

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Stamford Board of Education

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Appearing before: Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

I. ISSUES

1. Was the student eligible for special education and related services under the IDEA during the 2000-2001 school year?
2. Was the IEP proposed by the Board for the 2000-2001 school year appropriate?
3. If not, was the placement at Eagle Hill School during the 2000-2001 school year appropriate to meet the student's needs?
4. Was the student eligible for special education and related services under the IDEA during the 2001-2002 school year?
5. Was the IEP proposed by the Board for the 2001-2002 school year appropriate?
6. If not, was the placement at Eagle Hill School during the 2001-2002 school year appropriate to meet the student's needs?
7. Are the student's parents entitled to reimbursement, including tuition reimbursement, and transportation, for the 2000-2001 and 2001-2002 school years for their unilateral placement at Eagle Hill School?
8. Did the Board violate the procedural rights of the parents in any substantial way?

II. SUMMARY

The student was unilaterally placed by her parents for the third and fourth grades for the 2000-2001 and 2001-2002 school years at the Eagle Hill School ("Eagle Hill"), a private special education school in Greenwich, CT.

The parents assert that the student is eligible for special education and related services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA"). Specifically, the parents assert that the student has attention deficit disorder and a non-verbal learning disability which impact her ability to achieve educational benefit without special education instruction in an out-of-district private school. They further assert that the Board did not provide the student with an appropriate program for the 2000-2001 and 2001-2002 school years necessitating their unilateral placement of the student at Eagle Hill.

It is the Board's position that the student is not eligible for special education services and that they offered FAPE for the 2000-2001 and 2001-2002 school years, and hence the parents are not due any reimbursement for the unilateral private school placement of their daughter.

The parents requested a hearing by way of letter dated April 19, 2002. A prehearing conference was held on April 26, 2002. Thereafter hearings were held on May 13, 2002, May 23, 2002, May 30, 2002, June 5, 2002, June 6, 2002, June 18, 2002, July 1, 2002, July 8, 2002, July 9, 2002, July 10, 2002, August 29, 2002 and September 26, 2002. Continuances were given without objection and after filing of briefs and reply briefs the date for mailing of the final decision is February 19, 2003.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

III. FINDINGS OF FACT:

1. The student is a ten year-old child (d.o.b. 6/14/92) who resides with her parents in Stamford, Connecticut. (Exhibit P-37, p. 1 of 8)
2. The student attended the Newfield School in Stamford during the 1999-2000 school year. (Exhibit P-5)
3. The student has attended the Eagle Hill School in Greenwich, Connecticut since September 2000. (Testimony of Mother)

4. Eagle Hill School is a private school for children with learning disabilities. (Testimony of Quinn)
5. The student is a very hard worker, very determined, very hard on herself and very committed to school. (Testimony of Mother, testimony of Mrs. Shanahan)
6. Prior to the start of second grade and after the birth of their second child, the student's parents observed that the student was experiencing increased anxiety, temper tantrums, and separation anxiety. Two weeks before school started, the student's mother contacted an independent evaluator, Dr. Spector, and requested an evaluation to address the student's anxiety issues. (Testimony of the Mother)
7. The student was first brought to Dr. Spector for a psychological evaluation during her first week in second grade and it was both obvious because the school year had just begun and admitted by the mother that she did not request the Spector evaluation to address problems in second grade, but to address the student's emotional issues. (Testimony of the Mother)
8. On October 21, 1999 Mrs. Shanahan completed and submitted to Dr. Spector various student rating forms based on her approximately seven weeks of teaching the student. (Exhibit P-46, p. 6)
9. Dr. Spector did not observe the student in Mrs. Shanahan's classroom. (Testimony of Mother.) Based in part on the teacher rating scales Dr. Spector documented "significant problems with attention, hyperactivity and behavior in the classroom", and significant problems with excessive anxiety, poor intellectuality, and poor academics. Dr. Spector indicated that the teacher rating scales provide an excellent measure of typical classroom performance and behavior since they are based upon the daily observations of the child's teacher. (Exhibit P-1A)
10. However, Mrs. Shanahan testified that the rating scales produced an inaccurate picture of the actual classroom performance of the student. She had taught the student for only approximately seven weeks and she felt that the scales produced an unreliable reflection of the actual classroom performance of the student. Further, this was consistent with her broader experience completing rating scales for five other children. She believes the reports generated from the rating scales she has produced have not been an accurate reflection of what she sees in the classroom with this student or other students. Significantly, the first grade teacher, who observed the student for a full year, also completed the scales and found no concerns. (Testimony of Mrs. Shanahan.) It is concluded that the scales produced by Mrs. Shanahan are not a reliable source of information about the student.
11. Dr. Spector did not recommend that the student be considered eligible for special education under the IDEA. (Testimony of Mother). The report lists numerous classroom modifications that could be implemented in the regular education classroom. (Exhibit B-4; Testimony of Ms. Screnock)

12. Ms. Friedlander is currently the Assistant Director of Special Education. She is a certified school psychologist and is in charge of the supervision of special education classes, resource teacher, special education teachers, and the school psychology department. Her educational background is in school psychology. She has served as a school psychologist in Stamford and Baltimore and, a special education consultant in the Chicago Public Schools. She then became the Assistant Director of Special Education for the Mamaroneck Public Schools prior to her position as Assistant Director of Special Education for the Stamford Public Schools. In addition, since 1997 Ms. Friedlander has been an adjunct professor at the University of Bridgeport, where she teaches a graduate level course in special education. In her capacity as a school psychologist, she has evaluated “hundreds” of students for a determination of eligibility for special education services. (Testimony of Ms. Friedlander.) She testified in a credible, straight forward manner.
13. The Hearing Officer qualified Ms. Friedlander as an expert in the identification of students under the IDEA and the writing of curriculum for students with disabilities. (Transcript, 6/18/02)
14. In regard to the Spector recommendations none of the recommendations would require specialized instruction because they are done in the classrooms all the time. They reflect good teaching and benefit all students. (Exhibit B-4, Testimony of Mrs. Shanahan; Testimony of Ms. Friedlander)
15. Dr. Spector’s report indicated that the student’s “general cognitive ability is within the average range of intellectual functioning.” (Exhibit B-4 at 4). She also found that the student’s “verbal reasoning abilities are average,” (*Id.*) her “nonverbal reasoning abilities are low average,” (*Id.*) and her “ability to sustain attention, concentrate and exert mental control is average.” (*Id.*) She also found that the student “performed in the average range in overall reading skills as indicated by her standard score on the reading composite.” (Exhibit B-4 at 5). In addition, Dr. Spector found that the student performed in the average range as indicated by her mathematics composite score. Three pages of remediation strategies were made. Those recommendations included strategies to teach the student how to see part-whole relationships, perceive and analyze abstract designs, and enhance nonverbal concept formation. (*Id.*)
16. Near the beginning of the 1999-2000 school year the parents had noticed that the student was fidgety, anxious, would cry easily and couldn’t remember how to do her homework. These problems became more pronounced later in September and the student began to indicate she did not want to go to school. (Testimony of Mother)
17. The Father asked the student’s classroom teacher, Mrs. Shanahan, during the third or fourth week of September 1999 if she observed anything of concern regarding the student and Ms. Shanahan stated that she did not know the student very well but she did seem anxious. The Mother told Mrs. Shanahan that the student was forgetting things and was anxious. Mrs. Shanahan thought the anxiety was due to unreasonably high expectations placed on the student by the parents, and this concern was shared

by other Board staff but no one from the Board shared this perception with the parents prior to the hearing. (Testimony of Mother; Testimony of Mrs. Shanahan; Testimony of Mrs. Friedlander)

18. The parents took the student to Dr. Tami Amiri, a child psychiatrist, in the fall of 1999. Dr. Amiri diagnosed the student with ADD inattentive type based on what she saw of the student and what was reported to her from the Mother. Dr. Amiri explained that this disability is often not picked up in the classroom because it is more of an internalizing spectrum of symptoms instead of externalizing. These children do not disrupt the class and Mrs. Shanahan agreed that the student was never a behavior problem. (Testimony of Dr. Amiri; Testimony of Mrs. Shanahan)
19. Dr. Amiri did not observe the student in the classroom, did not consult with the student's teachers, and did not remember if she reviewed any school records, although she acknowledged it is good practice and is her general practice to speak to school personnel. (Testimony of Dr. Amiri)
20. In the fall of 1999 Dr. Amiri prescribed an anti-anxiety medication, Paxil, and Adderall for attention deficit disorder for the student. (Testimony of Mother)
21. Dr. Amiri did not make a recommendation about where the student should attend school. However, she has made such recommendations in the past for other patients. (Testimony of Dr. Amiri)
22. The parents hired tutors to provide additional instruction to the student in math, writing and reading beginning the first half of October, 1999. Tutoring was provided two hours per week in reading and writing and one hour per week in math. The tutoring in math continued until April. The tutoring in reading and writing continued through the summer of 2000. (Testimony of the Mother)
23. The father testified that he discussed having a team meeting with Mrs. Shanahan. However Mrs. Shanahan testified that neither parent made a request for a team meeting or PPT to her. At no time between September through November did the parents express in writing any dissatisfaction with their daughter's academic achievement level. At no time between September through November did the parents request in writing that the school convene a PPT. The mother is a former special education teacher. (Testimony of Mrs. Shanahan, Testimony of Father, Testimony of mother)
24. The mother requested a PPT meeting in a discussion with Assistant Principal, Gail Flaster around the end of November of 1999. The school promptly scheduled a PPT meeting for December 15, 1999. (Testimony of Mrs. Shanahan, testimony of Mother)
25. Mrs. Shanahan took the information that the Mother gave to Mrs. Flaster and filled out a pre-referral form. In the area of weaknesses, Mrs. Shanahan recorded both her own concerns and the parents' concerns as relayed to her by Assistant Principal Flaster. Among the concerns expressed to Ms. Flaster by the parents were the

following: “Often takes [the student] a long period to complete her work,” “appears to withdraw from group situations,” and “difficult time processing information that involved more than one-step direction.” Mrs. Shanahan did not feel that these concerns were a problem for the student in her classroom. (Testimony of Mrs. Shanahan)

26. Mrs. Shanahan did have concerns regarding the student. Mrs. Shanahan was concerned that the student lacked self-confidence, appeared anxious, and appeared worried. She felt, however, that “the high anxiety . . . originated from the parents.” She also did not feel that the student lacked self-confidence to a severe degree. (Testimony of Mrs. Shanahan)
27. Mrs. Shanahan has twelve years of experience teaching first and second graders and did not agree that the student needed an out-of-district placement and did not believe the student needed any more intervention than the student could receive in the classroom. She observed the student as a student of average intelligence who performed at or near grade level in all academic areas with an area of weakness in math, and she saw improvement in all areas during the course of the school year. (Testimony of Mrs. Shanahan)
28. The parents applied to Eagle Hill prior to the first scheduled PPT meeting and prior to any written request for special education from the Board. (Exhibit B-29; Testimony of Father; Testimony of Mother)
29. In her progress report, dated December 13, 1999, Mrs. Shanahan stated that the student “displays excellent classroom behavior and organizational skills.” In addition, the student was “becoming more of a fluent reader and reads for comprehension.” Mrs. Shanahan also found that the student was “capable of sounding out unfamiliar words, using skills in class, and made great progress within recent weeks with her ability to focus.” (Exhibit B-8; Testimony of Mrs. Shanahan)
30. On December 13, 1999, the Mother had the regularly scheduled parent teacher conference with the classroom teacher, Mrs. Shanahan and had the opportunity to discuss the student’s progress. The progress report indicated that the student “displays excellent classroom behavior and organizational skills.” The Mother did not indicate any disagreement with what was written on the report. Generally, when parents disagree with what appears on the progress report, Mrs. Shanahan would record the comments on the back of the report or on a separate sheet. She would include her own observations and concerns, observe the student more in the classroom, gather more notes, and pre-refer the student to the CST team. The Mother did not indicate any disagreement with what was written on the report. (Exhibit B-8, Testimony of Mrs. Shanahan)
31. As of December 1999, the Mother had not ask Mrs. Shanahan to make any accommodations for the student in the classroom nor did she ask for a list of

accommodations that Mrs. Shanahan was making for the student in the classroom.
(Testimony of Mrs. Shanahan)

32. In addition, by January Mrs. Shanahan observed that the student was less anxious in class. She was not asking constantly for reassurance that she was “doing it right.” Therefore, the lack of confidence and anxiety were decreasing. While the student did have a weakness in math, Mrs. Shanahan observed that she was making steady progress in math throughout the year. Although she was aware that the student was seeing a math tutor and communicated with the tutor on a weekly basis, she did not feel that it was necessary. (Testimony of Mrs. Shanahan)
33. The student’s parents were provided with notice of every planning and placement team (“PPT”) meeting held during the 1999-2000, the 2000-01 and 2001-2002 school years. The parents also received their procedural safeguards during or before each meeting. One or both of the student’s parents attended all PPT meetings during this period. (Exhibits B-12; B-28; B-32; B-38)
34. The parents postponed the December 1999 PPT until January 26, 2000. The January PPT meeting was postponed until February 2, 2000 to permit the attendance of Mrs. Shanahan, the classroom teacher. (Testimony of Mother)
35. At the February 2nd PPT meeting, the parents were accompanied by their educational consultant, Anne Terezakis, from their former lawyer's office. (Exhibit B-12)
36. At the February 2nd PPT, the team discussed the classroom accommodations already in place for the student in the classroom; including the use of manipulatives for math, preferential seating, visual support in learning, the use of an assistant, a visual agenda, school choice, and the need to break down directions into components. In addition, the PPT described the use of a communication journal, health-related speech services, a liaison between the school and the tutor, the need for visual input, and math strategies. The PPT reviewed the Spector report and noted that many of the recommendations were already in place. The team also expressed the willingness to implement the recommendations in the Spector report in the regular classroom. (Exhibit B-12, Testimony of Jackie Shanahan)
37. The Mother did not feel the explanations concerning classroom accommodations given at the PPT on February 2, 2002 were sufficiently detailed but she never requested more. (Testimony of Mother)
38. The parents objected to the accommodations made by Mrs. Shanahan because all children could avail themselves of these opportunities and they were not specifically designed for the student—for example, the visual daily planner, the teaching assistant, and the math manipulatives were available to all students. The Father agreed that Dr. Spector had recommended manipulatives, a visual calendar, and a one-on-one assistant when necessary. (Testimony of the Father)

39. Mrs. Shanahan testified that the accommodations were implemented for the student in her classroom, and the accommodations were successful in assisting the student in the regular classroom setting. (Testimony of Mrs. Shanahan)
40. Ms. Friedlander testified that the student's achievement of above goal in the CMT's in math and excellence on the Degrees of Reading Power in April of second grade are not consistent with a student who requires special education under the IDEA in her experience. (Exhibit B-23, B-24, Testimony of Ms. Friedlander)
41. Ms. Friedlander further testified that although previous reports from Dr. Spector have recommended eligibility for students under the IDEA, her report on the student did not indicate that the student should be considered eligible for special education services. (Testimony of Ms. Friedlander)
42. The team recommended a speech and language assessment. The school's speech and language pathologist recommended in her report (which could not be completed due to the student's young age and other factors) regular education strategies to consider in helping the student become a better listener, including preferential seating, breaking down lengthier directions, providing feedback to refocus the student, periodic checking for comprehension, implementation of a "buddy system," and encouraging the student to ask questions. Mrs. Shanahan implemented these strategies in the regular education classroom. (Exhibit B-14, Testimony of Mrs. Shanahan)
43. The PPT, upon request of the parents and their consultant, recommended a math assessment to be conducted by Angela Screnock. Ms. Screnock is currently a resource teacher at Newfield Elementary School, teaching students in kindergarten through third grade. She conducts classroom observations, evaluations, and consultations with classroom teachers and parents. She has a Master's degree in reading and a Sixth Year Degree from Columbia University in reading and learning disabilities. She began her teaching career at Eagle Hill School in Greenwich, teaching there for seven years. Altogether Ms. Screnock has over sixteen years of experience working with disabled students. (Testimony of Ms. Screnock)
44. Astoundingly, Ms. Screnock testified that while teaching at Eagle Hill School, she did not have access to the educational records of the students she taught. (Testimony of Ms. Screnock, Tr. 7/9/02 at 27-29)
45. On March 3, 2000, Ms. Screnock conducted the Key Math Evaluation. The student scored slightly below grade equivalent in the area of basic concepts at 1.9, at grade level for operations at 2.3, and at grade level for applications at 2.1. The student's total test score was 95, demonstrating average math skills. Although some weaknesses were noted on the sub-tests in the areas of estimation and problem solving (*Id.* at 4-5) Ms. Screnock testified that overall the student had good basic math skills. (Testimony of Ms. Screnock, Exhibit B-16)

46. The school psychologist, Linda Wanosky, conducted a classroom observation to evaluate the student's learning style. She noted that "[w]hen the class was structured, she demonstrated a high level of concentration, a good ability to focus and a desire to participate." (Exhibit B-17 at 2)
47. Although the PPT was scheduled to reconvene on March 22, 2000 to discuss the evaluations, the parents' educational consultant, Ann Terezakis, sent a letter to Ms. Moffa stating, "[w]e have agreed in good faith to postpone [the student's] PPT in order to give her program more time." Therefore, the Board was not responsible for the delay between the February and April PPT meetings. (Exhibit B-21, Tr. 6/6/02 at 67-68)
48. The parents also gave consent for the school to conduct an occupational therapy evaluation. The occupational therapist completed her evaluation and recommended occupational therapy services for thirty minutes per week to address visual motor skills. In addition, she recommended various classroom accommodations. (Exhibits B-13, B-17, B-19)
49. A PPT was held on April 26, 2000 for the limited purpose of discussing the recommendations in the of Occupational Therapy consultation. The parents were provided with notice and their procedural safeguards. At this meeting the PPT found the student eligible as other health impaired ("OHI") for the limited area of visual motor skills. The team recommended 30 minutes a week of OT services to assist the student in improving her copying from the board. The occupational therapist stated that the services will not be necessary for the long term. The parents approved of the recommended program. The PPT created an IEP for the student for the end of the school year to continue into the following 2000-2001 school year that provided occupational therapy on a short-term basis. (Exhibit B-28)
50. In April of 2000, Newfield Elementary School administered the Connecticut Mastery Test for second graders in math. The student participated in this testing without any modifications or accommodations. The student scored above goal for mathematics, scoring a 39 out of a possible 40. The student mastered all ten of the listed objectives. In terms of the student's progress, Mrs. Shanahan noted that the CMT's demonstrated she had made progress. (Exhibit B-23, testimony of Mrs. Shanahan)
51. The student participated in the Degrees of Reading Power (DRP) tests in the spring of 2000. The student participated in this standardized testing without any modifications or accommodations. The student achieved a score of 34, scoring as well or better than forty-three percent of students in the same grade. The student achieved the excellence goal for second graders. (Exhibit B-24)
52. An additional PPT was scheduled for May 10, 2000 to review and discuss the reports and evaluations. The parents were provided with notice and their procedural safeguards. The parents' consultant, Ann Terezakis, also attended the meeting. The

team discussed the student's progress. The classroom teacher, Ms. Shanahan, noted that socially the student was more assertive and academically doing well. (Exhibit B-30)

53. Mrs. Shanahan's overall impression of the student's performance in second grade was that "she made excellent progress." At the end of the year, there were no areas that she felt needed to be alerted to the third grade teacher. The parents never contacted Mrs. Shanahan about the student's final report card. Mrs. Shanahan testified that the only end of the year contact she had with the father was on the last day of school, when he shook her hand and told her what a wonderful year the student had had and thanked her for his daughter's year in my classroom. Although the parents expressed extreme dissatisfaction with the student's second grade teacher in their testimony, the parents never expressed their dissatisfaction to Mrs. Shanahan. (Testimony of Mrs. Shanahan)
54. The PPT devised an IEP for the student for occupational therapy that was to be implemented for the upcoming school year. This was envisioned as a short-term plan, but the student would have been provided more occupational therapy services throughout the school year if, after review, the team found it was necessary. (Testimony of Ms. Screnock, testimony of Ms. Friedlander)
55. The parents requested that the Board reimburse them for tuition at Eagle Hill School for the upcoming school year. The PPT, however, refused to provide tuition reimbursement because the student was demonstrating progress in her regular education setting. The PPT noted that the student was offered extended year services for health related speech services. (Exhibit B-30)
56. The parents unilaterally enrolled their daughter at Eagle Hill School for the 2000-2001 and 2001-2002 school years. (Testimony of Mother, Exhibit B-38)
57. Although the mother emphasized in her testimony the extreme anxiety the student experienced in the Board's school and particularly in Ms. Shanahan's classroom, the mother also acknowledged that after leaving the Board's school, the student returned to visit her teachers, including Ms. Shanahan. (Testimony of Mother, Testimony of Ms. Shanahan)
58. Eagle Hill School ("EHS") is a private school geared towards students with learning disabilities. Students are not classified by grade but rather by abilities. . According to the testimony of the student's academic advisor, Ms. Quinn, teachers at EHS make up their programs independently. In addition, the teachers at EHS create their own materials, and hence, the materials and levels being tested would vary depending on the individual teacher. The curriculum is skill based rather than matched up against a specific grade level curriculum. (Testimony of Ms. Quinn)
59. Generally, students in the lower school range in age from six to twelve, and students in the upper school range in age from twelve to sixteen. Of the twenty-five students

assigned to the student's academic advisor, Ms. Quinn, all have stayed at EHS. Last year, four of Ms. Quinn's students "graduated" and continued their education at other private schools. None of the four transferred to public school. EHS students do not receive a diploma. (Testimony of Ms. Quinn)

60. According to Ms. Quinn, at EHS the student is not receiving additional services such as occupational therapy, speech and language therapy, psychological testing and counseling. She is not given the opportunity to interact on a regular basis with non-disabled peers. The curriculum concentrates on math and language arts and only offers science and social studies in alternate years. The science curriculum is not based on a grade level. The teacher who is instructing the science will add to or delete to that as she sees fit. Music and art are electives only. The curriculum is skill-based rather than grade-base. Teachers do not appear to coordinate their materials consistent with an IEP, so the materials and the levels that are being tested would vary depending on the individual teacher and what they decide to test. (Testimony of Ms. Quinn)
61. Ms. Quinn acknowledged that there are no "non-special education" students at EHS and therefore the student would not be interacting with nondisabled peers. (Testimony of Ms. Quinn)
62. According to the student's test scores, she entered Eagle Hill School from the Stamford schools already reading at grade level, and has continued to score at or near grade level in math and reading in both third and fourth grade. Data from the Slossen Oral Reading Test showed that she made a little over a year's growth in a year's time. (Testimony of Ms. Quinn, Exhibit P-26)
63. When the student entered Eagle Hill School for her third grade year following her exit from the Board's regular education second grade classroom, EHS administered several placement tests. According to the Gilmore Oral Reading Test, the student was reading at 3.8 grade equivalent for accuracy and at 4.1 for comprehension upon her entry into third grade at EHS. On the Slossen Oral Reading Test, the student entered third grade reading at a 3.4 level. (Exhibit P-26)
64. On the Stanford Diagnostic Math Test, administered in April of 2001, the student scored 3.8 on concepts/applications and 2.9 on computation, showing that after a year at EHS that she was still consistently performing at or near grade level for math. (Exhibit P-26, Testimony of Ms. Quinn)
65. On May 30, 2001, after the student's first year at Eagle Hill School, the PPT convened. At this meeting, the parents, who were accompanied by their advocate, Marian Lewis, waived review of the procedural guidelines. (Exhibit B-32; Testimony of Mother)
66. The parents testified that the student was very successful at Eagle Hill and that her confidence increased. They further testified that Eagle Hill brought the student's

attentional problems under control and reduced her level of anxiety. (Testimony of Mother)

67. At the beginning of her second year at Eagle Hill the student's medication was increased. No explanation was given for this increase in medication, given the testimony that the student was doing so well and was so comfortable at Eagle Hill. (Testimony of Mother)
68. At the May 20, 2001 PPT the team made several recommendations. They recommended an updated psychological evaluation for the student, but at the meeting, Marian Lewis refused to allow the Board to conduct a psychoeducational evaluation. The parents later agreed to have an independent evaluator conduct the psychoeducational evaluation. The team also recommended an occupational therapy evaluation, to which the parents agreed. The parents again requested reimbursement for Eagle Hill tuition. The PPT refused to reimburse for the unilateral placement until they were able to reassess the student's progress from the requested re-evaluations. (Exhibit B-32)
69. On June 12, 2001, the Board's occupational therapist, Andrea Beebe, arrived at Eagle Hill School to evaluate the student. She was not permitted to observe the student in the classroom or to talk to the student's teachers, making it difficult to assess the student's abilities in the classroom. According to the testimony of Ms. Quinn of Eagle Hill School, the school did not have a policy prohibiting such interviews and evaluations, but the school did not permit Ms. Beebe to complete her observations because it was too close to the end of the school year. (Exhibit B-36)
70. The parents chose Dr. Judith McCarty as the independent evaluator. Dr. McCarty found that the student's "[a]cademic achievement when compared to the full scale IQ, was within expectancy using the regression formula provided by the State of Connecticut." Math skills were commensurate with the student's measured ability. The student was capable of completing the arithmetic requirements including holding concepts to memory, figuring out the process and performing the skills. In addition, Reading skills were "adequately developed." She noted that the student's "ability to plan, monitor, and problem solve while maintaining the rules associated with the task in her working memory was outstanding." Dr. McCarty additionally stated that academic achievement was within expectancy in all areas, noting a weakness in writing and spelling. (Exhibit B-37)
71. Dr. McCarty found that the student "does not met [sic] the criteria set forth by the State of Connecticut as a learning disabled child." However, Dr. McCarty did state that the student could be found eligible under the label of other health impaired. (Exhibit B-37)
72. Dr. McCarty made many recommendations for the classroom; including many accommodations that were provided at the Board's school in the regular education classroom during the student's second grade year. For example, she advocated the

use of counting materials, games, the use of everyday examples, worksheets with structured work spaces, a “buddy system,” webbing before writing, daily journal writing, a written checklist as a visual cue, breaking down words into component parts. (Exhibit B-37 at 15- 16). She also listed recommendations to address inattention, which the Board had previously provided such as breaking assignments into smaller parts, preferential seating, use of cues to monitor her attention, minimizing distractions, providing simple, clear directions. (Exhibit B-37)

73. The PPT convened on November 15, 2001 to review the evaluations performed on the student and to determine eligibility. The parents were provided with notice and their procedural safeguards. The Board and the Parents had difficulty scheduling the PPT of November 15, 2001 because the parents were trying to get dates that would be convenient for both Ms. Lewis and Dr. McCarty and not because of any undue delay by the Board. (Exhibit B-38)
74. The parents requested that no staff from the student’s second grade school year attend the PPT. (Exhibit B-38 at 2)
75. Prior to the November 15, 2001 PPT, Ms. Friedlander spoke to Dr. McCarty regarding her evaluation and recommendations. During that conversation, Dr. McCarty indicated that the student’s needs could be addressed through accommodations under section 504. (Testimony of Ms. Friedlander)
76. During the PPT, the team reviewed the McCarty recommendations, and the Board members of the PPT concluded that the accommodations and strategies outlined in the Neuropsychological Evaluation could be provided within the regular classroom. Based on the team’s review of the record, the McCarty evaluation, and the most recent academic reports, the PPT did not find the student eligible for special education instruction and related services. (Exhibit B-38, Testimony of Ms. Friedlander) However, the PPT found the student would be eligible for a 504 Accommodation Plan. (*Id.*)
77. When the team determined that a 504 Accommodation Plan would be appropriate, Ms. Friedlander offered to continue with a 504 meeting in her office with the parents and their advocate, Marian Lewis, or schedule the meeting at another time. After consulting with Ms. Lewis, the parents decided to immediately convene the 504 team meeting. In attendance were the parents, Marian Lewis, Ms. Friedlander, and Ms. Screnock. Ms. Lewis provided Ms. Friedlander with the Eagle Hill instructional strategies and asked that they be incorporated into the 504 plan. Ms. Friedlander agreed to incorporate the instructional strategies as requested. (Exhibit B-38, Testimony of Ms. Friedlander, Testimony of Ms. Screnock)
78. At some point in December of 2001, the parents contacted Dr. Miriam Cherkes-Julkowski and asked her to evaluate the student. Dr. Cherkes-Julkowski is an educational consultant who was hired by the parents to provide a diagnostic cognitive and achievement evaluation. She has a doctorate in special education but is not a

psychologist. Dr. Cherkes-Julkowski has testified at approximately twenty hearings, all on behalf of the parents. She has never testified in support of a Board's proposed placement. (Testimony of Dr. Cherkes-Julkowski)

79. On January 28, 2002 Dr. Cherkes-Julkowski met with the student for the evaluation. It was conducted in one sitting over three and one-half hours. She did not consult with teachers and staff members of Newfield Elementary School. She did not at any time interview teachers and staff members at Eagle Hill. She did not observe the student in any classroom setting. She did not speak to Dr. Spector. She did not speak to Dr. McCarty or to Dr. Goldschmid. In fact, she never spoke to anyone who actually worked with the student. She spoke only with the parents and the student. (Testimony of Dr. Cherkes-Julkowski)
80. After reviewing the records and meeting with the parents and the student, Dr. Cherkes-Julkowski found that the student had a non-verbal learning disability. Dr. Cherkes-Julkowski conceded that neither Dr. McCarty (a licensed Clinical Psychologist), Dr. Spector (a licensed Clinical Psychologist), nor Dr. Goldschmid (a licensed speech and language pathologist) found that the student had a non-verbal learning disability. Dr. Cherkes-Julkowski made this new diagnosis based upon a record review, an interview with the parents and three and a half hours with the student. (Testimony of Dr. Cherkes-Julkowski)
81. In her report she found that the student received a superior score (ninety-eighth percentile) for pre-planning, "resulting in a well-executed, well-organized sequence of problem solving steps." In the area of reading she found that the student "had more than adequate phonological awareness to support reading skill. (Exhibit P-39)
82. Dr. Cherkes-Julkowski stated that during the testing "there were absolutely no signs of impulsivity. . . . [the student] works slowly and methodically, sustaining long periods of highly focal attention." (Exhibit P-39, Testimony of Dr. Cherkes-Julkowski)
83. Dr. Cherkes-Julkowski testified that based on the records that she reviewed—the CMT scores, the DRP scores, Dr. Spector's testing, that the student was achieving, according to those measures, within the average range for a second grader while she was in the second grade. She further contended that despite this performance, the student was still eligible for special education services in the areas tested because the student was below grade level on specific aspects of those particular subject areas. She concluded that the student has processing deficits that are discrepant from what she believes her optimal ability is. (Testimony of Dr. Cherkes-Julkowski)
84. Dr. Cherkes-Julkowski admitted that because she had never observed the Stamford classroom, she had no factual basis to determine whether or not a regular education classroom in the public school the student would otherwise attend would be able to accommodate her recommendations. (Testimony of Dr. Cherkes-Julkowski)

85. Dr. Cherkes-Julkowski stated that she believed that it would not be particularly helpful for her to talk personally with Dr. Spector, Dr. Goldschmid, Dr. McCarty, teachers at Eagle Hill School, or the teachers and staff at Newfield Elementary School, apparently believing the written records are all encompassing and unambiguous in all regards. In fact, she admitted that it is her practice not to speak to staff that are or were working with a child. (Testimony of Dr. Cherkes-Julkowski)
86. In her review of the student's educational records, Dr. Cherkes-Julkowski testified that in making her determination that the student had a non-verbal learning disability she relied upon the Teacher Report of Progress and the PPT pre-referral, (B-10; B-27), completed by Mrs. Shanahan. It was Dr. Cherkes-Julkowski's assumption that the form reflected the opinions of Mrs. Shanahan, not the parents. When asked if it would alter her opinion if she knew that Mrs. Shanahan did not agree with all the statements on the form, she said yes. As noted above, Mrs. Shanahan did not feel that these concerns were a problem for the student in her classroom, and had reported the parents' concerns on this form. (Testimony of Dr. Cherkes-Julkowski, Testimony of Ms. Shanahan)

CONCLUSIONS OF LAW:

1. Connecticut Regulations provide that "the public agency has the burden of proving the appropriateness of the child's program or placement or of the program or placement proposed by the public agency." Conn. Reg. 10-76h-14(a) see also *Walczak v. Florida Union Free School Dist.*, 142 F.3d 119, 122 (2d Cir. 1998)
2. The parents assert that the student should be eligible as other health impaired or as learning disabled. A student may be found eligible for special education due to an "other health impairment" which causes the student to have "limited strength, vitality or alertness, due to chronic or acute health problems . . . which adversely affects a student's educational performance." 34 C.F.R. § 300.7(b)(8). Such disabilities shall not be temporary in nature. Title 5, C.C.R. § 3030(f).
3. The Connecticut Regulations provide that "other health impaired means a child with limited strength, vitality or alertness, due to chronic or acute health problems, which is anticipated to be of more than three week's duration." Conn. Agencies Reg. § 10-76a-2(i)
4. Classification as a child with a disability is limited to those whose condition adversely affects his or her educational performance. *Rochester City Sch. Dist.*, 31 IDELR 178 (N.Y. Educ. Agency 1999) (finding that the student's ADHD and seizure disorder did not adversely impact to the extent that he required special education and/or related services because his test scores showed he was an average student performing near grade level); *Board of Educ. of the City Sch. Dist. For the City of New York*, 33 IDELR 145 (N.Y. Educ. Agency 1999) (dismissing a claim for reimbursement where the students' scores on standardized tests indicated that he was achieving at his grade level); *Los Alamitos Unified Sch. Dist.*, 26 IDELR 1053 (Cal.

Educ. Agency 1997) (holding that although the student did experience some processing difficulties and was diagnosed with ADD, her difficulties did not adversely affect her educational performance); *Greenfield Pub. Sch.*, 21 IDELR 345 (Mass. Educ. Agency 1994) (“[The student] is a student capable of doing average level work at his appropriate grade level.”); *Board of Educ. of the East Syracuse-Minoa Centr. Sch. Dist.*, 21 IDELR 1024 (N.Y. Educ. Agency 1994) (finding a student with auditory processing deficit and ADD did not qualify for special education because his performance on achievement tests and in the classroom was consistent with his cognitive ability).

5. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al. v. Rowley*, 458 U.S. 176 (1982), 102 S.Ct.3034. The first prong requires determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
6. In examining the record, it is concluded that the Board has complied with the procedural safeguards set out in the IDEA. IDEA requires that the relevant public education authority prepare and review at least annually an "individualized education program" (IEP) for each child with a disability. 20 U.S. 1414 (d)(4); 34 C.F.R. 300.343. The IEP is the primary vehicle for ensuring that a disabled child's educational program is individually tailored based on the child's unique abilities and needs. *See* U.S.C. 1414(d); 34 C.F.R. 300.345-300.350. The Board has complied with 34 C.F.R. Section 300.342(a), which states, in pertinent part that “[a]t the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.” Further, it is found that the parents, a practicing attorney and a former special education teacher, received proper notice of all PPT meetings and were provided with the opportunity to participate at the PPT meetings with advocates accompanying them, and they received notices of their rights in a timely manner. Their claim that a request for PPT made one to two months earlier was ignored is not supported by the weight of the evidence. It is unlikely that a parent trained as a special education teacher would tolerate a school's failure to call a timely initial PPT without at least putting her request in writing.
7. As to the second prong of the *Rowley* two-part test, it must be determined whether the IEPs are reasonably calculated to confer meaningful education benefit upon the student. *Rowley* 458 U.S. at 192, 102 S.Ct. at 3043-44. While the law does *not* require that a school district provide an educational program to *maximize* a student's educational potential (*Rowley* at 3046), the school district must provide more than “mere trivial advancement.” *Mrs. B. v. Milford Board of Education* 103 F.2d1114 (2d Cir. 1997).

8. Further, it is well established that an educational program provided to a special education child under IDEA must be in the least restrictive environment possible. 20 U.S.C. 1412(a)(5)(A), 34 C.F.R. 300.550(b). The *Rowley* Court noted in the course of its opinion that the IDEA contains a separate specific legal mandate which “requires participating states to educate handicapped children with nonhandicapped children whenever possible.” “Courts have looked to a number of factors to indicate whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA, including, *iter alia*... (2) whether the program administered is in the least restrictive environment.” *M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D. Conn. 2000).
9. School districts must carefully examine the educational benefits, both academic and nonacademic, available to a child with a disability in a regular classroom. Among the factors to be considered are the advantages derived from modeling the behavior and language of children without disabilities; the effects of such inclusion upon the other children in the class, both positive and negative; and the cost of necessary supplementary services. See *Oberti v. Board of Education*, 995 F.2d at 1216-17; *Holland*, 14 F.3d at 1401; *Greer*, 950 F.2d at 697; *Barnett v. Fairfax County School Board*, 917 F.2d 146, 153-54 (4th Cir.), *cert. denied*, 112 S.Ct. 175 (1991); *Daniel R.R.*, 874 F.2d at 1048-50; *Mavis*, 839 F.Supp. at 983, 990.
10. The courts have recognized that a child’s academic performance may be positively affected by the nonacademic benefits of mainstreaming. A child may be better able to learn academic subjects because of improved self-esteem, behavior and increased motivation due to placement in regular education and modeling behaviors. *Holland*, 786 F.Supp. 874-79.
11. In examining the record, it is clear that the Board’s program for the 2000-2001 school year was reasonably calculated for the student to receive educational benefits as required by *Rowley*, 458 U.S. at 206-07. The occupational therapy provided to the student pursuant to her OHI identification was intended to be short term in duration and this was understood and agreed to by the parents, Further, the regular education classroom teacher provided numerous accommodations that gave the student the same access to the benefits of a public education as all other students. These accommodations were used in the classroom in a manner that did not stigmatize the student as a “disabled” child. Moreover, Newfield Elementary School was the school that the student would have otherwise attended, consistent with the mandate of the IDEA. Finally, the record clearly demonstrates that the student made academic progress during her second grade year in the regular education program. The parents' relied in large part on an expert who relied heavily on the parents for information and elected not to observe the student in the classroom or speak to any of her teachers from the public (or private) school setting, or speak with anyone who actually worked with the child; this election and the expert’s record of never testifying in support of a Board’s proposed placement undermined the effectiveness of her testimony, and the weight that was given to it.

12. In addition, the Board's decision that the student was not eligible under IDEA but could be provided services pursuant to a Section 504 plan for the 2001-2002 school year was appropriate. (See Finding of Fact # 76) Many of the accommodations that are being provided at Eagle Hill School could easily be implemented at Newfield Elementary School. For example, in the area of math, the student's regular education class can provide the following: a number line for computation, manipulatives, visual cues, teacher modeling, practice identifying particular patterns, cueing or directed questioning, visual study aids, worksheets with limited numbers of examples, use of a calculator, and mnemonic devices.
13. In light of the conclusion that the Board's placement provided to the student during the 2000-2001 and the 2001-2002 school years were appropriate for her, the parents' unilateral placement at Eagle Hill School is neither necessary for the student to receive educational benefit nor is it the least restrictive environment in which the student can receive an appropriate education.
14. In placing the student at Eagle Hill the parents made a unilateral placement. "Parents who unilaterally change their child's educational placement without...the consent of school officials, do so at their own financial risk." *Sch. Comm. of Town of Burlington, Mass. v. Dept. of Educ. of Mass.*, 471 U.S. 359, 373-74 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993). "[W]hether the parents of a disabled child are entitled to reimbursement for the costs of a private school turns on two distinct questions: first, whether the challenged IEP was adequate to provide the child with a free appropriate public education; and second, whether the private educational services obtained by the parents were appropriate to the child's needs. ...Only if a court determines that a challenged IEP was inadequate should it proceed to the second question." *M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed.*, 226 F.3d 60, 66 (2d Cir. 2000).
15. Having found that the challenged IEP is adequate to provide the child with a free and appropriate public education, it is not necessary to examine whether the parents' unilateral placement at Eagle Hill School was appropriate to meet the student's needs.

FINAL DECISION AND ORDER:

1. The student was eligible for special education and related services under the IDEA during the 2000-2001 school year.
2. The IEP proposed by the Board for the 2000-2001 school year was appropriate.
3. The student was not eligible for special education and related services for the 2001-2002 school year.
4. The student's parents are not entitled to reimbursement, including tuition and transportation, for the 2000-2001 and 2001-2002 school years for their unilateral placement at Eagle Hill School.

5. The Board did not violate the procedural rights of the parents in any substantial way.

