

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Parent: The Parent proceeded *pro se*.

Appearing on behalf of the Board: Attorney Nicole Bernabo  
Sullivan, Schoen, Campana & Connon, LLC  
646 Prospect Avenue  
Hartford, CT 06105

Appearing before: Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board failed to provide the Student with a free appropriate public education for the spring 2002 school term.
2. If not whether the Parent is entitled to reimbursement for tuition for the spring 2002 school term.
3. Whether the Board failed to provide the student with a free appropriate public education for the 2002-2003 school year.
4. If not whether the Parent is entitled to reimbursement for tutoring and counseling for the 2002-2003 school year.
5. Whether the Board's proposed program for the 2003-2004 school year is appropriate.
6. If not whether the Parent's proposed out of district placement for the 2003-2004 school year is appropriate.
7. Whether the Student is entitled to tutoring by the tutors selected by the Parent.
8. Whether the Board is entitled to a psychiatric consult/evaluation in the absence of parental consent.

**PROCEDURAL HISTORY:**

This hearing was requested by the Parent on July 9, 2003. On July 10, the Board submitted a hearing request to join the issue of the psychiatric evaluation to the pending hearing. Both requests were joined by the State Department of Education into this one case. The prehearing conference was held on July 21. The hearing proceeded on August 18, August 21, September 8, September 9, September 15, September 16, September 23, September 29, October 1, October 6 and October 9.

After review of the evidence submitted and the testimony presented at the hearing on August 18 and August 21, the following interim rulings were ordered:

- 1. The stay put placement of the Student shall be the Learning Incentive Center, 3 days per week, with transportation to the Center, during the pendency of this hearing.*
- 2. The Student shall be provided counseling once per week by a duly licensed psychologist as an interim order, during the pendency of this hearing. The parties shall attempt to select a mutually agreed upon psychologist at the PPT meeting which is ordered to be held prior to the next hearing date. If the parties are not able to agree on a psychologist, the selection of the psychologist will be made by the hearing officer at the next scheduled hearing date. This counseling component is a hearing officer order based on the recommendation of the Learning Incentive Center that counseling be provided to the Student so that the Learning Incentive is better able to provide an appropriate program for the Student, and based on the evidence submitted and testimony presented at the hearing.*
- 3. The Student shall have a comprehensive psychiatric evaluation by Dr. James Black while the hearing is proceeding. The psychiatric evaluation is currently scheduled for September 2, prior to the date that Dr. Black is scheduled to testify in this hearing. The Student and Parent shall fully comply with this evaluation which is ordered by the undersigned hearing officer. The Student and Parent shall sign all releases for Dr. Black to obtain all necessary background and history of the Student.*
- 4. The parties are hereby ordered to hold a PPT meeting prior to the next scheduled hearing date of September 8. The PPT meeting shall be scheduled at a mutually agreed upon date/time, and both parties shall make all reasonable efforts to schedule the PPT on or before August 29. If either party is failing to cooperate in scheduling this hearing officer ordered PPT, notice should be submitted to the undersigned hearing officer, and the date/time of the PPT will be*

*ordered by the undersigned hearing officer. The PPT shall attempt to select a mutually agreed upon psychologist for the counseling to be provided in accordance with this interim ruling. In addition, the PPT shall consider the placement/credit status of the Student to assist the Learning Incentive Center in determining the appropriate coursework and instruction to provide to the Student. If the parties are unable to agree to the placement/credit status of the Student at the PPT, the Student's coursework/instruction at the Learning Incentive Center shall be based on the last information received by the Board as to the Student's credit status and placement.*

*5. Both parties shall provide all reasonable requests for documentation and releases to the other party. If a party refuses to provide such documentation or releases, a request for a hearing officer order regarding the release of the information should be submitted forthwith.*

The Board complied with the stay put order placing the Student at the Learning Incentive, although the Student did not attend many of the scheduled days at the stay put placement.

The Parent did not comply with the interim ruling that the Student shall undergo the psychiatric evaluation on September 2. On September 3, the Parent requested that the September 9 hearing date be postponed. That request was denied, although the starting time of the hearing date was changed so that the parties would have sufficient time for argument on all preliminary issues.

On September 8, the Parent requested a second due process hearing regarding issues of a free appropriate public education for the 2003-04 school year, issues already pending in this hearing. The second due process hearing request was assigned to Hearing Officer Christine Spak.

On September 9, the Parent did not appear at the hearing. The Board requested that a dismissal with prejudice be entered, which was denied. After the hearing on September 9 and as a courtesy to the Parent, the matter was not dismissed, but was continued to the next scheduled hearing date of Monday September 15 at 9 a.m. The Parent was sent a notice which indicated that the matter would be dismissed with prejudice, or a final decision would be issued based on the facts presented, unless she appeared at the next scheduled hearing date. Furthermore, the Parent's Motion to Withdraw the Hearing Without Prejudice submitted late in the evening on September 8, and received on September 9, was denied. Only vague assertions of "duress" and extenuating circumstances were given and no good cause was shown to allow for a withdrawal of the action after three days of testimony. This request to withdraw the hearing was submitted at the time that the Parent was filing a second request for hearing, and was incongruous. On the one hand, the Parent was seeking to withdraw a pending hearing as she claimed she was unable to proceed due to "emotional duress" and other extenuating circumstance. [Exhibit HO-2] At the same time, she filed a new request for hearing.

The Board's Request to Consolidate the case filed by the Parent on September 8 [Case No. 03-285] with this case was granted, subject to the other appointed hearing officer's granting of a separate Motion to Consolidate in Case No. 03-285. Subsequently Hearing Officer Christine Spak granted the Board's Motion to Consolidate Case No. 03-285 and dismissed Case No. 03-285. Therefore, the issues submitted in the request for hearing in Case No. 03-285 were consolidated in this case.

As the Parent had not complied with the Interim Ruling ordering the psychiatric evaluation to be conducted on September 2, a second Interim Ruling was issued on September 9, ordering that the Student shall have a comprehensive psychiatric evaluation by Dr. James Black prior to Monday September 15. The Student and the Parent were ordered to fully comply with this evaluation so that a comprehensive evaluation could be used in drafting and reviewing an appropriate program for the Student. The Student and the Parent were ordered to sign all releases for Dr. Black to obtain all necessary background and history of the Student. It was further ordered that the Student shall be evaluated by Dr. Black on Thursday, September 11 at 1 p.m., unless the parties mutually agreed upon another date and time for this evaluation.

On September 10 the Parent filed a request to recuse the hearing officer, which request was denied as the hearing officer has no bias or personal or professional interest which conflicts with the objectivity in the conduct or disposition of the hearing. The hearing continued on September 15 and 16.

On September 23, the hearing convened, but the Parent reported that she was experiencing chest pains. The hearing concluded immediately so that the Parent could see her physician. The Parent declined on offer to summon an EMT to the hearing room.

On the eighth hearing date on September 29, the matter continued, and the Parent provided a letter from the doctor regarding the September 23 symptoms which noted that the Parent had been experiencing anxiety symptoms. [Exhibit HO-5A]

Immediately prior to the last hearing date, upon the request of the Parent, the State Department of Education issued a subpoena duces tecum to Attorney Lawrence Campana; Attorney Howard Klebanoff; Linda Blessing of the Law Office of Howard Klebanoff; Attorney Peter Boorman, Town Attorney for the Town of Newington; Attorney Ann Byrd, Corporation Counsel for the City of Hartford; Attorney Joan Libby, Department of Human Resources for the Manchester Board of Education and David Gowell, Assistant Superintendent, Newington Public Schools. The Board filed a Motion to Quash the subpoenas as the testimony and documents were irrelevant, the subpoenas were overbroad, the information was subject to the attorney-client privilege and the subpoenas were aimed at annoying and harassing the Board.<sup>1</sup> The Motion to Quash was

---

<sup>1</sup> In response to assertions that the Parent was not receiving documents requested, as part of the initial Interim Ruling of August 22, 2003, both parties were ordered to provide all reasonable requests for documentation to the other party. If a party refused to provide such documentation, it was ordered that they must submit a request for a hearing officer order regarding the release of the information. Therefore, it was

granted in part, except as to Attorney Klebanoff and Linda Blessing, as they were being subpoenaed by a former client, who was seeking their testimony. The ruling on quashing the subpoena as to Attorney Joan Libby from the Manchester Board of Education, the former employer of Martha Hartranft, was reserved until after an *in camera* review of the documents provided by Attorney Libby in response to the subpoena. After the *in camera* review documents from the personnel records were copied and provided to the Parent.

On October 9, the last hearing date, the Parent's witness, Dr. Vivian Cross, failed to appear at the hearing so that the Board could complete its cross examination in violation of the subpoena issued by the Board on October 2. The Board's attorney submitted a facsimile received on the morning of October 9, the hearing date, in which Dr. Cross refused to appear at the hearing on that date due to "out-of-state family and business matters that need [her] undivided attention" and further stated that she would be returning "sometime during the third week in October." The Parent was requested to contact Dr. Cross to attempt to secure her testimony on that date. Dr. Cross did not appear, despite the requests, and despite the fact that she continued to be under subpoena, so the Board's Motion to Strike Dr. Cross' testimony in its entirety was granted.

The Parent's witnesses were Shauna Goodwin, case manager from Catholic Family Services; the Mother; Philip Piazza, Board assistant principal; Sally Swanson, Board guidance counselor; Vivian Cross<sup>2</sup>; Attorney Howard Klebanoff; and Joan Libby, Department of Human Resources for the Manchester Board of Education.

The Board's witnesses were Dena Tompkins, Board department coordinator for special education; Attorney Ann Bird; Constance Horvath, former Board special education supervisor; Attorney Lawrence Campana; and Martha Hartranft, Board special education and pupil services supervisor.

On October 9, the last day of the hearing, the Parent and the Board's attorney jointly requested that they have one week to file a brief/closing arguments. To accommodate the request to address the issues in this hearing and because the Parent was *pro se*, parties were given more than a week [11 days], until October 20, to file briefs/closing arguments. The Board filed a brief. No brief and/or closing argument was received from the Parent.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

---

unreasonable for the Parent to subpoena Board documents on the last day, without any indication prior to that a request was made to which the Board had not complied.

<sup>2</sup> The testimony by Vivian Cross was stricken, as the Board was not given the opportunity to cross examine this witness.

**SUMMARY:**

The 17 year old Student has not attended school on a regular basis since November 2001, when a close friend died. For a portion of the time since November 2001, the Student attended a private school, has acquiesced to intermittent tutoring, and been placed at a one-one-one tutoring center. The evaluators concur that the Student is depressed, but the Parent failed to consent to share information from the mental health providers and would not consent to the Board staff contacting any medical or mental health providers.

The Student has been identified as eligible for special education and related services as seriously emotionally disturbed. The Board requested that the Student undergo an evaluation by a psychiatrist, as additional information was necessary to program appropriately for the Student. The Parent has sought reimbursement for counseling, tutoring and placement for the Student at an academically challenging private school.

The parties entered into a settlement agreement in March 2003, but the Parent, by requesting reimbursement for services prior to that date, seeks to void this agreement.

The Parent's acrimony for the Board and its staff was palpable at the hearing, and the record and testimony were replete with references to the Parent's hostility towards the Board.

**FINDINGS OF FACT:**

1. The Student is 17 years old and has been identified as eligible for special education and related services as Emotionally Disturbed. [Exhibit B-78]
2. The Student attended Mooreland Hills, a private school, for ninth grade. The Student's grades at Mooreland Hills were in the C range, with an above-average grade in art. [Testimony Sally Swanson, Exhibit B-83] The Board guidance counselor was aware that the Student had been active at Mooreland Hills, and had given a speech as class president at Mooreland Hills School [Testimony Dr. Swanson]
3. In fall 2001, the Student initially attended Northwest Catholic School from the time school began until she left Northwest Catholic on or about October 18. At Northwest Catholic, the Student had a high absentee rate. Northwest Catholic did not award credit to the Student for the work completed in the fall 2001. [Testimony Dr. Swanson] The Student wanted to go to Newington High School, and had a negative experience at Northwest Catholic, so the Parent agreed to the Student attending Newington High School. [Testimony Parent] From the outset, the Parent reported that the Student's encounters were not pleasant at Newington High School. [Testimony Parent]
4. The Student enrolled at Newington on October 18, 2001, near the end of the first marking quarter. [Testimony Dr. Swanson]

5. The Board staff had great concern when the Student entered from Northwest Catholic, as they did not have a transcript. The Board guidance counselor made diligent efforts to attempt to obtain transcripts and coursework from Northwest Catholic, but this seemingly went on for weeks. Information was received from Mooreland Hills, but the Board guidance counselor could not appropriately program for the Student without information from Northwest Catholic. [Testimony Constance Horvath]

6. The Student's first week at Newington High School was fine, but absences and tardiness began soon after. Around the third week of November, the Student's friend died, and the Student did not attend school after that. The guidance counselor had a conversation with the Parent regarding the death of the Student's friend, and the Parent indicated that the Student was receiving counseling. [Testimony Dr. Swanson]

6. Around Thanksgiving 2001, the Parent reported that the Student was distressed, and contacted the school. The Parent was concerned about the Student, and the Board guidance counselor indicated that homebound tutoring was an option. [Testimony Dr. Swanson]

7. On December 3, 2001, the Parent called regarding the Student's absences from school. The guidance counselor indicated to the Parent that documentation from a medical provider would be required to establish the Student's inability to attend school, so that homebound tutoring could be set up. [Testimony Sally Swanson, Exhibit B-5] The Parent provided a letter from Douglas G.J. Van Veldhuisen, who identified himself as a Marriage and Family Therapist, which indicated that the Student is dealing with "dieresis"<sup>3</sup> and noted that "it would be in [the Student's] best interests to receive short term home bound tutoring . . ." [Exhibit B-6]

8. The guidance counselor faxed a form to the Parent to be filled out for a request for short term homebound instruction by a licensed physician to verify the need for homebound instruction. [Testimony Sally Swanson, Exhibit B-7] On December 12, 2001, a physician submitted a letter, not on the Board's form for homebound instruction, which indicated that "[d]ue to medical reasons, I feel that it is necessary that [the Student] have a home tutor for her high school work. I will re-evaluate the situation in mid January 2002." [Exhibit B-9] Coincidentally, on the same date that the doctor was indicating that the Student required homebound tutoring, the Student came into school to pick up her homework. She appeared content, and indicated that she was seeing a therapist and a physician. [Testimony Dr. Swanson]

9. In January 2002, the Parent's request for homebound instruction was authorized. [Testimony Ms. Horvath] This occurred after a physician noted that the Student's diagnosis was depression, and that she may need homebound instruction for two months. [Exhibit B-11]

---

<sup>3</sup> It was confusing that Mr. Van Veldhusien used the term of "dieresis" as the label for what the Student was experiencing, as that word is defined as: "a mark placed over a vowel to indicate that the vowel is pronounced in a separate syllable." *Merriam-Webster's Collegiate Dictionary, Eleventh Edition*

10. Once homebound tutoring was approved, the Board undertook numerous good faith attempts to provide tutoring to the Student in February. [Testimony Ms. Horvath] School staff later learned that the Student had enrolled as a residential student at Stoneleigh Burnham School in Greenfield Massachusetts. [Testimony Dr. Swanson, Ms. Horvath, Ms. Tompkins and the Parent; Exhibit B-34] The Student enrolled at Stoneleigh Burnham near the beginning of February 2002, and attended that school until the end of April. [Testimony Parent]

11. The Student was not identified as eligible for special education at this time. The tutoring was continued at the time the Student was not enrolled at Newington High School, and attending Stoneleigh Burnham, as a good faith effort to support the Student because she was out of school from the end of November 2001 through January 2002. The Student did not return to Newington High School during the 2001-2002 school year as she remained at Stoneleigh Burnham. The Student was tutored by the Board at that time over the weekends, when the Student returned from the residential program. [Testimony Ms. Horvath] Although the Board was under no obligation to provide homebound tutoring to the Student, as she was no longer enrolled at the Board schools, the Board nevertheless attempted to provide homebound tutoring to the Student throughout the remainder of the 2001-2002 school year at various times to accommodate the Student's schedule. [Testimony Dr. Swanson, Ms. Horvath, Ms. Tompkins, Parent, Exhibits B-30-37, B-45]

12. The Parent contacted the Board in June 2002 to inform Board staff that the Student would be attending the Board High School for the next school year. [Testimony Ms. Swanson; Exhibit B-47] It was very difficult for the Board to secure transcripts from Stoneleigh Burnham when the Parent indicated that the Student was returning to the Board High School. [Testimony Ms. Horvath]

13. Based on the credit information that the Board received, the transcript information and records available, the Board set up a schedule for the Student. [Testimony Dr. Swanson] The Parent complained about the Student's courses and credits, stating that the Student should be in more advanced classes, and should have more credits awarded to her for the work at the other schools than what was indicated in the documentation sent home. [Testimony Parent, Dr. Swanson, Ms. Horvath; Exhibit B-48]

14. On September 19, 2002, the Board Superintendent of Schools responded to the Parent's concerns regarding the Board's awarding credits for the Student's attendance at other schools. The Board Superintendent noted that the Board needed additional documentation for the third trimester of the Student's attendance at Stoneleigh Burnham to award credits for the Student's attendance at that school, and reiterated that credit for an academic year is provided by the student's last school of attendance. [Exhibit B-49]

15. In September 2002, the Parent continued to address her concerns about the Student's credit status, and whether the Student should be in more advanced courses in her communications with the Board. [Exhibit B-50]



16. The Board clarified the status of the tutoring during the prior 2001-2002 school year in October 2002, noting that the tutoring provided to the Student by the Board was done in good faith, and was not an educational obligation. No sufficient documentation was ever provided by the Student that she was depressed, and the Student was enrolled in and attending a private school in the spring 2002. [Testimony Ms. Horvath, Exhibit B-51]

17. On October 8, 2002, a Planning and Placement Team [PPT] meeting was held to consider whether the student should be referred for evaluation to determine eligibility for special education and related services. At the PPT, the Parent inquired as to what the Board was going to do to compensate the Student, and the Parent again brought up the issues of credits for work purportedly completed at other schools, and requesting that the Student be placed in upper level courses. [Exhibit B-52] The Board members who attended the PPT meeting could not appropriately communicate with the Parent at this PPT, as the meeting was so contentious. The Parent's tenor at the meeting was loud and disrespectful, and was escalating. No decisions were made at the meeting, due to the contentious nature of the Parent, who said she was seeking retribution, according to the high school department coordinator of special education who was chairing the meeting. Out of the approximately 1000 PPT meetings attended, the coordinator has only had to table a meeting one or two times in the past. The Parent never discussed concerns regarding the Student's emotional state at this PPT. [Testimony Dena Tompkins] The PPT meeting was tabled, and rescheduled as a system-wide PPT, with the Board supervisor of special education in attendance. [Testimony Ms. Tompkins, Mr. Horvath]

18. The Board supervisor of special education discussed the PPT process with the Mother and attempted to de-escalate the Parent's annoyance and anger prior to the next PPT. [Testimony Ms. Horvath]

19. At the October 31, 2002 PPT meeting the team agreed that the Student should have a full evaluation, and discussed that it would consist of an educational evaluation and a psychological evaluation. The Board members of the PPT also indicated that information from the other schools attended was still needed to design a program for the Student. The Board offered to have a school psychologist conduct the evaluation, but the Parent requested that independent outside evaluators complete the evaluations. The Parent indicated that she would propose which evaluators should be used, but that she didn't have the names on the date of the PPT meeting. [Testimony Ms. Horvath, Exhibit B-58]

20. The Board did not delay these agreed upon evaluations. The Board director did explain the process of evaluations to the Parent. The Parent did not contact the Board director with her list of requested evaluators in a timely fashion. In addition, one of the evaluators selected by the Parent, Dr. Rooney, had limited appointment availability as he comes to Connecticut only one day per month. Because of this limited availability, the Student was not evaluated by Dr. Rooney until January 10, 2003. [Testimony Ms. Horvath, Exhibit B-60]

21. While the evaluations were pending, the Board assistant principal had been attempting to set up tutoring for the Student, and to schedule a math test to provide the

Student an opportunity to test out of Algebra II. The Student continuously cancelled the meetings set up for the Student to take the Algebra II test for a variety of reasons. Tutors also attempted to set up timeframes for tutoring directly with the Parent but she thwarted the process by not responding and/or not being home when the tutors arrived to tutor the Student. [Testimony Mr. Piazza, Ms. Tompkins, Ms. Horvath] During a telephone conversation that Mr. Piazza was having with the Student regarding the Algebra II test and tutoring, he heard the Parent in the background telling the Student not to talk with Mr. Piazza. The Parent spoke with Mr. Piazza and told him that she did not want Mr. Piazza to talk to the Student because she didn't want to have to call him as a witness at a hearing. [Testimony Parent, Mr. Piazza] The Parent admitted that she prohibited any staff member to speak with the Student directly. [Testimony Parent; Exhibit B-66]

22. The PPT reconvened on February 6, 2003, as the evaluation process was not moving at a pace with which the Board was comfortable. [Testimony Ms. Horvath] The PPT was scheduled to address the status of the evaluations, and to attempt to plan a program for the Student. At the PPT the Board agreed to an independent psychiatric evaluation by Dr. Almai. The Board recommended an educational evaluation by the Board staff, and recommended the alternative 2:30 p.m. to 4:30 p.m. program at the Board school for the Student. At the PPT, the Parent discussed the Learning Incentive private program that the Student had visited and wanted to pursue. The Parent left the PPT meeting, indicating that she would consider the after hours program, and subsequently contacted the Board assistant principal to decline that program. The Board members of the PPT felt that the after school program would be an appropriate way for the Student to reconnect with the school, to establish relationships with staff and to be able to participate in extracurricular activities. [Testimony Ms. Horvath, Exhibit B-63]

23. At each of the PPT meetings, the Parent was provided procedural safeguards. [Testimony Ms. Tompkins, Parent; Exhibits B-63, B-58, B-52]

24. A couple of days after the February 2003 PPT meeting, the Parent requested a due process hearing [Case No. 03-055], claiming that the Board did not provide an appropriate program for the Student. [Testimony Ms. Horvath]

25. In March 2003, the Parent and the Board entered into an Agreement addressing the placement of the Student, the Student's credit status and the selection of an independent evaluator to complete the educational evaluation. In accordance with this agreement, a PPT meeting would be held 45 days after the Student's initial placement at the Learning Incentive to consider the Student's identification as a special education student and placement at the Learning Incentive. The agreement also provided for a summer program for the Student at the Learning Incentive. [Testimony Ms. Green, Ms. Horvath, Attorney Campana, Attorney Klebanoff; Exhibits B-69, P-3] The Agreement expressly provided that:

*This agreement is intended and shall release the Board, its past or presents officers, members, agents and employees either in their individual or official capacities from any and all claims, demands, causes of action, fees and liabilities,*

*whether known or unknown, which the Parent ever had or now has against the Board arising out of or in connection with [the Student's] entitlement to special education programming and related services that the Parent had or may have up through the signing of this agreement pursuant to state and/or federal law including Connecticut General Statutes, Sec. 10-76, et seq., the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act.*

*The Parent and Board acknowledge that they have read this Agreement in its entirety, understand all its terms and conditions, have consulted with legal counsel and knowingly and voluntarily assent to all the terms and conditions contained herein.*

*The parties hereto agree that this Agreement constitutes the sole and complete agreement of the parties. [Exhibits B-69, P-3]*

26. At the time the Parent entered into the settlement agreement she was represented by Attorney Howard Klebanoff, and his assistant Linda Blessing. [Testimony Attorney Klebanoff, Attorney Campane] Attorney Klebanoff represented the Parent solely in the Agreement, and did not represent the Parent in any subsequent due process filings. [Testimony Attorney Klebanoff] The Parent's testimony at the hearing that she did not agree with the terms of the settlement, or that the final settlement included additional handwritten notations were not credible. [Testimony Parent] The record reflects that an agreement was signed and that the Parent was sent a copy of the final agreement. [Exhibits B-69, P-3, B-100] It is found that the Parent knowingly and voluntarily entered into the settlement agreement, with the benefit of advice of counsel.

27. The issue of the credit status for the Student was one of the issues resolved in the settlement process, through the negotiations of Attorney Campane and Attorney Klebanoff's assistant. [Testimony Ms. Horvath]

28. The Parent agreed that she settled for the program at the Learning Incentive in March 2003, as it was a temporary means to help the Student get back on track. [Testimony Mother]

29. The due process hearing requested in February 2003 [Case No. 03-055] was dismissed on March 25, 2003, as the Parent did not appear at the hearing. The Board's counsel appeared at the hearing because the Parent had not yet filed the Notice to Withdraw the case. [Testimony Attorney Campane, Exhibit B-71] The fact that the Parent did not appear at the hearing, as the matter was settled, lends additional credibility to the conclusion that the Agreement entered into in March 2003 settled the claims arising on or before the date of the agreement between the parties.

30. At the outset of the Student's placement at the Learning Incentive there were attendance problems. Once the agreement was signed, transportation was put into

place for the Student. The Parent was concerned that the van driver did not wait for the Student. The van driver did wait 5 to 10 minutes, but the Student was not ready. By April 2, 2003, the supervisor of special education notified the Parent in writing that the Student should attend the Learning Incentive program regularly, in response to attendance problems at this Parent-requested placement. The supervisor also noted that the van driver cannot wait for the Student, if she was not ready and waiting for the van. [Testimony Ms. Horvath, Exhibit B-72]

31. Upon receipt of the report on April 11, the supervisor of special education sent the Parent a copy of the psychiatric evaluation report from Dr. Ahmad Almai, along with a consent to share the report with the staff at the Learning Incentive. Dr. Almai was one of the evaluators agreed to by the Board and the Parent. His report was sent to the Board, as the Board had paid for this evaluation. [Testimony Ms. Horvath, Exhibit B-72]

32. The Parent did not consent to sharing Dr. Almai's report with the Learning Incentive. In addition, the Parent failed to consent to share Dr. Almai's psychiatric report with any of the members of the PPT team. [Testimony Parent, Ms. Horvath] The Parent was concerned about the conclusions in Dr. Almai's report regarding the Student's poly-substance abuse. The Parent noted that the psychiatrist's conclusions are based on the psychiatrist's feeling that any use is abuse, including "casual use." The Parent does not believe the Student is "in danger in any of these areas" of alcohol and drug use. [Testimony Mother]

33. Dr. Almai diagnosed the Student as having a major depressive disorder, generalized anxiety disorder, post-traumatic stress disorder, poly-substance abuse, and disruptive behavior. His educational recommendations include a modified school program in addition to providing extra support at school, and in the event that a modified school program is not successful, he recommended home schooling with the ultimate goal of having the Student return to a regular education program. Due to the interventions that have been tried with the Student, it was Dr. Almai's opinion that the Student's symptoms cannot be treated without medication. He also recommended that the Student attend an outpatient substance abuse treatment program, and if that was not successful, he recommended that voluntary services through the legal system be tried. [Exhibit B-74]

34. Dr. Janet Schragger's educational evaluation was completed on or about April 30, 2003. She found that the Student has the ability to complete school work at a level consistent with her current grade, and can achieve at least as an average student. Dr. Schragger pointed out several areas in mathematics which need extra attention, especially fractions and decimals. Dr. Schragger also recommended that the Student start planning for college or engage in vocational/career planning. [Exhibit B-75]

35. The PPT reconvened on May 19, 2003. At this PPT meeting, the staff at the Learning Incentive expressed frustration with the Student's inconsistent attendance. The staff member from the Learning Incentive discussed that the Student was absent

seven of 21 days, and noted that the Student had tremendous learning gaps, especially in math. At this PPT meeting, the supervisor of special education discussed the conclusions of Dr. Almai's report, as the Parent would not consent to share the evaluation with the PPT. This was atypical, since the members of the PPT, including the school psychologist, must have an opportunity to review the report and are routinely given an opportunity to do so. To appropriately program for the Student, the Board members of the PPT must have full access to the evaluative data. [Testimony Ms. Horvath, Exhibit B-78]

36. The Parent objected to the content of Dr. Almai's evaluation, including the discussion of substance abuse contained therein. At the May PPT, the supervisor of special education was limited in what information could be shared with the team. She shared that Dr. Almai's primary finding was major depressive disorder and anxiety. That finding, coupled with the Student's failure to attend school, was information that the team needed to move toward a Serious Emotional Disturbance [SED] identification. The PPT agreed that the Student should be identified as eligible for special education and related services under the SED designation. The supervisor noted that Dr. Almai's report recommended that a modified program should be attempted, and outpatient therapy be provided to the Student. The educational evaluation by Dr. Schrage was also reviewed at the PPT, which confirmed that the Student had no specific learning disability. [Testimony Ms. Horvath, Exhibit B-78] The Parent agreed with the Student being eligible for special education as Seriously Emotionally Disturbed. [Testimony Parent] The Student's IEP was drafted in conjunction with the staff at the Learning Incentive, and based on the Student's strengths and weaknesses. [Testimony Ms. Tompkins]

37. Shortly after the May 19 PPT meeting, the Board was notified by the Learning Incentive that it could no longer meet the needs of the Student, and could not accommodate the Student. Because the Learning Incentive was no longer available for the Student, another PPT was scheduled to discuss the Student's placement. [Testimony Ms. Horvath]

38. At the beginning of June, the Board's supervisor of special education retired, and the new supervisor made diligent attempts to work with the Parent to resolve the Student's status and programming. The supervisor had close to 30 telephone conversations with the Parent, some lasting more than one hour. The Board had extreme difficulty scheduling the June PPT meeting due to the Parent's work schedule. The Board tried to schedule the PPT as soon as the Board was notified that the Student was no longer attending the Learning Incentive, but, despite these diligent efforts, the PPT meeting could not be held until June 10. It was important to hold the meeting in June, as the Student was dismissed by the Learning Incentive, and the Board was eager to obtain consent for Dr. Black's evaluation. The last IEP of May 19, 2003 which was based on the settlement agreement, provided for placement at the Learning Incentive, so it was essential that this PPT proceed as the Student's placement had changed. [Testimony Ms. Hartranft]

39. According to the Learning Incentive staff, the Student was dismissed from the program, as lack of attendance was an issue, the Student's needs could not be appropriately met, and the staff had a great deal of difficulty in working harmoniously with the Parent. [Testimony Ms. Hartranft]

40. The PPT convened in June 10, 2003. Again at this PPT, there were disputes regarding the Student's credit status. At this point, the Learning Incentive notified the Board that they were unable to provide services to the Student, as the staff at the Learning Incentive said it was beyond the scope of services that it could handle. At this PPT the psychiatric evaluation by Dr. Black was requested as Dr. Black could make positive, insightful and productive recommendations to move the Student's program in a positive way. The PPT also recommended 60 total hours of tutoring over the summer to address subjects in which credit had not yet been awarded. [Testimony Ms. Tompkins, Exhibit B-82]

41. The June 10, 2003 PPT was an extremely difficult one. The Parent interrupted frequently and would not stop talking. It was difficult to follow the agenda. Of the thousands of PPTs the supervisor of special education has chaired over the years, she had never encountered a Parent who would so challenge the chair of the PPT, as at the PPT on June 10. [Testimony Ms. Hartranft]

42. The Board members of the PPT recommended the evaluation/consult by Dr. Black as additional information was required to plan appropriately for the Student. Dr. Almai's report had omitted information at the Parent's request. Furthermore, the team did not have access to the evaluative report to appropriately plan a program for the Student. In addition, Dr. Almai's recommendations of an alternative setting and the homebound tutoring were attempted, but were unsuccessful, so additional recommendations were needed. [Testimony Ms. Hartranft] The Parent refused to consent to the Dr. Black evaluation. [Testimony Ms. Hartranft, Parent]

43. In June 2003, the Board staff consulted with Dr. Black who shared recommendations and impressions with the team. [Testimony Ms. Hartranft, Dr. Black] At that time, Dr. Black had limited information since he had not evaluated the Student, but had no reason to disagree with the assessment that the Student was depressed. Dr. Black opined that it was very important for the Student to return to school as soon as possible in the public school setting. Dr. Black noted that a psychiatric consult/evaluation was warranted because he did not have enough information to draw conclusions as to the specific reason for depression and why the Student did not attend school. He needed to understand the Student's life experience, what happened in the family. He couldn't make definitive conclusions and recommendations without an evaluation of the Student. [Testimony Dr. Black]

44. At the hearing, Dr. Black provided competent, professional, and reasoned recommendations and observations. Dr. Black is an experienced psychiatrist who has been in practice 36 years. He has consulted with local boards of education since 1968, and conducts three to seven consultations per week. His conclusions were

credible and were based on the information which was provided to him by the Board and through his telephone conversation with the Parent. At the hearing, Dr. Black noted that more information than what was included in Dr. Almai's report was required to fully understand the Student and make definitive program recommendations. Dr. Almai included minimal family history in his report, noting that:

*[The Student's] parents were separated when she was 2 years old. She has two other half siblings and her mother has one foster child. There is family history of depression. (Other details of family history are not included at the request of the family.)* [Exhibit B-74, parenthetical in the original]

45. Dr. Black testified that family history is important in assessing adolescents, as they are in a developmental state, still strongly tied to issues, conflicts and problems within their family. Adolescent's self-concepts usually have strong components in depression that emanate from the family. Dr. Black noted that family history is crucial to how an adolescent sees themselves. According to Dr. Black, the Student's self esteem issues relate to the Student's history of rebellion with the Parent. Dr. Black noted that the Student also has experienced feelings of rejection from her biological father, and so the death of her male friend in November 2001 had a devastating impact on the Student and her state of well-being. This loss was devastating for the Student, and that major blow was the major precipitating event that resulted in the Student's failure to attend school. [Testimony Dr. Black]

46. Dr. Black testified that the current Individualized Education Program [IEP] for the Student is appropriate for the Student, based on what he knows at this time. The Student is in a state of depression and regression which leads to a profound self esteem deficiency. The Student needs to return to normal life which includes school attendance, relationships with peers and homework expectations. This will help the Student mobilize her movement away from grief, and improve her self esteem. [Testimony Dr. Black]

47. At the hearing, Dr. Black recommended that the Student start in very small ways to return to the school environment, by, for example, adding one class at a time. [Testimony Dr. Black]

48. Dr. Black also recommended that the school psychologist at the high school provide counseling, as is recommended in the IEP, as she has the background and experience to work with the Student. [Testimony Dr. Black]

49. Dr. Black further advised that all adults in the Student's life should be giving her the same message regarding the expectation that she attend school. Discussions regarding college plans, or attending college interviews at this time creates unreasonable expectations, the psychiatrist noted. Dr. Black also advised that the Student should not be awarded credits she did not earn, as it doesn't communicate the appropriate message that she must attend school. [Testimony Dr. Black]

50. Dr. Black confirmed that the Student needs to be evaluated by a consulting psychiatrist to determine how the Student's return to school should be implemented. Through his evaluation, Dr. Black could also determine if and when certain incentives should be offered to motivate the Student. Dr. Black cautioned, however, that incentives such as a laptop computer could contribute to the Student staying at home. Dr. Black could also determine how the cultural component of the Student's pride in being an African-American woman could be used to foster healthy self confidence. Furthermore, as the other recommendations of previous evaluators have not been successful, as the Student continues to avoid attending school, further evaluation is warranted. Dr. Black testified that he must speak with the Student to make appropriate program recommendations. Dr. Black did not recommend that the Student be placed in a therapeutic out of district placement, as the Student's psychological problems differ from the type of problems of the students placed in the therapeutic settings. Dr. Black also did not recommend that the Student be placed at a private school, as they would not have the special education supports, coupled with academics, that the Board high school has. [Testimony Dr. Black]

51. At the next PPT meeting on July 7, 2003, the team attempted to address the program for the next school year based on the recommendations received from their informal consult with the psychiatrist. The Board members of the team recommended that the Student return to school, based on the information they had received from Dr. Black. The program offered included academic support center for 3 ¼ hours per week (one period per day) to support the Student with academic issues; 60 hours of summer tutoring in math, U.S. History and French, to complete credits and move forward into the next level of courses; and weekly counseling. The Student would have the opportunity to participate in extracurricular activities in this program. The PPT was scheduled to reconvene prior to the opening of school to address credits, determine which courses would be provided for the school year, and to assess the level of emotional stability to determine how the day would be scheduled for the Student. [Testimony Ms. Tompkins, Ms. Horvath; Exhibit B-85]

52. At the July 7 PPT, the team discussed the fact that the tutors had not yet commenced tutoring the Student. The Parent was offered an opportunity to select the tutors, which would be found acceptable if the tutors met the appropriate standards. At the PPT, the Board supervisor received names and phone numbers of the tutors from the Parent. The supervisor understood from the Parent that all of the tutors were certified, and therefore, to go forward with the summer tutoring by these tutors, the Board merely needed to receive applications and have the tutors go through the fingerprinting procedure. But when the supervisor contacted the tutors, none were certified in the areas that they were to tutor. In the summer, the Board supervisor noted it is essential to have certified tutors, as there are no department heads with whom the tutors can consult. Therefore, the Board supervisor contacted the Parent on July 10 to inform her that certified tutors from the Board staff were arranged for the summer tutoring. The Board supervisor subsequently contacted the Parent on July 21 as to which tutors were assigned to tutor the Student. The Parent was directed to contact the tutors as soon as possible. The Parent never contacted the tutors. These



tutors were ready to proceed with the tutoring, to implement the 60 hours of summer tutoring in accordance with the IEP. The Parent contacted the Board supervisor, indicating that she did not want the Board's tutors, and that she'd hire her own tutors. [Testimony Ms. Hartranft; Exhibits B-89, B-101]

53. The Board had attempted prior to this time to also offer the Student opportunities to obtain credit in Algebra II and English 10, but the Student did not comply with the requirements to obtain credit. [Testimony Ms. Tompkins]

54. The hearing request was filed shortly after the July 7 PPT meeting. [Testimony Ms. Hartranft, HO-1]

55. When the Parent requested a hearing, the Board also requested a hearing for the evaluation by Dr. Black [Exhibit HO-2] The Board also sought an order that Dr. Black be afforded the opportunity to review all prior evaluations and the Student records completely, and further that the PPT members be able to receive all information from the prior school placements and all of the Student's providers to appropriately program for the Student. [Testimony Ms. Hartranft]

56. While the Student's IEP was appropriately addressed as the Student's strengths and weaknesses were known to the Board at the time in May 2003, it was anticipated that the goals and objectives would be revised when more information was received regarding the Student shortly before the fall quarter began. The Board members of the PPT did not know the level of the Student's anxiety and depression and felt that they would make the additional program recommendations and tailor the look of the program once they had all the pieces of information with the psychiatric evaluation by Dr. Black. Dr. Black recommended that the Board hold off for the summer, and see where the Student is at the time school commences to determine the additional program components at that time. [Testimony Ms. Tompkins]

57. The PPT convened on August 29, 2003 to implement the stay put order. The members of the PPT, including the Parent, agreed that Dr. Schrage would provide counseling to the Student in accordance with the stay put order. The Board offered to provide the Learning Incentive program for the Student for four days, rather than the stay put order of three days, but the Parent preferred 3 days of programming. The tone of the PPT deteriorated, and the Parent pressed for additional programming for the 2003-2004 school year, including physical education, therapeutic horseback riding, additional tutors and a laptop computer. The Parent would frequently interrupt and would continue to speak, so the PPT was continued to another date. [Testimony Ms. Hartranft, Exhibit B-93]

58. At the next PPT on September 5, the Board attorney attempted to meet with the Parent to try to come up with an agreement regarding the agenda. The Parent was allowed to speak for 20 to 25 minutes at the beginning of the PPT. At this PPT, the Parent continued to request a laptop computer and various therapies for the 2003-2004 school year. By this date, the Parent had not complied with the Interim Ruling

which ordered the psychiatric evaluation of the Student during the pendency of the case. No evaluative data was provided to support the Parent's requests, and, as of this date, Dr. Black did not believe that these suggested services were necessary. All of these requests were for programming and related services for the 2003-2004 school year, which is an issue presented to this hearing for adjudication. [Testimony Ms. Hartranft, Exhibit B-94]

59. As of the PPT meeting on September 5, 2003, the Student had attended the stay put placement only two times. At that time, the instructor from the Learning Incentive reported that the Student was making good progress. After that, however, the Student only attended the stay put placement two additional days, as of October 6. [Testimony Mother]

60. The Student's program is still in the initial stages because the Board has not had a chance to work with the Student to find out her needs. The Board continues to need to understand the Student's home situation and understand her other needs and concerns. [Testimony Ms. Hartranft]

61. While the Parent testified and questioned Board witnesses regarding the lack of cultural diversity in the Board's program, the Board was not given an opportunity to determine how such issues could be integrated into the curriculum, and help motivate the Student, as the Student has not been attending the Board schools. [Testimony Ms. Tompkins] The Board does, however, include cultural diversity in courses that the Student would take in the general curriculum. [Testimony Ms. Tompkins]

62. The testimony presented by Board witnesses confirms that the Board staff has experience and understanding in working with a diverse student population, and is sensitive to the issues involved in programming for cultural diversity. The Parent's allegations of the Board staff's racial animus are unfounded. No evidence supports any claim that the Board discriminated against the Student and the Parent in any of their actions. [Testimony Ms. Tompkins, Ms. Hartranft]

63. The Parent's relationship with the Board further deteriorated in the summer of 2003, as the Parent characterized their relationship during testimony as "boundaries were drawn, and we were at war." [Testimony Mother]

64. The Parent provided insufficient information about the summer tutoring program purportedly organized by the Parent. Furthermore, the Parent provided no information to Board staff regarding the academic work completed over the summer 2003. [Testimony Mother]

65. The Parent sought programming and related services for the Student in music therapy, equestrian therapy and a laptop for the 2003-2004 school year. No evaluative data was provided that would support claims that the Student requires any of this special programming. [Testimony Mother] It is not appropriate to add additional motivational elements to the program without the Student making any attempts to

return to the classroom, and without Dr. Black evaluating the Student and her needs.  
[Testimony Dr. Black]

66. The Parent would not provide the Board with consent to speak with the Student or any professional involved with the Student since at least February 2003. [Exhibit B-66] This obviously further thwarted the Board's ability to evaluate and program for the Student.

### **CONCLUSIONS OF LAW:**

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act [IDEA], 20 U.S.C. Sec. 1401, et seq.
2. The Parent's settlement of her claims existing prior to and as of March 2003 as set forth in the settlement agreement bars the Parent from litigating the issues relating to (1) the provision of a free appropriate public education for the spring 2002 school term, (2) reimbursement for tutoring and counseling for the 2002-2003 school year through the date of the agreement, and (3) provision of free appropriate public education for the 2002-2003 school year through the date of the agreement.
3. A settlement agreement between the parent of a child requiring special education and a school board is enforceable so long as the agreement was voluntarily and willingly entered by the parties. *Mrs. J., et al v. Board of Education, et al*, 98 F. Supp. 2d 226 (D.Conn. 2000) Settlement agreements are enforceable, as allowing parents to void settlement agreements when they become unpalatable would work a significant deterrence contrary to the federal policy of encouraging settlement agreements. *Id.* Settlement agreements are encouraged as a matter of public policy as they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the courts. *Id.* When parties enter into settlement agreements, they enter into a contract. *Id.* Hearing officers have the authority to enforce the terms of a voluntary settlement agreement. *Id.* In this case, the terms of the settlement agreement of March 2003 were clear and unambiguous, and it is expressly found that the Parent entered into the agreement voluntarily and willingly. Moreover, the Parent entered into the agreement with benefit of advice of counsel. Therefore, the agreement binds the parties as to all claims arising up to the date of the agreement, March 18, 2003.
4. Even if the March 2003 agreement was not binding, as will be discussed *infra* the Board proceeded appropriately in its identification, evaluation and attempts to program for the Student.
5. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14. The Board has met its burden in this case.

6. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. No evidence presented indicates that the Board failed to comply with the procedural requirements of the Act. The Board took all reasonable efforts to evaluate and identify the Student. The IEP contains all the required elements, including:

(1) the child's present level of educational performance; (2) the annual goals for the child, including short-term instructional objectives; (3) the specific educational services to be provided to the child, and the extent to which the child will be able to participate in regular education programs; (4) the transition services needed for a child as he or she begins to leave a school setting; (5) the projected initiation date and duration for proposed services; and (6) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *M.S. v. Board of Education*, 231 F.3d 96, 103 (2<sup>nd</sup> Cir. 2000)

7. Based on the evidence presented during this hearing, the Board's proposed IEPs during the 2002-2003 school year, and as proposed for the 2003-2004 school year appropriately met the procedural mandates of the IDEA based upon the information available to the PPT at the time of the recommendations.

8. The Parent's claims that she was not allowed to fully participate in the PPT, and that she was not provided with her procedural safeguards, are not supported by the weight of the evidence. At every step, the Parent continually thwarted the Board's ability to assist the Student including the refusal to allow the Board to speak with the Student and prohibiting the Student from communicating with the Board staff [B-66]; enrolling the Student in another school out of state [Testimony Parent, Dr. Swanson, Ms. Horvath, Ms. Tompkins]; failing to comply with the parentally requested tutorials at the Learning Incentive; refusing to allow the Board to speak with the Student's therapists [Testimony of Dr. Hartranft, Ms. Tompkins]; denying the PPT the opportunity to review the complete psychiatric evaluation [Testimony Ms. Horvath]; and refusing to allow the Student to undergo the psychiatric evaluation.

9. The Board has included the Parent to the point where the Parent's communications continuously interfered with the productivity of the PPT meeting. [Testimony of Ms. Horvath, Dr. Hartranft, Dr. Swanson] The Parent complains that her concerns are not heard, yet she fails to allow the PPT members to respond to her concerns. She disrupts the process with her continued interruptions and threats of civil litigation. [Testimony Ms. Horvath, Dr. Hartranft] It is not a procedural violation for Board members of the PPT to discuss the Student's program without the parent present, in anticipation of a PPT meeting. *N.L. v. Knox County Schools*, 315 F. 3d 688 (6<sup>th</sup> Cir. 2003) Moreover, the PPT has the right to adjourn the meeting after a reasonable time, even if the parent objects. *See, e.g., Grapevine-Colleyville Independent School District*, 21 IDELR 875 (SEA TX 1994)

10. Furthermore, the Parent's testimony that she did not understand her procedural safeguards with respect to the filing for due process is not credible, particularly given the fact that she was represented by counsel since October 2002. [Testimony Attorney Klebanoff] Each PPT meeting document also indicates that the Parent was presented with her procedural safeguards.

11. Therefore, the Board has fully met all of the IDEA's procedural requirements.

12. The second inquiry in *Rowley* is a determination of whether the Individualized Educational Plan [IEP] is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207. The requirement of a free appropriate public education is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Education v. Rowley*, 458 U.S. at 201. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. *Board of Education v. Rowley*, 458 U.S. at 203.

13. The IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Hendrick Hudson v. Rowley* 458 U.S. at 204. When the child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade is one important factor in determining educational benefit. *Mrs. B. ex rel M.M. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2d Cir. 1997), citing *Board of Education v. Rowley, Id.* The Board has taken every reasonable step to attempt to evaluate and program for the Student, despite the repeated roadblocks set up by the Parent to thwart the Board's efforts. The Parent's and the Student's complete lack in cooperation has delayed the process, and the Board has proceeded as promptly as it could under the circumstances. The Board is to be commended for the patience and professionalism the staff has practiced in evaluating the Student, attempting to implement the Student's program, and dealing with the Parent and the Student, particularly in light of the Parent's acrimony toward the Board which was evident during this hearing.

14. Notwithstanding the conclusion that the settlement agreement bars the Parent's claims prior to March 2003, the Board was under no obligation to provide the Student with a program during the spring 2002. The Parent remained uncooperative throughout this time and the Student was not yet found eligible for special education. Moreover, the Student was attending a private school, and was not enrolled at the Board high school at this time. Nevertheless, the Board undertook extraordinary efforts to attempt to provide tutoring for the Student at the Parent's request. No denial of a free appropriate public education is found during this timeframe.

15. As for Issue No. 3 and Issue No. 4, and notwithstanding that it has been found that the settlement agreement bars the Parent's claims prior to March 18, 2003, it is found that the Board took all appropriate actions to evaluate, identify and program for the Student.

The Board accommodated the Parent's request for outside evaluators. While the evaluations took several months to complete, this delay was not due to the Board actions. The Board reacted appropriately in the Board staff's attempts to work with the Parent cooperatively to evaluate the Student by the Parent's requested evaluators.

16. The IEP for the 2003-2004 school year is appropriate, based on the evaluative information currently known about the Student. An IEP must provide an opportunity for more than "trivial advancement" and a free appropriate public education under the IDEA is one that is "likely to produce progress, not regression." *Mrs. B. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2<sup>nd</sup> Cir. 1997); *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F. 2d 245, 248 (5<sup>th</sup> Cir. 1997), *cert denied*, 118 S. Ct. 690 (1998) The Supreme Court has rejected the contention that the appropriate education mandated by the IDEA requires states to "maximize the potential of handicapped children." *Walczak v. Florida Free School District*, 142 F. 3d 119, 130 (2<sup>nd</sup> Cir. 1998)

17. The initial IEP was proposed to learn more about the Student's learning style since she had not been in school for almost six months. [Testimony Dr. Hartranft, Ms. Horvath, Ms. Tompkins; Exhibits B-69, B-78] The subsequent summer tutorial program, in the form of extended school year services was meant to provide the Student with an opportunity to complete the work that she would have otherwise completed during her time at the Learning Incentive, which the Student failed to attend. [Testimony Hartranft] The proposed 2003-2004 IEP was recommended after consulting with the Board's consulting psychiatrist and was intended to be an initial IEP to be developed in more detail prior to the commencement of the school year, and after the Student completed a psychiatric evaluation. [Testimony Ms. Tompkins, Dr. Hartranft]

18. Throughout the hearing, the Parent did not contest the components of the IEP as much as she contested the courses for which the Student should have received credit. [Exhibit B-88] To the extent the Parent is alleging that the IEP was not meaningful because it would not have provided the Student with an opportunity to fulfill her credit requirements in an accelerated manner, so that the Student could move on to more advanced courses, the evidence presented by the Board supports the opposite conclusion. The Board witnesses uniformly testified that they were attempting to address the parental concerns that the Student test out of certain courses, such as Algebra. The Board witnesses also testified, however, that they did not want to set up the Student for failure, if she didn't understand the concepts needed to move onto the more difficult courses. In light of the Student's emotional state, the Board's actions in providing the Student with less difficult coursework where she could prove her success is directly in line with Dr. Black's recommendations.

19. The IEPs were designed to enable the Student to receive meaningful educational benefit. The fact that the Student failed to avail herself of the opportunities presented by the Board warranted further evaluation. The Board took all reasonable steps to secure the required information. All of the Board's witnesses testified at the hearing that they were seeking additional evaluative information as to why the Student was not availing herself of the educational opportunities. If the Parent had complied with the request for Dr.

Black's psychiatric evaluation, a more complete and definitive IEP could have been drafted. The Board cannot be faulted for the Parent's failure to comply with the requested evaluations. *See, e.g., Patricia P. v. Board of Education of Oak Park*, 203 F.3d. 462 (7<sup>th</sup> Cir. 2000)

20. The Board members of the PPT recommended that the Student attend the Board High School. As of the date that the PPT made this recommendation in July 2003, there was no evaluative information that indicated the Student was unable to attend the Board High School. Moreover, Dr. Black recommended that the Student return to the public school setting. The federal and state regulations require that the state deliver the program in the least restrictive environment. 34 C.F.R. Sec. 300.550-300.556; Conn. Agencies Regs Sec. 10-76d-16. The least restrictive environment is one which, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled. 20 U.S.C. Sec. 1412(5)(A)

21. Since the Board's 2003-2004 program was designed to confer educational benefit and was to be delivered in the least restrictive environment, the IEP is appropriate based on the evaluative information the Board currently has. The Parent seeks placement of the Student in an academically challenging school, such as Watkinson. As the Board's program is appropriate, it is not necessary to determine the appropriateness of Parent's proposed placement. *See, Burlington School Committee v. Dept. of Ed.*, 471 U.S. 359 (1985), *Florence Co. School District v. Carter*, 114 S.Ct. 361 (1993) (Reimbursement for private school placement is only awarded when the *district's program was not appropriate* and that the private placement could provide an appropriate educational program for the child).

22. The Parent seeks reimbursement for tutoring by tutors selected by the Parent, rather than the ones provided by the Board for the summer 2003 tutoring. Parents are not entitled to choose teachers or instructional personnel. The IDEA permits school districts to treat these matters as administrative decisions to be made by school personnel. *Letter to Wessels*, 16 IDELR 735 (OSEP 1990) Therefore, the Parent is not entitled to reimbursement for her selected summer tutors.

23. While not expressly stated in the Parent's issues, the Parent repeatedly made claims of racial/cultural bias by the Board. Nothing in the record supports the claims that the Board is biased.

24. The Board is seeking a psychiatric evaluation of the Student to be used to revise the 2003-2004 IEP for the Student. In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted. Conn. Agencies Regs. Sec. 10-76h-9(a) The evaluation study shall include reports concerning the child's educational progress, structured observation and such psychological, medical, developmental and social evaluations as may be appropriate in determining the nature and scope of the child's exceptionality. Conn. Agencies Regs. Sec. 10-76-9(a)

25. It is the obligation of the PPT to review existing assessment data regarding a child and to determine whether additional information is necessary in order to program for the child. Initially the PPT reviews existing evaluation data and identifies:

what additional data, if any, are needed to determine –

- (i) Whether the child has a particular category of disability, as described in Sec. 300.7, or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
- (ii) The present levels of performance and educational needs of the child;
- (iii) Whether the child needs special education and related services, or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

34 C.F.R. Sec. 300.533(a)

26. In this case, the PPT proposed an appropriate IEP for the 2003-2004 school year based on the information that was available. The PPT is unable to revise the IEP for the Student, who has been diagnosed as having a major depressive disorder, generalized anxiety disorder and post-traumatic stress disorder. The PPT was unable to have access to Dr. Almai's psychiatric evaluation, as the Parent prohibited disclosure of the report. Moreover, the suggested placements for the Student in an alternative program, and in homebound tutoring have been completely unsuccessful. Therefore, additional assessment information is needed to make this determination.

27. The Parent has refused to consent to a psychiatric evaluation, and not complied with the Interim Rulings ordering the psychiatric evaluation while this hearing was pending. The Board is entitled to the requested evaluation in order to fulfill the need to have current assessment data to ascertain the child's disability and level of functioning pursuant to 34 C.F.R. Section 300.533(a)(2)

28. In the absence of parental consent for evaluations, hearing officers may order special education evaluations without the consent of the parent. Conn. General Statutes Sec. 10-76h(d)(1) The federal regulations specifically indicate that when the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the Board may continue to pursue the evaluations through the due process procedures. 34 C.F.R. Sec. 300.505(b) The Board has appropriately brought such a request, and the evidence supports that the psychiatric evaluation is necessary so that the evaluation of the Student is sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F. R. Sec. 300.532(h) It is essential that the PPT obtain this information to revise the IEP for the Student. The psychiatric evaluations shall be



completed. The Parent shall provide releases to Dr. Black to obtain all necessary background and history of the Student for his evaluation.

**FINAL DECISION AND ORDER:**

1. The Board did not fail to provide the Student with a free appropriate public education for the Spring 2002 school term.
2. The Parent is not entitled to reimbursement for tuition for the spring 2002 school term.
3. The Board did not fail to provide the Student with a free appropriate public education for the 2002-2003 school year.
4. The Parent is not entitled to reimbursement for tutoring and counseling for the 2002-2003 school year.
5. The Board's proposed program for the 2003-2004 school year is appropriate.
6. As the Board's program is appropriate it is not necessary to determine the appropriateness of the Parent's proposed placement/program for the 2003-2004 school year.
7. The Student is not entitled to tutoring by tutors selected by the Parent. The Parent is not entitled to reimbursement for the tutoring by the tutors selected by the Parent.
8. As the Board's program for the 2003-2004 school year is appropriate, the Student is not entitled to music therapy, equestrian therapy or a laptop for the 2003-2004 school year.
9. The Board shall be permitted to conduct a psychiatric evaluation of the Student by Dr. James Black. The Parent shall provide releases to Dr. Black to obtain all necessary background and history of the Student, as determined by Dr. Black, to be used in his comprehensive evaluation.
10. The PPT shall convene within 10 days of the receipt of Dr. Black's evaluation to implement Dr. Black's program recommendations, including, but not limited to recommendations as to how to implement the Student's return to the Board school, when or if incentives should be offered to motivate the Student, and what steps shall be taken to foster healthy self confidence.