

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Student: Attorney Lawrence W. Berliner
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Appearing on behalf of the Board: Attorney Abby Wadler
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Appearing Before: Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board fail to provide a Free and Appropriate Public Education (“FAPE”) for the 2019-20 school year by failing to address Student's unique and individual needs in her Individualized Educational Plan (“IEP”) dated September 9, 2019 (and/or its subsequent revisions) ?
2. Did the Board fail to provide a FAPE to Student by failing to implement strategies to encourage Student to attend classes and alleviate her anxiety and/or failing to implement the recommendations from Dr. Riordan when the Board was made aware of those recommendations?
3. Did the Board fail to provide Student with a FAPE by denying Parents' request to place Student in Winston Preparatory School at District expense?
4. Is the Student entitled to ESY-20 under her IEP?
5. Should the Board be required to provide Student with compensatory education and if so, what form should it take?
6. Should the Board be required to place the Student at Winston Preparatory School at District expense and reimburse Parents for any costs they have incurred for such placement prior to bringing this Request for Due Process?
7. Should the Board be required to place the Student at Winston Preparatory School at District expense for the 2020-2021 school year?

SUMMARY:

The Student, by her Parents, who is identified as eligible for special education services, brought this Request for Due Process Hearing in order to determine whether the Greenwich Board of Education offered Student a Free Appropriate Public Education (“FAPE”) for the 2019-20 and 2020-21 school years. The Student was unilaterally placed by the Parents at the Winston Preparatory School by the end of October, 2020.

PROCEDURAL HISTORY:

The Student, represented by counsel, initiated this special education due process case (20-0374) on February 20, 2020. The Hearing Officer was assigned to the case on February 25, 2020. A Prehearing Conference was convened on March 3, 2020 which was attended by the Student's attorney and the Board's attorney. An initial hearing date was set for April 24, 2020 with the deadline for filing the final decision set for May 8, 2020. Subsequently two additional cases (21-0035 and 21-0101) involving the same parties and issues for future school years were filed by Student. These cases were consolidated into the initial case. Subsequently, the parties conducted settlement negotiations which were unsuccessful. During the pendency of the case, orders were issued by the State of Connecticut allowing extensions of time for scheduling hearings, including due process matters as a result of the coronavirus pandemic. The hearing date was extended to May 7, June 4, and to August 5, 2020 with a date for mailing the final decision of September 3, 2020. A hearing was unable to be held on August 5, 2020 due to an unprecedented and unanticipated power failure and the hearing was rescheduled to September 16, 2020 and the mailing date to October 15, 2020. Additional days of hearings were held on October 8, November 9, November 17, December 10, 2020, January 19, 22, February 19, and the last day of hearing was February 22, 2021. By agreement, simultaneous briefs were ordered to be filed on or before March 30, 2021 and the mailing date of the final decision was ordered to be April 30, 2021. An extension due to exigent circumstances was requested and ordered, to extend the date for filing the briefs to April 14, 2021 and the date for mailing the final decision to May 12, 2021.

The following witnesses testified at the evidentiary hearing:

Jesse Outhouse
Judie Baumeister
Catherine Napolitano
Lauren Riordan
Jordan Yanotti
Thomas Healey
Michele Davis
Christina Shaw
Ashley Holzel
Suzanne Patti
Regina Rozier

Present:

May 12, 2021

Final Decision and Order 20-0374
(consolidated with 21-0035, 21-0101)

Mary Forde, of Greenwich Public Schools was present at the hearings
Both Parents were present at the hearings.

Hearing Officer Exhibit HO-1 was entered as a full exhibit.

The Board's Exhibits B-1 through B-27 were admitted as full exhibits.

Parent Exhibits P-1 through P-12 and P-14-33 were admitted as full exhibits.

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

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *Bonnie Ann F. v. Calallen Independent School Board*, 835 F. Supp. 340 (S. D. Tex., 1993)

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, and in accordance with the Connecticut 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 of the evidence submitted by the parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student formerly resided in New York City until August 28, 2019, and attended public school there through Grade 4. (Parent)
2. Concerns were raised by her fourth grade teachers about her lack of attention and difficulty with executive functioning. (B-14)
3. Student had difficulties with attention controls, anxiety, socio-emotional issues, and limited class participation since kindergarten, according to a neuropsychological evaluation in 2016 by Dr. Michelle Kornblueth. (B-14)
4. Dr. Kornblueth's report found Student's verbal and visual spatial intellectual functioning fell in the high average of scores, but her mathematics and reading comprehension skills were below grade level. (B-14)
5. Dr. Kornblueth diagnosed Student as having Attention Deficit/Hyperactivity Disorder and Specific Learning Disability with Impairment in Mathematics. (B-14)
6. While at P.S. 6 in New York, the Student received "Section 504" accommodations such as extended time for assignments and use of a separate location for test-taking. (B-14)
7. Thereafter, the Student received an IEP in December, 2016 recommending

- counseling, and special education teacher support for ELA and math. (B-11)
8. In September, 2017, Student was enrolled in York Preparatory School, a private school in New York City for seventh grade. (B-10, 11)
 9. Despite supports implemented at York, Student continued to experience struggles with poor grades and task management, culminating in further anxiety and school refusal. (B-11)
 10. The April, 2018 Neuropsychological Evaluation ("NPE") by Dr. Preetika Mukherjee recommended Student be classified as eligible for special education services as Other Health Impairment ("OHI") and the following diagnoses were made by Dr. Mukherjee; Unspecified Anxiety Disorder; Attention Deficit/Hyperactivity Disorder, Combined Type; and Moderate Specific Learning Disability with specific impairment in reading comprehension with specific impairment in written expression: clarity and organization of written expression. (B-12)
 11. An Individual Education Plan ("NY IEP") dated August 6, 2018 was prepared by New York which was implemented September 6, 2018. (B-11)
 12. There were no prior Due Process Requests filed before the student was enrolled in the Connecticut school system. (Parent)
 13. Shortly after the 2018 NPE was received, the Parents completed and submitted an Application for Enrollment for Winston Preparatory School ("Winston"), a private school which has campuses in New York and Connecticut and they attended an Open House in November, 2018. (B-28)
 14. In August, 2019, the family moved to Greenwich, Connecticut, and the Student was enrolled in 8th grade in the Board's Central Middle School ("CMS") for the 2019-20 school year. Student and her family physically moved to Greenwich on August 28, 2019. (Parent)
 15. Classes began at CMS on August 29, 2019. (P-28, Healy)
 16. The information that was sent to CMS included school records from York Preparatory, Fusion Academy, the 2018 NY IEP, and the 2018 NPE, but the records from New York sent to the CMS team did not include the 2016 records (the first IEP or the NPE by Dr. Kornblueth). (Napoletano)
 17. The 2018 New York IEP incorporated the observations and recommendations of Dr. Mukherjee, and provided that the student receive integrated co-teaching services 25 periods per week; special education teacher support 5 times per week; group counseling once a week for 40 minutes; individual counseling once per week for 40 minutes; longer times (time and half) on exams, and breaks. (B-11)
 18. Once the CMS staff had notice that Student was going to be enrolled in CMS, the staff collaborated on an educational plan for Student. The staff team consisted of the special education teacher, the principal, the school psychologist, the guidance counselor and input from her other assigned teachers. (Napoletano, Baumeister)
 19. Judie Baumeister is the head of the special education department at CMS. She is a fully certified special education teacher with 12 years of experience in New York and Connecticut and works with children with a wide range of disabilities, including autism, ADHD, emotional disturbance, specific learning disabilities and OHI. (Baumeister)
 20. Catherine Napolitano holds a Master's degree in school psychology and is the certified school psychologist for CMS. As such, she works with and counsels

Special Education students. She collaborated with Ms. Baumeister and the other members of the staff to determine the service hours and goals for Student. (Napoletano, Baumeister)

21. Michele Davis is the guidance counselor at CMS. She met with the Parents and Student at registration and explained the schedule and what the beginning of school would look like. Subsequently, Ms. Davis had numerous 1:1 interactions with Student during the weeks she attended CMS in addition to assisting the team on goals and objectives. (Davis).
22. Thomas Healy is the Principal of CMS. He testified he participated in the team planning and then became more involved when the Student began to experience difficulties. As the Parents had expressly requested they be informed about any issues that arose concerning the Student, he testified that he immediately opened a dialogue with the Parents to address them. (Healy)
23. When the CMS staff examined and reviewed the records from New York, they concluded "the following strategies to address the needs of the student specified in the New York IEP should be proposed to be included in a new IEP to be implemented by CMS: 1) a highly individualized program with a low teacher/student ratio, with real-time supports to accommodate her learning pace; 2) clear, short and direct oral directions; 3) advance warning to focus attention before announcing critical features contained in directions; 4) use of a multi-sensory format; 5) an integrated co-teaching program with special education supports; 6) teacher support with counseling; 7) providing previewing of materials in her courses; 8) organizing tasks into small specific steps and providing outlines of work." (B-11, Napoletano, Baumeister)
24. The staff also reviewed the goals and objectives and recommendations as set forth in the NY IEP and proposed to immediately include and augment them in a new IEP. (B-11, Baumeister, Napoletano)
25. A Planning and Placement Team meeting ("PPT") was scheduled for September 9, 2019. (B-9)
26. The purpose of this initial PPT was to present the new IEP and discuss the services to be provided to Student by CMS. Mr. Healy, Ms. Napoletano and Ms. Baumeister and the Parents attended the September 9, 2019 PPT. (B-9)
27. The draft IEP prepared by the staff drew from the very specific, detailed information contained in the NY IEP and the NPE and was available for review on September 9, 2019. (B-9)
28. The September 9 IEP also incorporated the New York IEP goals and objectives: "Solving multi-step math problems, solving math word problems, executive functioning/organizational goal, counseling goals will be reduced to 2 with subsequent objectives." Toward these goals, the team offered services to be implemented: Academic Lab 5 times for 46 minutes per week, counseling 1 time 20 minutes individual and 1 time 30-minutes group per week each, special education math skills class 5 times 46 minutes per week. The IEP proposed 7.50 hours of special education, and 25.84 hours of time with non-disabled peers. (B-9, B-11)
29. The Parents attended and offered their insight into Student's anxiety, "difficulties with transitions" and her being distracted by noise. The Parents shared there was a gap between Student's intellect and her social and emotional maturity. (Parent) (B-9)
30. The NY IEP had stated no Behavioral Intervention Plan ("BIP") was necessary at

- the time that the NY IEP was prepared. (B-11, Napoletano)
31. The NY IEP had recommended small class sizes for Student, and the CMS general English class was less than 20 students. (B-11, Baumeister)
 32. CMS had different levels of instruction ranging from "skills" classes which were all taught by special education teachers, to general education and advanced classes, and there were paraprofessionals and other additional support available as needed. (Healey)
 33. In the days after classes began, the staff discussed changes to the Student's schedule, and added academic lab for 45 minutes daily. (Baumeister)
 34. Ms Baumeister was in charge of the academic lab which is a program at the school for a small group of students with IEPs that addresses goals and strategies. (Baumeister)
 35. Ms. Baumeister also would "push in" to the Student's other, larger classes to help her use the skills she was learning in the lab to make improvement in those classes. (Baumeister)
 36. After observation and evaluation of the Student in the first week of school, Ms. Baumeister also switched Student from a special education "skills" ELA class to general education English class with supports shortly before the September 9 PPT. (Baumeister)
 37. Ms. Baumeister testified "I taught the skills class with another special education teacher and we together based on the work that we saw from her field that she would be better placed in the co-teach. She had the abilities to, with support, access the general ed curriculum in the co-teach with para support in class." (Baumeister)
 38. The September 9 IEP stated that "Mr. Healy reviewed the PPT recommendations and "all were in agreement," but at the hearing the Mother testified that, with regard to the ELA class, the Parents actually felt neither class was "the right fit for my daughter" and that she had called Ms. Davis to see if the Student was "placed in a class with students of similar cognitive function." (Parent)
 39. In the days after the September 9 PPT, the staff continued to meet "multiple times per week" to discuss the progress of the Student and whether the strategies and accommodations were working or not. (Napoletano, Outhouse)
 40. The first two goals of the September IEP were academic goals. Goal 1 sought "80% accuracy across 5 opportunities when given a set of 10 multistep math word problems." The team proposed special education supports for math, 5 times per week for 45 minutes of group instruction in the resource room. The second academic goal was for Student to improve her planning and organizing by using a daily log to help her monitor her classes. Student would receive support 5 times per week from the special education teacher. (B-9)
 41. Ms. Baumeister was Student's case manager, wrote the academic goals and makes sure everything in the IEP is administered correctly. Two additional social-emotional goals (Goal 3 and Goal 4) were added by Ms. Napoletano to address self-awareness/self-regulation and perspective-taking. (Baumeister, Napoletano)
 42. Goal 3 was a social/behavioral goal for Student to demonstrate self-awareness and self-regulation across her school day. Goal 4 was to demonstrate increase in perspective-taking during social interactions with peers during the school day. Student was to receive one counseling session per week for 30 minutes and one for 20 minutes for these goals. (Napoletano)
 43. One example of the methodology of achieving these social-emotional goals used by

- Ms. Napoletano was asking Student to "check in" during the day and identifying how she was feeling. Then Ms. Napoletano would suggest a "coping strategy" to help her deal with her feelings. (Napoletano)
44. To address the overall plan for the Student as well as the concerns of the Parents as stated in the document, the September 9 IEP specifically provided for:
 - a. counseling by Ms. Napoletano
 - b. use of calculator and graphic organizers
 - c. providing options for self regulation
 - d. modeling expected behavior by adults
 - e. facilitating personal coping skills and strategies
 - f. breakdown of long-term assignments
 - g. preferential seating
 - h. restating instructions
 - i. check work in progress
 - j. providing copies of teacher notes
 - k. 150% extended time on assignments and longer written assignments (B-9)
 45. Ms. Baumeister offered that posting routines and models should be added so Student knows what is expected of her. (Baumeister)
 46. Standardized testing accommodations were reviewed and IEP pages were updated for 8th grade testing (Smarter Balanced ELA and Math, Next Generation Science Standards) to include: Breaks as necessary; Non-imbedded calculator for math and science. (B-9)
 47. For Goal 3, Ms. Napoletano encouraged Student to work on identifying more independently her personal feelings across the school day, using check-ins, having her identify a personal rating system then identify a coping strategy. (Napoletano)
 48. Ms. Napoletano stated that Goal 4 required more time to develop and the short time Student spent at CMS was insufficient to achieve measurable results. (Napoletano)
 49. Ms. Napoletano testified that, to make progress, it is necessary to build a rapport with the student over time, and most of the beginning of the school year is spent on that. (Napoletano)
 50. Ms. Napoletano also recommended a Functional Behavior Analysis to address work initiating and completion issues, but that was not adopted. (Napoletano)
 51. Ms. Napoletano testified that she invited the Parents to share strategies they felt had worked with the Student in the past but they were unresponsive to her request. (Napoletano)
 52. Ms. Napoletano testified that the primary issues addressed by her in her work with the Student were difficulties with coping and self-advocacy. (Napoletano)
 53. The NY IEP had included an increase to Student's group counseling to group once per week for 40 minutes and individual 40 minutes once a week. (Napoletano)
 54. The CMS IEP continued this requirement of twice-weekly counseling in individual and group. (B-9)
 55. The Student's schedule called for her to have her counseling sessions or science classes in the morning, so if she came to school late, she would miss them. (Napoletano, Outhouse)
 56. The Student began to be tardy or absent at least several times per week from September 9 to the end of October resulting in her only attending seven school days over eight weeks. (B-1)
 57. The Student was tardy to school on September 26, and the record noted that when

- CMS staff called home, they were informed she had gone on a school tour, apparently to Winston. (B-1)
58. The science teacher, Jesse Outhouse, had concerns about the Student's chronic tardiness and incompleting assignments as it affected her ability to learn, so he worked on trying to establish a connection with Student in order to motivate her. (Outhouse)
 59. The science teacher testified he did not hear or observe the Student expressing any fears or safety concerns while in his class. Likewise, Ms. Napolitano and Ms. Baumeister did not observe Student to have safety or security fears while in school. (Outhouse, Napolitano, Baumeister)
 60. Mr. Outhouse attempted certain strategies to improve the Student's performance such as "chunking out" assignments into smaller sections, pre-printing forms and using a white board to write down directions. However, Mr. Outhouse's class was during first or second period so the Student was often not in attendance, causing Mr. Outhouse to opine that the strategies he attempted to test was difficult because of her inconsistency in attendance and a lack of cooperation. When she was in attendance, on more than one occasion the Student deliberately erased the information on Mr. Outhouse's white board. He reported this behavior to the other members of the team. (Outhouse)
 61. Student took the STAR Math Assessment on September 12, 2019 resulting in 30th percentile and 735 scale score. (P-4)
 62. The Student also achieved a scaled score of 69 on the STAR Reading Assessment which is considered above average. (P-4)
 63. Following the September 9 PPT, the Principal, Mr. Healy said he recalled the Parents began to raise concerns about Student's anxiety, declining grades, incidents in class, school security and emails were exchanged between the Parents and school staff. (P-24)
 64. Mr. Healy responded to Parent concerns by providing support in the school setting through the school psychologist, guidance counselor and additional mental health supports, suggesting Teen Talk (a support group headed by Tara Jojee that works with kids who need help outside of school) and other community resources as well. (Healy)
 65. The Student began to have more behavioral issues with other teachers and staff in the weeks following the September 9, 2019 PPT, following the whiteboard incidents involving the science teacher. (Napoletano)
 66. As the Student's absences became more frequent, the staff attempted to work more directly with the family. Student was refusing to attend school regularly by end of September. (Davis, Napoletano, B-1, B-5)
 67. There was a string of email communications with parents and school staff about the challenges of getting Student to school on time and consistently, and developing a plan to improve her attendance. (Napoletano)
 68. The team developed a school avoidance plan (SAP") which was reviewed at the PPT held on October 4. (B-16)
 69. The plan was for the Parents to call the school to touch base with school resources, but if no call came, school staff was to call the home and implement specific strategies to get Student to school. (B-16)

70. Mr. Healy stated: "We had a plan to demonstrate improved attendance so that we could implement the plan that we discussed to help her feel welcomed and supported at school...which we were unable to really work on the strategies and building those connections because of her lack of attendance..." so the team was unable to see any success of the plan before the student was no longer attending CMS. (Healy)
71. After the school visit on September 26, 2019, apparently to Winston Preparatory School, Ms. Napoletano saw a change in Student. Once she had made that school visit, and referring to her poor attendance and lack of effort, Student made a comment about how "it didn't really matter anyway." (Napoletano)
72. The SAP was inconsistently effective and the Student only attended school for three more days after October 4, 2019. (B-5)
73. Student made another visit to Winston on October 2, 2019 and was accepted as a student there on or about October 3, 2019. (Parent)
74. Mr. Healy was unable to obtain sufficient attendance data to create an attendance goal by October 4 because of Student's many absences. (Healy)
75. Mr. Healy stated that class attendance and getting to school on time were significant issues impacting Student's academic progress. (Healy)
76. Mr. Healy said there were no issues getting the Student into class once she was inside the building. (Healy)
77. A home visit was attempted by school staff on October 18, 2019, but was called off by the Parent. (Napoletano)
78. The home visit was offered to help transition Student to school and support the family in building a routine and expectations for school attendance. (Napoletano)
79. There were no further opportunities for the school avoidance plan to be used. (Healy)
80. The Parents notified CMS on October 11, 2019 they intended to place Student at Winston Preparatory School ("Winston"). (P-6)
81. The Student only attended CMS 26 (partial or full) out of 39 school days from August 29 to October 29, 2019.
82. The accommodations and modifications made for the individual Student were all in place and available to the Student, had she attended school. (Napoletano)
83. Ms. Napoletano took progress monitoring data as to whether the goals were being met but the lack of attendance interfered with that task. (Napoletano)
84. Student had missed over half of the counseling sessions due to tardiness or absence so the progress boxes on the social goals of the IEP were marked "other." (Napoletano)
85. Ms. Napoletano made efforts to reach out to team and family and attempted to reschedule the missed counseling sessions. (Napoletano)
86. The team had scheduled her counseling for first period to help her ease into her day and when she was late Ms. Napoletano offered her other times of the day for counseling, and time to check in and review for the day. (Napoletano)
87. The Student was having ongoing difficulty completing assignments and finishing her work. (Outhouse, Napoletano)
88. For the short time she attended CMS, owing to the lack of attendance, Student's grades were not reflective of her intellect, (Napoletano)
89. During September and October, several incidents occurred which affected Student's educational experience. (Healy, Parents)

90. On October 3, the Student reported to her Parents that during English class, she was called "insubordinate" and the teacher had used an offensive word in class (referring to teacher herself.) (P-19)
91. The incident arose because Student had a confrontation about incomplete assignments and refused to cooperate with the English (ELA) teacher. (P-19)
92. Ms. Baumeister testified that the Student's poor grades reflected her lack of motivation and failure to complete assignments, not that she was incapable of understanding the work. (Baumeister)
93. The District uses a method of positive behavioral intervention ("PBI") as follows: Students are able to obtain small rewards if they do not have any incidents of violating school "norms" in a given period. If they do have any such events, the first one is merely documented and they aren't able to qualify for the reward (name put on a "Clipboard")– a second incident "gets a phone call home." The Clipboard process is a part of "Tier 1" interventions for behavior. (Healy)
94. Student had an incident on September 19 in social studies class that resulted in her name being placed on the Clipboard. (Napoletano, Baumeister)
95. Ms. Baumeister believed Student understood the disciplinary PBI process, but Student "disagreed" with it. (Baumeister)
96. Mr. Healy described the incident in question as a "low level" infraction that would have nevertheless required a consequence, as a means of reinforcing positive behavior. (Healy)
97. On October 11 there was a school event known as a "celebration" but the student was not allowed to attend due to the prior September 19 social studies incident. (Napoletano, Healy)
98. Student didn't remember on October 11 why she was excluded from the celebration because of the September 19 incident in social studies, and was reminded of it by the guidance counselor, Michelle Davis. (Davis)
99. Ms. Napoletano spoke to Student together with Ms. Davis for 20-25 minutes and stated that Student now understood the PBI system and why she was excluded. (Napoletano)
100. Student claimed to be upset by another incident when another student became disruptive in class and was removed from her class. (Healy)
101. The Student herself was not directly involved in that incident, however, and was not harmed or endangered by the other student. (Healy)
102. Another incident reported by the Parents involved a threat to the school that was apparently received but there was no harm to any student or facility as a result. Notably, Student didn't relate any concerns about safety to Ms. Napoletano. (Napoletano)
103. The Parents stated their concerns about school safety, discipline practices and curriculum suitability in a series of emails beginning in mid-September, 2019. Parents stated that they wanted to be informed about anything affecting the Student, so multiple emails were exchanged with school staff about these incidents. (P-19)
104. Ms. Baumeister only had ten classes with Student due to her absences, although there were 39 school days from August 29, 2019 until the last day Student attended classes at CMS. (P-28, Baumeister)
105. Ms. Napoletano continued to attempt to build a relationship with Student but was met with resistance. (Napoletano)
106. According to Parent, the Student stopped seeing her private psychologist

- once she moved out of New York and the Student had missed at least 9 private psychological counseling sessions by October 4. (Parent)
107. Student did not resume private counseling until several months after she had left CMS. (Parent)
108. Less than a month following the first PPT, a second PPT to "review and revise" was convened for October 4, 2019. A School Avoidance Plan ("SAP") had been drafted and put into place with the goal of improving Student's attendance. (B-7)
109. In attendance at the October PPT were Mr. Outhouse, Mr. Healy, Ms. Napoletano, Ms. Baumeister, Ms. Davis, Ms. Jogie (a counselor from Teen Talk) and the Parents. (B-7)
110. At the October PPT the team discussed Student's classroom performance, frequent absences and lack of work production. The team revised the goals and objectives to address attendance and academic performance and the October IEP included a copy of the written School Avoidance Plan signed by the Parent and Student. Despite the SAP, the October IEP does not show progress in Goal 4 regarding attendance. The poor attendance was also causing numerous missed counseling sessions that would have been dedicated to Student's perception of her performance in the classroom. (Napoletano, B-7)
111. Parents shared their concerns regarding Student's transition to CMS at the October 4 PPT and her failing grades, poor attendance and lack of motivation and effort. (Parent)
112. Despite the "insubordination" incident having occurred just the day before this PPT, the Parents did not raise this incident with the team at the time. (B-7)
113. The Parents related that Student claims she does not understand what is being asked of her in class and that multi-step directions are challenging. (B-7)
114. The Parents said that Student is "losing enthusiasm for school, is feeling increased anxiety and doesn't feel safe in school." Parents "also wanted to be clear that they they do not see classroom concerns as a behavioral thing and that while [Student] has challenges but is very bright and will shine in the right environment." (Parent)
115. Ms. Napoletano shared her work with Student to date which has focused on building a relationship. She added an additional goal and objective regarding counseling and outlined the specific steps of the plan for school refusal. (Napoletano)
116. The Parents informed CMS at the October 4 PPT that the student was being enrolled in Winston in one week, on October 11, 2019. (Parent, P-6)
117. There were 39 school days between August 29 and October 31, 2019. (P-28)
118. Student was tardy 10 days from August 29 to October 4, 2019 and only attended 13 full days in all. (B-5)
119. Student attended only one day of school at CMS after October 18, 2019. (B-5)
120. Student started class at Winston on October 29, 2019. (Yanotti, Parent, B-1)
121. Despite the fact that Student was no longer attending CMS, the summary of the PPT of November 1, 2019 shows the team continued to offer services at CMS as appropriate. (Napoletano)
122. As a precondition of acceptance and enrollment at Winston, Student was

- required to undergo an evaluation which was done by Lauren Riordan, Ph.D. over several days in late October. (Yanotti)
123. Dr. Riordan is a clinical psychologist but not a neuropsychologist. (Riordan)
 124. Student was observed at CMS in her classes by one of Dr. Riordan's colleagues on October 17, 2019. (Riordan, P-7)
 125. Student was then evaluated from October 18 through October 27, 2019 by means of testing by Dr. Riordan. (Riordan, P-7)
 126. October 18, 2019, the day after Dr. Riordan's staff observation visit to CMS, was described as a "difficult morning" to Ms. Napoletano by Mother but when Ms. Napoletano offered to go to the home to attempt to convince Student to come to school she was told they were coming. (Naploetano)
 127. Dr. Riordan herself spoke to no one at CMS. (P-7, Riordan)
 128. Dr. Riordan said she "must have seen the IEP from CMS." (Riordan)
 129. Student completed the testing but was reluctant, clearly found it difficult and obsessed over it. (Riordan)
 130. Student told Dr. Riordan she had stayed up late and could not sleep the night before the session. (Riordan)
 131. The PPT of January 14, 2020 was the first time Dr. Riordan formally attended any of Student's PPT and offered her opinion based on her report. (P-7)
 132. Dr. Riordan stated "She's quite a bright young woman." (Riordan)
 133. Dr. Riordan reported a good verbal comprehension score of 121 (92nd Percentile), visual puzzles, processing speed and Her WIAT Reading Comprehension was in the 25th percentile even though her reading scores were average. (P-7, Riordan)
 134. Student scored below average on the Key Math tests but her Feiffer scores were "within the average across the board." The WIAT for Math scores were missing from Dr. Riordan's report but she stated the scores were in the "low average." (P-7, Riordan)
 135. The WISC-V is "a score of general intellectual ability as well as a measure of [Student's] ability to complete verbal, visual-spatial, fluid reasoning, processing speed and working memory tasks." (Riordan)
 136. Student had strengths in verbal comprehension, in visual spatial skills and strong visual processing speed but struggled with fluid reasoning and working memory. (Riordan)
 137. There was a 33 point difference between Student's verbal comprehension score and the working memory score. (Riordan)
 138. Dr. Riordan abandoned parts of the WIAT testing for the Student as she was unable to complete some of the portions of the test where the Student must provide a writing sample, as she "could not do it." (Riordan)
 139. The VMI (Visual Motor Integration) test showed Student's motor coordination was intact and that she was adequately able to discriminate between similar designs. (Riordan)
 140. The Rey Complex Figure Test showed she could neither copy a central figure nor draw it from memory. Dr. Riordan commented that this type of difficulty would reflect her lack of proficiency in math. (Riordan)
 141. The Gray Oral Reading Test V (GORT-V) test was given to Student, showing she reads quite appropriately in terms of rate and accuracy, but she scored

- only at the 16th percentile in comprehension. (P-7)
142. Student was unable to complete an essay as part of the testing, so the Test of Written Language 4 (TOWL-4) was substituted and she did a "beautiful job" on that test, scoring 150 (a "superior score"). (Riordan)
143. The Beck Youth Inventory self-concept was lower than average but it was noted at the time her anxiety level was slightly elevated. (Riordan)
144. The BASC ("Behavior Assessment for Children") was completed by Student and Parent. (Riordan)
145. The BRIEF-2, a measure of executive functions was given and is consistent with Student's attention deficit disorder diagnosis. (Riordan)
146. According to Dr. Riordan's evaluations, Mother had concerns about depression, anxiety and withdrawal. Mother also scored the Student low on the "adaptability, social skills and leadership" areas. (P-7, Riordan)
147. Student's sense of inadequacy, lack of self-reliance and anxiety, in addition to the ratings from her Mother, placed her in the "at risk" category. (Riordan)
148. Student has difficulty adjusting to changes in her environment and emotional regulation. (Riordan)
149. Student's difficulties coalesce into a diagnosis of a nonverbal learning disability and impacts her ability to understand nuances of social interaction and nonverbal communication. (Riordan)
150. This also affects her reading comprehension ability as to inference and unstated things.(Riordan)
151. Dr. Riordan recommended, in light of Student's diagnosis, direct instruction in math, executive functions and social pragmatics. (P-7, Riordan)
152. Dr. Riordan also recommended psychotherapy. (P-7, Riordan)
153. Student had stopped going to the psychologist since the family moved to Connecticut. (Parent)
154. Mother stated in an email to CMS she was looking for an outside therapist. (P-19)
155. Dr. Riordan opined that her placement in math and language arts at CMS "seemed inappropriate" and she was "unhappy." (Riordan)
156. CMS was "not meeting her needs" according to Dr. Riordan. (Riordan)
157. Student reported to Dr. Riordan that she didn't like the skills class and she was "lost" in the general education supported class. (Riordan)
158. According to Dr. Riordan, Student "has a history of having school difficulties" and she continued to have difficulties at CMS. (Riordan)
159. Dr. Riordan noted Student did have a "history of school avoidance." (Riordan)
160. Dr. Riordan was not able to say how long it would take for a student who transfers to a new school like this student to form that kind of relationship with an adult at the new school..."and it might depend on how often they met with the Student." (Riordan)
161. Dr. Riordan noted "it was difficult for her to express her feelings." (Riordan)
162. Dr. Riordan was unable to answer affirmatively as to whether Other Health impaired ("OHI") is the correct identification for the student. (Riordan)
163. Dr. Riordan said Student "needs a certain kind of setting that was different from the one she was in when I assessed her" and that Student needed a special

- education setting "way back when." (Riordan)
164. Winston is not an accredited Special Education school by the State of Connecticut. (Yanotti)
 165. Winston is a private school and does not require teachers to be certified or licensed. (Yanotti)
 166. Mr. Jordan Yanotti is the Dean of Students at Winston and described the school has a total of about 125 students and 50 faculty. Mr. Yanotti has no degrees or certifications in special education. (Yanotti)
 167. Winston works with students that have learning challenges, challenges with executive functioning, nonverbal learning disabilities and students who are dyslexic. (Yanotti)
 168. Winston groups students according to a "learning profile" not according to age or grade. (Yanotti)
 169. Students at Winston have a focus teacher that works 1:1 with them on their "greatest areas of need." (Yanotti)
 170. Winston does not implement IEPs and the faculty is not required to be certified or licensed as general education teachers or special education teachers by the State of Connecticut. (Yanotti)
 171. The classes at Winston are not separated by grades. (Yanotti)
 172. There is a "focus" teacher and "focus" class which provides 1:1 student/teacher interaction at Winston. (Yanotti)
 173. Mr. Yanotti familiarized himself with the Student's cognitive profile based on the tests that were given to Student by Dr. Riordan. (Yanotti)
 174. Initially, upon entering Winston, Student exhibited the same or similar school avoidance behavior as at CMS, and Student was still having trouble getting to school on time after enrolling at Winston. (Yanotti)
 175. Student was refusing to exit her Parent's car and walk into the school on many occasions, continuing on well into the month of December, 2019. (Yanotti)
 176. Student did not trust her teachers, was very difficult and uncomfortable with feedback, with support, for the first month or so (November-December) at Winston. (Yanotti)
 177. Student had difficulty interacting with faculty and avoided eye contact and would not engage in discussions in her first months at Winston. (Yanotti)
 178. Mr. Yanotti said he observed that the first "focus" teacher, Ms. Maraia still had to go out and get the Student out of the car to enter the school until December, 2019. (Yanotti)
 179. Student was given a waiver by Winston for geometry class during 2019-20. (Yanotti)
 180. Mr. Yanotti said Student began to show gradual improvement after several months and was able to hear feedback on her work. (Yanotti)
 181. Student's "focus" teacher was initially Ms. Maraia, but changed at the behest of the parents, on or about to Ms. Abate for 9th grade. (Yanotti)
 182. Mr. Yanotti believed Student had strengths in verbal comprehension and visual spatial, but difficulties with processing speed and working memory as well as comprehension difficulties and anxiety. (Yanotti)
 183. Mr. Yanotti said these difficulties are characteristics of a nonverbal learning disability, reading facial cues. (Yanotti)
 184. The Student completed the 2019-20 school year at Winston and returned for

the 2020-21 school year. (Yanotti)

185. Mr. Yanotti said that Student has slowly improved her attendance, work completion, and overall school success, but the school does not keep data to document the progress of a Student. (Yanotti)
186. At Winston, traditional grading is not used, but the Student was graded on Progress, Participation and Commitment, and these grades have slightly improved from her first year. (Yanotti)
187. The results of the WIAT test administered remotely by Winston in late spring 2020 indicated, according to Mr. Yanotti, that she has solid scores in several aspects but significant deficiencies remain in others:
- a. Listening Comprehension 21st percentile;
 - b. Oral Expression 87th percentile;
 - c. Word Reading 73rd percentile;
 - d. Pseudoword Decoding 77th percentile;
 - e. Reading Comprehension 39th percentile;
 - f. Oral Reading Fluency 50th percentile;
 - g. Math Problem Solving 30th percentile. (P-14, Yanotti)
188. Winston is accredited by the New England Association of Schools and Colleges and the New York Association of Independent Schools. (Yanotti)
189. The Covid pandemic affected Winston in that it required distance learning, beginning in March, 2020. (Yanotti)
190. In response to the Covid pandemic, the Winston team developed a plan for distance learning and set up a balanced level of classes for student with a mix of some special education and general education. (Yanotti)
191. When distance learning was initiated, Student still was having difficulties making progress despite not having to physically be present at school. (Yanotti)
192. The goals that were set by Winston were improvements in social communication skills and academic problem solving, ability to make inferences in reading and assisting the student with prewriting strategies. (Yanotti)
193. The Board prepared an IEP in anticipation of the Student's transition into high school. A PPT was held on July 21, 2020 to discuss services for the Student that would be provided at the high school. (Shaw)
194. Ms. Shaw stated that a draft IEP was not prepared for this PPT in advance because it was a "bridging" meeting, not an annual review. (Shaw) The PPT team reviewed the different resources and services available at the high school for students with IEPs in addition to different electives. (Shaw)
195. The PPT team reviewed the services and goals of the 2020-21 IEP to be implemented at Student's Annual Review in the areas of transition, reading comprehension, writing and math. (B-17)
196. The recommendations made for the Student for high school includes time for Academic Lab 9 times per 8 day cycle, counseling one time individually every eight days and also a "push-in" to the Academic Lab once every eight days. Additionally, the staff offered that the Student should be given prior knowledge of the text before assignments. (B-15)
197. Ms. Shaw explained that a second IEP containing the recommendations and goals would be prepared for the Annual Review and that "a meeting for that purpose could be scheduled for a later date." (B-15)
198. A draft of the August 26, 2020 Annual Review IEP was sent to Parents in

advance and contained the revisions to math, writing, reading, and social-emotional goals to accommodate the high school class structure. (B-17).

199. The PPT meeting for the Annual Review was held on August 26, 2020. (Shaw)
200. The Parents did not disagree with any portion of the August IEP but they, through counsel, disagreed with the purpose of the meeting. They had concerns about the size of the school and the hybrid schedule. (B-17, Shaw)
201. The PPT team recommended planning for Student's triennial review, recommending Student receive social-emotional scales and also an updated academic evaluation. (B-17)
202. The Student did not participate in placement testing for the District high school.
203. At the August 26, 2020 PPT, Parent stated the Student's placement at Winston was appropriate and they were intending to continue that placement, despite participating the July and August PPTs. (Patti, Parent)

CONCLUSIONS OF LAW AND DISCUSSION:

CONCLUSIONS OF LAW:

1. There is no dispute that the Student, as a student identified with Other Health Impairment ("OHI") is entitled to special education and related services in order to receive a free and appropriate public education ("FAPE") pursuant to 20 U.S.C. §1400 et. seq., the Individuals with Disabilities Education Act ("IDEA", also "the Act"), 34 C.F.R §300.7(a) and Section 10-76a-1 *et seq* of the Regulations of Connecticut State Agencies ("RCSA").

2. The Act defines FAPE as special education and related services which:

"(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)."

20 U.S.C. Section 1401(8); 34 C. F. R. §300.13

3. The IDEA directs that, in general, an Impartial Hearing Officer's decision must be made on substantive grounds based on a determination of whether the student received a FAPE. 20 U.S.C. § 1415[f][3][E][i]). The benchmark case on the definition of FAPE is provided in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U. S. 176 (1982) In 2017, the U.S. Supreme Court clarified that, in order to provide FAPE, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction," however, "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998-9 (2017) The *Endrew* decision goes on to say that the child's educational program must be appropriately ambitious in light of his or her

circumstances and every child should have the chance to meet challenging objectives.

Andrew, at 1000-1 The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." *Walczak v. Florida Union Free School District*, 142 F. 3d 119, 132 (2nd Cir. 1998) "While Boards do not have the responsibility to provide the best education that money can buy, the benefit to be conferred under the IDEA requires more than a trivial educational benefit." *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2nd Cir. 1989) [citations omitted]. Additionally, school districts are not required to "maximize" the potential of students with disabilities. *Walczak*, at 132. Nonetheless, a school district must provide "an IEP that is "reasonably calculated to enable the child to receive educational benefits and likely to produce progress, not regression." *Mr. P. v. West Hartford Bd. of Educ.*, 885 F. 3d 735, 757 (2nd Cir. 2018).

4. The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 C.F.R. §300.521. R.C.S.A. §10-76h-14(a)

5. Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2nd Cir. 2002) (*citing M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 226 F. 3d 60, 66 (2nd Cir. 2000).

6. The IEP is so critical to the IDEA that it has been termed "the key operative feature of the federal Act." *David D. v. Dartmouth School Comm.*, 775 F.2d 411, 423 (1st Cir. 1985), *cert. denied*, 475 U.S. 1140, 106 S.Ct. 1790 (1986) The IEP must set forth goals and objectives which provide a mechanism to determine whether the placement and services are enabling the child to make educational progress. 20 U.S.C. §1401(a)(20). Connecticut courts have determined that in order for an IEP to be found appropriate, it must provide more than mere trivial advancement, it must be one that is "... likely to produce progress, not regress." *Mrs. B. v. Milford B.O.E.*, 103 F.2d 1114, 1121 (2d Cir. 1997)

8. The student's recommended program must also be provided in the Least Restrictive Environment. (20 U.S.C. § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i), 300.116(a)(2); *see, Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 108 (2nd Cir. 2007); *Walczak*, 142 F.3d at 132. In order to order reimbursement to the Parents for their unilateral placement the Hearing Officer must find that one or more of the IEPs implemented and proposed by the Board fails to provide FAPE in the least restrictive environment. If a district fails to provide a FAPE, the child's parent may remove the child to a private school and seek tuition reimbursement from the state.

9. Under the *Burlington-Carter* framework, a parent may recover tuition reimbursement if: (1) the proposed IEP was inadequate to offer the child a FAPE, and (2) the private education services obtained by the parents were reasonably calculated to enable the child to receive educational benefits. *Burlington Sch. Comm. v. Dep't. of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156, 163 (4th Cir.

1991). Under the IDEA, a parental placement, whether residential or not, is appropriate only if it is "reasonably calculated to enable the child to receive educational benefits." *Carter*, 50 F.2d at 163. If the Board failed to offer a program that provided FAPE, Parents would be entitled to reimbursement, but only if the parents' private placement was appropriate to the child's needs and in the least restrictive environment. Generally the same considerations and criteria that apply in determining whether the School District's placement is appropriate should be considered in determining the appropriateness of the parents' placement; accordingly the private placement must be reasonably calculated to enable the child to receive educational benefits. Parents seeking reimbursement for a private placement bear the burden of proving the appropriateness of the unilateral placement by a preponderance of the evidence. R.C.S.A. Sec. 10-76h-14(c). *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F. 3d 356, 364 (2nd Cir. 2006), *Doe v. East Lyme Board of Education*, 790 F. 3d 440, at 451 (2nd Cir. 2015) *Student v. Southington Board of Education* Final Decision and Order 17-0562 (Conn. 2017)

DISCUSSION:

Alleged Procedural Violations

As set forth above, *Rowley* requires a Board to comply with procedural requirements established under the IDEA. However, a finding that a FAPE was not provided by a District due to a procedural violation can only be found if the procedural violation caused one of the following: 1) impeded the child's right to FAPE; 2) significantly impeded the parent's opportunity to participate in the decision-making process, or 3) caused a deprivation of educational benefits. 34 C.F.R. Sec 300.513(a)(2), *L. M. v. Capistrano Unified School District*, 556 F. 3d. 900, 909 (9th Cir. 2008), *R. C. ex rel. M. C. v. Byram Hills Sch. Dist.* 906 F. Supp. 2nd 256, 268 (S.D.N.Y. 2012)

Parents first procedural claim is that they were not presented with a draft IEP in enough time prior to the first PPT held on September 9, 2019 for them to meaningfully participate in the process. The Student first entered the Board's jurisdiction when she moved to Greenwich directly following her summer vacation and began attending school on August 29, literally the first day in her new home. Previous to that, Student already had an IEP from NY which provided similar supports for her. This IEP, along with her grades and an 2018 evaluation done by Dr. Mukherjee was provided to the CMS team by the Parents when Student was enrolled. (FF 10-11, 17) The testimony and other evidence also showed Parents were very well-educated, involved and informed as to all aspects of their child's educational development throughout the process. The testimony showed that beginning on the first day of school, with the New York information in hand from the Parents, the CMS team was assembled and prepared a class schedule for the Student that incorporated programs tailored to address her needs. This collaboration resulted in a new, draft IEP which was presented at the PPT of September 9, 2019. This draft IEP was reviewed by the Parents on September 9 with the other members of the team. According to the evidence presented, the draft was not available prior to the PPT. (FF-23-29) The Parents claim the failure to prepare and send them a draft IEP at least three days prior to the PPT is a significant procedural violation, but there is no evidence to conclude they or the Student were prejudiced thereby. This IEP was approved and agreed to by the Parents on September 9. (FF-38) Indeed, if the team had delayed convening the PPT simply to give the Parents the time they now claim to want, such exaltation of form over substance would

have actually delayed implementation of the IEP and would potentially have been more likely to prejudice the Student.

The other claim of procedural violation concerns the July 21, 2020 PPT which is considered a "bridging" meeting and as such, required no advance draft. This meeting was limited to a "review and revise" of the current IEP in place for special education students who will be moving into high school, because the classes and services are substantially different in high school. There was no testimony presented that any new written information was discussed at this meeting. Therefore, I find that all sufficient specific data was already available to the Parents, who were represented by counsel, at the time of the July 21, 2020 PPT. The Parents were not hampered in their ability to have meaningful participation in the PPT. The August 26, 2020 IEP and PPT addressed the Annual Review which was not due until September 8, 2020. By that time, the Student already had been at Winston for over six months and not planning to attend any District school. (FF 193-204)

“Determinations regarding the substantive adequacy of an IEP should be afforded more weight than determinations concerning whether the IEP was developed according to the proper procedures.” *Mr. & Mrs. G. v. Canton Board of Education*, (2019), citing *M. H. v. New York City Dept. of Educ.* 685 F. 3d. 217 (2nd Cir. 2012)

I find that none of the claimed procedural violations rise to the level of a denial of FAPE. In *Cerra v. Pawling Cent. Sch. Dist.*, 427 F. 3d 186 (2nd Cir. 2005), the court found that there is not “any statutory provision or regulation requiring that an IEP be produced at the time parents demand. Instead, school districts must only ensure that a child's IEP is in effect by the beginning of the school year and that the parents are provided a copy. See 34 C.F.R. § 300.342(a) ("At the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction."); 34 C.F.R. § 300.345(f) ("The public agency shall give the parent a copy of the child's IEP at no cost to the parent."). *Cerra*, at 193

Substantive Issues

I find that the Board offered Student an appropriate program that provided FAPE to the Student in the least restrictive environment. All of the personnel at CMS credibly testified in detail about the substance of the IEPs prepared for Student and the strategies and concepts being used to compose her program. Prior to enrolling at CMS, Student had an unchallenged IEP from New York in place. The evidence at the hearing showed that the CMS staff made diligent efforts from the beginning to adopt and improve the former IEP, increase her motivation to attend school, refine her goals and objectives and otherwise encourage Student's success. I find that the issues that arose during the approximately six week period that Student was enrolled at CMS were all addressed appropriately. The Student attended only 13 full school days before the Parents preemptorily removed the Student from the school.

The September 9, 2019 IEP prepared by CMS, as amended and revised, would have provided progress, not regression. It was reasonably calculated to enable the child to receive educational benefits.

The Student has now had the benefit of three independent psychological evaluations. (FF 3, 10, 125) An IEP was prepared for the Student while she attended school at York Preparatory School in New York, which addressed academic and social difficulties that she was experiencing at those facilities. (FF 11) As the facts have shown, starting from the first few days of eighth grade at CMS, these difficulties continued in the Connecticut school. (FF 28, 65, 82, 84, 85, 89, 99) To address these difficulties, the Connecticut IEP drew from the very detailed report from Dr. Mukherjee and the New York IEP to provide a program appropriate to Student's needs. Student was given accommodations and provided with strategies and tools to help with her organization skills. She was given counseling sessions and supports as necessary in her classes. (FF 18,23-55, 60, 64) The team agreed to keep the Parents informed and involved about any issues as they arose. (FF 17-18, 22) The team was monitoring Student and offered adjustments to her program as they felt were needed. (FF 33, 36) For example, Student was placed in the ELA special education class at the commencement of the term, but within a few days, she and the Parents requested a change to the General Ed classes, which the team agreed to do. Her team placed supports to augment this change. (FF 37-38) The facts showed, however, that the Student was at times uncooperative with the teachers and unable to keep up with directions, organization and completion of assignments, despite the best efforts of the staff. (FF 60, 65, 87, 90-91, 94)

In the weeks following the start of school, Student was absent or tardy with increasing and alarming frequency. (FF 56, 66-7) When she did arrive at school late, any benefits of her morning counseling classes and supports were completely negated. Notably, she missed over half of these sessions in the month of September, 2019. (FF 84)

The September 9, 2019 IEP had duly incorporated the elements of the NY-IEP and added goals and service hours per the team's recommendations. (FF 24-28) Ms. Napoletano in particular adjusted the counseling sessions for different times of day. (FF 44, 53, 58) These sessions were intended to help the Student adjust to her new school, identify her feelings and develop coping strategies. Expanding on the previous materials, the team added additional measurable goals and objectives not only for such social-emotional issues but academic and organizational. (FF 40) The Parents provided a list of their concerns, which were addressed by Ms. Napoletano at both the September and October PPTs. (FF 29) For example, the Student was provided with assistance in the form of preferential seating, extra time for tests, modeling (behavioral and task management, breakdown of larger assignments, providing a feeling of safety, and providing notes and outlines when needed. (FF 44) Ms. Baumeister conducted the Academic Lab daily for 45 minutes as part of Student's services. Ms. Baumeister also "pushed in" to Student's academic classes to help her in implementing skills learned in the Academic Lab. (FF 33-35) Although the claim was made by the Parents that the Student felt unsafe at school, there was no credible testimony that there was any actual harm or danger to the Student, and any concerns in that regard were addressed by school staff. (FF 59, 100-103)

I find that, by a preponderance of evidence, the Board developed, provided and implemented an appropriate, individualized plan for this Student that provided FAPE in the least restrictive environment. This plan reasonably contemplated that the Student would attend class regularly and complete the full academic year. The CMS staff appropriately and adequately addressed the Student's attendance issue, which was essential to her success in school. She could not adequately benefit from the other supports and accommodations provided, unless she was in school.

Because I find that the Board provided FAPE, the appropriateness of Parent's unilateral placement need not be addressed. However, it is noted that the Parents made the decision for unilateral placement without giving the Board a reasonable chance to implement its plan for the Student. It is unreasonable to expect that significant or measurable progress would have been made, and documented, in a mere 13 school days, for the Parents to have the ability to form an opinion and conclude that the Student was being denied a FAPE. Without allowing a reasonable amount of time for CMS to effectuate its plan, or even to gather enough data to evaluate whether the plan was working, the Parents effectively thwarted the Board's ability to do the job it was mandated to do.

The Student entered CMS on August 29, 2019. From that date until the Student was removed, she attended only 13 full days of school. During that time, the Board offered her an IEP that was an appropriate program, and appropriate services were provided to her. "The IDEA does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school facility." 34 C.F.R. sec. 300.403(a) *Student v. Groton Bd. of Ed.* Final Decision and Order 11-0196 (Conn. 2011), *M. C. ex rel. Mrs. C. v. Voluntown Bd. of Ed.*, 226 F. 3d, 60, 66 (2nd Cir. 2000)

FINAL DECISION AND ORDER:

1. There was no procedural violation sufficient or significant enough to deny FAPE to the Student.
2. The 2019-2020 Individual Education Plan ("IEP") offered to Student by the Board was appropriate and reasonably calculated to provide her educational benefit.
3. The 2020-2021 Individual Education Plan ("IEP") offered to Student by the Board was appropriate and reasonably calculated to provide her educational benefit.
4. The Board is not responsible for reimbursement of the Parent's unilateral placement of the Student at Winston Preparatory School.
5. The Student is not entitled to ESY.
6. The Student is not entitled to compensatory education.