

April 25, 2022

Final Decision and Order 22-0119

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

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Appearing before: Raymond J. Rigat, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Has the Board denied the Student a free appropriate education, (“FAPE”), for the previous two years by habitually failing to record the PPT decision in prior written notice?
2. Does the current IEP and placement deny the Student FAPE?
3. Should the Hearing Officer place the Student in a residential therapeutic school for students with CP and, if necessary order the Board to hire an educational consultant to identify a placement for the Student?
4. Is the Student entitled to compensatory education?

PROCEDURAL HISTORY/SUMMARY:

The Parents brought the Hearing Request on October 12, 2021. The initial mailing date was established as December 27, 2021, and extended to: January 26, 2022; February 25, 2022; March 28, 2022; and finally, to April 27, 2022. These extensions were made to facilitate the completion of the hearing which began on November 29, 2021.

The hearing took place by video conference over five days: November 29, 2021; January 20, 2022; February 10, 2022; February 23, 2022; and March 16, 2022.

The parent called eleven witnesses: (1) **Ms. Klara Monaco**, principal of the Glenville School; (2) **Ms. Loren Heizman**, special education teacher; (3) **Ms. Lauren Zalis**, occupational therapy evaluator; (4) **Ms. Charlotte Bishop**, practicing physical therapist; (5) **Ms. Karen Vitti**, special education administrator; (6) **The Mother**; (7) **Suman Baddam, MD**, child psychiatrist; (8) **David Feingold, MD**, physiatrist; (9) **Kathleen Cardinale, MD**, pediatric neurologist; (10) **Ms. Kate McLaughlin**, speech-language pathologist; and (11) **Mr. Brendan O’Neil**, MSW, educational consultant.

The Board was allowed to conduct cross examination on the Parent's twelve witnesses, and called two witnesses in its case in chief: (1) **Dr. Fabian A. Boie**, school psychologist, BCBA (2) **Ms. Maya Feldman**, speech-language pathologist. The Parent was allowed to cross examine the Board's two witnesses.

Parent's Exhibits 1-79 were admitted as full exhibits. Board's Exhibits 1- 77 were admitted as full exhibits. It should be noted that Exhibits 76, 77, and 78 are video exhibits of the Student on the bus.

The Parent and Board were given until March 28, 2022, to submit post-hearing briefs in support of their respective positions. Both parties submitted briefs.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given due consideration in this decision.

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

STATEMENT OF JURISDICTION:

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

FINDINGS OF FACT:

I do not remember when I first realized that I was different from other people; but I knew it before my teacher came to me. I had noticed that my mother and my friends did not use signs as I did when they wanted anything done, but talked with their mouths. Sometimes I stood between two persons who were conversing and touched their lips. I could not understand and was vexed...

--Chapter II, page 10.¹

1. The Student is a twelve-year-old child with athetoid cerebral palsy, ("CP"), which is one of the more uncommon forms of brain damage for a child. (Testimony of David Feingold, M.D.).²

¹Helen Keller, *The Story of My Life*, New York, Doubleday, Page & Co., 1903. This work is available on line at no charge at the Internet Archive: archive.org/search.php?query=the%20story%20of%20my%20life%20creator%23A%27keller%20AND%20AND%20mediatype%3Atexts

² Dr. Michael Cohen's December 8, 2020, report of his psychological evaluations of the Student notes: "At the time of birth [the Student] had difficulty breathing and required chest compressions and 911 medical services at which time [she] was placed in the NICU at [the hospital] for one month. [Her] initial medical

2. This type of CP is less common, and less understood. (Testimony of David Feingold, M.D.).³

3. The student is trapped inside her body, she knows who she is, but she cannot speak, and has no control over her arms and legs. (Testimony of David Feingold, M.D.).

4. The Student has been treated for four years by David Feingold, M.D., a physiatrist⁴ with a special focus on patients with cerebral palsy. (Testimony of David Feingold, M.D.).

5. While she is not intellectually disabled, she has profound difficulty speaking, no control over her movements, and cannot walk independently. The Student experiences significant difficulties using her communication device. She becomes extremely frustrated and refuses to cooperate getting ready for school. (Testimony of Mother).

6. The Student has created her own self-taught sign language to communicate with others. (Testimony of Mother; Testimony of Ms. Loren Heizman: “You know, we have secret sign language, little hand movements”).⁵

7. The Student is witty, curious and a fighter. (Testimony of Dr. Fabian Boie).

8. The Student loves doing math, telling jokes, and is interested in reading books about other people with disabilities—she is very interested in disabilities—and enjoys sign language. (Testimony of Ms. Loren Heizman).

9. The Student, however, requires intensive services and assistance in dressing, feeding, and toileting. (Testimony of Ms. Lauren Zailis).

diagnosis was of encephalopathy with symmetric basal ganglia change concurrent with Hypoxic Ischemic Encephalopathy/HIE.” Board Exhibit 12, at p. 2)

³ Dr. Feingold testified that: “I think the critical aspect of [the Student] is that she’s not typical, she’s not typical for CP. She has a unique combination of a more rare form of CP, athetoid dystonic, which sounds academic but it basically means she’s in there, she’s bright, she can’t talk, she can’t move her body with any consistent control without flinging or cramping movements. So her situation is so atypical that it takes years of training for any of her therapists specific to children with disabilities, communication between those therapists, deep training in her speech therapist for computerized communication and add that all to their educational setting where she has to be calm, at ease, ability to communicate with peers, feel like she is supported. It takes a team of exceptional skill. Not only that, but a time-proven skill, not something that is being created at the time and then hoping it’s going to work. It is really, really tough rehab, its tough PT/OT speech teaching and needs coordinated care because she is that unique. This is not a typical situation at all.” 02/23/2022 Transcript at page 76, lines 23-25; and page 77, lines 1-18).

⁴ “A physiatrist is a physician who specializes in Physical medicine and Rehabilitation. A physiatrist is a highly trained medical professional who focuses on whole body treatment for the musculoskeletal system and pain-causing disorders.” <https://www.wmedgroup.com>

⁵ Dr. Boyet testified that she makes an up and down motion with her hands near her neck in reference to his tie as a means to greet and identify him.

10. The Student struggles with many activities of daily living and needs intensive services to support her skill deficits in the areas of fine motor, gross motor, and sensory processing. (Testimony of Ms. Laurin Zalis).⁶

11. The Student needs support with managing her clothing to access the toilet. (Testimony of Ms. Laurin Zalis).

12. The Student also suffers from mood disorder and seizures. (Testimony of Ms. Klara Monaco).⁷

13. The Student's medications include: Oxcarbaepine, Trazondone, Trileptal, and Diazepam.⁸ (Board's Exhibit 12, p.4; and Board's Exhibit 16, p.1).

⁶ Ms. Zalis' evaluation concluded that "there were many activities of daily living that [the Student] was struggling with and jumping to the recommendations this is a child that needs intensive services to support her skill deficits in the areas of fine motor, gross motor and hen subsequently activities of daily living, s well as sensory processing and her ability to participate in those activities." (02/10/2022 Testimony of Laurin Zalis T., p. 115, lines 1-8).

⁷ Dr. Michael Cohen also noted in his December 8, 2020, assessment report: "In terms of her current personality and behavior [the Student] is observed as a sensitive, fearful, overactive, independent, moody, dependent, and dependent (sic) child. She is observed as prone to tantrums (and with significant prior and current history of a behavior dysregulation disorder which is reported to have worsened over the past 14-to 16-months." (See Board's Exhibit 12, p. 2); and "Notably, as a child with a neuropsychiatric disorder [she] has prior and current history of markedly unsafe behavior (to herself and to others) and she appears as indiscriminate in her lack of self, social, and situational safety awareness. [The Mother] reports that [she] will play with broken glass, she will reach for hot stoves, and she will attempt to crawl into traffic. [The Mother] reports that [she] can be violent to others, lacks empathy, has hurt animals, and she will refuse to bathe or use the toilet (she has recent history of active encopresis and playing with her feces. [The Mother] provided extensive picture and video documentation of [the Student's] markedly unsafe reactive conduct at home. As related to personal safety concerns, [the Mother] requires a second adult (usually [the Student's] maternal aunt) for assistance when [the Student] becomes increasingly reactive at home or in the community and when [the Student] needs to be driven in the car for her and the driver's safety." *Id.* at 3.

⁸ Oxcarbaepine is used for the treatment of epilepsy for both focal seizures and generalized seizures and for patients with bipolar disorder, one serious side effect of this drug is suicide ideation, *see* en.wikipedia.org/wiki/Oxcarbazepine; Trazodone is used to treat depression, the more serious side effects of this drug include suicide, mania, and irregular heart rate, *see* en.wikipedia.org/wiki/Trazodone; Trileptal is simply a brand name for Oxcarbaepine, *see* en.wikipedia.org/wiki/Oxcarbazepine; and Diazepam, first marketed as Valium, is used to treat anxiety, seizures, muscle spasms, insomnia, and restless legs syndrome, one serious side effect (albeit rare) is suicide, and occasionally excitement or agitation may occur, *see* en.wikipedia.org/wiki/Diazepam.

14. The Student is aware, and sensitive to the fact, that she is different from the rest of her peers⁹ and has specifically requested to be educated with peers who are likewise confined to a wheelchair. (Testimony of Ms. Loren Heizman).¹⁰

15. The Student prefers to be in the company of adults. (Testimony of Ms. Loren Heizman).

16. The Student has been identified as qualifying for special education services under the category of “Other Health Impairment.”¹¹

⁹ In her October 28, 2021 email to Mother, Ms. Susan Dalmoura, LCSW, (“Licensed Clinical Social Worker”), from the Pediatric Specialty Center, Yale New Haven Children’s Hospital, documented information from Dr. Kathleen Cardinale, the Student’s neurologist: “[The Student’s] anxiety and aggression are beyond her CP. The hypoxic ischemic injury caused damage to her basal ganglia and thalami, which causes a lot of her motor difficulties including poor control of her movements. There are likely other changes from the hypoxia that are not readily visible on MRI that would lead to learning difficulties. I suspect her mental health concerns are related to the CP in the sense that she is aware enough to realize she is different from her peers and to resent that, leading to avoidance behavior, anxiety, aggression, etc.” (Parent’s Exhibit 41, p. 80).

¹⁰The November 20, 2020, Augmentative & Alternative Communication, (“AAC”), evaluation report notes, that: “During this evaluation [the Student] was clear that one of her current unmet needs is authentic connection and friendship with peers. [The Student’s peers include those her own age, those who share interests, and those who also use AAC. Connection is a critical need for everyone. It is vital that [the Student] feels understood and valued. This can be complicated by a difference in communication and the frustration that [the Student] experiences, but it is not insurmountable. Connecting with others who have a shared life experience will be invaluable for [the Student]. Immediately, she would likely benefit from connecting with groups of AAC users and/or AAC mentors online. [The Student] responded very enthusiastically when this was suggested during the evaluation. Though challenging during the COVID-19 pandemic, increasing [the Student’s] opportunities to socialize and develop authentic friendships with her local peers should also be pursued. When possible, this might eventually include participation in extracurricular activities.” (Board Exhibit 15, at p. 6).

¹¹ This represents a mischaracterization of the qualifying disability for purposes of special education and related services under the IDEA. The appropriate qualifying disability, based strictly on the Student’s diagnosis of CP, is orthopedic impairment based on CP, (*See* 34 C.F.R. § 300.8(c)(8)) (“Orthopedic impairment means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., *cerebral palsy*, amputations, and fractures or burns that cause contractures).”) (emphasis added); the Student also appears to qualify under the category of serious emotional disturbance, (*See* 34 C.F.R. § 300.8(c)(4)(i)) (Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems.”); and under the category of multiple disabilities, which is the proper classification of this student’s qualifying disability as explained more fully later in this decision (*See* 34 C.F.R. § 300.8(c)(7)) (“Multiple disabilities means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities do not include deaf-blindness.”). It is significant that Dr. Michael Cohen noted in his December 8, 2020, assessment report: “[The Student] is currently classified for special education by the GPS, [“Greenwich Public Schools”], as Other Health Impaired and IDEA special education remains endorsed for [the Student] as a student with an IDEA disorder. At present, however, it is advised that [the

The Student's difficulties Toileting

17. The Student's difficulty with toileting during school required her special education teacher to accompany her to the bathroom and apply a technique having the Student sit on the floor in order to urinate in a pull-up because it would help alleviate pressure. (Testimony of Ms. Loren Heitzman).¹²

18. The Student has told her special education teacher that she experiences pain when going to the bathroom. (Testimony of Ms. Loren Heitzman).

19. The Student has difficulty urinating, using words such as "tight" to describe how she feels the urge to urinate but can't; and is subject to constipation spells experiencing pressure and pain. (Testimony of Ms. Loren Heitzman).

20. The Student always experienced issues around toileting, and when her stomach was tight or hurting or burning it would impact her mood and her day. (Testimony of Ms. Loren Heitzman).

21. The Student often has accidents in front of her peers that she finds demoralizing and embarrassing. She will often come home wearing a pull-up because she is unable to use the toilet during the day. (Board's Exhibit 37, p.1)

22. On September 23, 2020, the Student used the toilet for the first time in two weeks. (Board Exhibit 72, at p. 198).

23. The Student informed her teachers once, upon coming back from her doctor that she had a "neurogenic bladder," typing those words on her iPad. (Testimony of Ms. Loren Heitzman).

24. The school never sought any further information about this condition, but thought that laughter might help her urinate—"so we tried, you know, to make her laugh when she was sitting for a while."¹³ (Testimony of Ms. Loren Heitzman).

Student] is reclassified for special education by the GPS as a student with Multiple Disabilities provided her neuromuscular, and psychiatric disability profile." (See Board's Exhibit 12, pgs.8-9.).

¹² David A. Feingold, MD, the Student's psychiatrist, provided a letter stating that: "[The Student] is a patient in my practice. She should be assisted to the bathroom during summer school by the paraprofessional, teacher or nurse at least 2-3 times minimum while at school. She should never not be offered (sic) to the bathroom. She will need assistance while in the bathroom and a staff member to accompany her. Thank you." (Board's Exhibit B-2C).

¹³ The testimony includes the following colloquy:

Q You also talked about [the Student] telling you about her neurogenic bladder.

A Um-hum.

Q And you claim that, you know, you didn't have any other information. Did anyone from the school district make any effort to find out about that

A I don't know.

Q Did you Google it?

A Did I Google it? I think maybe—no, I don't know if I Googled it.

The Student's School Avoidance and School Refusal

25. The Student has become disillusioned with school, routinely throwing tantrums at home when getting ready for school. She is known to kick, hit, spit and punch. (Testimony of Mother).¹⁴

26. The Student gets extremely anxious about going to school and starts acting out to avoid and/or refuse going to school. She sometimes stays up all night screaming and kicking the wall about going to school. She hits, kicks, will not get out of bed, will not go to the bathroom, spits, and throws herself to the ground. The Mother must plan the night before how she can get the Student to participate with reward systems, stories, and jokes. They have the same conversation every morning, with the Student questioning why the Mother makes her go to school if she loves her. The Mother sometimes has to carry her down the stairs by her hands and feet; The Student punches the Mother while she is helping the Student put on her coat and will spit in her the Mother's face. As the Mother is getting the Student out the door the Student says "no, no, no, no." The Mother has tried everything and has a caregiver she pays from her own pocket who comes in the morning to help get the Student ready for school. The Student engages in these behaviors to avoid

(Testimony of Loren Heizman, 02/10/2022 T. p 100, lines 1-11).

A quick Google search reveals that: "Neurogenic Bladder, also known as Neurogenic Lower Urinary Tract Dysfunction, is when a person lacks bladder control due to brain, spinal cord or nerve problems. Several muscles and nerves must work together for [the] bladder to hold urine until [it is] ready to empty. Nerve messages go back and forth between the brain and the muscles that control when the bladder empties. If these nerves are harmed by illness or injury, the muscles may not be able to tighten or relax at the right time. In people with neurogenic bladder, the nerves and muscles do not work together well. The bladder may not fill or empty in the right way. Millions of people have neurogenic bladder. This includes people with Multiple Sclerosis (MS), Parkinson's disease and spina bifida. It also could include people who have had a stroke, spinal cord injury, major pelvic surgery, diabetes or other illnesses." See The Urology Care Foundation, (the Official Foundation of the American urological Association), *What is Neurogenic Bladder?* at urologyhealth.org/urology-a-z/n/neurogenic-bladder. From the generic definition of this condition, it is unclear how "laughter" would assist the Student's muscles and nerves in working together to get her to go to the bathroom. What is more unclear—and frankly, deeply troubling—is why no one appears to have consulted the school nurse on how to handle this serious and painful situation for the Student. The evidence establishes that this was a chronic condition that troubled the Student on a daily basis. It is incomprehensible to this Hearing Officer that the school nurse—if not the doctor for the public schools—was not consulted immediately on how to handle this serious and sensitive medical situation during the school day.

¹⁴ The November 20, 2020, Augmentative & Alternative Communication, ("AAC"), evaluation report notes, that: "During this evaluation, [the Student] shared insight into her experience as an AAC communicator and the frustration she experiences. She acknowledged times when she may lash out physically, saying 'I hit because I cannot communicate.' Her mother noted that [the Student] also experiences significant anxiety. The full nature of [the Student's] psychological and/or emotional health is not within the scope of this evaluation. That being said, it is common for individuals with limited communication to experience anxiety. It is critical that [the Student's] communication partners view her behavior through the lens of her experience as an AAC user and someone with a disability. It is common for team (sic) serving those with limited communication to get focus (sic) on negative behaviors. While these behaviors are real, they are very likely related to communication and unmet needs." (Board Exhibit 15, at p. 5).

going to school most school days, and the situation has become progressively worse over the last two years. (Testimony of Mother).

27. The Mother has sent numerous emails to the school reporting on the Student's school refusal and behavior. (Parent's Exhibit 22 at p. 4; Parent's Exhibit 24 at 2; Parent's Exhibit 26 at p. 6; Parent's Exhibit 35 at p. 8; Parent's Exhibit 39 at pgs. 2, and 9; Parent's Exhibit 41 at pgs. 6, 8, 24, 26, 28, 37, 38, 41, 44, 78, 79; Parent's Exhibit 42 at pgs. 1, 10, 18, 19, 22, 32, 36, 43, 59, 60, 61, 64, 67, 78, 81, 102, 104, 119, 138, 148, 151. (Parent's Exhibit 69 at pgs. 49-54; and Parent's Exhibit 70 at pgs. 63-64).

28. The Mother has sent numerous emails to the school asking for help with this situation. (Parent's Exhibit 32; Parent's Exhibit 41 at pgs. 67, 78; Parent's Exhibit 42 at pgs. 2, 4, 25, 35, 67, 104, 108, 119, 120, 122, 129, 130, 147, 151, 163. (Parent's Exhibit 69 at pgs. 16-18; Parent's Exhibit 70 at pgs. 2-10, and 47-49).¹⁵

28. The Student has complained to her mother that her classroom environment is too bright, too loud, and that other students are mean to her. (Testimony of Mother).

29. The Student first became violent around the time she was in kindergarten; and as she has grown bigger, her violence has had a greater impact on those around her. The Student's outbursts have hurt people and she has broken objects. (Testimony of Mother; Testimony of Ms. Loren Heizman, "as she gets older the behaviors get more extreme").¹⁶

¹⁵ For example, on October 26, 2021, the mother emailed school officials the following: "I need help this morning. Can we start the Google meeting before 8:30? [The Student] is refusing to go out in the rain and go to school. Also, last night was horrific; [the Student] has started to self harm. She is pulling out her own hair punching herself. She has also said she is holding her bowels on purpose to hurt herself. When is GPS going to admit the severity of this mental health and physically debilitating condition and give my daughter the supports she needs?! You have no idea the damage you're causing my daughter! She needs out of district immediately. Please help her!" (Parent's Exhibit 41, p. 78).

¹⁶ According to Dr. Cohen, in his December 8, 2020 report: "As noted above, [the Student's] psychiatric status has markedly declined over the past 14 to 16 months and because of manic associated behavior dysregulations (parent report), [the Student] was placed in an extended psychiatric hospitalization this past summer (June-August 2020). [The Student] was initially referred by [the Mother] to Greenwich Hospital (June 28, 2020) and transferred to Yale New Haven Hospital June 29, 2020 to August 15, 2020. As reported by her attending Yale Psychiatrists, [the Student] demonstrated aggressive and oppositional behaviors towards staff which were reported to exhibit relative improvement with provision of psychiatric medication and behavior support reports...As result (sic) of her Yale hospitalization, [the Student] was diagnosed Disruptive Mood Dysregulation Disorder (DMDD) and her attending Yale psychiatrists documented that [the Student's] mental health difficulties are closely intertwined with physical, social, and academic functioning with each affecting the others. [The Student's] aggression and mental health needs present in atypical ways because of her physical limitations. Primary mental health recommendations include: At home and in the school setting, clinicians specializing in mental health needs of physically disabled children should be used to guide the interventions. The [a]ntecedents, precipitants, and perpetuating factors to challenging behaviors need to be identified and interrupted to reduce the conditioning pattern that she has developed for these behaviors. Primary behavior support recommendations include: Based on our observation and effective management [the Student] needs constant one to one assistance at home and at school for supervision, communication, and support. Primary physical support recommendations include: In addition to the one on one support at home and in school, [the Student] will need regular physical therapy and occupational therapy (in-home) to help with her strength, tone and fine and gross motor skills... As [the Student] is able to actively participate and

30. The Student spends hours in the bathroom, sometimes 120 minutes per day, rather than in class receiving instruction. (Testimony of Ms. Loren Heizman; Testimony of Mother).

31. The Student has complained that she does not like the subject matter she is given in school. (Testimony of Mother).

32. The Student has removed her clothing in the classroom and pulled out her own hair. (Testimony of Mother).

33. The Student's behavior has not improved in two years. (Testimony of Mother).

34. The Student has started to use profanity. (Testimony of Mother).

35. It is important to know whether the Student's school avoidant behaviors are due to physical issues like discomfort or fatigue, or because she was frustrated and angry. It is not sufficient to determine if the Student is engaging in a behavior to avoid a task; it must be determined why she is avoiding it. (Testimony of Dr. Baddam).

The Student's Difficulties Riding the Bus

36. The Student has difficulty riding the bus and will not cooperate getting on the bus to go to school. The bus ride is twenty minutes long. The Student is known to unbuckle her safety belts, undress and has hit others while being put in safety belts. (Testimony of Ms. Klara Monaco).

37. The Student has been seen by school officials trying to take her clothes off while on the bus. (Testimony of Dr. Fabian Boie).

38. The Student has arrived home from school without clothes. (Testimony of Mother). The Board has not collected data about her behavior on the bus and the FBA and BIP do not address it. (Testimony of Dr. Fabian Boie)

39. On one occasion, the 211 counselor, Janessa Alvarez, rode the bus to school with [the Student]. She reported that the bus drove very fast, it was very loud, that the bus was jolting back and forth, and that the Student's head was swinging back and forth causing dizziness. She said it was very distressing. The Student's iPad was not accessible, and

when she is able to stay safe during transportation, the occupational therapy and physical therapy may transition to outpatient setting. Primary Educational Support recommendations include: She would need a one to one at school who is trained to manage any maladaptive behaviors to ensure that her education and academic goals are met...because of her difficulties with communication and time lag in communication, she would need assistive devices to help her communicate effectively and reduce the frustration related to the time lag in communication.” (Board's Exhibit 12, at p. 4) (Emphasis in the original).

Ms. Alvarez thought the jolting of the bus would make using it difficult. (Testimony of Mother).

40. Bus incidents were often not reported or documented. (Testimony of Dr. Fabian Boie).

41. The Mother had to ask each time she learned of an incident that it be documented, and that often did not happen. When the Mother asked the bus monitor to write down when these incidents occurred, the monitor responded that she and the driver had not been doing so because they were worried they would get in trouble if they wrote it down. (Testimony of Mother).

42. The documented bus incidents included those which occurred on 3/8/21, 3/9/21, 3/26/21, 7/9/21, 8/2/21, 8/6/21, 9/30/21, 10/1/21, 10/5/21, 10/6/21, 10/26/21, and 10/28/21. (Parent's Exhibit 41 at p. 26, 79; Parent's Exhibit 42 at pgs. 58, 59, 62, 64, 68, 69, 71, 74, 75, 76, 119, 122, 123, 148; Parent's Exhibit 63; Parent's Exhibit 64; Parent's Exhibit 65; Parent's Exhibit 66; Parent's Exhibit 67 at p. 1; Parent's Exhibit 69 at pgs. 16-18; Parent's Exhibit 70 at pgs. 30-34).

43. Dr. Boie does a group training at the Board's bus company for drivers and monitors and provided individualized training for the Student's bus staff; but the staff have limited English, limited education, and are not qualified to provide behavior intervention. (Testimony of Dr. Fabian Boie)

44. The bus videos viewed during the hearing indicate that the Student cannot safely be transported by the bus. (Parent's Exhibits 76, 77, and 78).

45. For example, on October 7, 2021, the bus driver pulled the vehicle over to the side of the road as a result of the Student's behaviors. He can be heard telling the Student that she will be taken away, and while the bus is pulled over to the side of the highway the driver reports to his dispatch that the Student is out of her straps, fell, and twice describes the situation as "unsafe." (Parent's Exhibit 77).¹⁷

46. In another video, the bus monitor and driver struggle to keep the Student safely fastened in her wheelchair as she undoes the straps; as the driver reports to her dispatch, the Student simply releases the straps after the staff fastens them, and the staff are left wondering what to do. (Parent's Exhibit 76)

47. The Board never considered another form of transportation because the bus was considered "appropriate transportation for [the Student]," and Dr. Boie was unsure

¹⁷ The exhibit is a video recording with sound of the bus ride. The Student can be seen throwing a fit, severe enough to require the driver to stop the bus. This dramatic video exhibit, reminiscent of Patty Duke's performance in *The Miracle Worker* while at the water pump, is one of three that were played during the hearing and entered in evidence as full exhibits. Parent's Exhibit -77 is particularly disturbing. The Student can be seen to be absolutely uncontrollable, with the monitor and the driver unable to calm her. It is simply not safe for this child to continue to be transported to and from school by bus, and it is simply inexplicable that this has been allowed to continue this long under these conditions and circumstances.

whether the bus company had a different vehicle “in their . . . parking lot.” (Testimony of Dr. Fabian Boie).

48. The school bus monitors themselves struggled with the English language, lacked the skill set to cope with the Student’s behaviors while riding the bus, and had difficulty writing down incident reports. (Testimony of Dr. Fabian Boie).¹⁸

49. The vibrations of the bus while in operation makes the Student’s communication device problematic. (Testimony of Dr. Fabian Boie).

50. In March 2021, the Student’s special education teacher had to ride the bus with her, because the Student did not want to wear her seat-belt and kept unclicking it, and attempted to release the straps that were holding her wheelchair to the vehicle. (Testimony of Ms. Loren Heizman).¹⁹

51. The Student had a very difficult time riding the bus in July and August of 2021, and her difficulties with the bus continued into the fifth grade. (Testimony of Dr. Fabian Boie).

52. The Student would become upset when the bus would arrive late to pick her up at home to bring her to school. (Testimony of Dr. Fabian Boie).

53. The bus would arrive late for weeks. (Testimony of Dr. Fabian Boie).

54. The Student’s special education teacher was required to conduct Zoom chats with the Student to help her get ready while waiting for the bus. (Testimony of Dr. Fabian Boie).

¹⁸ The Mother emailed Ms. Oxeer, (Ms. Barbara Brennan Oxeer, Assistant Principal, Glenville School), on 10/28/2021, to inform her that: “The bus late. Hasn’t left driveway yet. It’s different ladies and they’re panicked about [the Student’s] violence this morning. Why aren’t these staff members trained?? [The Student] is screaming, thrashing, pulling out her hair, scratching her face, and punching her body! She told me this morning she wants to kill herself. The only way I was able to get her on the bus was telling her that Sarah was following it on way to school. Please help me!!! (Parent’s Exhibit 41, p. 79).

¹⁹ The Mother sent the following email to Ms. Karen Vitti, and other school officials—March 8, 2021 (5:16pm): Karen and Sarah, Firstly, please thank Maya, Luz and Loren for riding the bus today to ensure [the Student] got home safely. She and I have been speaking about this all afternoon. She told me she doesn’t want to wear her seatbelt or go to school. Please tell Ms. R that I appreciate her understanding, as well, since I believe [the student] was aggressive to her today. We will continue to talk that hitting, kicking and screaming in class is not appropriate or acceptable behavior. Please be advised that this is the second incident in a week on the bus; I have asked several times for bus incidents to be documented but I do not think they have been. If [the student] cannot ride safely home within a two mile radius, then busing her during the day to another school is absolutely unacceptable. This further reiterates the need for her to be outplaced to a residential facility in order for her to learn and maintain minimal disruption to her day. All of this only adds to her high-stress, crippling anxiety, and difficulty to self-regulate, which has an adverse effect on her being able to receive a fair education. Her experience from today at school is now causing violent tantrums at home and I foresee difficulty sleeping and a morning of school-avoidant behavior. See attached [photo] which was taken a few moments ago. I have finished speaking to all the schools you referred and they have all declined placement. I would like a call to discuss residential placement, as soon as possible. (Parent’s Exhibit 67, p. 1, with attached photo).

55. The Mother had to hire an assistant, because she cannot get the Student ready to go on the bus just by herself. (Testimony of Mother).

56. The Student's serious behavioral issues during transportation were known by school personnel to have caused an accident when her mother was driving with her one weekend. (Testimony of Ms. Loren Heitzman; Parent's Exhibit 41, p. 63).²⁰

57. The Student's issues with riding the school bus have a negative impact on her ability to learn, and to retain what she learns. (Testimony of Dr. David Feingold).²¹

Suicidal Ideation and Multiple Hospitalizations

58. The Student has threatened to kill herself—as recently as March 14, 2022—she reported hearing voices while in school and that a monster told her to drink, to take pills and to kill herself. (Testimony of Fabian Boie, Ph.D.).

59. The Student was in the school psychologist's office for an hour while threatening to kill herself during the March 14, 2022 incident. (Testimony of Fabian Boie, Ph.D.).

60. The Student has stated that she “wants to go to sleep and never wake up.” (Testimony of Mother).

61. The Student has previously been hospitalized at the Yale Psychiatric Unit. The first hospitalization was for seven weeks, from June to August 2021; and underwent a second

²⁰ The following email exchange describes the incident:

MS. HEIZMAN—December 2, 2019 (12:01pm): Hi [Mother], [The Student] told us you were in an accident yesterday. Just checking in to see if you are ok? How was Thanksgiving? Also, she pooped again in school today.

THE MOTHER—December 2, 2019 (12:09): Yes, we were in a car accident because [the Student] was freaking out and having a tantrum. I barely got out of the road and slid into a pole. She was trying to get out of her seat and kicking me. Then when we got to my mom's, she hit a total stranger, [I]t was a terrible day.

MS. HEIZMAN—December 2, 2019(12:35pm): Hi [Mother] , [I'm] so sorry so hear this. I'm glad everyone is ok.

THE MOTHER—December 2, 2019 (2:13pm): Thank you. Fortunately no one was injured and I didn't hit another car, just a telephone pole. Sadly, my car is pretty much totaled so I have to figure out if I can get it fixed up so I can perhaps get another year out of it. I tried talking to [the Student] about what happened but I don't think she really understands the severity of it all. It makes me very sad to think that she couldn't even feel bad after causing me to go off the road. I am wondering if she has PseudoBulbar Affect (PBA)—her preschool teacher brought this up to me years ago and I figured it was possible, but the crying and laughing episodes are getting more apparent now that she is getting older. Have you heard of it?

MS. HEIZMAN—December 3, 2019 (11:43am): Hi [Mother] I have heard of it. Perhaps you can check with the dr? At school she seems to be laughing more. The two accidents she has had in the past 2 weeks happened while she was laughing. I haven't observed the crying. (Parent's Exhibit 41, p.63).

²¹ Dr. Feingold testified, that: “Well, again, the Student's a [passive commuter so she has no control over that if it gives her any fear or lack of ability to communicate or needs and that starts or finishes her day. If it's a longer commute and it's just not reasonable that she's able to make gains during the day and then sustain them if to and from school is either long or difficult, keeping in mind that she can't control her body. So it's no small thing to get her on or off a bus or in the car or keep her—keep her experiential ability to take the gains during the day and make them something that she would keep with. She just needs the structure and simplicity of being where she is educated.” (02/23/2022 Transcript p. 73, lines 11-23).

two-week psychiatric hospitalization, from October 28, 2021 to November 15, 2021. (Testimony of Ms. Loren Heizman; Testimony of Ms. Klara Monaco).²²

62. The Student displayed aggressive behaviors while hospitalized at Yale during the Summer of 2020. She would urinate in her wheelchair or on the bed when frustrated, would throw things, and hit staff members. If she did not want to participate in a group activity, she would make loud noises or scream in order to be removed as she understood that if she disrupted the group she would go back to her room. (Testimony of Dr. Baddam).

63. The Student has been diagnosed with DMDD²³; mood dysregulation; mental health issues intertwined with physical problems, social settings, and academic situation. (Testimony of Suman Baddam, M.D.).

64. The Student suffers from emotional disturbance in the moderate to severe range. (Testimony of Suman Baddam, M.D.).

65. The Mother is doing the absolute best that she can to care for her daughter under the circumstances. (Testimony of Kathleen Cardinale, M.D.)

²² The clinical impressions as of November 11, 2021 were recorded as follows: “History: Briefly, this is 10 y.o. 11 m.o. female up to date with vaccinations with PMH of cerebral palsy (TBI at birth), developmental delay, emotional dysregulation, disruptive mood dysregulation disorder, ODD, constipation, precocious puberty, aggressive behavior, and seizure disorder BIBA from school due to suicidal thoughts over the past 2 days. She had a plan to grab pills at home and intentionally ingest them. She endorsed these symptoms to the school staff today and was very agitated at school. She was evaluated by psychologist who called 211. These symptoms are in the setting of a more subacute presentation of worsening depression. She fears for her own safety and what she could potentially do at home and at school. The school principal notes that she has a very stressful home life and mom is currently working to put her in a residential facility. I spoke to Janessa Alvarez...from 211 (who took call about this patient) and she reports patient is suffering social and emotional distress due to recent stressors. Depression from being different than her peers and inability to do things other kids can. Recently lost ability to control when she urinates, so wears a pull-up recently, which is very distressing for her. Patient could not commit to safety. I spoke to [the Student’s] mother...and got her permission to treat [the Student]. She reports that her daughter has cyclical spikes in her behavior, consisting of temper tantrums, agitation and violence. These occur several weeks and consist of hitting her mother, pulling things off the wall, breaking things, and she recently just started pulling out her own hair and scratching her face. Mom has been trying to get [the Student] into a special needs school without any success.” (Parent’s Exhibit 68, pgs3-4).

²³ “Disruptive mood dysregulation disorder, (“DMDD”), is a childhood condition of extreme irritability, anger and frequent, intense temper outbursts.” See <https://www.nimh.nih.gov>

Behavior Issues in School and Difficulties with Communication Device

Meanwhile the desire to express myself grew. The few signs I used became less and less adequate, and my failures to make myself understood were invariably followed by outbursts of passion. I felt as if invisible hands were holding me, and I made frantic efforts to free myself. I struggled—not that struggling helped matters, but the spirit of resistance was strong within me; I generally broke down in tears and physical exhaustion. If my mother happened to be near I crept into her arms, too miserable even to remember the cause of the tempest. After awhile the need of some means of communication became so urgent that these outbursts occurred daily, sometimes hourly...

--Chapter III, page 17.²⁴

66. The Student's fingers and arms have tremors which result in her pushing the wrong letter when she attempts to communicate on her communication device, and this leads to frustration. (Testimony of Suman Baddam, M.D.).

67. The Student has behavior issues in school, she engages in hitting, kicking and pulling down her pants. (Testimony of Ms. Klara Monaco).

68. The Student has stated that she should have an Augmentative and Alternative Communication, ("AAC"), system to assist her with communication. (Testimony of Ms. Kate McLaughlin).

69. The Student has stated that she hits because she cannot communicate. (Testimony of Ms. Kate McLaughlin).

70. The Student's hands have locked at least twice while in school denying her access to her communication device. (Testimony of Ms. Mya Feldman).

71. The Student's Speech Therapist lacks specific training for students with CP. (Testimony of Ms. Mya Feldman).

72. The Student's speech therapist lacks formal training with the Student's specific communication device. (Testimony of Ms. Mya Feldman).

73. The Student has stated that she wants friends. (Testimony of Ms. Kate McLaughlin).

74. The Student receives "push-in" services in a regular classroom. (Testimony of Ms. Loren Heizman).

75. The Student's special education teacher who has worked with her for three years, (in 2nd, 3rd, and 4th grades), has no specific training in CP. (Testimony of Ms. Loren Heizman).

²⁴ Helen Keller, *The Story of My Life*.

76. On October 28, 2021, the Student wrote a suicide threat on her I-pad. The school psychologist called 211 to report suicidal ideation, and the Student was sent to the hospital for two-weeks. (Testimony of Ms. Klara Monaco).

77. The Student has been forced to attend three different public schools during the 2020-2021 school year. (Testimony of Ms. Klara Monaco).

The Spring 2019 Triennial Evaluation

78. The spring 2019 educational evaluation revealed that the Student's reading comprehension on the WIAT III was a below-average standard score, ("ss"), of 83; and that her Silent Reading Quotient on the Gray Silent Reading Test was also below-average. (Parent's Exhibit 10, at p. 3).

79. In math, the Student's problem solving was also at a below-average ss of 80. (Parent's Exhibit 10, at p. 3).

80. The psychological assessment attempted to quantify the Student's worsening behavior problems; the Student's parent and teacher both rated her as either Clinically Significant or At Risk on each and every item of the Behavior Assessment System for Children-3, including externalizing problems, internalizing problems, school problems, behavioral symptoms, and adaptive skills. (Parent's Exhibit 12, at p. 5).

81. The speech and language evaluation documented below-average core-language functioning (Parent's Exhibit 13).

82. The occupational and physical therapy evaluation described the amount of assistance the Student needed for various activities; but offered no recommendations despite having noted that the Student could remove a pull-over top or her shoes and socks without significant assistance. (Parent's Exhibit 11, at p. 6).

The Speech, Language, and Feeding Evaluation

At first, when my teacher told me about a new thing I asked very few questions. My ideas were vague, and my vocabulary was inadequate; but as my knowledge of things grew, and I learned more and more words, my field of inquiry broadened, and I would return again and again to the same subject, eager for new information. Sometimes a new word revived an image that some earlier experience had engraved on my brain...

--Chapter VI, page 29.²⁵

83. The Student has difficulty "inferencing," or "smart guessing," because she has had fewer experiences as a result of her disabilities. (Testimony of Mya Feldman).²⁶

²⁵ Helen Keller, *The Story of My Life*.

²⁶ The Student's summer camp experience described later in this decision was of critical importance to her; the ability to interact with her peers, to engage in activities, to have fun will allow her make smart guesses and effectively inference. How important is experiencing the world for this student? Helen Keller tells us

84. The Student has spasticity in her arms and legs due to her disability. She is inconsistent with feeding herself using utensils because she is shaky at times and may miss her mouth. She also has poor lip closure and tends to thrust her tongue when moving the food in her mouth. These problems can lead to malnutrition and choking, therefore, the Student has paraprofessional support during feeding. (Board's Exhibit 1B, p. 8, 10/08/2021 IEP, Present Levels of Academic and Functional Performance).²⁷

85. In October and November 2020, Cheryl Small Jackson conducted an independent speech, language, and feeding assessment of the Student. (Parent's Exhibit 17).

86. Ms. Jackson conducted a PROMPT motor-speech assessment and determined that while the Student's receptive language skills were average, her expressive and higher-level language skills were impaired. In addition, Ms. Jackson concluded that the Student showed moderate weakness in the social-emotional domain, and "severe" deficits in the physical sensory domain. She noted that "[The Student] cognitively understands what she needs to do; however, her physiological system at this point in time does not have sufficient underlying control/support." (Parent's Exhibit 17 at 5-7).

87. Ms. Jackson diagnosed the Student with Developmental Dysarthria, which is a neurologically based condition with muscle tone imbalance affecting the respiratory, phonatory and articulatory systems. During the assessment the Student was observed to have mixed muscle tone, weaknesses in respiratory-phonation function, and retained immature neurological reflexes. Ms. Jackson wrote that "The quality of [the Student's] vocal output was breathy, labored and hypo-nasal. Given the complex nature of these disorders [the Student] requires an intervention plan that is based on motor learning and is efficacy based." The motor component is critical; according to Ms. Jackson, in the Student's treatment plan, the jaw (mandible) must be the first priority as the Student needs to learn how to maintain midline orientation while moving her jaw efficiently across different jaw heights when producing sounds, syllable words and phrases. PROMPT was one of the research-based methodologies endorsed by Ms. Jackson. (Parent's Exhibit 17, at pgs. 7-10).

88. Noting that the Student benefits most from tactile rather than auditory or visual cues, Ms. Jackson stated that [the Student] requires five sessions per week of speech therapy from a pathologist skilled in using motor learning – specifically the PROMPT teaching methodology. The therapist must be PROMPT certified or a "PROMPT level 2 Bridging therapist who can be mentored by a certified PROMPT therapist." She was more specific

just how important: "We read and studied out of doors, preferring the sunlit woods to the house. All my early lessons have in them the breath of the woods—the fine, resinous odour of pine needles, blended with the perfume of wild grapes. Seated in the gracious shade of a wild tulip tree, I learned to think that everything has a lesson and a suggestion ... Thus I learned from life itself. *The Story of My Life*, pages 34-38.

²⁷ Ms. Carolyn Conelias, RN, (The School Nurse), reported the choking incident that occurred on October 22, 2021: "Good afternoon, I wanted to let you know that I was called to the cafeteria today to see [the Student]. She seemed to have had a minor choking incident on a very small piece of pizza. When I got there she was fine, coughed a few times, drank milk and said she felt better." (Parent's Exhibit 41 at p. 77).

in an addendum in which she specified that the Student needs three 30-minute sessions per week of motor-based individual therapy; 1x30 minutes of individual language therapy; and 1x30 minutes of group language therapy. In addition, she offered specific goals and objectives for jaw control and lip control. (Parent's Exhibit 17, at p. 15)

89. Ms. Jackson also assessed the Student's feeding skills (chewing, swallowing, and drinking) and concluded that they are significantly impaired. (Parent's Exhibit 17).

90. Ms. Jackson determined that the Student requires a speech and language therapist with a specialty in oral motor and feeding to develop a program which can be used by her team and her family. The evaluator noted that, since the Student has never received direct feeding intervention and has significant deficits which put her at risk for choking, aspiration and malnourishment, it is imperative to address these issues in her school program. Ms. Jackson also recommended that the school have a feeding team/committee to monitor the Student's feeding skills. (Parent's Exhibit 17, at 12-13).

91. Ms. Jackson reviewed her evaluation at a PPT on December 8, 2020, with Ms. Feldman attending as the Board's speech and language pathologist. (Parent's Exhibit 35).

92. Ms. Feldman has little recent experience with students who have oral-motor challenges or feeding issues. (Testimony of Ms. Maya Feldman).

93. Ms. Feldman has performed only one formal oral-motor evaluation that evaluated a student with respect to the Motor Speech Hierarchy. In response to a question about whether oral-motor speech production and oral-motor feeding skills were important to [the Student], she responded that her job is restricted to helping students with developing language skills to access the curriculum. In her opinion, the only reason the Board ever included oral-motor therapy in [the Student's] IEP was to honor the fact that it was important to [her]. (Testimony of Ms. Maya Feldman).

The Assistive Technology Evaluation

I had known for a long time that the people about me used a method of communication different from mine; and even before I knew that a deaf child could be taught to speak I was conscious of dissatisfaction with the means of communication I already possessed. One who is entirely dependent upon the manual alphabet has always a sense of restraint, of narrowness. This feeling began to agitate me with a vexing, forward reaching sense of a lack that should be filled...

--Chapter XIII, pages 58-59.²⁸

94. The parent requested an IEE for an AAC/assistive technology evaluation, which was conducted by Ms. Kate McLaughlin in October and November 2020. (Parent's Exhibit 15).

²⁸ Helen Keller, *The Story of My Life*.

95. Ms. McLaughlin is a speech-language pathologist who specializes in the needs of AAC users, having practiced exclusively in that area for 12 years. She testified that in order to evaluate an AAC user's needs, one must consider their motor needs and language needs, including what they need to communicate and what they need to develop their language skills. Once the evaluator has a good picture of the learner, they examine the environments in which AAC is needed and the circle of people with whom the user is communicating. Finally, the evaluator matches features of available AAC systems to the user's needs and trials several of them with the user. (Testimony of Ms. Kate McLaughlin).

96. While data generated by the trials is considered, the participation model is the accepted standard of assessment, prioritizing the student's perspective of the communication systems trialed. Such assessment should be ongoing, as learners grow and their needs change. (Testimony of Ms. Kate McLaughlin).

97. The Student's greatest need was efficiency, as efficient access to language was needed to minimize fatigue and frustration. She also needed a robust language system so she could communicate very specifically and with enough language to communicate complex thoughts, and she needed preprogrammed words and phrases as well as word prediction. Ms. McLaughlin noted that the Student, who has good language and cognition for AAC use, was experiencing persistent errors with Proloquo4Text, the system the Board assigned to her without trialing any other potential systems. (Testimony of Ms. McLaughlin).

98. Ms. McLaughlin trialed four systems with the Student, including Proloquo4Text. Of the four, the Student rated Proloquo4Text lowest, with the SimPODD appearing to be her preferred system, as she consistently returned to it to discuss other systems she was trialing. SimPODD has larger targets, spaced further apart when loaded on the larger iPad Pro, organizes language, including phrases and sentences, by function, and has robust language with word prediction. The Student composed longer sentences with this system and was most efficient, with fewest errors. (Testimony of Ms. McLaughlin).

99. SimPODD also offers a low-tech version of its pages that can be printed out from the application; and the Student was particularly interested in this feature for times when she cannot access her iPad. (Parent's Exhibit 15, at p. 5).

100. Ms. McLaughlin recommended SimPODD; consultation from a speech and language pathologist who is very experienced in AAC to implement the new system, including customizing it for the Student; 10 hours for set up, and monthly consultation afterward. (Parent's Exhibit 15, at p. 11).

101. Ms. McLaughlin's evaluation was reviewed at the December 8, 2020, PPT, and the school team agreed to trial SimPODD (but only agreed to three hours of consultation with Ms. McLaughlin). (Parent's Exhibit 35, at p.2).

102. The Board did not trial SimPODD, because “we’re not able to download the SimPODD app,” more than a year after the trial was agreed to; that no one ever reached out to the Parent about the problem; and that she was unaware of any efforts to solve the problem.

102. Ms. Feldman did not pursue any follow-up after requesting the program from the Board’s IT department, nor was Ms. McLaughlin consulted. (Testimony of Ms. Maya Feldman).

104. The only contact Ms. McLaughlin had from the Board following the December 8, 2020, PPT was a 30-minute phone call from another Board speech-language pathologist, Ms. Margaret Presley, on October 26, 2021, nearly one year following the evaluation. During that conversation, Ms. McLaughlin reviewed her evaluation, and explained the SimPODD, and re-sent the vocabulary questionnaire she had previously provided for the purpose of customizing an AAC device. (Testimony of Ms. McLaughlin).

The Neuropsychological Evaluation

When we arrived in Baltimore, Dr. Chisolm received us kindly: but he could do nothing. He said, however, that I could be educated, and advised my father to consult Dr. Alexander Graham Bell, of Washington, who would be able to give him information about schools and teachers of deaf and blind children. Acting on the doctor’s advice, we went immediately to Washington to see Doctor Bell, my father with a sad heart and many misgivings... Dr. Bell advised my father to write to Mr. Anagnos, director of the Perkins Institution in Boston, the scene of Dr. Howe’s great labours for the blind, and ask him if he had a teacher competent to begin my education. This my father did at once...

--Chapter 3, pages 19-20.²⁹

105. On December 8, 2020, Dr. Michael Cohen, performed a neuropsychological evaluation, and recommended the Student—who suffers from brain injury—be placed in a therapeutic residential program. (Parent’s Exhibit 16; Board’s Exhibit 11; Testimony of Dr. Michael Cohen).

The PPT Meetings

106. The Special Education Administrator considers herself to be the Local Educational Activity, (“LEA”), and solely responsible for making the final decisions for the PPT. (Testimony of Ms. Karen Vitti).³⁰

²⁹ Helen Keller, *The Story of My Life*.

³⁰ This of course was a serious and significant misunderstanding of the PPT process and compromised the reliability the Student’s IEP from its initial formulation. This is more fully discussed in a later section of this decision.

107. The Parent requested in-home services for the Student at the November 2, 2020, PPT annual review meeting; Ms. Vitti, not the PPT, determined that service provided the Student would not be in person. (Testimony of Ms. Karen Vitti).

The Student's IEP Goals and Behavior Plan

108. By the time of the 11/2018-11/2019 IEP year (2nd to 3rd grade), the Student's behavior was often out of control. The Behavioral/Social/Emotional section of the Student's November 13, 2018 IEP, notes that "[the Student] has been showing angry reactions in the classroom by refusing to do her work, hitting or kicking others and making loud noises. When asked to use her strategies to calm herself, she inconsistently uses the strategies." (Parent's Exhibit 26, at p. 7).

109. The checkbox on the Special Factors page for students "whose behavior impedes the learning or that of others," however, is marked N/A, even though at this point the Student's behavior was impeding her learning. (Parent's Exhibit 26, at p. 28; Testimony of Ms. Loren Heizman).

110. The Student's behavior plan was put in place in January 2019, but to little effect: It lists the Student's "expected behaviors" as keeping her hands and feet to herself, following directions from the teacher, and using her AAC, and calls for her to ask for a break, relax for three minutes, or take a walk³¹ if she feels frustrated or angry; It also provides that the Student's daily schedule and expectations for the day will be reviewed with her in the morning, that she will be allowed to make choices where appropriate, and that she can earn a reward. If her behavior is "unexpected," i.e., hitting or kicking, classmates and objects are to be moved away from her and she is to be ignored until calm. (Parent's Exhibit 55).

111. The Student's behavior plan did not produce improvement. (Parent's Exhibit 41, at pgs. 48, 49, 56, 61, 62, 66, 69, 70, 72).

112. On October 10, 2019, the Parent signed consent for a Functional Behavior Assessment ("FBA"). (Parent's Exhibit 28).

113. The annual review on November 4, 2019, notes continued aggressiveness (hitting, kicking, biting) toward peers and adults, that the Student gets angry and frustrated when given some tasks, and that she will refuse to work and wait for someone to notice she is not working. (Parent's Exhibit 29, at p. 6).

114. In November 2019, school staff started taking the Student out of specials such as PE, music, and art to work on her IEP goals and objectives. (Parent's Exhibit 29, at p. 2).

115. Ms. Heizman testified that this was necessary because the Student missed a lot of instructional time when she was taken out of the classroom for ADLs such as toileting

³¹ The Student, of course, has great difficulty walking, as graphically demonstrated in Parent's Exhibit 53.

and removed from the classroom because of her behavior. (Testimony of Ms. Loren Heizman).

116. The Student's passive behavior in the classroom was also concerning. In the "Other Academic" section of the IEP it was noted that the Student "rarely initiates participation in a whole group setting and relies on individualized attention from an adult after the lesson for explanation." (Parent's Exhibit 29, at p. 5).

117. The data on which the Board based its FBA was collected in October 2019. (Parent's Exhibit 58, at p. 4).

118. The Behavior Intervention Plan, ("BIP"), however, was not completed and reviewed until four months later in February 2020, (Parent's Exhibit 30); It was developed with the assistance of the Board's BCBA, Dr. Fabian Boie. (Testimony of Ms. Loren Heizman).

119. Dr. Boie only reviewed the BIP months after it was drafted. (Testimony of Fabian Boie, Ph.D.).

120. The FBA/BIP posited that the function of the Student's behaviors was avoiding tasks or gaining attention from adults. (Parent's Exhibit 58, at p. 5)

121. It would have been more helpful if the FBA/BIP had determined which specific tasks were being avoided and the reasons why they were being avoided. (Testimony of Fabian Boie, Ph.D.).

122. The "environmental accommodations," listed in the BIP, (which are supposed to be changes in the environment to diminish behavior), are mostly descriptions of measures that were already in place and mirror the behavior plan from 2019, which proved ineffective. (Parent's Exhibit 58, at p. 6; Testimony of Ms. Loren Heizman).

123. The replacement behavior to be taught the Student were "zones of regulation," calming strategies, and filling out Google forms. The strategy to manage behavior incidents was the same to be found in the previous plan, with the addition that if the Student was disruptive in class she would be removed from the classroom and taken to the resource room. (Parent's Exhibit 58, at p. 8).

124. The way the school handled crisis situations with the Student was no different than before the BIP was implemented. (Testimony of Ms. Loren Heizman).

125. Dr. Boie, the Board's BCBA, provides two hours consultation per month on the Student's program and does not provide direct services to the Student. His role is mostly observing and coaching staff members as well as coordinating with the bus company. He coached the staff on data collection and charting. He admitted during his testimony that the aggregation of data and the charts based on them, which were submitted as exhibits,

were not accurate.³² When asked what he took from those charts, he stated that he concluded the Student is “complicated.” (Testimony of Fabian Boie).

126. From 9/10/20 until 3/2/21, the Board recorded 47 days during which the Student engaged in aggressive behaviors such as hitting, kicking, and spitting, or refusing to work, many of them with multiple episodes. (Parent’s Exhibit 60).

127. The Student has reported that the classroom was too bright, too loud, that she did not like the subject matter, that the other students were being mean, that she was tired, that she was unable to follow along, and that that when she tried to answer someone cut her off. The Student has removed clothing, including her pants, in the classroom. She tells her mother she does it because she hates it, does not have any friends, and does not feel like she belongs. More recently, the Student has reported that she is being treated like a baby at school because she cannot do what the other kids do; and they therefore assume she is not smart. The Mother has not seen any improvement in the Student’s behavior over the last two years. The Student is now pulling out her own hair, hitting her body, and saying she wants to go to sleep and never wake up. (Testimony of the Mother).

128. The Student’s IEPs fail to adequately address her behaviors. They do not include goals and objectives that required objectively measurable improvements in her behavior at school. The Student’s 11/13/18 IEP contained just one social/behavioral goal that required her to fill out a form and review it. (Parent’s Exhibit 26 at p. 17).

129. The Student’s 11/4/19 IEP contains two social/behavioral goals in which the Student analyzes scenarios in the therapy room and uses her AAC device to ask for help. (Parent’s Exhibit 29 at pgs. 11-13).

130. The Student’s 12/8/20 IEP has her counseling service co-treat a communication goal for gaining a communication partner’s attention, using a mode of communication in a moment of frustration, and to use “expected” strategies to complete non-preferred tasks. (Parent’s Exhibit 35 at pgs. 21, and 37).

131. The IEPs limit the Student’s counseling services to 30 minutes per week (Parent’s Exhibit 26 at p. 29; Parent’s Exhibit 35 at p. 41); and in the case of the 2019-20 IEP, that service was pushed into the classroom. (Parent’s Exhibit 29 at p. 24).

132. Based on observations, the Student continues to show incidents of hitting and kicking with an average 1.4 per day. She becomes angry and frustrated when given various tasks to do. She states she wants to do things by herself. She does not advocate for herself but

³² The transcript reveals the following colloquy:

Q. Okay. So that was far more than a total of five incidents for the marking period, wouldn’t you agree?

A. Absolutely.

Q. It was more than five just in November, correct?

A. Yes.

Q. So you would agree that the data is inaccurate.

A. The data? Yes.

March 16, 2022 Hearing, T. at p. 105, lines 3-11.

waits for others to come to her or notice that she is not working. The Student's aggressive behaviors towards others impacts her ability to participate effectively in regular education activities. Her lack of self-advocacy impacts her ability to be more independent in school. (Board's Exhibit 1B, p. 7, 10/08/2021 IEP, Present Levels of Academic and Functional Performance).

133. The Board has failed to address the Student's school avoidance and refusal behavior at home and her unsafe behavior on the bus. Aside from one at-home chat with Dr. Boie about strategies, the Board has never offered any in-home behavior intervention. (Testimony of Mother).

134. The Board has not addressed the Student's school refusal at home because it does not view the Student as school avoidant. (Testimony of Ms. Karen Vitti).³³

135. The amount of energy the Student expends resisting going to school at home and on the bus affected her profoundly at school—by the time she arrives at school she would be exhausted. (Testimony of Mother).

136. The Student has often complained that she was tired at school and would sometimes fall asleep. (Parent's Exhibit 42 at p. 46).

137. The Board's response was to reduce academic demands on the Student, for example, it stopped requiring her to read for herself by having all reading done by device or through another person. (Testimony of Ms. Loren Heizman).

138. The reading comprehension measures used by the school were therefore actually listening comprehension measures. (Testimony of Ms. Loren Heizman).

139. The Student's behaviors at home and on the bus translated to school, by creating "behavior momentum." That is, the Student would be "revved up" arriving at school. In these situations, the school would not put her directly in class; although she usually calmed down within an hour and could be returned. The Student, however, would miss instruction during that hour. (Testimony of Dr. Fabian Boie).

140. Ms. Jackson's suggested speech and language long-term goals, (goals 6, 10, and 11), and her recommended short-term objectives, were incorporated into the Student's IEP. (Parent's Exhibit 35, at p. 19, and pgs. 23-26; Testimony of Ms. Maya Feldman).

³³ Despite the Student's violent behavior, her resistance getting out of bed, getting dressed, and getting on the bus (because she did not want to go to school), Ms. Vitti did not consider the Student to be school avoidant: "she came to school all the time," and "I think of school avoidance as somebody who doesn't come to school." (Testimony of Ms. Vitti). Ms. Heizman also denied any school refusal or avoidance because "I did not witness that here in school." (Testimony of Ms. Loren Heizman).

141. The IEP, however, provided only 2x30 minutes per week motor-based therapy instead of the 3x30 minutes per week recommended by Ms. Jackson. (Testimony of Ms. Maya Feldman).

142. The Board, however, did not provide that level of service as evidenced by the IEP service grid's failure to assign any service time to Goal 6; and to assign only 1x30 minutes per week for Goals 10 and 11, (the other two oral-motor goals). (Parent's Exhibit 35, at pgs. 41-42).

143. Ms. Jackson was also clear that the person implementing the Student's oral-motor therapy needed to be PROMPT-certified or at a Level 2 in PROMPT training (a bridging therapist) who was being supervised by a certified therapist. (Parent's Exhibit 17, at p. 13; and Parent's Exhibit 75).

144. The Board agreed at the PPT to "look for a prompt level 2 trained employee to support oral motor needs." (Parent's Exhibit 35, at p. 2).

145. Ms. Feldman, however, has only taken the introductory PROMPT course and is not a bridging therapist. (Testimony of Ms. Maya Feldman).

146. Ms. Feldman has never taken supplementary online modules specific to CP, and has never been supervised by a certified therapist while using the PROMPT technique on students. During her career, she has used the technique on 5-10 students. (Testimony of Ms. Maya Feldman).

147. Ms. Feldman testified that she reached out to the speech-language pathologists in the school district to find out if anyone was PROMPT level 2 trained and found one therapist who had such training.

148. Ms. Feldman shared that information with Ms. Karen Vitti, her special education supervisor, but does not know why the Level 2 therapist was not asked to work with the Student. (Testimony of Ms. Maya Feldman).

149. Ms. Vitti testified that Ms. Feldman was PROMPT-certified. (Testimony of Ms. Karen Vitti).

Issues with Feeding and the Need for More Physical Therapy

150. The Student wants to be able to safely feed herself, and the school is not providing enough training in this area. (Testimony of Lauren Zalis).

151. The Student requires 30 minutes of occupational therapy 5 times per week to adequately address the sensory underpinnings of her behaviors. (Testimony of Lauren Zalis).

152. The Student's IEP is insufficient in assisting the Student with feeding and daily living, and have not been adequately addressed. (Testimony of Lauren Zalis).

153. The Student does exceptionally well for a child with her disabilities; however, the Student needs 30 minutes of physical therapy 5 times per week, in order to achieve greater stability balance and better access to the school environment. (Testimony of Ms. Charlotte Bishop).

The COVID Shut-Down and its Impact on the Student's Education

154. On March 11th, or 12th, 2020, the Greenwich Public Schools were shut down as a result of the COVID outbreak. School reopened in August of 2020. (Testimony of Ms. Loren Heizman).

155. The Student received remote instruction from a paraprofessional from March to June, 2020. (Testimony of Ms. Loren Heizman).

156. In September 2019, the PPT reached out to Dr. Fabian Boie, Board Certified Behavior Analyst, ("BCBA"), for his professional assistance and continued consultation with respect to BCBA support.

157. In October 2019, Dr. Boie arranged a home visit with the Student's mother and aunt to brainstorm strategies to deal with the Student's outbursts. (Testimony of Dr. Boie)

158. Dr. Boyet had no further involvement with the Student or her family, once the school went remote during the shut-down, as he expressed it during his testimony "it was a one and done." (Testimony of Dr. Fabian Boie).

159. The Student's aunt was required to quit her job in order to provide the student with 1:1 assistance during remote instruction during the COVID shut down. (Testimony of Mother).

160. The Student had inconsistent access to the live reading group. (Testimony of Ms. Loren Heizman).

161. The Student failed to master many of her Individualized Educational Program, ("IEP"), goals, and her special education teacher does not know if the Student made any progress. (Testimony of Ms. Loren Heizman).

162. The Student faced impediments to making progress during the COVID shut down, for example, she was not in the school building to attend class. (Testimony of Ms. Loren Heizman).

163. The Board failed to provide physical assistance to the Student—though it was needed—during the shutdown. (Testimony of Ms. Loren Heizman).

The Roof Collapse of 2021

164. In February 2021, the building roof collapsed at the school the Student was attending, and Students were forced to go back to remote learning for about two weeks because it was unsafe for students to remain in the building until it could be assessed. (Testimony of Ms. Heizman).

165. The Student, however, was allowed to attend the Glenville School while her peers were provided with remote learning, because of the critical importance for the Student to be in school in person. (Testimony of Ms. Heizman).

Summer Camp

More than once in the course of my story I have referred to my love of the country and out-of-door sports. When I was quite a little girl I learned to row and swim, and during the summer... I almost liv[ed] in my boat...

--Chapter XXII, page 119³⁴

166. The Student attended a residential camp for special needs children, including those with physical disabilities like hers. The Student was never so happy. The Student did not engage in any maladaptive behaviors there, she made friends, and was included in all camp activities as they were all adaptive. The Student did not want to come home. (Testimony of the Mother)

167. The Student was able to engage in activities with peers that she could not otherwise participate in at school, and her behaviors improved. (Testimony of Mr. Brendan O'Neil).³⁵

Exploration for an Out of District Placement by PPT; and the Recommendation for a Therapeutic Residential Program

My parents were deeply grieved and perplexed. We lived a long way from any school for the blind or the deaf, and it seemed unlikely that anyone would come to such an out of the way place as Tuscumbia to teach a child who was both deaf and blind... My mother's only ray of hope came from Dicken's "American Notes." She had read his account of Laura Bridgman, and remembered vaguely that she was deaf and blind, yet had been educated...

--Chapter III, page 17.

³⁴ Helen Keller, *The Story of My Life*.

³⁵ Mr. O'Neil testified, that: "[The Student] participated in the summer camp where a lot of the issues that have been exhibited over time were not exhibited at the summer camp, and the easiest parallel that can be made is that she's with like students and getting specialized attention there and has less anxiety about being part of that group in comparison to the current school." (03/16/2022 Transcript at p. 143 lines 17-23).

168. The Student has expressed a desire to be educated with other disabled peers. (Testimony of Ms. Loren Heizman).

169. In November 2020, the PPT met and agreed to explore non-residential, out of district placement for the Student. (Testimony of Ms. Loren Heizman).

170. The Student was rejected, however, from non-residential out of district placements because while she is physically similar to other disabled students she is intellectually stronger. (Testimony of Ms. Karen Vitti).

171. The Student must receive education and therapy performed together. (Testimony of Suman Baddam, M.D.).³⁶

172. The Student requires residential placement at an educational facility that can also address her physical and psychological needs. (Parent's Exhibit 44, Neurologist's recommendation; Parent's Exhibit 45, Psychiatrist's recommendation; Parent's Exhibit 46, Psychiatrist's recommendation; and Parent's Exhibit 47, ER doctor's recommendation).

173. The May Institute, located in Massachusetts, has been identified by an educational consultant as the most appropriate residential facility to educate and care for the Student. (Testimony of Mother; Testimony of Mr. Brendan O'Neil).

The Students Aspirations

174. The Student was comfortable and happy to make a presentation to her classmates regarding CP. (Testimony of Ms. Monaco).

175. The Student wants to give a second presentation on CP to her classmates. (Testimony of Ms. Mya Feldman).

176. The Student, once she grows up, wants to open a school for children with special needs. (Testimony of Mother).³⁷

³⁶ According to Michele Feinburg, MD, the Student's child psychiatrist: "[The Student] currently continues to be violent and oppositional when faced with anxiety, stress, unfamiliar environments, and frustration both in the home and school setting. Therefore, I am recommending that [she] would benefit from a structured, supportive, consistent, therapeutic environment in which she could receive academic, behavioral, and medical 24-hour support. As a result, she could then access the academic curriculum and ensure her, as well as others, personal safety." (Board's Exhibit 10; Letter to Ms. Forde dated 12/29/2020).

³⁷ Mrs. Green, the Student's second grade teacher, noted that the Student was doing well in science and social studies, and showed great interest in the unit entitled "People Who Make a Difference." (Board's Exhibit 51, at p. 4).

CONCLUSIONS OF LAW AND DISCUSSION:

Thus I came up out of Egypt and stood before Sinai, and a power divine touched my spirit and gave it sight, so that I beheld many wonders. And from the sacred mountain I heard a voice which said, "Knowledge is love and light and vision."

--Chapter III, page 20.³⁸

1. The purpose of the IDEA is to provide an education to all students regardless of disability. It recognizes the "towering importance" of education to all members of society, and it has set ambitious goals. "In enacting the IDEA in 1970, Congress recognized that 'improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living and economic self-sufficiency for individuals with disabilities.'" *Harris v. District of Columbia*, 561 F.Supp.2d 63, 65 (2008), citing 20 U.S.C. § 1400(c)(1) (2005).

2. "Almost thirty-five years after the initial enactment of the IDEA, Congress reaffirmed its commitment to providing quality educational services to children with disabilities through its 2005 amendments... The impetus for revising the statute stemmed from the observation that 'the implementation of this chapter has been impeded by low expectations and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.'... In response to this perceived hindrance to maximal progress under the statute, Congress stressed that it remained committed to 'ensur[ing] that all children with disabilities have available to them a free appropriate education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.'" *Id.* citing 20 U.S.C. § 1400(d)(1)(A).

3. The Student was evaluated by the Greenwich Public Schools in 2016, by Ms. Danielle Micallef. The Student was then five years old, and the purpose of the evaluation was to gather information for special education services to be provided. In her report, Ms. Micallef stated, that "[i]t has been my pleasure watching [the Student] grow cognitively, academically, socially and physically over the past two and [a] half years. She is delightful to have in class and brings much joy to her peers and teachers. [Her] perseverance and strength are unstoppable. ***Much success is yet to come for her, I know it.***"³⁹ This observation serves to underscore the very reason why the IDEA has set such ambitious goals for special education, because with an appropriate educational program this Student can achieve success and have the opportunity for a full and fruitful life that the IDEA promises her.

³⁸ Helen Keller, *The Story of My Life*.

³⁹ (Parent's Exhibit 6, p. 3)(Emphasis added).

4. In any dispute concerning whether an IEP provides the free appropriate public education, (“FAPE”), required by the federal act, there are two questions that require close examination: (1) did the Board comply with the procedures required under the Act; and (2) is the IEP reasonably calculated to enable the child to receive educational benefits. In this case, the Board did not comply with the procedural protections of the IDEA, and it failed to develop an IEP reasonably calculated to enable the Student to receive educational benefit.

The Denial of Procedural FAPE

5. I find that the Board did not comply with the procedures required under the Act. Firstly, the Board did not properly identify the Student’s qualifying disabilities with the concomitant result that it could not develop the proper educational program for the Student.⁴⁰ The Student does not qualify under “Other Health Impairment,” she more properly qualifies under the category of “Multiple Disabilities”—and this is an important distinction, because it accents this student’s needs for more intensive services. The Board was not at liberty to label the Student as having “Other Health Impairment,” and ignore the most important qualifying disability classification. This failure to adequately classify the Student resulted in a warped IEP that does not meet all of this Student’s needs. “In view of the centrality of the role of the IEP in affording appropriate education to every child with a disability, Congress explicitly provided for frequent and thorough monitoring and revising of the program.” *Harris v. District of Columbia*, 561 F.Supp.2d 63, 65 (2008), citing 20 U.S.C. § 1414. Monitoring and revising the Student’s education program required the proper identification of her qualifying disability—particularly the one that is the most significant. For this reason, “the IDEA requires school officials to conduct evaluations that ‘use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent,’ and to examine students ‘in all areas of suspected disability.’”⁴¹

6. The Board was certainly alerted to the fact that it had misidentified the Student’s qualifying disabilities upon receipt and consideration of Dr. Michael Cohen’s December 8, 2020 report, but nevertheless it chose not to address the multitude of complex disabilities affecting the Student. (I believe this change was not made to justify the continued denial of residential placement—which given this child’s extensive needs may indeed prove to be expensive). But the cost of residential placement is not a legitimate factor for purposes of the placement decision.⁴² The designation of “Other Health

⁴⁰ Ms. Klara Monaco, the principal of the Glenville School, testified: “I believe that mood disorder could be listed under another area of the IDEA in terms of educational classification. Anxiety and depression can be under emotional disturbance, I do know that. But I did know that her educational classification is OHI as I answered initially.” 11/29/2021 Tr. p. 45, lines 11-17. If Ms. Monaco understood that mood disorder, anxiety and depression could qualify under multiple classifications then why didn’t she ask the PPT to either evaluate the Student further, or else correct the IEP to reflect Multiple Disabilities as the qualifying classification?

⁴¹ Allan G. Osbourne, Jr., and Charles J. Russo, “Special Education and the Law: A Guide for Practitioners, Second Edition,” Corwin Press (2006), p.77, citing 20 U.S.C. §1414(b)(2)(A), and §1414(b)(3)(B).

⁴² “Residential placements are important for educational agencies to address, because they can be extremely expensive, costing over \$100,000 per year. That can be a very large portion of a local school district’s

Impairment” has allowed the Board to short the Student of an appropriate IEP by pretending that her educational needs are not as significant as they present to the Parent and to all of the Student’s medical providers. And it must be observed that the Student’s medical providers are from some of the most respected medical schools and institutions in the world. These were not quacks, medical mountebanks, or charlatans providing fantastical, nonsensical, or unscientific opinions. They were extremely credible, and their opinions, collectively and individually are entitled to great weight.

7. Secondly, the Board was operating under the incorrect perception that Ms. Vitti as the local educational agency, (“LEA”), representative made the final decisions for the PPT. The following colloquy at the hearing is instructive:

HEARING OFFICER: Right. Okay. So then you took over a role to make decisions for the entire team?

MS. VITTI: Correct. Make decisions, either agree with the decisions or disagree with the decision.⁴³

8. This is simply not true. As the LEA’s representative, Ms. Vitti’s role was to explain and describe the Board’s available educational resources,⁴⁴ not be the sole decision-maker for the IEP Team. This misunderstanding of Ms. Vitti’s role resulted in the PPT having a closed mind, because only one member was allowed to make the decisions with respect to the Student’s IEP. The process is supposed to be collaborative. The following is further instructive:

HEARING OFFICER: What it sounds like I’m hearing and maybe I’m wrong, But what it sounds like I’m hearing is that ultimately, you’re taking over the role at this meeting to be the final decision-maker.

MS. VITTI: An LEA does have the final decision, yes.

HEARING OFFICER: And that’s how Greenwich is doing these?

MS. VITTI: Yes.⁴⁵

9. While school officials are not required to come to the planning and placement team meeting, (“PPT” meeting), with a blank slate, they are required to come with open minds—because the IEP Team’s decision in this case was made for it by a single participant, it was not allowed to have an open mind. I further find that the procedural

budget.” Rothstein, Laura, and Johnson, Scott, F., *Special Education Law*, 5th Edition, Sage Publications, Inc., 2014, citing *Clevenger v. Oak Ridge School Board*, 744 F.2d 514 (6th Cir. 1984), where “the court held that cost considerations could not be a factor in placing a child who was seriously emotionally disturbed in an \$88,000/year residential placement.”

⁴³ 02/10/2022 Transcript at p. 167, lines 10-15.

⁴⁴ See 34 C.F.R. § 300.321(a)(4).

⁴⁵ Id., Transcript at p. 168, lines 6-15.

irregularities in this case had a dramatic impact on the delivery of an appropriate education for this Student for the reasons more fully stated below.

The Denial of Substantive FAPE

10. I find that given the Student's multiple disabilities and complex needs, the Board failed to provide her with an adequate IEP, and thus denied her with FAPE. I also find that the Board failed to implement the IEP that was in place for the Student during the sixteen week period of the COVID school closure, and thus denied her with FAPE.

The IEP is Inadequate.

11. First, the IEP is inadequate. It simply does not provide the Student with a secure environment conducive to learning, and it has directly led to a decline in her observed capacity to learn and to have success in life.⁴⁶ This is because of the nature of the Student's disability, and perhaps her time of life.⁴⁷ She is noticing the differences between herself and her peers—and she is angry. She does not have control over her movements and has trouble with using her communication device, and she becomes frustrated. She must wear pull-ups, and she has experienced accidents in front of classmates—and she is embarrassed. She spends inordinate amounts of the time in the bathroom and sometimes cannot relieve herself and is in great pain. Her resentment, her school refusals, her violent tantrums and outbursts are growing in frequency and in their intensity. She has had two lengthy psychiatric hospitalizations, multiple trips to the ER (once with the school principal riding the ambulance with her) and has expressed suicidal thoughts on multiple occasions (one while the hearing on this matter was in progress). These distractions—all school related—prevent her from being appropriately educated.

11. Dr. Feingold summed-up best the situation in his testimony:

Q And for the four years that you've been seeing [the Student] what changes have you observed in her?

A *Yeah, I mean the neurologic condition is still cerebral palsy, that's a static condition. It doesn't go away. But her capacity to tolerate people,*

⁴⁶ Dr. Feingold testified that "I'm an advocate and a caregiver for my patients. My specialty is in maximizing their capacity to learn, live on their own, have relationships, work, be independent. And her capacity and her success in heading towards all these goals was just spiraling downward and I wanted to advocate in a thoughtful way what I saw as the difficulty with her educational focus and setting and just to be a resource for them and also for her advocates to describe what she is dealing with." 02/23/2022 Testimony, at 70, lines 13-22.

⁴⁷ As Dr. Feingold explained, when specifically asked if in his opinion without a residential placement for the Student's education if her issues get progressively worse: "Yes. I would add any other physicians who are treatment experts to the field, but from my just the way I look at it she's trying to exert her own needs best that she can. She's trying to tell us what she is trying to accomplish. She wants to learn; she wants to be one of a social group. And I don't imagine that her ability to do that will improve at any point with the current plan we have. So I don't think the emotional dysregulation, the feeling of being an outcast, I think it will only worsen as each year goes on without support." 02/23/22 Transcript at 75, lines 11-21.

communication, rehabilitation, PT, OT and social norms, tolerate schooling, just has really been devastatingly worse and worse each year. It's bad. It's serious.

Q Okay. And to what do you attribute this sort of decline and toleration for, you know—

...

A *It's not intrinsically her. I mean she has the capability to learn and to grow as a person, to develop social skills. It's the world around her, it's the resources that we do or do not afford her.*

She's medically stable. She's followed for some seizures and obviously psychiatric and so that's part and parcel of her, but she has every potential to gain skills, but she hasn't been able to be in an environment that helps her with those skills. So, it's gotten pretty bad.

...

Q Can you explain that to the Hearing Officer what about her school environment is contributing to this issue?

A *Sure, sure. Well, she's one of a kind. There's nobody like her. She's one of a few patients of mine who have a combination of her deficits. But if you put her in a school there's nobody like her. There's no teacher that would easily understand her even if they've taken a seminar or have had disabled kids. She is one of a kind. So, communication alone takes a high level of expertise of her teachers and her staff and her speech therapist.*

In terms of movement, she has safety concerns so just getting through the day is challenging. In terms of learning to create a safe, productive, compassionate child-focused education, you know, I think it's hard just to get through the day and then you add onto that getting to and from school, it's just – nonproductive would be generous.⁴⁸

12. Moreover, the Student's IEP is woefully inadequate to meet her educational needs. Multiple experts provided consistent testimony that this child needs to be residentially placed to be properly educated at this time. Despite having the superficial ability to learn in a general classroom environment, the emotional and psychological strain on the Student is causing her to regress following multiple emotional disturbances that have resulted in two extended psychiatric hospitalizations—and multiple suicidal ideation episodes. The Student's IEP falls dramatically short of the mark in providing her with an appropriate education and does not meet the substantive requirements of FAPE.

The COVID School Closure.

⁴⁸ 02/23/2022 Testimony, at pages 68-70.

13. Given the complex and extensive educational needs of this student, despite the COVID shut down,⁴⁹ the Board could not just provide her with on-line learning.⁵⁰ This Student needs 1 to 1 professional attendance throughout the day. The Board simply abandoned the Student for this period, and left the Parent—with the assistance of the Student’s aunt—the herculean task of educating her daughter basically by herself for sixteen weeks. This was inappropriate under the circumstances. Is it a surprise that the Student had to be psychiatrically hospitalized when informed that she was required to attend the Extended School Year following the chaos of home schooling, for sixteen weeks, without the assistance of a paraprofessional to assist her in accessing her on-line learning, and with no physical therapy to help her maintain, if not gain, strength?

14. The fact that the Office of Special Education and Rehabilitative Services, (“OSERS”), issued policy guidance on remote learning during the COVID school closure does not provide the Board with a safe harbor in this situation given this student’s needs. It is significant that OSERS advised in its March 12, 2020, published guidance, that its recommendations were “not intended as a replacement for careful study” of the IDEA. (OSERS Q & A at p. 1), and that the IDEA did not specifically address the possibility of school closures for an extended period of time due to exceptional circumstances, (such as COVID).

15. It is further significant that policy guidance documents issued by the U.S. Department of Education do not have binding effect on IDEA Hearing Officers, even though they are often found to be persuasive by courts that interpret the IDEA. See e.g. Perry A. Zirkel, *Impartial Hearings Under the IDEA: Legal Issues and Answers*, Dec. 15, 2018, *JOURNAL OF THE NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDICIARY*, Vol. 38, Issue 2, Article 2, pg. n 4; Perry A. Zirkel, *The Courts’ Use of OSEP Policy Interpretations in IDEA Cases*, 344 *EDUC. L. REP.* 671 (2017); but *cf. Seth B. v. Orleans Parish Sch. Dist.*, 810 F.3d 961, 968 (5 th Cir. 2015) (relying on the relevant regulation rather than the “questionable” OSEP interpretation).

16. The Board was not relieved of its responsibility to provide the full panoply of special education and related services, under the student’s IEP, as a result of the COVID-19 outbreak despite the guidance issued by OSERS⁵¹; and while both the Commissioner of the Connecticut Department of Education, and the Special Education Unit, issued their

⁴⁹ From mid-March to August, 2020.

⁵⁰ The Board recognized the critical importance of in school learning for this student when it provided her with in person learning for the two weeks in 2021 following the roof collapse in the school building the Student normally attended. Her classmates went back to virtual learning for the two weeks, but she was transported to another school for in-person education.

⁵¹ At least one Administrative Law Judge has found it significant, that: “OSERS did not state that a school district could satisfy the IDEA’s requirements for providing a FAPE by ‘mak[ing] every effort’ to provide special education and related services, or by providing them ‘to the greatest extent possible.’ No such safe harbor, or other waiver or relaxation of pre-COVID-19 IDEA requirements was suggested. Instead, OSERS acknowledged that local educational agencies might not be able to provide FAPE to some students through educational programs developed in response to COVID-19 and would need to evaluate whether those students needed compensatory education as a result.” See *Parent on Behalf of Student v. Los Angeles Unified School District*, Case No. 2020050465, at p. 8, before the Office of Administrative Hearings, State of California, (Martin, Robert G., ALJ), August 24, 2020.

own guidelines in conformity with the Governor’s emergency directives⁵²; there is nothing in the IDEA to suggest that the State has the authority to suspend its obligation to provide special education to students with qualifying disabilities during the pandemic.

17. The state’s policy guidance may have been sufficient for many special education students who were able to meaningfully receive their IEPs through alternate means; but in this case virtual instruction could not effectively implement the Student’s IEP given her intensive special needs.

⁵² The first policy statement by the Director of the Special Education Division to the Superintendents of School was issued on March 24, 2020, and was designated “a working document, which may be updated frequently due to the rapidly changing response to this pandemic emergency and ongoing Federal guidance updates.” (Emphasis in the original) (p. 1). School districts were exhorted, that “All members of our school communities must continue to consider what is appropriate under the current circumstances and reasonable within their resources, to determine what constitutes providing continued educational opportunities, to the greatest extent possible, consistent with state and federal guidance.” (p. 1) It was explained in this document that “what is appropriate and reasonable will include the individual child’s circumstances, as well as the circumstances related to the pandemic emergency.” (p. 2). While this initial policy statement recognized that the “IDEA does not specifically address a situation in which school would be closed for an extended period of time,” (p. 2), that school districts nevertheless “must provide a free and appropriate public education ... consistent with the need to protect the health and safety of students, and those individuals’ providing education, specialized instruction, and related services to these students.” (p. 2) (emphasis added). 17 21. The March 24, 2020, policy statement provided specific guidance with respect to PPT meetings: “During school closure, the Office of Special Education and Rehabilitative Services (OSERS) has indicated that if all students are receiving continued educational opportunities, and therefore the general education population has moved to virtual, online, or distance learning, school districts are not required to revise an IEP because all students are receiving an alternate mode of instructional delivery of the general education curriculum. This would obviate the need to conduct PPT meetings related to the instructional delivery method in those cases and would not constitute a change in placement. This also allows school staff to focus on the provision of supports and services, rather than engaging in numerous PPT meetings. If a parent or the school district wishes to discuss the students continued educational opportunity, the parent and school district have flexibility to use other means of conferring with one another rather than convening a PPT for a meeting. (Emphasis added).” That policy directive, however, further recognized that: There may be unique instances, however, when a school; district and a parent agree that a PPT meeting is necessary. In such cases, the parties may agree to conduct the meeting via an alternate means of meeting participation, such as video conference or conference call. The second policy statement, issued on April 24, 2020, by the Special Education Division Director informed districts that because “the federal Office of Special Education and Rehabilitation Services has not communicated to states any temporary flexibility or waiver from the requirements of the [IDEA],” that “a district should not adopt any policy or practice that results in the cancellation of all PPT meetings during this extended school closure.” (p. 1). Districts were advised, that “[t]he decision whether to convene a PPT meeting during this time should be an individual, student-centered decision. Each individually based decision should be made with parent input after considering the child’s needs and [various factors, to include whether the purpose of the PPT meeting needs to be convened; will the PPT members be able to meaningfully participate; and whether the PPT meeting could be convened in a manner that guarantees privacy and confidentiality].”(pgs. 1-2). It was “also recommended that the district and parent agree to amend the [IEP] without convening a PPT meeting when appropriate. If there is a need to revise an IEP during the school closure, the parent of a child with a disability and the school district may agree not to convene a PPT meeting for the purpose of making those changes, via an IEP amendment.” (p. 2). (Emphasis added). The April 24, 2020 policy guidance reminded districts that “continued educational opportunities are not required to be determined or documented as part of the PPT process. Providing the parent with prior written notice for decisions made about these opportunities is not necessary because all students are receiving an alternate mode of instructional delivery of the general education curriculum.” (p. 2).

18. The school system allowed this child to go uneducated for several months during the COVID school closing without making home supports available to the Parent to assist with physical therapy and occupational therapy. The “one and done” by the BCBA was simply inexcusable for a child with the level of this Student’s needs.

The Student Requires Residential Placement.

19. In his testimony with regard to residential placement, Dr. Feingold was apodictic:

Q Okay. So, is it your opinion that [the Student] requires residential placement in order to be educated appropriately?

A Yes. I can’t think of any other way to move her capabilities forward and I want to emphasize she is capable. She has a lot of things going on but she is not thriving, she is not getting the education she has the capacity [for]. I know this because I treat adults and kids, I’m telling you it’s only going to get worse [unless] we do something substantially in her benefit.⁵³

20. The IDEA explicitly provides that in certain cases a state may have to pay for institutionalized care for a handicapped child. See 20 U.S.C. § 1401(a)(16) (defining “special education” as including “instruction ... in hospitals and institutions”). Regulations promulgated under the IDEA require, that:

[i]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

34 C.F.R. § 300.302.

21. In *Board of Education v. Rowley*, the Supreme Court determined that only “if personalized instruction is being provided with *sufficient supportive services* to permit the child to benefit from the instruction” is the child receiving a “‘free appropriate public education’ as defined by the Act.” 458 U.S. 176, 189 (1982)(emphasis added). While the Court rejected a potential-maximizing standard of what is “appropriate” education for a child, the Court noted that “[t]he Act’s use of the word ‘appropriate’ [] seems to reflect Congress’ recognition that some settings simply are not suitable environments for the participation of some handicapped children.” *Id.* at 197–98 n. 21, 102 S.Ct. at 3046 n. 21. The Court held that the Act requires “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Id.* at 203, 102 S.Ct. at 3049. Accordingly, the Act clearly contemplates the need for the support services provided by such programs as residential placements in some circumstances. In deciding if a school must fund a residential placement, the court must determine whether the child

⁵³ 02/23/2022 Transcript at p. 77, lines 19-25; and at page 78, lines 1-3. (Emphasis added).

requires the residential program to receive educational benefit. *See Abrahamson v. Hershman*, 701 F.2d 223, 227–28 (1st Cir.1983).

22. Dr. Feingold’s testimony makes it clear that the Student requires residential placement to ensure that educational gains do not get erased simply by returning home from a long school day,⁵⁴ riding a noisy and vibrating bus to and from school, and without adequate home supports: “I just think that any gains that might happen get erased. You know, we don’t just learn during the school day and then keep it unless there’s some ability to pull that into long-term memory. Good sleep, good activity, calm environment, ability to think about what you’ve learned. Ability not to be stressed to and from school and the moment you get home, it’s just not feasible that she’d be able to learn, grow up, live on her own, things that she can do, and we’re just expecting too much from her to imagine that she’s going to be able to do that without the support both in school and at home.”⁵⁵

23. “When a child’s behavioral and emotional problems are so closely intertwined with his educational difficulties that he requires residential placement, the school board must pay for that placement . . .” *Plainville Bd. of Educ. v. R.N. ex rel. H.*, No. 3:09-CV-241 RNC, 2012 WL 1094640, at *12 (D. Conn 3/31/2012). *See Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1122 (2d Cir. 1997) (“The fact that a residential placement may be required to alter a child’s regressive behavior at home as well as within the classroom, or is required due primarily to emotional problems, does not relieve the state of its obligation to pay for the program under federal law so long as it is necessary to insure that the child can be properly educated.”); *Vander Malle v. Ambach*, 667 F. Supp. 1015, 1039 (S.D.N.Y. 1987) (“As long as the child is properly educable only through a residential placement, when the medical, social or emotional problems that require hospitalization create or are intertwined with the educational problem, the states remain responsible for the costs of the residential placement.”); *In re Greenwich Board of Education*, 119 LRP 33237 (Connecticut State Agency Case No. 19-306 7/9/19). With respect to these complicated children whose needs intertwine and overlap, “the concept of education is necessarily broad . . .” *Kruelle v. New Castle County Sch. Dist.*, 642 F.2d 687, 693 (3d Cir. 1981).

24. The fact that a residential placement may be required to alter a child’s regressive behavior at home as well as within the classroom, or is required due primarily to emotional problems, does not relieve the state of its obligation to pay for the program under federal law so long as it is necessary to ensure that the child can be properly educated. *See McKenzie v. Smith*, 771 F.2d 1527 (D.C.Cir.1985) (requiring state to fund residential care for child with severe emotional disabilities, where child required highly structured environment in order to learn). If institutionalization is required due to a child’s emotional problems, and the child’s emotional problems prevent the child from making meaningful educational progress, the Act requires the state to pay for the costs of the placement. *Id.* at 1534; *Abrahamson*, 701 F.2d at 228. *See also Vander Malle*, 667

⁵⁴ Dr. Feingold’s opinion is reinforced by the Ms. Feldman’s observations of the Student when conducting her speech and language testing in 2019: “Although, [while] good attention was noted throughout [the Student] required frequent breaks due to fatigue.” (Parent’s Exhibit 13, p. 6).

⁵⁵ 02/23/22 Transcript at pgs 74-75.

F.Supp. at 1039 (“As long as the child is properly educable only through a residential placement, when the medical, social or emotional problems that require hospitalization create or are intertwined with the educational problem, the states remain responsible for the costs of the residential placement.”). As the Third Circuit has reasoned, “the concept of education is necessarily broad with respect to [such children].” *Kruelle v. New Castle County Sch. Dist.*, 642 F.2d 687, 693 (3d Cir.1981).

25. “Because the law expresses a strong preference for children with disabilities to be educated, ‘to the maximum extent appropriate,’ together with their non-disabled peers, 20 U.S.C. § 1412(5), special education and related services must be provided in the least restrictive setting consistent with a child's needs. Only ‘when the nature or severity’ of a child's disability is such ‘that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily’ should a child be segregated. *Id.* In such cases, instruction may be provided not only in special classrooms but also ‘in the home, in hospitals and institutions, and in other settings.’ 20 U.S.C. § 1401(a)(16). Indeed, a school board may be required to place a child in a residential institution if such a placement is necessary to provide an appropriate education. *See* 34 C.F.R. § 300.302 (1998); *Mrs. B. v. Milford Bd. Of Educ.*, 103 F.3d 1114, 1122 (2d Cir.1997).” *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998). As multiple medical experts, and Mr. O’Neil, the Parent’s educational consultant, opined this student may only be properly educated in a residential placement adequately equipped and staffed to meet her multiple and complex needs ⁵⁶ In the present matter, as counsel for the Parent observed in her closing remarks “residential placement is ironically the least restrictive environment for this student.” This is because the attempt at mainstreaming the Student among the general education program has actually isolated her from other students. She has become self-conscious of her disabilities, and strongly desires the opportunity to be educated with and have the opportunity to interact with similarly disabled students.

26. The Board has taken the convenient position that the Student’s emotional, psychological, and psychiatric problems are somehow home related. But even if this were true, what of that? “As the Second Circuit has stated,

[t]he fact that a residential placement may be required to alter a child's regressive behavior at home as well as within the classroom, or is required due primarily to emotional problems, does not relieve the [school board] of its obligation to pay for the program under federal law so long as it is necessary to ensure that the child can be properly educated.

Mrs. B., 103 F.3d at 1122; *see also McKenzie v. Smith*, 771 F.2d 1527 (D.C. Cir.1985) (holding that the state was responsible for funding the residential treatment of a child with severe emotional disabilities because the child required a highly structured environment in order to learn).” *See Naugatuck Bd. of Educ. v. Mrs. D.*, 10 F. Supp. 2d 170, 180–81 (D. Conn. 1998). This Student, at this time, needs residential placement to

⁵⁶ Mr. Brendan O’Neil was extremely credible and provided powerful testimony echoing the recommendations of the medical experts who believe the Student is in need of intensive services that only a residential placement can provide.

be properly educated. The Board asserts that the Parent has failed to show that there is an appropriate residential program for the Student.⁵⁷ This is simply untrue. Mr. O’Neil, the educational consultant called by the Parent at the hearing testified that he narrowed the list of several potential placements for this Student to four that were most appropriate to meet her educational needs. Mr. O’Neil was an exceedingly credible and powerfully important witness.

27. It is highly significant that in the December 18, 2020 IEP, the “[t]eam agreed to support the educational portion of a residential placement if the family chose to place [the Student].”⁵⁸ It would appear that the team recognized the strong need for residential placement,⁵⁹ but was unwilling to pay for the non-educational components of residential placement.

28. Reimbursement for such components, however, is appropriate “if the child’s placement [is] proper.” *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114 (1997), citing *School Comm. Of Burlington v. Dept. of Educ.*, 471 U.S. 359, 370 (1985). That is, the Board can’t agree to support just the educational component, but not the non-educational expenses, if residential placement is deemed necessary to educate the Student.

29. “The fact that a residential placement may be required to alter a child’s regressive behavior at home as well as within the classroom, or is required due primarily to emotional problems, does not relieve the state of its obligation to pay for the program under federal law so long as it is necessary to ensure that the child can be properly educated. *Mrs. B.*, 103 F.3d at 1122, citing *McKenzie v. Smith*, 771 F.2d 1527 (D.C. Cir. 1985) (requiring state to fund residential care for child with severe emotional disabilities, where child required highly structured environment in order to learn).

30. I conclude that the team’s agreement to support the educational component of the parent’s proposed residential component is a tacit—if not express admission—that this child needs to be residentially placed to be properly educated. Why else would the team be prepared to support the educational component of residential placement if the Student could be properly educated by the local school?

31. The Board’s support of residential placement makes perfect sense, and is in accord with all the experts, both the medical experts and educational consultants, who have worked with the Student. I will let these experts speak for themselves in the addendum to this decision.

⁵⁷ Board’s Brief at p. 26, ¶ 26.

⁵⁸ See January 5, 2021 PPT/IEP Meeting Summary, Board Exhibit 11, at p. 5. (Emphasis added.)

⁵⁹ The overwhelming evidence is that the Student needs to be residentially placed and it is no surprise that the team would come to this realization at the December 10, 2020 PPT meeting. The Student had recently spent seven weeks in the Yale Psychiatric Unit, and the team had before it the recommendations from Dr. Cohen’s evaluation.

32. Dr. Michael Cohen's ultimate conclusions and professional recommendations are compelling:

In terms of her adaptive/maladaptive behavioral presentation, [the Student] requires consistent behavior support which can only be provided in a residential school placement. [The Student] was likely overwhelmed on a daily basis by the increasingly accelerated expectations of a general education classroom placement and by the unexpected changes in her daily routines at home. Her maladaptive behavior has become markedly unsafe for [her] as a child in her home (which resulted in her extended psychiatric hospitalization this past summer) and as a student in school. At the same time there also appears a volitional element to [her] maladaptive behavior. [She] has markedly limited self and social appreciation of situational expectations and she will act on immediate impulse for immediate rewards. She will also readily decompensate when she does not achieve immediate rewards and further decompensate. This is both a learned cycle of behavior and a function of her neuropsychiatric disorder. In the current examination, [the Student] demonstrated conventional awareness of conventional social rule and expectations (WISC Comprehension sub-test). At the same time, she demonstrated impaired skill on measures of social perspective (NEPSY Affect Recognition; Theory of Mind) and when agitated she likely become (sic) confused (if not adaptively disoriented) which would become reflected in her inability to readily or accurately know how to respond to personally stressful or distressing events and situations.

In this regard, as a child/student with a neuropsychiatric disorder [the Student] requires consistent coordinated behavioral health and integrated medical care (neurology, psychiatry, physical medicine) to advance her adaptive behavior and development. In this regard, as a student with an IDEA disorder (recommended classification: Multiple Disabilities), [she] requires consistent coordinated IEP instruction and related services to promote her academic developments as a student with an IDEA disorder. It is impressive that [she] has consistently demonstrated very well-developed academic skill acquisition (as documented in recent GPS assessments and the current examination) and she requires a consistent designated residential placement to advance her academic development as a student with an IDEA disorder. In terms of her neurocognitive profile and academic skill development, [she] has demonstrated clear and consistent gains well above what might have—on the surface—been expected of a child/student with her medical history. ***However, in order to maintain her academic gains and to promote her academic and neurocognitive development [the Student] will require advanced specialized instruction and coordinated social supports to advance her academic and personal development as academic expectations increased (sic) for students in fifth grade and when students transition to middle school.***

In this regard the primary current recommendation is that [the Student] is authorized by her IEP to attend a comprehensive residential school for students

with neurological and related disorders. In this regard it is believed that placement in an appropriate designated residential school is the Least Restrictive Placement for [the Student]. In particular, the special education instruction and related services which [she] requires is most consistently provided by a residential placement which can provide safe, therapeutic around the clock integrated mental-behavioral health/psychiatric care to promote [her] access to IDEA instruction and related services which she requires as a student with an IDEA disorder. ***Without the structure and support of a residential program [the Student] will not have the direct continuity of clinical care which she requires to promote her ability to access instruction and related service programming to advance [her] academic development as a student with a complex and clinically impairing IDEA disorder/ICD disorder.*** In particular, [it is] believed that integrated residential-IDEA academic programming will have a direct palliative role as related to improving [the Student's] psychiatric adjustment with the intended objective of improving her safe adaptive behavior as a child at home and in her home community and as a student in school and as a productive member of her school community.⁶⁰

33. It should be noted that while attending fifth grade, and while the hearing in this matter was ongoing,⁶¹ the Student spent an hour in the school psychologist's office the result of yet another suicidal ideation. It is pellucid that she cannot be educated in the public school at this time given her disabilities, Dr. Cohen's report and recommendations have proven to be entitled to great weight—and must be followed in order to educate this child.

34. Mr. Brendon O'Neil is an educational consultant hired by the Parent to locate residential placements appropriate to meet the unique needs of the student. He researched and considered 60 residential schools, 50 of which with intense scrutiny. He found four residential schools that expressed receptiveness to accepting the Student: The May Institute, School for Brain Injury in Massachusetts; the Judge Rotenberg Center in Massachusetts; the Woods School in Pennsylvania; and the Benedictine School. The May Institute has recently expressed a willingness to consider the Student for enrollment,⁶² and can provide the Student with the one-to-one care level that she needs on a daily basis throughout the year, and provides a diploma program.⁶³

The Student is Entitled to Compensatory Education.

The Equities Balance in Favor of the Parent.

⁶⁰ 12/08/2020 Psychological Evaluation Report of Michael S. Cohen, Ph.D., ABPP; Board Exhibit 12, pages 10-11. (Emphasis added).

⁶¹ March 14, 2022.

⁶² 03/16/2022 Transcript pgs. 137-38.

⁶³ *Id.* at p. 139. It also has speech and language, OT, PT and a staff that are connected and built into the educational model, that is, the school does not have to add on services or bring in a professional to help facilitate service to the Student. It has experience and expertise addressing the needs of students with cerebral palsy and services students up to age 18. *Id.* pgs. 139-144.

35. The Board argues that “[t]hroughout the entire process, the Parent has not dealt with the Board in a straightforward and transparent manner.”⁶⁴ The Board asserts that “[t]he United States Supreme Court has expressly held that if a Hearing Officer finds a school district’s program inappropriate and a unilateral placement appropriate, “even then [they] retain the discretion to reduce the amount of reimbursement award if the equities so warrant—for instance, if the Parent failed to give the school district adequate notice of their intent to enroll the child in a private school.”⁶⁵ I find this ***emphatically*** not to be the case.

36. The Mother has done everything within her power to both help her child and to work constructively with the school. Her communications with school personnel have been both respectful and informative. Even under the most trying of circumstances. It is not the Mother’s fault that school personnel have been deaf to her concerns. The following e-mail exchange⁶⁶ demonstrates the Mother’s continued attempts to inform the school of the Student’s situation and her own desperate appeal to get help:

THE MOTHER: October 7, 2021 (3:02pm)—Jennifer and Barb, Please include the following parent concerns in the appropriate box on page 4 of the IEP: I am concerned that, despite the universal opinion of experts that [the Student] cannot get an appropriate education without a residential setting, the school district continues to insist on keeping her in this patently inappropriate setting which is causing her to lash out fiercely. She hates coming to school and she is not being educated. As a result, she lashes out at home and on the bus to convey her displeasure; soon, she will lash out at school as she did when she was at North Mianus. The school district has compounded problems by changing her school twice now. In addition to the inappropriate program at school, which is not teaching her how to communicate effectively and is not helping her make progress academically, socially, or adaptively, she now gets picked up late for school and arrives late every single day. It takes her almost an hour to get home, and at that point she is exhausted and out of strategies to communicate her needs since none have been taught to her, not to mention that she has arrived home without any clothing since she removes it due to frustration on the bus. She is engaging in dangerous behavior on the bus, but the school district isn’t doing anything about this. [The Student] has sensory regulation issues and as a result , loud noises and bright lights are incredibly disruptive to her; if you have ever taken the bus with her, you would see that the bus ride is actually proving to be cruel and detrimental to [her] well-being. Your neglect is harming her. Although there have literally been incidents every day on the bus I rarely get incident reports. I have called the 211 crisis hotline three times this week because [the Student] is showing to be unsafe to herself and to others within our household, at school, and outside in the community. Even though we receive in-home therapeutic support services through DCF, hat team is also unable to manage [her] behaviors. We also need copies of all videos for use with the CHRO complaint I

⁶⁴ Board’s Brief at p. 29, ¶ 30.

⁶⁵ *Id.* citing *Forest Grove Sch. Dist. v. T.A.*, 129 S.Ct. 2484, 2496 (2009).

⁶⁶ See Board Exhibit 75, pages 108-111.

will be filing shortly. The school district needs to help identify a placement for her or hire an educational consultant to do so; it is not fair to leave that burden with me when I am trying to manage a child with this level of need. Further, I need to know how you plan to educate her while she is quarantined for Covid. Finally, I am shocked that in retaliation for me filing a due process complaint the school district would report ME as neglecting or abusing [her] when the school district is the party neglecting my child. I will invite the DCF investigator to ride the bus with [the Student] to witness the lack of supports for herself.

MS. BARBARA OXER:⁶⁷ October 7, 2021 (3:06pm)—Thank you, []. I will include this verbatim on the IEP, Best, Barb.

MS. BANKS:⁶⁸ October 7, 2021 (4:38pm)—Dear[], Good afternoon. Please see the attached PPT invitation for [the Student's] meeting on 10/08/21 at 10:00am I have also included a 5-day waiver for your signature (due to the meeting being held with less than 5 days' notice). Please return to my attention. PLEASE CONFIRM RECEIPT OF THIS EMAIL. Thank you and have a nice afternoon.

THE MOTHER:⁶⁹ October 13, 2021(8:28am)—Yesterday afternoon proved to be one of the most difficult in a while; [the Student's] anxiety escalated through the roof and she began to panic about returning to school today. As a result she attacked her sitters, urinated on the floor, decapitated her dolls and wrecked the house. I was forced to call 211 and the mobile crisis team was dispatched but they were only allowed to stay 30 minutes since it's considered a "follow up." The woman told us to call 911 if it continued. Within moments after she left, [the Student] escalated her behavior and took off her clothes, pushing the furniture, pulling down drapes, and hitting the sitters. We called 911 shortly after and the police and ambulance arrived—they assessed the situation (and the state of the kitchen in disarray) and decided to bring her to the ER. Since she was in an agitated state at the hospital, and after reviewing her history, they said she needed to stay there for evaluation. When the physicians asked her why she acted this way, she said, "I don't want to go to school tomorrow." I left the hospital around 10pm. She was actually fine when I left because I told her she would spend the night and be able to rest. She said, "mom, go home and sleep." By denying this child a residential school is (sic) now turning into an abusive situation. I barely slept, and I can only imagine what she is going through. All I know is that I took dozens of people yesterday to help me manage, diffuse (sic) and medically attend to this child's needs. The look of terror on her face when I talk about why she has to go to school is horrifying. I'd like to know what you're going to do about this now that she is in the hospital for a psychiatric evaluation brought on by school avoidance??

⁶⁷ Ms. Barbara Brennan Oxer, Assistant Principal, Glenville School.

⁶⁸ Ms. Jennifer Banks, Administrative Assistant, Glenville School.

⁶⁹ Sent to the following school officials: Ms. Barbara Oxer, Ms. Sarah Jarombek, Ms. Karen Vitti, Ms. Stacey Heiligenthaler, and Alexa Bartlett.

MS. VITTI: October 13, 2021 (6:43pm)—Hi []—I am so sorry to hear about this and I hope today [the Student] is feeling better. Please let us know if he was admitted to the hospital or if she has been discharged. If they discharged her, did they write a summary that you would consider sharing with the team? We can set up a PPT to consider reviewing/revising the IEP and the documents from the hospital. Keep in touch, Karen.

37. It is significant that Dr. Cohen advised the school, in his December 8, 2020, evaluation, that the Student would require advanced specialized instruction and coordinated social supports to advance her academic and personal development as academic expectations increase for her in the fifth grade and while she transitions to middle school. His advice and recommendations were unfortunately not heeded by the Board, and the Student, predictably, had another melt-down.

And then, another—

MS. GRONOWSKI:⁷⁰ November 1, 2021 (11:19am) Good morning [Mother], I am reaching out to check in on [the Student]. How is she doing? Is she in the hospital or has she been released? Are there any plans as of yet regarding when she may return to school? Please let us know if we can do anything to help. The Glenville team is thinking of her and we look forward to seeing her when she is ready to return.

MOTHER: November 1, 2021 (11:45am) Barb and Annmarie, Since you both emailed me separately, I am responding to you together. While I appreciate your kind words, the school district, including you both, have been informed numerous times that the way to help [the Student] is to place her in a residential therapeutic setting, yet you continue to support an administration that turns a blind eye to [the Student's] urgent needs. It is therefore difficult to interpret your expressed concern for [her] as sincere. My daughter is still stuck in the Emergency Department (5th day), with no discharge planned. She is laying in a bed, with no exercise, the ability to shower or use a bathroom. She is wearing adult diapers and urinating herself. They cannot find a psychiatric unit to transfer her to since there aren't any available beds anywhere. Her doctors, as well as myself, are in no rush to discharge her and plan a reentry to Greenwich Public Schools which is the exact reason for why my daughter threatened to take her own life. This has been ongoing for several years and I can't believe that [the Student], who already had so many challenges, now has to undergo yet another traumatizing event in her life at 10. If you really want to help, then you should have no doubt in your mind what needs to be done; locate and transition her to an appropriate residential school with minimal disruption that allows for intensive therapeutic services and like-minded cohorts and peers! Please do the right thing for my daughter! That's all I have to share at this time. I hope you both had a nice weekend; mine was horrifying. (Parent's Exhibit 41, p. 82).

⁷⁰ Ms. Annmarie Gronowski, M.S., BCBA, the School Psychologist.

38. The equities do not balance in favor of the Board with respect to acting in good faith. If anything, it was the other way around. The following email exchange makes the point:

MS. MULHERN:⁷¹ October 6, 2021 (12:29)—Hi [Mother], I can hear your level of distress when we connect by phone, in particular during our conversation today. I want to provide you with a phone number you can call 24/7 when you are feeling concerned for your mental health and well being. There is an ACTION line for adults that can be accessed via 211 (1-800-203-1234), then follow the prompts for an adult in crisis (press 1), then the prompts for adult support (press 2). You will be connected with someone who can offer support in the moment. See below for the link to the website with more information:
<https://portal.ct.gov/DMHAS/Programs-and-Services/Finding-Services/Crisis-Services>. All the best...

MOTHER: October 7, 2021 (2:53pm)—Did you report me to DCF?

One week later, Mother received the response to her question...

MS. MULHERN: October 14, 2021 (8:44am)—Good morning [Mother], Yes, I did make a DCF report following our phone conversation as it was concerning. Making the decision to call is not taken lightly. As a mandated reporter, it is my responsibility by law to make those reports. I am hopeful that DCF may be able to offer resources to you and [the Student]. Sometimes DCF is able to make referrals to programs and agencies we don't otherwise have access to. In addition, I will continue to make calls and follow up on any possible leads with regards to potential supports in the community for you and your family. All the best...

39. It is more than perplexing that the school would report this mother to DCF—it's frankly shocking. The Mother is certainly not the party in this matter who needs to be investigated by the Department of Children and Families. As Dr. Cardinale, the Student's pediatric neurologist, testified: "Mom is doing the absolute best that she can..." Other than express platitudes, phony concern, and the telephone number to 211, school officials did nothing to properly assess the Student, or provide her with the federally required education and related educational services that she so desperately needs.

40. Compensatory education is available as a remedy when a Board has violated the IDEA, its purpose is to put the Student in the position she would have occupied if the IDEA violation had not occurred. *Copeland v. Dist. of Columbia*, 64 IDELR 37 (D.D.C. 2014). While there is an increasingly narrowed minority view that the denial of FAPE must be gross, *see e.g., Mrs. C. v. Wheaton*, 916 F.2d 69, 63 Ed.Law Rep. 93 (2d Cir 1990), more recent decisions of the Second Circuit have interpreted the gross denial standard as only applying to students beyond age 21 by the time of the completion of litigation. *See Doe v. E. Lyme Bd. of Educ.*, 790 F.d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015); *P. v. Newington Bd. of Educ.*, 546 F.3d 111, 238 Ed. Law Rep. 517 (D. Conn.

⁷¹ Ms. Kristen Mulhearn, LCSW, District Social Worker.

2007), *aff'd* on other grounds, 546 F.3d 111 (2d Cir. 2008); *A. v. Hartford Bd. of Educ.*, 68 IDELR 40 ¶ 40 (D.Conn. 2016). In any event, I find that the denial of FAPE in this matter was a gross denial of FAPE to the Student for the reasons already advanced in this decision.⁷²

41. Therefore, I am awarding the following compensatory education for the failure to offer the Student FAPE:⁷³ while the Student waits to be residentially placed, she is to receive a weekly total of 5x30 minutes speech and language services, (not the weekly 2x30 minutes called for in the current IEP); a weekly total of 5x30 minutes physical therapy, (not the weekly 1x30 minutes called for in the current IEP); a weekly total of 5x30 minutes occupational therapy, (not the weekly 2x30 minutes in the current IEP); counseling by the school psychologist or school social worker for at least one hour per week; transportation to and from school by medical taxi,⁷⁴ (accompanied by a qualified chaperone); and a qualified assistant to come to the Student's home at least 30 minutes prior to the arrival of the medical taxi to assist the Parent in getting the Student getting ready for school.

42. In addition, the Board shall pay for six weeks tuition, fees, and costs at an appropriate CP oriented summer camp for the Student (when she is able to attend such camp); and reimburse the Parent for the costs of the professional services rendered by Mr. Brendan O'Neil in locating appropriate residential schools prior to the date of the hearing request.⁷⁵

⁷² The evolving role of the "equities" in calculating compensatory education is not entirely settled, but reason dictates that some consideration be given to the impact of the COVID outbreak in preventing full implementation of the Student's IEP. Therefore, I am not awarding all of the Student's specific requests for compensatory education for the Board's failure to implement the Student's IEP during the school closure, but I do recognize that for at least 9 of the 16 weeks of the school closure, (she was hospitalized at Yale for 7 of those 16 weeks and received some educational benefits), the Student had practically no meaningful education. The Student is entitled to reasonable compensation for the loss of educational benefits due to the school closure together with the overall failure of her IEP to address her educational needs, (and the concomitant denial of FAPE), I am fashioning an award of compensatory education in an effort to make up for the educational opportunities that she did not receive. *See e.g. R.L. v. Miami Dade Cty. Sch. Bd.*, 757 F.3d 1173, 307 Ed.Law.Rep. 596 (11th Cir. 2014); *Torda v. Fairfax Cty. Sch. Bd.*, 517 F.App'x 162 (4th Cir. 2013); *S.C. v. Chariho Reg'l Sch. Dist.*, 298 F.Supp. 3d 370, 354 Ed.Law.Rep. 295 (D.R.I. 2018); *French v. N.Y.S. Dep't of Educ.*, 476 F. App'x 468, 283 Ed. Law Rep. 821 (2d Cir. 2011); *Dep't of Educ. v. M.F.*, 840 F.Supp. 2d 1214, 281 Ed. Law Rep. 886 (D. Haw. 2011); *T.B. v. San Diego Unified Sch. Dist.*, 56 IDELR ¶ 152 (S.D. Cal. 2011); *In re Student with a Disability*, 120 LRP 257 (Nev. SEA 2020); *cf. Horen v. Bd. of Educ.*, 61 IDELR ¶ 103 (N.D. Ohio 2013) (no denial of FAPE where parents impeded IEP process); *Great Valley Sch. Dist.*, 55 IDEL ¶ 86 (Pa. SEA 2010) (unclear effect). Cases collected, Education Law Into Practice, Compensatory Education: The Latest Annotated Update of the Law, Zirkel, P., EDUCATION LAW REPORTER, Education Law Association, 376 Ed.LawRep. [850] (June 25, 2020).

⁷³ This is for the Board's failure to provide the Student with an appropriate education during the COVID closure, and the failure to offer an appropriate IEP.

⁷⁴ A medical taxi is typically a van equipped to allow a patient in a wheelchair the ability to receive transportation apart from an ambulance. This will allow the Student to have a much smoother and quieter ride than she experiences in a school bus (even the smaller school bus so often used to transport special education students).

⁷⁵ Such reimbursement is for Mr. O'Neil's professional services in identifying an appropriate residential placement for the Student, which is something the Board should either have done with its own educational professionals, or else hired someone with Mr. O'Neil's qualifications to have done so; but I am not

Preservation of the Parent's Dismissed Rehabilitation Claims.

43. The Parent has asked, for purposes of preserving this issue, that the Hearing Officer's decision memorialize his having previously dismissed her requested relief under the Rehabilitation Act (RA).

44. "Under Connecticut law, an IDEA Hearing Officer's jurisdiction is limited to IDEA claims. *See generally* Conn. Gen. Stat. § 10-76h(d) (describing the authority of the "hearing officer or board"). To the extent an IDEA Hearing Officer considers Section 504/ADA issues, he may only do so 'provided that a determination of the issue is necessary to ensure that the substantive and procedural rights of the particular child or parent or guardian who initiated due process are being complied with....' *Mrs. L., et al., v. Gerald N. Tirozzi, et al.*, Consent Decree, No. H-89-209 (PCD) (D. Conn. Sep. 30, 1991) (ECF No. 17-1) (directing IDEA Hearing Officers 'to rule upon substantial issues involving alleged procedural and/or systemic violations of state and federal law regarding the education of handicapped children, including violations of the Rehabilitation Act....'). In a letter issued by the Connecticut State Department of Education, the Commissioner of Education told School Superintendents, 'please note that the provisions of the *Mrs. L* consent decree extend the jurisdiction of the state's IDEA hearing officers to make determinations regarding Section 504 claims only as necessary to resolve the claims made under the IDEA.' Circular Letter C-13, Series 2008-2009, Reissue of Circular Letter C-9, Series 2000-2001, Mark K. McQuillan, Comm'r of Educ., Conn. State Dep't of Educ., at p. 2 n.2." *Doe v. Westport Bd. of Educ.*, No. 3:18-CV-01683 (KAD), 2020 WL 869861, at *6 (D. Conn. Feb. 21, 2020)

45. It is not necessary to resolve any Section 504 claims to determine the Student's IDEA claims in this matter. Therefore, the Hearing Officer lacks jurisdiction over any Rehabilitation Act claim raised by the Student.

CONCLUSION

46. The Student needs a residential school placement that can provide her with an integrated education including physical therapy, occupational training and therapy, ambulatory convenience, counseling as needs, speech and language therapy and education alongside peers similarly situated. The May Institute would provide the Student with all of these necessary components. Therefore, I am ordering that the Student be placed at the May Institute if she is accepted; or else another similarly situated residential school.

FINAL DECISION AND ORDER:

1. The Board ***did not*** deny the Student FAPE for the previous two years by habitually failing to record the PPT decision in prior written notice.

awarding compensation for preparation of Mr. O'Neil's testimony—or for his testimony—at the due process hearing.

2. The Board, however, *did* deny the Student her right to procedural FAPE for the previous two years by allowing the Board’s representative to make decisions as a substitute for the collective decision of the entire planning and placement team.
3. The Board *denied* the Student FAPE by its failure to implement the Student’s IEP during the COVID School Closure.
4. The current IEP and placement *denies* the Student FAPE.
5. The Hearing Officer directs the Board to promptly convene a PPT meeting following notice of this decision in order to determine an appropriate, year-round, residential school for the Student--preferably the May Institute, if available—and, if necessary, to hire an educational consultant, Mr. O’Neil if available, to identify an appropriate residential placement for the Student; and then to place the Student at that residential school.
6. The Hearing Officer further directs the PPT to identify the Student’s qualifying disability to be characterized as “Multiple Disabilities.”
7. The Hearing Officer directs the Board to immediately pay for a medical taxi, with a qualified chaperone to take the Student from her home to school and back during the remainder of the school year.
8. The Hearing Officer directs the Board to immediately pay for a qualified assistant to arrive at the Student’s home no later than 30 minutes before the medical taxi arrives to assist the mother in preparing the Student for school until such time as the Student is residentially placed. This qualified assistant may also assume the role of the qualified chaperone to assist the Student going to, and coming back, from school in the medical taxi.
9. The Hearing Officer awards the Student with the following compensatory education:
 - The Board shall provide the Student, while she waits to be residentially placed, while the Student waits to be residentially placed, she is to receive a weekly total of 5x30 minutes speech and language services, (not the weekly 2x30 minutes called for in the current IEP); a weekly total of 5x30 minutes physical therapy, (not the weekly 1x30 minutes called for in the current IEP); counseling by the school psychologist or school social worker, (for at least one hour per week); transportation to and from school by a medical taxi, (accompanied by a qualified chaperone); and the services of a qualified assistant, (to come to the Student’s home at least 30 minutes prior to the arrival of the medical taxi to assist the Parent in getting the Student getting ready for school);
 - The Board shall pay for six weeks tuition, fees, and costs at an appropriate CP oriented summer camp for the Student (when she is able to attend such camp);

- The Board shall reimburse the Parent for the costs of the professional services rendered by Mr. Brendan O’Neil in locating appropriate residential schools prior to the date of the hearing request.

N.B. In quoting Helen Keller’s autobiography, I realize that the Student in this matter is not blind and deaf, but the severity of her CP leaves her in a situation not all that unlike Helen Keller’s. That is before her teacher Anne Sullivan arrived and taught her how to express herself through sign language, and ultimately how to speak. There is a certain parallel that helps inform both the Student’s struggles in school, and her need for expert attention in a residential placement. Only a residential facility can provide her with the extensive one-to-one care by highly trained specialists that she so desperately needs at this critical stage of her formative years. The Greenwich Public Schools simply cannot provide this Student with the level of care and education that she needs and is entitled to have under federal law.

It should also be noted that Helen Keller’s teacher, Anne Sullivan was herself gravely disabled: “At the age of five, Sullivan contracted trachoma, an eye disease, which left her partially blind and without reading or writing skills. She received her education as a student of the Perkins School for the Blind; soon after graduation at age 20; she became a teacher to Keller.” *See* en.wikipedia.org/wiki/Anne_Sullivan. In her autobiography, Helen Keller describes how Anne Sullivan patiently taught her how to sign, read, write, and ultimately how to speak. This was accomplished through long and tedious hours of hard work and heuristic trial and error. “[Anne] Sullivan strongly encouraged Helen [Keller’s] parents to send her to the Perkins School, where she could have an appropriate education.” *Id.* Through dogged persistence and unparalleled personal pluck, Helen Keller went on to graduate from Radcliffe College becoming “a world-famous speaker and author. She was an advocate for people with disabilities, amid numerous other causes.” *See* en.wikipedia.org/wiki/Helen_Keller.

I note all this because the Student in this matter has expressed her own desire to help other disabled children when she becomes an adult. The Student has also demonstrated that she can be an advocate for people with disabilities, as evidenced by her presentation to classmates about her fight with CP. The Student has is known to be expressive, and a great communicator, and passionate about educating people about the challenges of living with CP. Ms. Micallef reported that “[m]uch success is yet to come for her, I know it.” If given access to an appropriate individualized education program the Student may one day realize her dream, and like Anne Sullivan work with, educate, and inspire other disabled children. It will take commitment, hard work and perseverance by the Student; but if she can be assisted in channeling the energy expended in outbursts of frustration to productive purposes she can achieve great things. There certainly exists strong historical precedent that this can be accomplished.

ADDENDUM

The Yale Inpatient Child Psychiatrists

Kashif Ahmed, MD, and
Suman Baddam, MD
Child and Adolescent Psychiatrists
Yale New Haven Hospital

...

[The Student] has a history of Cerebral Palsy, seizures, choreoathetoid movements, and contractures. She needed a hospital bed for comfort and adjustment because of her low muscle tone and a pediatric wheelchair for ambulating. She needed help switching from her wheelchair to bed, feeding, and bowel movements. She is non-verbal, had expressive language difficulty and communicated with an iPad because of the tremors.

During the seven weeks [she] was admitted at Yale New Haven Hospital, she demonstrated aggressive behaviors towards staff (such as hitting a staff member's arms repeatedly when [she] was verbally redirected away from making inappropriate comments about a peer) and oppositional behaviors (refusing to participate in group activities, screaming loudly as a way to remove herself from groups, intentionally urinating on herself and laughing about the episodes on a daily basis). These oppositional behaviors and agitation fluctuated over the course of the hospitalization and she did demonstrate some improvement in these behaviors with psychiatric medication changes and firm limits and structure on the unit.

[The Student] is a child with complex medical, mental health, and social difficulties. Based on these behaviors described by her mother, and observed on the unit, she met criteria for and was diagnosed with Disruptive Mood Dysregulation Disorder (DMDD). DMDD is characterized by excessively angry moods and aggressive outbursts (verbal and behavioral) that are much more severe than those displayed by same-aged peers present for more than 12 months. [The Student's] mental health difficulties are closely intertwined with physical, social, and academic functioning with each affecting the other. [Her] aggression and mental health needs presents (sic) in atypical ways because of her physical limitations. Below are the observations of her mental health, physical health, behavioral support and recommendations for her care.

Mental health

...

- **At home and in the school setting, clinicians specialized in mental health needs of physically disabled children should be used to guide interventions. The antecedents, precipitants, and perpetuating factors to**

challenging behaviors need to be identified and interrupted to reduce the conditioning patterns that she developed for these behaviors.

Behavioral Support

...

- **Based on our observation and effective management, [the Student] needs constant one to one assistance at home and at school for supervision, communication, and support.**

Physical Support

...

- **In addition to the one to one support at home and school, [the Student] will need regular physical therapy and occupational therapy (in-home) to help with her strength, tone and fine and gross motor skills.**
- **As [the Student is able to actively participate and when she is able to stay safe during transportation, the occupational therapy and physical therapy may transition to the outpatient setting.**

Educational Support

- [The Student] had significant difficulty reaching school because of the unsafe behaviors in the car while she was at home and missed school.
- Reliable and safe transportation to school and ensuring that she stays at school full time is important for her academic progress.
- Updated intelligence tests and adaptive functioning tests need to be conducted to understand her current deficits and potential solutions.
- **She would need a one to one at school who is behaviorally trained to manage any maladaptive behaviors to ensure that her education and academic goals are met[.]**
- **Because of her difficulties with communication and time lag in communication, she would need assistive devices to help her communicate effectively and reduce the frustration related to the lag time in communication.** (Parent's Exhibit 43, pgs. 1-3)(Emphasis in the original).

The Yale Pediatric Neurologist

Kathleen Cardinale, MD
Assistant Professor of Child Neurology
Yale Medicine

[The Student] follows in my Neurology clinic for her cerebral palsy and

epilepsy. I have also collaborated with her other specialists including her physiatrist and psychiatrist and have spoken directly with Dr. Cohen who performed her neuropsychological assessment. It is my belief that Dr. Cohen's recommendation for a residential education program tailored to students like [her]—with physical and emotional impairments as well as some specific learning impairments—would be most beneficial for her. As the rigor of school has increased with age, [the Student's] impairments have become more challenging and fatiguing. Additionally she has become much more aware of her differences and I believe this contributes to her anxiety surrounding school. To be surrounded by other children with similar differences and expectations may help her feel more comfortable at school. Additionally, I am concerned that if she is outplaced to a day school which requires a significant daily commute, she will become even more fatigued than she already is, further contributing to her emotional dysregulation. A residential program such as those recommended by Dr. Cohen would afford her consistency, support in and out of the classroom, and the chance to improve her social skills among similar peers all while ensuring her medical needs are also being met. (Parent's Exhibit 44).

The Student's Physiatrist

David Feingold, MD
Physical Medicine and Rehabilitation

This letter is in regards to the above referenced patient, [the Student]. She has been under my care in the Yale Pediatric-specialty Center—Cerebral Palsy Clinic for almost 3 years. Over the course of [her] care, it has become apparent that her anxiety, aggression, and behavioral outbursts have worsened. As [she] gets older, she is becoming more aware of the differences between her and other children. She does not engage in any extracurricular activities and does not have a social group or peers who she considers friends. [The Student] has openly expressed that she wants to be with “kids like her,” and with children who communicate similarly to how she does.

We fully support [her] transition to a residential program. Our number one priority is to ensure that [the Student] is in a safe environment where she can thrive to the best of her ability, which she is currently not experiencing. [The Student] does well with structure, staff support, and consistency. The inconsistencies of a day school include the entire process of commuting to and from school, and the continued lack of external support in the home. Without the structure and support of a residential facility, [her] anxiety, emotional dysregulation, incontinence, and behavioral outbursts will continue to worsen.

[The Student] requires supervision at all times for her safety as she is ambulatory at risk of hurting other peers and/or staff when she is dysregulated. She also requires close observation when feeding/swallowing.

The School/therapists are not equipped, or experienced with CP, to foresee what needs might need to be addressed as [she] grows. There is not an adaptive lesson plan o ensure that she can participate in all activities followed by other students. There is a constant need to assess her equipment, assistive tech, walkers, etc. which another school specializing in her disabilities can more easily anticipate.

Thank you for your consideration. Please contact us if you have any questions. (Parent's Exhibit 45).⁷⁶

The Student's Treating Psychiatrist

Michele Feinberg, MD
Board certified General & Child and Adolescent Psychiatrist
Child and Adolescent Psychiatry of Fairfield County

This letter is in regards to [the Student]... [She] is a 10 year old Female with Cerebral Palsy due to Neonatal Hypoxic-Ischemic Encephalopathy and as a result exhibits significant and complex, motor, cognitive and emotional delays. She began treatment in my practice 1/16/20 due to mood lability, aggression, regression in her behavior including encopresis, sleep difficulties, and anxiety, with little response to behavioral therapy. She expressed that school caused a lot of stress and her mother stated homework was a big struggle and would often cause conflict to the point of [the Student] becoming aggressive. Her aggressive behavior and mood lability ws nonresponsive to medication, as the etiology appears to be due to the neonatal brain injury. Her aggressive behavior led to a 7 week hospital admission, which is a lengthy stay. During the admission Medications were adjusted, and she responded extremely well to the structure and personalized 24 hour treatment that the hospital provided. When she was discharged, a home health aid was provided to the home to help with [her] care and behavior. [The Student] continued to have episodes of mood lability and aggression both at home and school, despite being prescribed the same medication she was taking on the inpatient unit.

She currently continues to be violent and oppositional when faced with anxiety, stress, unfamiliar environments, and frustration both in the home and school setting. Therefore, I am recommending that [the Student] would benefit from a structured, supportive, consistent, therapeutic environment in which she could receive academic, behavioral, and medical 24 hour support. As a result, she then

⁷⁶ This letter dated December 11, 2020, was directly addressed to the Greenwich Public School System. It is curious that neither Dr. Feingold, who had been treating the Student for almost three years, nor any other medical care provider, had been invited to any of the PPT meetings to provide information and their input on the Student's rare and very complicated medical situation. The significance of this failure to reach out to such providers is addressed more fully in an earlier section of this decision.

could access the academic curriculum and ensure her, as well as others, personal safety. (Parent's Exhibit 46).⁷⁷

The Emergency Room Pediatrician

Rabia Malik, MD
Assistant Professor of Clinical Pediatrics
Pediatric Emergency Medicine
Yale New Haven Hospital
Greenwich Hospital

I took care of [the Student] in the emergency department on October 12, 2021. She was brought in by EMS due to an aggressive outburst at home that was reportedly due to discussions around returning to school. Her outburst consisted of punching the adults around her, throwing picture frames, ripping her doll apart. [The Student's] mother, [], was concerned for her own safety as well as for [the Student's] so she called 211, DCF, her psychiatrist, therapist, who attempted de-escalation over the phone, with no resolution of the episode so she had to call EMS.

[The Mother] reported to me that [the Student] has a hard time in her current school setting as she is in an integrated class with students who do not have special needs like she does. She would prefer to be around others 'like her' who use a wheelchair, use text to speech devices. Mother asked [the Student] during the interview if indeed school was the trigger for her outburst, and [the Student] responded in the affirmative.

[The Mother] reports that she has attempted many routes to change [the Student's] schooling situation, even hiring a special education lawyer to no avail. Mother was very upset and verbalized that she does not feel safe at home with [the Student] and is worried about [the Student's] safety. As [the Student] has grown, she has become increasingly aggressive with physical outbursts and has become difficult to subdue. (Parent's Exhibit 47).

As such, in my opinion, it would be in [the Student] and her family's best interest if she could be given accommodations that will reduce the ongoing stress of her schooling situation. I believe it would be beneficial to [the Student] to be in a classroom setting with other students who have similar communication, mobility, learning and social challenges and where the educators have experience in dealing with her challenging behaviors.

⁷⁷ This letter dated December 29, 2020, was addressed to Ms. Mary Forde, Greenwich Public Schools. Dr. Feinberg was also never invited to participate in any of the PPT meetings for the Student, which is unfortunate as she would have been a valuable member of the Team.