

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Ridgefield Board of Education

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Appearing before: Attorney Brette Fitton  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the District fail to provide Student with a free appropriate public education (“FAPE”) for the 2015-2016 school year? If the District failed to provide Student with a FAPE for the 2015-2016 school year, did Eagle Hill School provide Student with an appropriate program and are Parents entitled to reimbursement for tuition and related expenses incurred as a result of Student’s enrollment at Eagle Hill School for that school year?
2. Did the District fail to provide Student with a FAPE for the extended school year (“ESY”) in the summer of 2016? (*Issue Withdrawn*)
3. Did the District fail to provide Student with a FAPE for the 2016-2017 school year? If the District failed to provide Student with a FAPE for the 2016-2017 school year, did Eagle Hill School provide Student with an appropriate program and are Parents entitled to reimbursement for tuition and related expenses incurred as a result of Student’s enrollment at Eagle Hill School for that school year?
4. Did the District fail to provide Student with a FAPE for the ESY in the summer of 2017?

5. Is the Student entitled to compensatory education for District's failure to provide Student with an appropriate ESY program during the summer of 2017? (*Issue Withdrawn*)
6. Was the District's proposed individualized education program ("IEP") for the 2017-2018 school year appropriate? If the District's proposed IEP for the 2017-2018 school year was not appropriate, did Eagle Hill School provide Student with an appropriate program and are Parents entitled to reimbursement for tuition and related expenses incurred as a result of Student's enrollment at Eagle Hill School for this school year?
7. Are Parents entitled to reimbursement of a private neuropsychological evaluation of Student conducted by Dr. Stephanie O'Leary? (*Issue Withdrawn*)

### **PROCEDURAL HISTORY:**

On September 8, 2017, the Board received a special education hearing request filed by Parents and the Connecticut State Board of Education appointed the undersigned hearing officer to preside over the case. At the prehearing conference on September 18, 2017, the hearing was scheduled to begin on October 30, 2017 and the original mailing date was established as November 22, 2017. The parties engaged in mediation on October 18, 2017 which was not successful. The parties requested a postponement of the October 30, 2017 hearing date and an extension of the mailing deadline to allow the Board time to file a motion to dismiss and for the Parents to respond. These requests were granted. The mailing deadline was extended to December 22, 2017 and the first date of hearing was set as December 5, 2018.

The hearing took place on December 5, 2017, January 22, 2018, January 23, 2018, January 27, 2018, February 14, 2018, February 21, 2018, February 27, 2018, March 6, 2018, May 3, 2018, May 9, 2018, and June 12, 2018. The hearing dates of February 2, 2018, February 23, 2018 were postponed due to issues with scheduling witnesses and the hearing date of May 1, 2018 was postponed at the request of Counsel due to a pressing personal matter. When the hearing opened on December 5, 2017, a request to extend the mailing deadline to accommodate the hearing schedule was made and granted and the mailing deadline was extended to January 19, 2018. On January 17, 2018, Parents requested another extension of the mailing deadline of January 19, 2018 to accommodate the hearing date schedule. This request was granted and resulted in a new mailing deadline of February 16, 2018. On February 14, 2018, the Parties jointly requested another extension of the mailing deadline to accommodate the need for additional hearing dates on the record. This request was granted and resulted in a new mailing deadline of March 16, 2018.

On March 15, 2018, Parents requested an extension of the March 16, 2018 mailing date to accommodate the agreed upon hearing date schedule, this request was granted, and the new deadline was established as April 13, 2018. On April 3, 2018, Parents requested an extension of the April 13, 2018 deadline for mailing the final decision and order to accommodate the agreed upon hearing date schedule. This request was granted and resulted in a new mailing deadline of May 11, 2018. During the hearing on May 3, 2018, Parents requested an extension of the May 11, 2018 mailing deadline to accommodate the need for additional hearing dates. This request was made and granted on the record and resulted in a new mailing deadline of June 8, 2018. The

parties also agreed to add June 12, 2018 as an additional hearing date during the May 3, 2018 hearing. On May 9, 2018, Parents requested an extension of the mailing deadline from June 8th to July 6th, to accommodate the added hearing date. This request was made and granted on the record. On June 12, 2018, the Parties requested an extension to July 13, 2018 to accommodate the briefing schedule. This request was granted on the record. On June 28, 2018, Parents requested an extension of the deadline for submission of briefs from June 29, 2018 to July 3, 2018 and also requested an extension of the mailing deadline to July 20, 2018. Both requests were granted on June 29, 2018.

The Board's witnesses were Kim Hapkin, Ridgefield Public School ("RPS") Assistant Superintendent of Special Services; Dr. Stephanie O'Leary, Private Neuropsychologist; Dana Tatela, RPS School Psychologist; Laura Kent, RPS Special Education Teacher; Megan Calderwood, RPS School Psychologist; Sheryl Kane, RPS Special Education Teacher; Ashley Vidmar, RPS Regular Education High School English Teacher; Joseph D. Kawalczyk, RPS Transition and Post-Secondary Coordinator and Joseph Arcieri, RPS Physical Education Teacher.

The Parents' witnesses were Mother; Student; Dr. Marjorie Castro, Bachelor of Science, Master or Arts. Doctorate of Education, Eagle Hill School Head of School and Student's School Advisor; Dr. Tara Levinson, Student's Private Psychotherapist and Ms. Kara Mistretta, RPS Special Education Teacher.

The Hearing Officer called the Father as a witness.

Parents withdrew Exhibits P-3, P-4, P-5, P-9 and P-11. Exhibits P-1, P-2, P-6, P-7, P-8, P-10, P-12, P-13, and P-14 were entered as full exhibits after objections by the Board objections overruled. Exhibits P-15 through P-20, P-22, P-23, P-25 [P-26] P-27 through P-31, P-33 through P-47 and P-50 were entered as full exhibits without objection. P-21 and P-24 (audio recordings of PPT meetings) were marked for identification only, with direction that they would not be accepted unless transcribed. Transcriptions of the PPT meetings were subsequently offered and made full exhibits as P-48 and P-49.

The Board submitted exhibits numbered B-1 to B-38, which were entered as full exhibits.

On November 13, 2017, the Board filed a motion to dismiss and strike claims which were precluded by a prior settlement agreement or exceeded the applicable two-year statute of limitations that the Board alleged were contained in Parents' hearing request. Parents filed an objection to the Board's motions on November 20, 2017. Oral argument was presented by Counsel at the opening of the December 5, 2017 hearing on these pleadings. The Board's motion was denied, after Parents confirmed that the issues presented in the post-prehearing conference memorandum did not include any of the claims the Board was objecting to, and as such only those claims were not going to be decided in the course of the hearing. Board's motion to strike was based on its objection to the inclusion of statements in the request predating the statutory period. The motion to strike was denied, and the objection noted as going to the weight of those statements.

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

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, *see SAS Institute Inc. v. 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).

**SUMMARY:**

Parents unilaterally placed Student at Eagle Hill School for the 2015-2016, 2016-2017, 2017-2018 school years, after rejecting IEPs offered by the District for those academic years and filed the instant due process request to request reimbursement for tuition and related services by the District. Parents also claimed that the District denied Student a FAPE during the Summer of 2017 when it provided a hybrid academic and vocational ESY program for Student. The IEPs offered by the District for all 3 years were deemed to be appropriate, thus Parents are not entitled to reimbursement. The ESY program offered to the Student was appropriate in design and implementation, therefore no remedy is required.

**STATEMENT OF JURISDICTION:**

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

**FINDINGS OF FACT:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on April 2, 2002 and is now 16 years of age. (HO-1)
2. Student is eligible for special education under the eligibility classification of Autism. (B-13, B-14, B-19, B-21, B-25, B-26)
3. A 2014 neuropsychological evaluation indicated Student had symptoms that were compatible with diagnoses of Cognitive Disorder, Specific Learning Disability in Math, Social Pragmatic Disorder, Motor Dyscoordination Disorder and Non-Verbal Learning Disability. (P-10)
4. Student suffers from a medical condition called eosinophilic gastroenteritis, which results in the Student having to follow an extremely restrictive diet. At the time of the hearing, Student was only able to consume 11 specific foods. Mother prepares all the food consumed by Student while at school. (Testimony of the Mother, January 23, 2018) Student's medical condition does not have much of an impact on Student during the school day, except there are occasions when Student must leave the classroom to use the bathroom for an extended amount of time. (Id.)

Outside of school, Student's medical condition limits spontaneity with regards to outings and social events that involve food. (Id.)

5. As evidenced by the District's evaluations and the Student's private neuropsychological evaluation and Student has a complex profile of learning differences, whose full intellectual profile may not be reflected in the composite scores on her cognitive psychological testing. (B-8, P-10) Cognitive functioning testing done by the District in May of 2016 and by Student's private neuropsychologist in December of 2016 place Student's Full-Scale IQ in the low average range, 80 to 81 respectively on the WISC-V. (B-15, B-23)

6. Student has been enrolled in and attended the Eagle Hill School, a private special education school on the list of programs approved by the State of Connecticut, from the age of 8 (Grade 3) to age 16 (Grade 10), which includes all academic years that are the subject of this hearing. (Testimony of Mother, January 23, 2018; Testimony of Student, January 22, 2018; P-40, P-41, P-43, P-45) Student's advisor at Eagle Hill School is the Head of School, Dr. Marjorie Castro. (Testimony of Dr. Marjorie Castro, January 22, 2016; P-33) Dr. Castro has extensive experience as a teacher and administrator in the field of education and has spent the past 9 years as the Eagle Hill Head of School. (P-33)

7. At the time of the hearing, Student was receiving the following services from providers, not affiliated with the Eagle Hill School: psychopharmacology, occupational therapy, and psychotherapy. (Testimony of Mother, January 23, 2018) In the summer of 2017, Parents also arranged for Student to receive services from a speech and language pathologist. (Testimony of Mother, January 23, 2018)

### **Student's Enrollment in Eagle Hill School for 2015-2016 School Year**

8. Parents signed a contract for Student in the Eagle Hill School day program on January 29, 2015 for the 2015-2016 school year. (P-41)

### **IEP for 2015-2016 School Year**

9. On May 20, 2015, a PPT meeting was held to conduct an annual review, review evaluations and plan Student's IEP for the 2015-2016 academic year. (B-13) In attendance at this PPT meeting were Mother, the school psychologist, the speech and language pathologist, a regular education teacher, an occupational therapist, and a member of the East Ridge Middle School administration. (Id.)

10. At the May 20, 2015 PPT meeting, the team reviewed the following evaluations: a psychological evaluation conducted on February 23, 2015 by school psychologist Dana Tatela, which included an observation of Student at Eagle Hill School; an educational evaluation conducted on February 24, 2015 by Dawn Kawulicz, a RPS special education teacher; a report of an observation of Student at Eagle Hill School on March 10, 2015 conducted by Solandy Forte, Licensed Clinical Social Worker, Board Certified Behavioral Analyst ("BCBA"); a speech and language evaluation report dated May 12, 2015, by Lynn Ruben, MS, CCC-SLP, which included another classroom observation at Eagle Hill School; an occupational therapy specialist

evaluation report conducted by Ms. Yasmin Hussain, Master of Science in Occupational Therapy (“OT”) and a review of records including review of a progress report from Eagle Hill School. (B-13)

11. Student was observed across two environments at Eagle Hill school for the class observation conducted by the District’s BCBA consultant. (B-10) Student was observed transitioning independently and in a timely manner between classes. (Id.) During a lecture, Student was observed engaging in lip picking behaviors which required teacher to intervene and direct Student to go to the bathroom to clean blood off her lips and fingers, after being redirected twice to stop the behavior. (Id.) Student appeared to smile and laugh at times that did not fit the situation in the classroom, at which point staff would redirect her to the task at hand. (Id.) Student successfully followed large group instructions and answering questions directed at her with the aid of prompts from school staff. (Id.)

12. The May 2015 speech and language evaluation indicated that Student’s core, lexical, syntactic and supralinguistic composite scores fell below average when compared to same aged peers. (B-11) While Student performed within the average range for pragmatic judgment; her knowledge and use of social language rules varied reflecting a weakness in Student’s ability to use language for social purposes in a variety of contexts. (Id.) Understanding inferences and complex linguistic structures were additional challenge areas for Student. (Id.)

13. The May 12, 2015 occupational therapy evaluation included a comparison of prior scores from testing in 2013 to current scores on the Burininks-Osersky Test of Motor Proficiency-Second Edition (“BOT-2). Student’s continuing weaknesses in the administered subtests of fine motor precision, fine motor integration, and manual dexterity were documented in Student’s scaled scores, which were all below average. However slight improvements in scores in fine motor integration resulted in a shift from well below average to below average on that subtest. (B-12) Student’s handwriting is legible but takes time and is labor intensive and as a result Student prefers typing when producing written work. (Id.)

14. For the academic achievement testing completed in March 2015, the evaluator utilized the Wechsler Individual Achievement Tests (“WIAT-III”). (B-9) Student’s scores in word reading and pseudo-word decoding subtests fell in the average range, while Student’s score on the reading comprehension subtest was in the below average range. (B-9) Student’s scores on the math subtests of the WIAT-III, fell in the below average range for math problem solving and numerical operations subtests comprising the mathematics composite score, while the subtests that made up the low average math fluency composite score fell in the low to very low range. (B-9) Written language scores fell in the average range with the exception of essay composition which fell in the below average range. (B-9) Student was also administered the Gray Oral Reading Tests, Fifth Edition (“GORT-5”) to measure Student’s oral reading achievement. (B-9) Student’s scores in the areas of accuracy and fluency fell in the average range, while comprehension and rate fell in the average range. (B-9) Student’s results on the Test of Word Reading Efficiency, Second Edition (“TOWRE-2”) fell in the poor range for the composite total word reading efficiency index, which combined Student’s poor score in sight word efficiency with her below average score in phonemic decoding. (B-9) Student performed in the average range on three of the four subtests of the Comprehensive Test of Phonological Processing -

Second Edition (“CTOPP-2”), with the exception being Student’s performance in the area of phonemic isolation in which Student scored below average. (B-9) Student also scored below average in the phonological memory composite, reflecting a weakness in student’s ability to verbally repeat a series of digits, as Student scored in the average range for her ability to verbally repeat nonsense words. (B-9) While Student scored in the average range for rapid digit naming, her poor score on the rapid letter naming subtest led to an overall poor score in the rapid symbolic naming composite score. (B-9).

15. Recommendations contained in the achievement evaluation to be considered by the PPT at the May 20, 2015 PPT meeting included: Student having access to a computer, goals for completion of writing tasks involving paragraphs, use of graphic organizers to plan essays, use of a calculator and multiplication chart to aid fact knowledge, math charts and cues to support math instruction, models and examples provided to follow in all subjects, extended time for assignments and assessments, explicit and repeated directions as needed, access to recorded books, use of repeated readings to improve rate and accuracy of reading and use of modeling such as read-a-louds to demonstrate the sound of fluent reading to Student. (B-9)

16. The District’s psychological evaluation was conducted by Dana Tatela, Ed. D is a RPS school psychologist, certified in both Connecticut and New York. (B-36) Ms. Tatela has a Bachelor of Science in Psychology, a Master of Arts and Education Specialist degree in School Psychology. (B-36) The testimony of Ms. Tatela was found credible.

17. Student was administered the Wechsler Intelligence Scale for Children, Fourth Edition (“WISC-IV”) as part of the psychological evaluation of Student conducted in February 2015. (B-8) Student’s scored in the average range on the Verbal Comprehension Index; in the borderline range for the Perceptual Reasoning Index; and in the extremely low range for the Working Memory Index, the Processing Speed Index and on her Full-Scale IQ. (Id.) The variability across Student’s index scores required that the Student’s abilities not be determined based on a single score, as evidenced by Student’s relative strengths in the areas of verbal comprehension. (Id.) The Behavior Assessment System for Children, Second Edition (“BASC-2”) completed by Parent placed Student’s anxiety in the “at risk” range and withdrawal in the clinically significant range, revealing significant concerns about Student’s shyness and ability to make friends in the clinical scales portion. (Id.) In the adaptive scales, Parent indicated student’s leadership abilities fell into the at-risk range. (Id.) On the Social Skills Improvement System (“SSIS”) teacher and Parent reports indicated that Student fell in the average range for problem behaviors including externalizing, bullying, hyperactivity/inattention and internalizing and above average in the category of autism spectrum. (Id.) While the teacher’s social skills composite score places the Student in the below average range, Parents’ assessment placed Student in the average range. (Id.) Both teacher and Parent placed the Student in the average range for cooperation, assertion, responsibility, and self-control and in the below average range for empathy and engagement. (Id.) Teacher and Parent diverged in their assessments of Student’s communication skills which teacher scored below average in contrast to the average score given by Mother. (B-8)

18. The only Eagle Hill progress report tendered at the hearing predating the May 20, 2015, PPT meeting was the Eagle Hill Advisor Report dated December 2014. (P-12) Student’s

difficulties with social interactions are detailed in this report, including difficulty resolving conflicts independently, reluctance to participate in class discussions, relying on established scripts to converse with others. (Id.) Task avoidance especially in the context of small group work was also noted. (Id.) There was no mention of Student's Obsessive-Compulsive Disorder ("OCD") behaviors or any formal intervention provided by school staff, if any (Id.)

19. Mother reported at the May 20, 2015 PPT meeting that during the 2014-2015 school year, Student exhibited behaviors associated with OCD, such as picking her lips when overwhelmed. (Testimony of Mother, February 14, 2018; B-13) Parents also expressed concern that Student's tendency to focus on other people who were not following the rules as Student understood them, would be a distraction that would interfere with Student's learning. (Testimony of Mother, February 14, 2018) The PPT meeting summary documents discussion at the PPT meeting in which Parent informed the education team that Student had been exhibiting OCD-like behaviors which had impacted her school work and which Eagle Hill School had addressed through utilizing different technology. (B-13)

20. After reviewing the evaluations and team discussion at the May 2015 PPT meeting, the PPT recommended an IEP placing Student in the Ridgefield Intensive Special Education ("RISE") program in the District at the RPS East Ridge Middle School. (B-13) RISE was a team-based program for students with the most intensive needs, which involved students being supported by a case manager, a special education teacher, occupational therapist, physical therapist, speech and language pathologist, school psychologist, and BCBA. (Testimony of Dana Tatela, May 9, 2018).

21. With regards to Student's needs in math, identified in the District evaluation and in the Present Levels of Academic Achievement and Functional Performance ("PLAAFP"), the PPT proposed the measurable annual goal of demonstrating an improvement in mathematical concepts, reasoning, and computation necessary to develop problem-solving skills and utilized mathematics to address everyday problems. (B-9, B-13) The IEP sets forth four short term objectives/benchmarks linked to achieving progress towards the measurable annual goal, which included Student solving math problems with whole numbers successfully with modeling, adding, or subtracting fractions with common denominators, completing four two-step word problems, and using estimation prior to completing addition subtraction, multiplication, or division problems to assist with the skill of self-correction. (B-13) The May 20, 2015 IEP provides for 50 minutes of direct instruction in mathematics per day in a small group setting. (Id.) Further in addition to numerous accommodations to be implemented across the curriculum, including during math instruction, the IEP provides for the math-specific accommodations of using a calculator, graph paper, a multiplication chart. (Id.)

22. To address Student's difficulties in language arts as identified and described in the District's educational evaluation report dated March 1, 2015, and on the PLAAFP of the May 20, 2015 IEP, the PPT proposed two measurable annual goals. (B-9, B-13) The first language arts goal was for Student when presented with narrative text and/or specific informational text from content area subjects to answer questions about the text that test for understanding. The second was for Student to demonstrate an improvement in written language skills necessary to write for information, understanding and written expression. (Id.) The objectives linked to the first



language arts goal included Student being able to answer 5 factual questions relating to an independently read passage, determining the correct definition of words from context from grade level texts, drawing appropriate conclusions and providing supporting evidence from texts read aloud or silently, and forming an opinion and identifying textual evidence to support responses orally or in writing. (Id.) The objectives linked to the second language arts goal focused on using technology to produce a four-sentence paragraph in correct sequence, produce two paragraphs about an expository topic with topic sentence and three supporting examples, and write three paragraphs including a topic sentence with three supporting ideas when given an expository writing prompt. (B-13) Under the May 20, 2015, IEP, language arts instruction was to be provided by a special education teacher with paraprofessional support in a small group setting for one hour and 20 minutes per day. (Id.) In addition to the numerous accommodations to be implemented across the curriculum, accommodations particularly relevant to language arts instruction included vocabulary word banks and utilization of speech to text software and the assistive technology of use of a word processor. (Id.)

23. To address Student's difficulties in communication as identified and described in the District's Speech and Language Evaluation report dated May 12, 2015, and on the PLAAFP of the May 20, 2015 IEP, the PPT proposed two measurable annual goals. (B-11; B-13) The first goal was for Student to improve pragmatic judgment skills by mastering three objectives involving the identification and discussion of socially appropriate actions, disagreements and potential resolution of those conflicts, and predication of social consequences. (B-13) The second communication goal was for Student to improve comprehension and use of complex language by mastering objectives involving the identification of the meanings of idioms, metaphors, and similes, making inferences, and showing evidence that led to inferences that she has made. (Id.) This goal was to be serviced by the speech and language pathologist in a small group setting for 40-minute sessions twice a week. (Id.)

24. To address Student's social and emotional challenges as identified and described in the District's psychological evaluation report dated February 23, 2015, and on the PLAAFP page of the May 20, 2015 IEP, the PPT proposed the measurable annual goal of improving interpersonal skills as measured by three objectives involving Student demonstrating active listening skills during conversations, identifying perspectives of a person in a given scenario, contributing relevant comments to peer-initiated discussions, and initiating conversation with a peer on that peer's topic of interest. (B-8, B-13) Accommodation specific to Student's social emotional goals included reinforcement breaks for behavioral needs and cuing of expected behavior. (B-13) This goal was to be serviced by the school psychologist providing social skills instruction 3 times a week for 20 minutes (one individual session and two small group sessions). (Id.)

25. To address Student's challenges in the area of gross and fine motor skills as identified and described in the District's occupational therapy and on the PLAAFP of the May 20, 2015 IEP, the PPT proposed that Student have a goal of demonstrating improved fine visual motor skills when using classroom tools as measured by objectives involving cutting shapes with a scissor, following functional computer features independently, improving typing skills by 1-3 words per minute, typing at 80% accuracy using a typing website, and using functional computer features of spell check and cut and paste independently. (B-12, B-13) This goal was to

be serviced by occupational therapist meeting with the Student 1:1 for 40 minutes one time per week. (B-13)

26. The May 2015 IEP also included a 1:1 paraprofessional assigned to assist student throughout the school day. An occupational therapist was to consult 30 minutes each month with the educational team and a BCBA would consult with the team as well. Team meetings with the case manager, Parents and the BCBA were to take place monthly and with the school psychologist and speech and language pathologist as needed. (B-13)

27. The May 2015 IEP also included significant accommodations to be implemented in all classes throughout the year, including but not limited to, checking work in progress, providing student with class notes, providing Student with extra time and extra worksheet space, providing models and visuals to support instruction and word banks. (B-13) Other accommodations, included, allowing the student wait time to accommodate for Student's slow processing speed, providing student with notice of changes in routine preferential seating proximity to teacher seating and access to a computer, alternative texts, audio versions of books, testing in a separate location, and reducing length of tests/quizzes. (Id.)

28. A plan to transition Student out of Eagle Hill School and into the East Ridge Middle School was discussed at the May 2015 PPT meeting and included having Mother observe the RISE program at the middle school, having Student shadow in the middle school for a few days before the end of the school year, and holding a meeting between Eagle Hill School and East Ridge Middle School staff. (B-13) ESY programming for the summer of 2016 was also proposed to assist Student in increasing her comfort level and build rapport with peers and staff. (Id.)

29. On June 18, 2015, the Parents rejected the May 20, 2015 IEP, and gave notice of their intent to unilaterally place Student at Eagle Hill School for the 2015-2016 school year. (Testimony of Mother, February 14, 2018)

### **Student's Engagement in Private Psychotherapy**

30. In August 2015, Student began seeing Dr. Tara Levinson for individual counseling. (Testimony of Dr. Levinson, February 27, 2018) Dr. Levinson testified during the hearing and her testimony was found credible. Dr. Levinson has a Master of Arts. in Special Education is a nationally certified school psychologist and is a licensed psychologist in both New York and Connecticut. (Testimony of Dr. Levinson, February 27, 2018; P-36)

31. Dr. Levinson has seen Student weekly for 50-minute session since that time to the present and her treatment goals have remained focused on the issues of better understanding social communication skills and having some tools and strategies to be able to problem solve social situations in her world. (Testimony of Dr. Levinson, February 27, 2018) Dr. Levinson has also worked on skill development in the areas of prosocial coping and self-regulation when anxious or uncomfortable. (Id.) While the areas of focus in therapy have not changed, but Student's abilities to work independently on those areas has improved. (Id.) When Dr. Levinson began working with Student there were high levels of generalized anxiety, which have decreased

with skills acquisition. (Testimony of Dr. Levinson, February 27, 2018) Student was struggling with perfectionistic behaviors. Dr. Levinson saw OCD behaviors manifested in perfectionism and some ritualistic behaviors, generating work product would be a significant challenge due to Student's focus on correcting the error. (Id.) Student's extremely slow processing speed impacts therapeutic session in that it takes Student a long time to communicate and complete requests at times. (Testimony of Dr. Levinson, February 27, 2018) Student must be given time to process fully, as she is not able to shorten her ideas. (Id.) Dr. Levinson observed student at Eagle Hill in the fall of 2015 and met with Eagle Hill School staff in 2016 and did an incidental observation in March of 2017. (Testimony of Dr. Levinson, February 27, 2018) Dr. Levinson conferred with Eagle Hill Staff via email and phone mostly during the 2015-2016 and 2016-2017 school years to carry over strategies into the school day. (Id.) When Student entered residential program, Dr. Levinson consulted with the staff member responsible for that program on the goal of helping Student be more independent. (Id.) Dr. Levinson also worked on assisting Student acquire more age appropriate interests and present in a more age appropriate manner. (Testimony of Dr. Levinson, February 27, 2018) Student has made progress in expected social behaviors and emotional regulation. (Testimony of Dr. Levinson, February 27, 2018) Dr. Levinson utilizes CBT and DBT modalities with Student. (Testimony of Dr. Levinson, February 27, 2018)

### **Summer 2016**

32. Instead of attending the ESY program offered by the District in the summer of 2016, Parents sent the Student to sleep away camp in Vermont for three weeks, during which she spent a portion of the morning each camp day completing the summer packet provided by the Eagle Hill School under the supervision of camp staff. Student was not successful in this camp program. (Testimony of Mother, January 23, 2018; B-24, P-37).

### **Student's Enrollment in Eagle Hill School for 2016-2017 School Year**

33. On March 18, 2016, Parents enrolled Student in the Eagle Hill School's day program (with additional afterschool enrichment two days a week) for the 2016-2017 school year. (P-43). Student was eventually enrolled in the residential dorm program at Eagle Hill for this year. (Testimony of Student, January 22, 2018, P-43).

### **IEP for 2016-2017 School Year - April 28, 2016**

34. On April 28, 2016, a PPT meeting was held to conduct an annual review, review evaluations and plan Student's IEP for the 2016-2017 academic year. (B-14) In attendance at this PPT meeting were Mother, the school psychologist, a general education teacher guidance counselor and a member of the RPS administration. (Id.) The PPT reviewed the Student's December 2015 advisor report from Eagle Hill School (Id.)

35. At the April 28, 2016 PPT meeting, the PPT decided to move up Student's triennial evaluation, from the scheduled date in February of 2017, so that the results could be reviewed before the start of the 2016-2017 school year to assist in planning Student's IEP for the freshman year in Ridgefield High School. (B-14) The evaluations planned were cognitive, adaptive

behavior, social emotional, executive functioning, occupational therapy, academics, assistive technology, language processing test and pragmatic language (Id.)

36. With regards to Student's current needs in math, as identified in the PLAAFP of the April 28, 2016 IEP, the PPT proposed the measurable annual goal of demonstrating an improvement in mathematics, achieved through 11 objectives targeting word problem solving skills, division, and fractions. (B-14) The April 28, 2016 IEP provides for 42 minutes of specialized instruction in mathematics per day in a small group setting for 7 out of the 8-day schedule. (Id.) Further in addition to numerous accommodations to be implemented across the curriculum, including during math instruction, the IEP provides for the math-specific accommodations of using a calculator, graph paper, a multiplication chart. (Id.)

37. To address Student's difficulties in language arts as identified and described in the data on the PLAAFP page of the April 28, 2016 IEP, the PPT proposed a measurable annual goal in reading comprehension. (B-14) The objectives linked to this language arts goal (12 in all) included: Student understanding multiple meanings of vocabulary words, making inferences and supporting them with detail from a passage, comparing and contrasting an element of a passage, developing an opinion about the plot, theme and character's actions in a passage, discriminating between relevant vs. irrelevant information and identifying cause and effect relationships in a reading passage, comparing and contrasting themes in two different reading passages and critically analyzing texts and identifying the author's purpose in a text. (Id.) Additional objectives targeted writing summary paragraphs, composing reports, and proofreading for errors using an editing rubric. (Id.) Under the April 28, 2016, IEP, language arts instruction was to be provided by a special education teacher with paraprofessional support in a small group setting for 42-minute period 7 out of the 8-day schedule. (Id.) In addition to the numerous accommodations to be implemented across the curriculum, accommodations particularly relevant to language arts instruction included audio versions of books and the assistive technology ("AT") of the use of a word processor. (Id.)

38. To address Student's difficulties in communication and social and emotional challenges as described in the PLAAFP of the April 28, 2016 IEP, the PPT proposed the measurable annual goals of improving social skills (B-14) The six objectives for this goal included Student being able to describe the perspective of each person in a social problem scenario picture, stating the main problem in one sentence for social problem scenario picture, stating the reasonable practical solution in one sentence to a given social problem, maintain a non-preferred conversational topic with a peer, identify three specific topics that might be of interest to peers in her class and accurately categorize given information as private, social and public. (Id.) This goal was to be serviced by the speech and language pathologist and special education teacher (sometimes together) in a small group setting for 6 out of the 8-day schedule for 42-minute periods. (Id.)

39. To address Student's challenges in gross and fine motor skills as identified on the PLAAFP of the April 28, 2016 IEP, the PPT proposed that Student have a goal of demonstrating improved fine visual motor skills when using classroom tools as measured by objectives involving typing skills and independent use of functional computer features. (B-14) This goal would be addressed by the special education teacher. (Id.)

40. The PPT proposed a measurable annual goal of improving her post-secondary transition/employment skills by completing a learning styles inventory, a skills and interest survey, and a strengths and difficulties questionnaire. (B-14) The goal was to be serviced by the special education teacher. (Id.)

41. APE was recommended by the PPT, which would have been given in a small group setting by a special education teacher and provided for one, 42-minute period, 4 days out of the 8-day schedule. (B-14)

42. A plan to transition Student out of Eagle Hill School and into the Ridgefield High School was discussed at the April 28, 2016 PPT meeting and included having Mother and Student visit the high school. (B-14)

### **Triennial Evaluations**

43. Parents signed a notice and consent form for all triennial evaluations requested by the PPT, including an AT evaluation on April 28, 2016. (P-39)

44. On May 9, 2016, the District conducted a psychological evaluation of Student for consideration by the PPT at the June 7, 2016 PPT meeting. (B-15) The evaluation includes a record review, observations of Student, Wechsler Intelligence Scale for Children, Fifth Edition (“WISC-V”), the Delis-Kaplan Executive Function System (“D-KEFS”), Behavior Assessment System for Children, Second Edition (BASC-2) Teacher, Parent, Self-Report scales and Vineland Adaptive Behavior Scales, Second Edition (“Vineland II”) Teacher and Parent Rating Form. (Id.)

45. Student’s Full-Scale IQ, per the May 2016 WISC-V was 81, which falls in the low average range. (B-15) There was a significant disparity between Student’s verbal reasoning, an area of relative strength and Student’s visual perceptual skills, which fell in the extremely low range. (Id.) Student’s processing speed as measured by the processing speed index (“PSI”) on the WISC-V was in the very low average range. (Id.) Student’s ability to sustain attention, concentrate and exert mental control, as measured by working memory index (“WMI”) on the WISC-V also falls in the low average range. (Id.)

46. On the Vineland II -Rating Scales, all 3 raters, Eagle Hill staff and Parent scored Student in the moderately low range on the adaptive behavior composite. (B-15) On the BASC-II, Student’s externalization of problems composite score fell in the average range by all raters, Student’s advisor, and Eagle Hill teachers. (Id.) Student’s internalizing problems composite was rated in the average to at risk range. (Id.)

47. Recommendations from the psychological evaluation for consideration at the June 7, 2016 PPT included: extended time for tests and projects, limiting use of visuals in instruction, social skills instruction to help facilitate peer interactions and foster friendships, as well as, encouragement of participation in extracurricular and leisure activities. (B-15)

48. An occupational therapy evaluation was conducted on May 10, 2016 by a District occupational therapist and a written report was issued on May 12, 2016. The occupational therapist conducted the following standardized assessments: three subtests of the Developmental Test of Visual-Motor Integration (“VMI”) and two subtests of the Bruininks-Osersky Test of Motor Proficiency, 2nd Edition (“BOT-2”). (B-16) On the VMI, Student’s scores fell in the average range in the subtests of motor coordination (93) and visual perception (97). Student’s score on the subtest of visual motor integration (78) was in the lower than average range. Student’s scores on the BOT-2 subtests of fine motor precision, fine motor integration and manual dexterity all fell in the below average range. (B-16) Student’s handwriting, while legible, demonstrated difficulties using consistent baseline orientation of some letters and consistent spacing between words. (B-16) Student demonstrated good keyboarding skills. (B-16)

49. Speech and language tests of Student were conducted on May 10, 2016 and a written evaluation was generated for consideration by the PPT at the June 7, 2016 PPT meeting. The speech and language evaluation conducted by the district included observation of Student, review of the pragmatic profile portion of the Clinical Evaluation of Language Fundamentals-5 (“CELF-5”) completed by Dr. Castro, Student’s Eagle Hill advisor and the administration of selected subtests of the Comprehensive Assessment of Spoken Language (“CASL”). (B-18) Student’s speech and language pathologist at Eagle Hill had reported her language processing weak in area of pragmatics including: conversational skills, problem solving, reading social cues, appropriate language and social behavior and main idea and inference comprehension. (Id.) Expression of main idea and knowing critical information on which to focus in spoken and written expression is also reportedly difficult. (Id.) Student has difficulty modulating her reactions to problems and has difficulty finding the most practical solutions to problems. (Id.) Comprehension of main idea and inferences is weak. (Id.) Expression of main idea in oral and written expression is difficult as Student tends to give all information instead of selecting key content. (Id.) Student has trouble maintaining conversations with peers, especially on non-preferred topics. (Id.) On the CASL, Student’s performance on the pragmatic profile fell in the well below average range. Student’s performance supralinguistic index score on the CASL was also in the well below average range (5th percentile), with supplemental subtests also falling in the below average range. (Id.) Student’s speech and language evaluation indicated that while Student has good basic language processing abilities, Student has significant difficulties with higher level language skills, including understanding and interpreting abstract, nonliteral language, making inferences, and understanding ambiguity. (Id.) Student also has significant difficulties with pragmatic language skills recognizing, explaining, using, and interpreting appropriate language for various social situations. (Id.) Recommendations in the speech and language evaluation for consideration at the PPT meeting included goals and objectives focusing on making inferences in both academic tasks and social situations and targeting Student’s weak understanding of figurative language to improve her understanding of social situations. (Id.) To target weaknesses in use and understanding of social pragmatic language across all settings, Student requires explicit teaching of social skills as well as incidental practice and coaching throughout her school day. (Id.) Practice in conversational skills, nonverbal communication, active listening, perspective taking, and awareness of mood was also recommended. (Id.)

50. On May 25, 2016, Kara Mistretta, District Special Education teacher generated an academic evaluation for the PPT’s consideration. (Testimony of Kara Mistretta, December 5,

2017; B-17) Kara Mistretta is a special education teacher at Ridgefield High School. (B-27) Ms. Mistretta holds a Bachelor of Arts. in Psychology, a Master of Science in Education, and a Master of Science in Special Education with an Autism Endorsement. (Id.) She is certified to teach elementary education and holds the comprehensive special education endorsement in the State of Connecticut. (Id.) Her testimony was found credible.

51. For the May 2016 educational evaluation, Student was again administered the WIAT-III. (B-17) Student's composite scores in reading and writing fell in the average range and below average in mathematics. (Id.) Recommendations for consideration by the PPT were use of a calculator, formulas for use as a reference, breaking down of math problems into smaller steps, extra time for tests, quizzes, and projects, use of graphic organizers for writing assignments. (Id.)

52. On May 10, 2016, Parent signed a release allowing RPS to release information to CREC AT Staff. (P-39)

### **IEP for 2016-2017 School Year - June 7, 2016**

53. On June 7, 2016, a PPT meeting was convened as a triennial review. (B-) In attendance at this PPT meeting were Mother, two special education teachers, a school psychologist, a general education teacher, a speech and language pathologist, an occupational therapist, a guidance counselor, and a member of the RPS administration. (Id.) The PPT reviewed all the evaluations scheduled at the April 2016 PPT meeting, with the exception of the AT evaluation which had not yet been completed but was scheduled. (Id.) The PPT recommended placement at Ridgefield High School. (B-19)

54. With regards to Student's current needs in math, as identified in the PLAAFP page of the April 28, 2016 IEP and in the educational evaluation conducted for the triennial, the PPT again proposed the measurable annual goal of demonstrating an improvement in mathematics, achieved through 11 objectives targeting word problem solving skills, division, and fractions. (B-17, B-19) The April 28, 2016 IEP provides for 42 minutes of specialized instruction in mathematics per day in a small group setting for 3 days out of the 8-day schedule. (Id.) Further in addition to numerous accommodations to be implemented across the curriculum, including during math instruction, the IEP provides for the math-specific accommodations of using a calculator, graph paper, a multiplication chart. (Id.)

55. To address Student's difficulties in language arts as identified and described in the data on the PLAAFP page of the June 7, 2016 IEP, the PPT again proposed a measurable annual goal in reading comprehension. (B-19) The objectives linked to this language arts goal (12 in all) included: Student understanding multiple meanings of vocabulary words, making inferences and supporting them with detail from a passage, comparing and contrasting an element of a passage, developing an opinion about the plot, theme and character's actions in a passage, discriminating between relevant vs. irrelevant information and identifying cause and effect relationships in a reading passage, comparing and contrasting themes in two different reading passages and critically analyzing texts and identifying the author's purpose in a text. (Id.) Additional objectives targeted writing summary paragraphs, composing reports, and proofreading for errors

using an editing rubric. (Id.) Under the June 7, 2016, language arts instruction was to be provided by a special education teacher with paraprofessional support in a small group setting for 42-minute period 3 days out of the 8-day schedule. (Id.) In addition to the numerous accommodations to be implemented across the curriculum, accommodations particularly relevant to language arts instruction included audio versions of books and the AT of use of a word processor. (Id.)

56. To address Student's difficulties in communication and social and emotional challenges as described in the PLAAFP of the June 7, 2016 IEP, the PPT proposed the measurable annual goals of improving social skills (B-19) The eight objectives for this goal included Student being able to describe the perspective of each person in a social problem scenario picture, stating the main problem in one sentence for social problem scenario picture, stating the reasonable practical solution in one sentence to a given social problem, maintain a non-preferred conversational topic with a peer, identify three specific topics that might be of interest to peers in her class and accurately categorize given information as private, social and public, stating the difference between stranger, acquaintance, fiend and boyfriend/girlfriend , and identifying behaviors that correspond to strangers. (Id.) This goal was to be serviced by the speech and language pathologist, school psychologist and special education teacher (sometimes together) in a small group setting for 6 days out of the 8-day schedule for 42-minute periods. (Id.) A second goal of improving Student's ability to manage difficult situations as measured by 3 objectives. The objectives were for Student to be able to identify academic or social situations that cause her to experience a negative emotion, to identify appropriate proactive coping strategies when she is experiencing a negative emotion and accurately rate the perceived intensity of an emotion given a hypothetical or actual social situation that causes a negative emotion. (Id.)

57. To address Student's challenges in gross and fine motor skills as identified on the PLAAFP of the June 7, 2016 IEP, the PPT proposed that Student have a goal of demonstrating improved fine visual motor skills when using classroom tools as measured by objectives involving typing skills and independent use of functional computer features including cutting and pasting. (B-19) This goal would be addressed by the occupational therapist in a 1:1 setting for one 42-minute period per week. (Id.)

58. The PPT proposed a measurable annual goal of improving her post-secondary transition/employment skills by completing a learning styles inventory, a skills and interest survey, and a strengths and difficulties questionnaire. (B-19) The goal was to be serviced by the special education teacher. (Id.)

59. The PPT also recommended adult support in general education classes that do not have special education co-teachers, a monthly parent meeting for 30 minutes and a BCBA to consult weekly for 30 minutes with the educational team. (B-19) 20 minutes of counseling was added to the IEP as well. (Id.)

60. APE was recommended by the PPT, which would have been given in a small group setting by a special education teacher and provided for one, 42-minute period, 4 days out of the 8-day schedule.



61. The June 7, 2016 IEP included recommendations for Student to participate in the RPS ESY program from July 5, 2016 through July 28, 2016, which was to run from 7:45 a.m. to 10:45 a.m. three days per week (Tuesday, Wednesday, Thursday) and provide to student 7 hours 30 minutes of academic instruction per week and 30 minutes of social skills instruction 3 times per week. (B-19)

### **IEP for 2016-2017 School Year - September 15, 2016**

62. On August 18, 2016, the Board received a 10-day notice letter from Parents notifying the Board that of their intent to unilaterally place Student at the Eagle Hill School in Greenwich for the 2016-2017 school year, because they believed the Board's proposed IEP, dated June 7, 2016, was inappropriate for Student and would not allow her to make meaningful progress. (B-20).

63. On September 15, 2016, a PPT meeting was convened in response to Parents' notice of their rejection of the June 2016 IEP. (B-21) In attendance were Dr. Kim Hapken, Mother, a special education teacher, a school psychologist, a speech and language pathologist a, a guidance counselor, a general education teacher and the RPS transition coordinator. (Id.) The AT evaluation had still not yet been completed. (Id.) The PPT again recommended placement at Ridgefield High School and offered the same program as it had offered in June of 2016. (B-19, B-21)

64. At the September 15, 2016 meeting, the PPT proposed District staff conduct an observation of Student at Eagle Hill School. (B-21) Parents agreed and signed the necessary consent. (B-21)

65. In the Fall of 2016-2017, school year Student participated in the afterschool sport of field hockey on the Eagle Hill team. (Testimony of Student, January 21, 2018)

66. The December 2016 Eagle Hill School Advisor report indicated that Student's reading materials were at the instructional reading level of 5th/6th grade. (P-19)

67. Student visited Ridgefield High School on February 15, 2017. (P-28) She visited two special education classes and two general education classes and ate lunch with peers. (P-28) Student was accompanied by a paraprofessional throughout her visit. (P-28)

68. On March 25, 2017, Parents enrolled Student in the Eagle Hill School day program for the 2017-2018 school year. (P-45)

### **IEP for 2017-2018 School Year - April 19, 2017**

69. On April 19, 2017, the PPT met to conduct an annual review, review the AT and neuropsychological evaluations of Student, conduct transition planning, and plan for ESY in the summer of 2017 and for the 2017-2018 school year. (B-25) Dr. Castro and another Eagle Hill School staff member participated in this conference as did Mother, Dr. Kim Hapken, a special education teacher, a school psychologist, a speech, and language pathologist a guidance

counselor and an assistive technology provider, the RPS transition coordinator and attorneys. (Id.)

70. On September 21, 2016, Nicole Natale, who has a Master of Science and a Certificate of Clinical Competence for Speech-Language Pathologists, Assistive Technology Specialist, and is a speech and language pathologist and AT professional employed by the Capitol Region Education Council (“CREC”) conducted an AT assessment of Student and on November 14, 2016 she issued a written AT assessment report. (B-22). The AT evaluation indicated that Student would benefit from AT and included a list of recommendations the first of which was to encourage Student to evaluate the available AT and decide what would work best. Recommended AT supports included: a lightweight, highly portable device capable of running Google Chrome, specific software programs to assist with typing and note-taking skills as well as using graphic organizers and spellcheck to assist with writing assignments. (Id.) Recommended supports for reading included text to speech within Read and write for google Chrome, Bookshare (a program for downloading of electronic text so written text could be accessed in audio form and services with human voices reading books. (Id.) Utilizing text to speech for the delivery of written information in math classes and using online organizational tools (calendars) with synching to Student’s phone were also recommended. (Id.) Voice to text was determined to be a tool that, while not recommended at present, might be revisited in the future. (Id.)

71. Parents had retained a private neuropsychologist, Dr. Stephanie O’Leary to conduct a neuropsychological evaluation of Student in the Fall of 2016. (B-23) This report was completed in December 2016 and shared at the April 19, 2017 PPT meeting. (Testimony of Dr. Stephanie O’Leary, May 9, 2018; B-23, B-25). Dr. O’Leary has a Bachelor of Arts with majors in Psychology and Biology, a Master of Arts in clinical psychology and has earned a Doctor of Psychology in clinical psychology with a specialization in Neuropsychology. (P-34) This report was completed in December 2016 and shared at the April 19, 2017 PPT meeting. (Testimony of Dr. Stephanie O’Leary, May 9, 2018; B-23, B-25)

72. The stated reason for the neuropsychological referral in the report was to provide recommendations for academic planning and placement as Student prepared to transition to an alternate boarding school in the near future. (Testimony of Dr. Stephanie O’Leary, May 9, 2018, B-23) Mother testified that she did not know why Dr. O’Leary had mentioned an alternate boarding school, appearing to suggest it was a mistake by Dr. O’Leary. (Testimony of Mother, February 14, 2018) The hearing officer credited Dr. O’Leary’s testimony on this point.

73. The scoring and interpretation of Student’s performance on the standardized tests in the neuropsychological evaluation were deemed credible and were consistent with information contained in the District evaluations. (B-23)

74. Dr. O’Leary’s educational placement recommendations as it pertained to what kind of educational environment (school) Student should attend were not credited. Dr. O’Leary had no familiarity with the IDEA, the PPT process and had no experience working with schools directly in planning programs for students. (Testimony of Dr. Stephanie O’Leary, May 9, 2018) She could not recall how many evaluations she had done for Parents to provide schools with more

information about Student. (Testimony of Dr. Stephanie O’Leary, May 9, 2018) Dr. O’Leary’s basis for recommending boarding school, as opposed to a day school was not articulated in the report or during the hearing and appeared to be based not on Student’s specific needs, but on Parents’ stated purpose for the evaluation. (B-23)

75. An updated academic and Social Emotional Assessment was completed by Dr. O’Leary in the Fall of 2017. (P-32) This evaluation was requested by Parents after the mediation of the instant complaint had failed and as such was never presented to the PPT at any of the meetings where IEPs were developed and thus is not relevant to consideration of the appropriateness of those IEPs. (P-32) It was noted by the hearing officer that many of Dr. O’Leary’s responses to the Board’s requests for explanations of the placement recommendations in the updated report were tautological. Such responses undermined the updated placement recommendations and cast further doubt on the validity of the private school placement recommendation in the 2016 neuropsychological evaluation. (Testimony of Dr. Stephanie O’Leary, May 9, 2018, B-23, B-32)

76. Student’s advisor from Eagle Hill, Dr. Marjorie Castro, attended this meeting and provided information about Student’s current needs and functioning and provide significant input regarding the IEP goals and objectives. (P-48) Although Dr. Castro testified at the hearing that she spoke with the PPT about how a full-size class even with two teachers would be overwhelming and that having small class size would be very important, the PPT transcript does not reflect that she made those comments at that time. (Testimony of Dr. Castro, January 22, 2018; P-48) Similarly, Dr. Castro recalled expressing concern about “pull out” services being a concern if the Student ended up missing academic instructional time at the PPT, but this was not expressly stated at the PPT meeting. (Testimony of Dr. Castro, January 22, 2018; B-25, P-48.)

77. The April 19, 2017 IEP contained the following special education services (with Student to be mainstreamed in other classes with adult support):

1. Language Arts and Math instruction provided in self-contained classes,
2. Language Arts instruction in a general education English class co-taught by a special education teacher and a regular education teacher.
3. Social skills instruction in a small group setting six out of the 8-day cycle for 42-minute periods.
4. Adapted Physical Education (“APE”) at 4 out of the 8 days per cycle for 42-minute periods.
5. Occupational therapy once per week for a 42-minute period. (Testimony of Joseph Kowalczyk, May 3, 2018; B-25)

78. Related services included adapted physical education 2.8 hours per 8-week cycle, occupational therapy .7 hours a week one on one counseling 30 minutes per week to be provided by a school psychologist, social skills instruction to be provided by the school psychologist in a small group setting 1.5 hours per week. (B-25)

79. With regards to Student’s current needs in math, as identified in the PLAAFP page of the April 19, 2017 IEP, the PPT again proposed the measurable annual goal of demonstrating an improvement in mathematics, achieved through 11 objectives targeting word problem solving

skills, division, and fractions. (B-25) The April 19, 2017 IEP provides for 42 minutes of specialized instruction in mathematics per day in a small group setting for 3 days out of the 8-day schedule. (Id.) Further in addition to numerous accommodations to be implemented across the curriculum, including during math instruction, the IEP provides for the math-specific accommodations of using a calculator, graph paper, a multiplication chart. (Id.)

80. To address Student's difficulties in language arts as identified and described in the data on the PLAAFP page of the April 19, 2017 IEP, the PPT again proposed a measurable annual goal in reading comprehension. (B-25) The objectives linked to this language arts goal (12 in all) included: Student understanding multiple meanings of vocabulary words, making inferences and supporting them with detail from a passage, comparing and contrasting an element of a passage, developing an opinion about the plot, theme and character's actions in a passage, discriminating between relevant vs. irrelevant information and identifying cause and effect relationships in a reading passage, comparing and contrasting themes in two different reading passages and critically analyzing texts and identifying the author's purpose in a text. (Id.) Additional objectives targeted writing summary paragraphs, composing reports, and proofreading for errors using an editing rubric. (Id.) Under the the April 19, 2017, language arts instruction was to be provided by a special education teacher with paraprofessional support in a small group setting for 42-minute period 3 days out of the 8-day schedule. (Id.) In addition to the numerous accommodations to be implemented across the curriculum, accommodations particularly relevant to language arts instruction included audio versions of books and the AT of use of a word processor. (Id.)

81. To address Student's difficulties in communication and social and emotional challenges as described in the PLAAFP of the April 19, 2017 IEP, the PPT proposed the measurable annual goals of improving social skills (B-25) The eight objectives for this goal included Student being able to describe the perspective of each person in a social problem scenario picture, stating the main problem in one sentence for social problem scenario picture, stating the reasonable practical solution in one sentence to a given social problem, maintain a non-preferred conversational topic with a peer, identify three specific topics that might be of interest to peers in her class and accurately categorize given information as private, social and public, stating the difference between stranger, acquaintance, fiend and boyfriend/girlfriend , and identifying behaviors that correspond to strangers. (Id.) This goal was to be serviced by the speech and language pathologist, school psychologist and special education teacher (sometimes together) in a small group setting for 6 days out of the 8-day schedule for 42-minute periods. (Id.) A second goal of improving Student's ability to manage difficult situations as measured by 3 objectives. The objectives were for Student to be able to identify academic or social situations that cause her to experience a negative emotion, to identify appropriate proactive coping strategies when she is experiencing a negative emotion and accurately rate the perceived intensity of an emotion given a hypothetical or actual social situation that causes a negative emotion. (Id.)

82. To address Student's challenges in gross and fine motor skills as identified on the PLAAFP of the April 19, 2017 IEP, the PPT proposed that Student have a goal of demonstrating improved fine visual motor skills when using classroom tools as measured by objectives involving typing skills and independent use of functional computer features including cutting and

pastings. (B-25) This goal would be addressed by the occupational therapist in a 1:1 setting for one 42-minute period per week. (Id.)

83. The PPT proposed a measurable annual goal of improving her post-secondary transition/employment skills by completing a learning styles inventory, a skills and interest survey, and a strengths and difficulties questionnaire. (B-25) The goal was to be serviced by the special education teacher. (Id.)

84. The PPT also recommended adult support in general education classes that do not have special education co-teachers, a monthly parent meeting for 30 minutes and a BCBA to consult weekly for 30 minutes with the educational team. (B-25) 20 minutes of counseling was added to the IEP as well. (Id.)

85. APE was recommended by the PPT, which would have been given in a small group setting by a special education teacher and provided for one, 42-minute period, 4 days out of the 8-day schedule, achieved through objectives targeting division and fractions. (B-25) The April 28, 2016 IEP provides for 42 minutes of specialized instruction in mathematics per day in a small group setting for 3 days out of the 8-day schedule. (Id.) Further in addition to numerous accommodations to be implemented across the curriculum, including during math instruction, the IEP provides for the math-specific accommodations of using a calculator, graph paper, a multiplication chart. (Id.)

86. The April 19, 2017 IEP contained the following accommodations to be implemented throughout the Student's school day: Student was to be provided with alternative texts, modified classwork, modified worksheets, and class notes and outlines. For assistive technology, Student was to be provide with audio books calculator, graph paper, laptop or Chromebook, multiplication chart and text to speech. Alternative tests breaks during testing, checking for understanding, chunking multiple choice question, contact specific study guides, extra time (+50%) extra time on tests, projects, and written work, highlight key words, limited multiple choice, modified/shortened homework assignments, no scantron testing, orally read tests/directions, preview Student was also to be given advance notice in changes of routines or schedule, provided with preferential seating with seat in close proximity to teacher. (B-25) For behavioral support, Student was to have access to counseling personnel as needed breaks between tasks and cues for expected behavior. Accommodations in instructional strategies include activating background knowledge, highlighting critical features, checking on work in progress, copy of class notes, extra time, extra worksheet workspace, models, workload reduction, visuals to support instruction, word banks and having student restate directions for understanding and access to word processor. Organization - post routines. In addition, the Student was to be provided with reinforcement breaks for academic and behavioral need, wait time to allow for processing of information, models, scripts or guided questions, spell check daily homework list, listing of sequential steps, limitation on the introduction of vocabulary and skeleton outline for notes. (Id.) Also routines would be posted. (Id.)

87. Student was to be provided with adult support in non-co-taught classes and there were to be monthly parent meetings lasting 30 minutes. The IEP also provided that a BCBA was to consult with the Student's educational team on a weekly basis for 30 minutes. (B-25)

88. On June 7, 2017, an RPS special education teacher and school psychologist conducted an observation of Student during her literature at Eagle Hill. (Testimony of Laura Kent, March 6, 2018; B-31) The class contained 7 students and one teacher provided whole group instruction. Student was observed to transition independently to the class and completing her work electronically. (Testimony of Laura Kent, March 6, 2018; B-31) Student was also observed to be using putty appropriately. (Testimony of Laura Kent, March 6, 2018; B-31) Student had difficulty with listening comprehension and required clarification. (Testimony of Laura Kent, March 6, 2018; B-31) Student read aloud with fluency and prosody. (Testimony of Laura Kent, March 6, 2018; B-31)

89. During her observation of Student in the Eagle Hill class, Laura Kent, the RPS special education teacher took notes to ensure that information from the observation tracked with the planned program for high school in the RPS. (Testimony of Laura Kent, March 6, 2018; B-31)

### **ESY Summer 2017**

90. Parents decided to enroll Student in the ESY program and to postpone a decision on whether to reject the IEP for the 2017-2018 and notified the District of this by a letter sent on May 6, 2017. (P-22)

91. The Student was enrolled in and attended an ESY program in the District for the Summer of 2017, which ran from July 5 to July 26, 2017 and took place in the middle school building. (Testimony of Kara Mistretta, December 5, 2017) Kara Mistretta, the special education teacher responsible for the 2017 ESY program, is certified to teach elementary education and special education in the State of the (B-27). Ms. Mistretta has received training in the Linda mood-Bell visualizing and verbalizing program, and social thinking methodology training, SERC EnvisionIT transition training, and job coach training, and Bureau of Educational services for the Blind trainings, CTAA/CAPT administration testing training, ABA training through the Center for Children with Special Needs. (Testimony of Kara Mistretta; B-27) Ms. Mistretta was found credible.

92. There were 4 other students in the ESY program including Student's sibling, who ranged in age from 13 to 16. (Testimony of Kara Mistretta, December 5, 2017) Each student in the ESY program had a one to one paraprofessional assisting them. (Testimony of Kara Mistretta, December 5, 2017) Student was pulled out for social skills instruction for 30 minutes each day. (Testimony of Kara Mistretta, December 5, 2017) Student was also pulled out for counseling and would transition to a vocational program for the second part of the ESY day. (Testimony of Kara Mistretta, December 5, 2017) Ms. Mistretta had a parent meeting during the ESY program to review progress and answer any questions. (Testimony of Kara Mistretta, December 5, 2017)

93. Student appeared happy while participating in ESY and did not evidence signs of anxiety, nor were (Testimony of Kara, Mistretta December 5, 2017) Ms. Mistretta did not observe Student to be anxious during the ESY program, nor did she observe her to engage in lip picking. (Id.)

94. Student made satisfactory progress on her reading objectives and those mathematic objectives there were introduced. (P-26) Student also made satisfactory progress on social/emotional/behavior objectives that were introduced. (Id.)
95. Student enjoyed her vocational work experience during the summer. (Testimony of Student January 22, 2018, Testimony of Mother, January 14, 2018, Testimony of Laura Kent, March 6, 2018, P-49) Progress toward post-secondary education and training goals were not noted in the Progress Summary. (P-26)
96. During the hearing both Parents stated they felt ESY in 2017 was not indicative of what she would experience in typical classrooms in the 2017-2018 school year. (Testimony of Mother, February 14, 2018, Pg. 55; Testimony of Father, February 21, 2018, Pgs. 20-21)
97. Megan Calderwood, the school psychologist who delivered the social skills instruction during ESY, was not able to produce the underlying data on which the progress report marks were based at the hearing. (Testimony of Megan Calderwood, March 9, 2018) Ms. Calderwood indicated that she had provided those documents to the school psychologist who participated in her stead at the August 2017 PPT meeting, and when she requested it be returned her colleague was unable to find it. Ms. Calderwood's statements regarding what happened to these documents were deemed credible. (Testimony of Megan Calderwood, March 9, 2018)
98. Parents chose to have the Student enroll in the District's ESY program because they thought doing so would provide an opportunity for Student to try an educational program in a mainstream setting and to prepare Student for a possible transition to RPS. (Testimony of Mother, February 14, 2018)
99. Academic instruction was provided in a room with 4 other students who each had their own 1:1 paraprofessional. Academic instruction was provided to Students at one of four tables in the room. The academic instruction included built in breaks in which Students were permitted to engage in preferred activities. Student was observed reading during these breaks. Student was pulled out of this room for individual counseling and social skills work. (Testimony of Kara Mistretta, December 5, 2017); B-19). At the August 15, 2017 PPT meeting, Mother told the team that Student had benefitted from the one to one nature of instruction during the ESY program. (P-49)
100. The ESY program began each morning at 7:45 a.m. Student transitioned from the academic/social services portion of her day to a vocational placement at Walgreens at 10:45 a.m. after which Student would return to room where academic instruction was given until the time of dismissal. (Testimony of Student, January 22, 2018)
101. RPS staff did not observe Student exhibiting behaviors of concern during ESY in the summer of 2017, that would have required involvement of a BCBA beyond that of a consultant to the educational team, conducting observations and providing recommendations to Student's educational team as needed. (P-49)

**IEP for 2017-2018 School Year - August 15, 2017**

102. On August 15, 2017, the PPT met after Parents had rejected the 2017-2018 academic year portion of the April 19, 2017 IEP. (B-26) In attendance at this meeting were Mother, Dr. Kim Hapken, a RPS special education teacher, a RPS school psychologist, a speech and language pathologist, a guidance counselor, the RPS transition coordinator and Counsel. (Id.) The goals and objectives from the April 2017 IEP remained unchanged, but there were changes to the nature of specialize instruction and services. (B-25, B-26) The August 15, 2017 IEP included an additional co-taught class, in addition to the co-taught math and language arts classes included in the April 19, 2017. (Id.) One hour of counseling per week was added to the IEP as well. (Id.)

103. During the August 15, 2017 PPT meeting the PPT discussed removing APE from her schedule. (P-49) The recommendation was made by the special education teacher based on her direct observation of Student during the summer. (P-49) Mother's concerns about the general education PE class size (19-25) were discussed and the team discussed having adult support in addition to the PE teacher in the class. (P-49)

104. The August 15, 2017 IEP contained a draft schedule indicating that Student would be placed in a co-taught class, taught by the special education teacher, the school psychologist, and the speech and language pathologist. (Testimony of Laura Kent, March 6, 2018; B-26) This class would contain 3-4 students and up to 4 staff members. (Testimony of Laura Kent, March 6, 2018)

105. At the August 15, 2017, the PPT discussed how the existing accommodations were in place to support Student in the general education setting. (P-49) There was also discussion about whether Student was to be provided with alternative texts or should be provided with grade-level texts and support to maximize Student's inclusion, while retaining the option of providing alternative texts if necessary. (P-49)

106. The special education teacher described the BCBA role as a support in the IEP during the August 15, 2017 PPT meeting as serving as a consult to teachers, which would involve conducting observations, making recommendations which the case manager would share with all staff involved with Student. (P-49)

107. The PPT chose to have the BCBA begin service as a consultant because RPS staff did not observe behaviors of concern, while Student was enrolled in ESY in the summer of 2017. (P-49) Despite the lack of observed behaviors of concern, the PPT, cognizant of the significant change for Student in transitioning to RPS wanted to ensure staff had access to the services of a BCBA if needed. (P-49)

108. The PPT increased the OT services to two times weekly, and increased the therapy to one hour weekly, and added a co-taught class in History and added direct speech and language services for work on pragmatics one 42-minute period per week. (P-49)



109. In response to a question from Parent regarding the homework requirements, the special education teacher indicated homework is typically 30-45 minutes per class per night maximum, but that Student would have access to accommodations of shortened assignments and extra time and that the case manager would make sure the teachers were aware of those accommodations at the start of year. (P-49) The special education teacher also pointed out that there were study hall periods within the school week that could be utilized for homework completion. (P-49)

110. The 2017-2018 IEPs provided for the special education teacher and school psychologist to co-treat social skills instruction to be provided. (Testimony of Laura Kent, March 6, 2018)

111. During the 2017-2018 school year Student has scheduled weekly 40-minute counseling sessions at Eagle Hill School and sees the counselor on an as needed basis. (Testimony of Dr. Castro, February 27, 2018)

112. Student does not have APE at Eagle Hill School now. (Testimony of Dr. Castro, February 27, 2018)

113. No objections to the District's description of Student in PLAAFP pages of any of the IEPs were raised in the complaint or during the hearing.

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The standard for review of special education programs for individual students with disabilities was established by the U.S. Supreme Court in the case of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) Rowley set forth a two-part test for evaluating whether or not a District has complied with the substantive requirements of the IDEA: 1) were the procedural requirements of the Act complied with; and 2) was the educational program developed for the child reasonably expected to provide educational benefit. Rowley was recently further refined by the Supreme Court in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), in which the Supreme Court made clear that the proposition that the educational benefit must be merely something more than de minimus could not stand. *Id.*

2. The Second Circuit Court of Appeals has had the opportunity to discuss *Endrew F.* and its application in the context of a case originating in Connecticut. *Mr. P and Mrs. P. v. West Hartford Board of Education*, 885 F.3d 735 (2nd Circuit) 118 LRP 11253. In *Mr. P and Mrs. P.*, the Second Circuit clearly states that the appropriate inquiry into the substantive adequacy of an IEP under *Endrew F.* is whether the IEP was reasonably calculated to enable the child to receive educational benefits and likely to produce progress and not regression. *Id.* It is by this standard that the IEPs developed by the District and rejected by the Parents are to be judged.

3. In addition to the District's obligation to provide a FAPE in the form of an IEP which is designed and implemented in a manner that will enable the child to receive educational benefits and likely to produce progress and not regression, the District has the obligation to do so in the least restrictive environment under the IDEA. Specifically, the District must "(t)o the maximum

extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. 34 CFR 300.114 (a)(2)(i) Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR § 300.114 (a)(2)(ii)

4. Parents' claims fall into two distinct categories: claims that the IEP's developed and offered by the District did not offer an appropriate program, resulting in Parents decision to unilaterally place the Student and a claim that the ESY services provided by the District during the summer of 2017 denied Student a FAPE. The two categories are addressed in turn.

5. Parents are requesting tuition reimbursement for their unilateral placement of Student at the Eagle Hill School for the 2015-2016, 2016-2017 and 2017-2018 school years. Historically, the remedy of tuition reimbursement in disputes over special education has been an equitable remedy. *Burlington Sch. Comm. v. Massachusetts Dep't of Educ.*, 556 IDELR 389 (U.S. 1985); and *Florence County Sch. Dist. Four v. Carter*, 20 IDELR 532. This equitable remedy has been codified by Congress. 20 U.S.C. 1412 (a)(10)(C); 34 CFR § 300.148.

6. A District is relieved from any obligation to reimburse Parents for a unilateral placement, if the District made FAPE available at the time Parents chose the unilateral placement. Pursuant to 34 CFR § 300.148(a), reimbursement may be ordered if the District failed to make a FAPE available in a timely manner (prior to Student's enrollment in the unilateral placement), and the private placement is found to be appropriate. 34 CFR § 300.148(b) Reimbursement may be reduced or denied if parents fail to provide adequate notice to the Board of their intent to unilaterally place Student, refuse to cooperate in the evaluation of the Student by the District or if the Parents' actions were unreasonable. 34 CFR § 300.148(d)

7. In the present case, where Student was unilaterally placed by Parents at the Eagle Hill School for all three academic years and Student never attended RPS, the hearing officer must evaluate the IEP as written and base that analysis on the information available to the PPT at the time the IEP was developed. "The IEP is a written statement that sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives." *R.E.*, 694 F.3d at 175 (quoting *D.D. ex rel. V.D. v. N.Y.C. Bd. of Educ.*, 465 F.3d 503, 507-08 (2d Cir. 2006))

8. Thus, when evaluating Parents' tuition reimbursement claims, the threshold inquiry is whether the IEPs developed for the Student for these years was appropriate and offered in a timely manner. The District has the burden of proof to establish that the IEP is appropriate and if it fails to do so the burden of proof shifts to the Parents to establish the appropriateness of the private placement. *Burlington Sch. Comm. v. Massachusetts Dep't of Educ.*, 556 IDELR 389 (U.S. 1985) and *Florence County Sch. Dist. Four v. Carter*. If it is determined that the District met these obligations, the claim for reimbursement fails and no further analysis is required. 34 CFR §300.148

9. The essence of Parents' claims regarding the substantive deficiency of IEPs, as set forth in the due process hearing request, is that Student is unable to access her education outside of a small, highly structured, specialized setting in which all services and supports are integrated throughout Student's school day and that the District failed to offer such a setting in any of the academic years are in dispute (HO-1). A review of the due process complaint and Parents' brief, as well as the evidence (both testimonial and documentary) makes clear that Parents were most concerned by the mainstreaming aspects of Student's proposed programs. Parents concerns in this regard are directly at odds with the District's obligation to design a program in the least restrictive environment.

10. Despite Parents' arguments to the contrary, the May 2015 IEP developed for Student for the 2015-2016 school year was reasonably calculated to provide Student with educational benefits likely to produce progress, and not regression and is found to be appropriate. The goals and objectives in the IEP were logically related to the needs of the Student as set forth in the PLAAFP and as such were individualized to the Student. (Findings of Fact 21-27) The PPT properly considered District evaluations, information from Student's current educational placement and designed a program that would provide Student with a FAPE in the least restrictive environment through the inclusion of Student in general education classes with adult support. Student was provided with special education in the academic areas in which she evidenced deficits in her achievement testing and was provided with extensive accommodations, including a 1:1 paraprofessional in her general education settings. (Findings of Fact 21-27) While Parents voiced concerns that Student would be overcome in the general education setting based on her slow processing speed and that the accommodations offered were not sufficient to address Student's needs, these concerns, although understandable given that the Student had been privately placed for many years, were not supported by the evidence. (Findings of Fact 10-15 and 21-27)

11. Parents argue in their brief that the May 2015 IEP did not adequately address Students' emotional needs because there were no direct or consultative counseling services for Student. Most of this argument was based on information provided by Student's psychotherapist. This information could not have been available to the PPT, because the psychotherapist did not begin to see the Student until August of 2015, two months after the disputed IEP was developed and as such does not support a finding that the IEP was inappropriate. (Finding of Fact 35) The PPT meeting summary documents discussion at the PPT meeting in which Parent informed the education team that Student had been exhibiting OCD-like behaviors which had impacted her school work and which Eagle Hill School had addressed through utilizing different technology. (Finding of Fact 19) Although the first-hand account is not specified, the BCBA did observe Student picking her lip. (Finding of Fact 11) The PPT was therefore aware of Parent's concerns, which she relayed had been addressed through technology, and the behavior in the observation, which did not interfere with Student reengaging with her work after appropriate redirection. The IEP's lack of counseling support did not render the IEP deficient.

12. The April 2016 IEP developed for Student for the 2016-2017 school year was reasonably calculated to provide Student with educational benefits likely to produce progress, and not regression. The goals and objectives in the IEP were logically related to the needs of the Student as set forth in the PLAAFP and as such were individualized to the Student. (Findings of Fact 35-

41). The decision of the PPT to move up the triennial, when there was no obligation to do so, evidences a desire by the PPT to have the most current information about Student before the beginning of the next school year and not deemed to be an admission that the District did not adequately understand the Student as argued by Parents in their brief. (Finding of Fact 35)

13. The June 7, 2016 IEP developed for Student for the 2016-2017 school year was reasonably calculated to provide Student with educational benefits likely to produce progress, and not regression. The goals and objectives in the IEP were logically related to the needs of the Student as set forth in the PLAAFP and as such were individualized to the Student. (Findings of Fact 53-60).

14. The same finding of appropriateness for the June 7, 2016 IEP applies to the September 15, 2016 IEP, which was identical to the June 7, 2016 IEP. (Findings of Fact 53-60, 63)

15. Parents argue that the September 15, 2016 IEP was not appropriate because there were no changes to the substance of the June 2016, which had been rejected. No caselaw or statutory authority was provided for the proposition that the Board is foreclosed from calling a PPT meeting in response to the rejection of an IEP unless it agrees in advance that there will be revisions.

16. Parents also took issue with the fact the school team asked to conduct observations in September of 2016, but didn't conduct any observations until June 7, 2017, after Parents had accepted ESY. It was not clear why the timing of the observations before or after agreement to ESY would have any bearing on the appropriateness of the IEP in the PPT meeting in which they were discussed. The program for 2016-2017 had already been rejected, twice, and information from the observations was made available in time for the development of the 2017-2018 IEP.

### **2017-2018 School Year**

17. The April 2017 IEP developed for Student for the 2017-2018 school year was reasonably calculated to provide Student with educational benefits likely to produce progress, and not regression. The goals and objectives in the IEP were logically related to the needs of the Student as set forth in the PLAAFP page and as reported by Dr. Castro and as such were individualized to the Student. (Findings of Fact 76-87). Indeed, Dr. Castro's significant involvement in this PPT meeting and the considerable input she gave when the program was described by the PPT, given her knowledge of the Student add further support the finding that the IEP was appropriate. (P-49, Finding of Fact 76)

18. The District failed to complete the AT evaluation in the same period as the other evaluations from the triennial, in June of 2016, and was not completed and reported out until April of 2017. (Finding of Fact 70) The failure to complete this evaluation in a timely manner is determined to a procedural violation of the IDEA but is not found to be error on the part of the Board because the failure to complete the evaluation did not operate to deny Student a FAPE. Parents had already rejected the IEP proposed in April of 2016, when the triennial itself was planned, and the evaluation was made available and considered at the April 2017 PPT meeting, when the IEP for 2017-2018 was planned and which Parents subsequently. The PPT had

information throughout the IEP process, relating to Student's abilities to utilize and need for assistive technology through reports from Eagle Hill School and Mother and District evaluations and had incorporated them into each of its IEPs as accommodations.

19. The August 15, 2017 IEP developed for Student for the 2017-2018 school year was reasonably calculated to provide Student with educational benefits likely to produce progress, and not regression. (Findings of Fact 102-110)

20. Parents argued that the absence of testimony from District staff, specifically a BCBA, or a general education teacher or a speech and language pathologist precludes a finding that certain IEPs are appropriate. This argument taken to its logical conclusion would require the District to call every service provider for every service offered or evaluated and a general education teacher and special education teacher for each year (and perhaps each subject matter); Parents would likewise be required to provide testimony from providers who serviced the child in all areas when demonstrating the appropriateness of the unilateral placement. This would be an undue burden on both sides, were it the rule. The hearing officer has the authority to weigh all of the evidence, testimonial or documentary, and make factual findings.

21. Parents argue that one hour of counseling was not sufficient, because Student was receiving 40 minutes of weekly counseling in her current placement with the school psychologist in a small specialized setting and received interventions from various school staff on an as needed basis. (Finding of Fact 102.111) This argument does not hold merit as a challenge to the appropriateness of the August IEP as the times are commensurate.

22. Parents also argued that the amount of homework was inappropriate but appeared not to understand that modification of work was an accommodation that had been built into the IEPs that had been offered. (Finding of Fact 86)

### **ESY 2017**

23. The ESY special education and related services developed at the April 2017 PPT meeting and delivered by the District in the summer of 2017 were reasonably calculated to provide Student with educational benefits and did provide Student with such benefits. The Student attended the program worked towards academic and social skills goals and participated successfully in a work experience. (Findings of Facts 92-101)

24. Despite Parent expressing to the team that the Student benefitted from all the one on one instruction during the summer, Parents argue that the ESY program provided by District in the summer of 2017 was inappropriate, because it wasn't enough like the IEP developed for the 2017-2018 school year to prepare Student for a possible transition to RPS. ((Finding of Fact 105; Parents Brief) Specifically Parents objected to the fact that ESY services were provided in the RPS middle school rather than Ridgefield High School that Student would attend and that Student's ESY services were provided in a small group setting. (Finding of Fact 20) It is settled law that the IDEA does not confer upon Parents the right to specify the school in which a program is delivered. *T.Y. and K.Y. v. New York City Department of Education, Region 4*, 53 IDELR 69 (2d Cir. 2009), *cert. denied*, 110 LRP 28696 (U.S. 05/17/10).

25. Parents argue that the Board's ESY program did not target all of Student's IEP goals and objectives. While it is true the progress sheet indicates some objectives were not introduced, this is reasonable given the short length of the summer program, the fact Student's time was split between academics, social skills instruction and vocational experience and the fact the IEP goals are annual goals. (Finding of Fact 87)

**FINAL DECISION AND ORDER:**

1. The District's proposed IEP for the 2015-2016 school year was appropriate, therefore the District is relieved from reimbursing Parents for tuition.
2. The District's proposed IEPs for the 2016-2017 school year were appropriate, therefore the District is relieved from reimbursing Parents for tuition.
3. The District provided Student with a FAPE during the ESY in the summer of 2017.
4. The District's proposed IEPs for the 2017-2018 school year was appropriate, therefore the District is relieved from reimbursing Parents for tuition.