982). Under IDEA, a local education agency (LEA), such as the Board, must provide a FAPE to each qualifying student in the least restrictive environment, including special education and related services. 20 U.S.C. § 1401(18).
5. Under the Supreme Court test established by *Board of Education v. Rowley*, 458 U.S. 176, 203 (1982), FAPE consists of educational instruction specifically designed to meet the unique needs of the handicapped child, and related services as are necessary to permit the child to benefit from the instruction. FAPE is not required to maximize the potential of each child; however, it must be sufficient to confer educational benefit. *Id.* at 200. The *Rowley* standard is satisfied by providing meaningful access to educational opportunities for the disabled child. *Id.* at 192. The *Rowley* court determined that the IDEA requires school districts to provide a "basic floor of opportunity" consisting of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Id.* at 201. The Supreme Court found Congress' intent in passing the IDEA was "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *Id.* at 192.

6. However, the *Rowley* requirement of consideration of the unique needs of the handicapped child does require consideration of the child's capacity to learn. *Nein v. Greater Clark County School Corporation*, 95 F.Supp.2d 961, 973 (S.D. Ind. 2000). The requirement of "some educational benefit" requires more than a "trivial" benefit but not a maximization of the potential of a handicapped child. *N.J. v. Northwest R-1 School District*, 2005 U.S. Dist. LEXIS 24673, 22 (E.D. Mo. 2005).
7. Under *Rowley*, there are two components to the FAPE analysis, one procedural and the other substantive. An educational program can be set aside for failure to provide FAPE on procedural grounds under three circumstances: (1) where the procedural inadequacies have "compromised the pupil's right to an appropriate education"; (2) when the district's conduct has "seriously hampered the parents' opportunity to participate in the formulation process"; or (3) when the procedural failure has resulted in "a deprivation of educational benefits." *Independent School District No. 283 v. S.D.*, 88 F.3d at 556. Where this type of harm is found, the substantive question of whether the IEP provided FAPE is not addressed by the hearing panel. *W.B. v. Target Range School District*, 960 F.2d 1479, 1485 (9th Cir. 1991). Assuming no denial of FAPE on procedural grounds, the analysis turns to the substance of whether the IEP provides FAPE as defined by the *Rowley* standard and "whether a proposed IEP is adequate and appropriate for a particular child at a given point in time." *Rowley*, 458 U.S. at 200; *Town of Burlington v. Dept. of Education*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd* 471 U.S. 359 (1985).
8. In their request for due process the Parents did not allege any procedural violations. In their Post Trial Briefs Page 7 Paragraph 12, the Parents present the issue that the eligibility determination made by the Board in the PPT of June 2010 was faulty in that the , " use of one singular testing instrument" violates IDEA and does not give an "accurate picture of the [Student's] skill level." A party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its original due process complaint notice unless the other party agrees (20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. §§ 300.507(d)(3)(i), 300.511(d). The Board needs the opportunity to be able to present evidence to refute these allegations. The Parents' cite, *Boyertown Area School District*, 112 LRP 2673, 12/26/11; as authority for this determination. In *Boyertown*, the Student had not been classified as eligible to receive special education and related services and was seeking a determination that he was eligible to receive FAPE as defined in IDEA. Therefore, the use of one singular instrument to make a determination of eligibility was not appropriate. In this matter, it was not an eligibility determination but an issue of placement. In this matter, the evaluations that were sought were with the consent and knowledge of the Parents and more than one evaluation was done. There were occupational therapy, physical therapy, speech and language therapy evaluations as well as an evaluation by the special education teacher; in addition, the Student had had prior testing. (Findings of Facts # 29). The Parents also had their occupational therapist administer an evaluation of the Student. This new procedural violation, even if it had been raised properly, would have been found to be without merit.

9. The 2nd prong of *Rowley, id.* addresses the substantive question of whether the IEP provided FAPE. In order to decide the appropriateness of the IEP one must view it as, "a snapshot, not a retrospective. In striving for 'appropriateness', an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated." *D.F. and D.F., on behalf of N.F., v. Ramapo Central School District*, 403 F3d. 595 (2nd. Circuit 2005)
10. There is no one standard for determining what constitutes a meaningful educational benefit. The Student's capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit to the child. See, e.g. *Hall*, 774 F.2d at 635. Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispositive. See, e.g., *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1120 (2nd Cir. 1997).
11. During the 2008-2009 school year, the Parents were concerned with the Students' behavioral issues and the possibility of a reduction of the Student's speech and language goals. In response to the Parents' concerns, the Board agreed to an FBA; as a result of the FBA, a BIP was created and behavioral/social goals were added to the Students' IEP (Findings of Fact Nos. 12 and 14). Before the new IEP could be put in effect, the Parents unilaterally placed the Student at Villa Maria for the 2009-2010 school year (Findings of Fact No. 15). The Student was making meaningful progress during the 2008-2009 school year at the Board's school. While at Villa Maria, the Student's behavior, with the addition of social/ behavioral goals, improved but she did not master one of her goals at Villa Maria during the 2009-2010 school year even though they were to be mastered in one year. (Findings of Fact Nos. 15 and 20). When Villa Maria added behavioral/social goals to the Student's service plan, the Student's behavior problems and anxiety were reduced. The program offered by the Board at the February 19, 2009 PPT, before the unilateral placement to Villa Mara, as well as the program for the 2010-2011 school year, contained behavioral goals that had been created as the result of an FBA. The behavioral goals created by the Board could have also reduced the Student's behavioral issues and her anxiety and allowed the Student to continue making progress in an environment that included nondisabled peers.
12. The Parents are not in agreement with paraprofessionals providing services to the Student, but at Villa Maria the Student was receiving assistance from a tutor during her math class. (Findings of Fact No. 22) The Parents' concern about the Board's use of a paraprofessional is understandable because one always wants the best for their children, especially when they have special needs. The Board has placed controls over what the paraprofessional can do and they are strictly supervised by the speech and language pathologist (Findings of Fact No. 36) to ensure that the Student is on track and can continue to receive the necessary instructions to make progress in her goals and objectives.

13. The Board's evaluations and observations provided them with a clear picture of the Student's needs for the 2010-2011 school year. (Findings of Fact No. 29, 31, 24 and 35). The testimony provided by the Board's witnesses gave credence to the Board's contention that the Student would make progress with the IEP offered by the PPT for the 2010-2011 school year. The program at the Board's school would be the least restrictive environment as she would be with nondisabled peers in part of her school day. The program offered by the Board, with the related services, would have provided the Student with FAPE in the LRE.

FINAL DECISION AND ORDER:

1. The program offered by the Board for the 2010-2011 school year was appropriate and would have provided the Student with FAPE in the LRE.
2. Since the program offered by the Board for the 2010-2011 school year was appropriate, the Parents are not entitled to reimbursement for the cost of the unilateral placement of the Student for the 2010-2011 school year or the ESY program for the summer of 2010.
3. The Parents are not entitled to reimbursement for the Student's private speech and language, occupational therapy and physical therapy services during the 2010-2011 school year.