

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Wallingford Board of Education

Appearing on behalf of the Parent/Student: Attorney Courtney Spencer, Klebanoff & Alfano, South Main Street, Suite 105, West Hartford, CT 06110

Appearing on behalf of the Board of Education: Attorney Frederick Dorsey, Siegel, O'Connor, O'Donnell & Beck, P.C., 150 Trumbull Street, Hartford, CT 06103

Appearing before: Attorney Elisabeth Borrino, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Wallingford Board of Education (“the Board”) should reimburse the Parent for placement of the Student at Ben Bronz Academy (“BBA”) for the 2007- 2008 school year;
2. Whether the Board should reimburse the Parent for placement of the Student at BBA for the 2008-2009 school year.

PROCEDURAL HISTORY:

This matter is before the Hearing Officer pursuant to the Parent’s request for a Due Process Hearing on May 5, 2008. A prehearing conference was held on May 16, 2008. Both parties were represented by counsel and hearing dates were selected. The parties appeared on the following hearing dates: July 2, 3, 8, 9, and 24, 2008. Witnesses called by the Parent included the Parent, Dr. Susanne Sharp, and Dr. Cristina Ciocca, Psy.D. Witnesses called by the Board included Jill Hale, Vanessa Mather, Arline Lacey, and Robert Mancusi.

The issues addressed during the Due Process Hearing were raised at Planning and Placement Team (“PPT”) meetings on November 21, 2006, December 19, 2006, January 12, 2007, January 30, 2007, June 5, 2007, January 25, 2008 and June 2, 2008.

The Board has not challenged the sufficiency of the Parent’s Due Process Hearing request and there is no claim by either party that the pre-hearing resolution meeting requirements were not pursued.

The hearing was held on July 2, 3, 8, 9, and 24, 2008. The Hearing Officer directed the parties to submit their respective post hearing Briefs by mailing on or before July 31, 2008.

The date for mailing of the final decision was July 19, 2008. However, upon joint motion of the parties in order to be able to present necessary multiple witnesses and evidence so as to have a complete record; and after careful consideration of the following factors:

- (1) the extent of danger to the child's educational interest or well being which might be occasioned by the delay;
- (2) the need of either party for additional time to prepare and present their position at the hearing in accordance with the requirements of the process;
- (3) any financial or other detrimental consequence likely to be suffered by a party in the event of the delay;
- (4) whether there has already been a delay in the proceeding through the actions of the parties.

The motion was granted and the date for mailing the final decision and order was extended to August 11, 2008.

STATEMENT OF JURISDICTION:

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

SUMMARY:

The Student is twelve years old and has been identified as learning disabled due to her speech and language impairment. She was educated in the public schools until March 2007 when the Parent placed her in BBA. Prior to being placed at BBA, the Student had severe anxiety, depression and loss of self-esteem because she could not learn in the same manner and to the same extent as her non-disabled peers.

The Parent and Board entered into an agreement for placement of the Student through the end of the 2007 school term. Thereafter, the Board expected the Student to return to the public school for the 2007-2008 school term. The Student continued to attend BBA through the date of this administrative hearing. The Parent contends that the Student lacked appropriate educational progress and benefit while enrolled in the public school. The Board contends that it not only offered FAPE to the Student before she was placed at BBA but that it would continue do so if the Student returns.

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).

Any motions not previously ruled upon are hereby denied.

FINDINGS OF FACT:

1. The Student is twelve years old and a resident of Wallingford.
2. The Board is required to provide FAPE to the Student. The Student will enter seventh grade for 2008-2009. She has been diagnosed with Speech or Language Impairment and eligible to receive special education and related services under IDEA 20 U.S.C.45§1401, *et. seq.* and CGS §10-76a. (Exh. B-57)
3. On March 15, 2004, while the Student was in second grade, a PPT convened whereby the Student was determined to be eligible for services due to Speech or Language Impairment. This PPT also developed an Individualized Education Program (“IEP”) for the Student, providing one hour per week of speech and language services to be provided in the regular classroom and the speech office. During the 2003-04 school year, the Student also received compensatory education in reading. (Exhs. B-7, B-9, B-13)
4. The Student was promoted to the third grade for the 2004-05 school year. (Testimony of Parent; Exh. B-8)
5. On October 26, 2004, a PPT meeting was convened. The PPT recommended, and the Parent agreed to, a Neuropsychological Evaluation of the Student to be performed by Dr. Albert. Dr. Albert was unable to perform testing until the spring and, therefore, the Parent arranged to have all testing completed by Dr. Reynolds at an earlier date. (Testimony of Parent; Exh. B-10)
6. The Student scored below her class average in all areas on the grade 3 Connecticut Mastery Test (“CMT”), with her highest scores being in mathematics, where she mastered 10 of the 16 areas tested. (Exh. B-11)
7. On November 16, 2004, a PPT convened wherein the Student’s IEP was modified to increase her language time to two hours per week and revise her objectives for improvement of oral/written language as related to the classroom curriculum. It was also determined that another PPT would be convened when the Parent had received written results from Dr. Reynolds’ evaluation. (Exh. B-13)
8. On December 1, 2004, Dr. Reynolds and Dr. Suskovich at the Connecticut Educational Services (“CES”) completed their evaluation and determined that the Student had ADHD Type II, struggled with both auditory and visual attention, especially when material became more complex and challenging, had significant auditory impulsivity and distractibility, and mild problems filtering auditory material suggestive of an Central Auditory Processing Disorder. He also found that the Student had a significant weakness in visual tracking, visual planning, and organization creating a problem with processing and decoding visual information. Additionally, he found a weakness in working memory and coupled with her attentional problems appeared as a general memory disorder for both visual and verbal material. He reported that she would not benefit from cueing but needed multiple exposures and rehearsal

when learning new concepts and procedures. He found that she had variability in her academic performance, demonstrated grapho-motor slowness, perceptual difficulties, and deficit in working memory that significantly impaired her writing production. He diagnosed her with Dyslexia and Dysgraphia. (Exh. B-12)

9. During third grade, the Student began comparing her functioning levels to that of her peers. As a result, she would come home, cry, and ask her mother why she could not read. This increased significantly over time as the Student compared herself to her nondisabled peers. (Testimony of Parent)
10. On projective personality testing the Student expressed a desire to work independently, but would then be unable to fully comprehend the task, would perform poorly, and feel sad and frustrated with her inadequate performance. (Exh. B-12)
11. The Neuropsychological Evaluation was reviewed at a PPT and no changes were made to the Student's service hours. (Exh. B-15)
12. In February 2004, the Student was administered the Otis-Lennon School Ability Test ("OLSAT") and scored below average in three areas and average in the remaining four. In January of 2005, she again took the OLSAT and scored below average in all areas. No changes were made to her service hours. (Exhs. B-3, B-14, B-15)
13. On February 4, 2005, a PPT was convened wherein the Psychoeducational Evaluation was discussed with Dr. Suskovich, who had actually performed the CES testing. The evaluation provided information consistent with that obtained from the previous evaluations. The PPT further determined that Capital Region Education Council ("CREC") would perform a central auditory processing ("CAP") test on the Student. (Exh. B-15)
14. CREC was contacted regarding the CAP testing, but indicated that the Student's I.Q., confirmed to be in the 70's by both Board and Parent testing, made her cognitive ability too low to ensure an accurate CAP test score. Since that time, the Student has been re-evaluated, her scores reviewed, and she requires an immediate CAP evaluation. (Testimony of Parent, Testimony of Ciocca; Exhs. B-17, B-50)
15. On June 17, 2005, a PPT was convened wherein the Student's IEP was revised for the 2005-06 school year when the Student would be moving to the fourth grade. The Student's speech and language services were reduced from two hours to ninety minutes per week and an additional thirteen and one-half hours per week of special education instruction in reading and written expression (six and one-half hours with the special education teacher and seven hours with a paraprofessional) were added to the Student's program. (Testimony of Lacey; Exhs. B-18, B-19)
16. Until June 2005, the Student's IEP continued to provide two hours of speech and language services. At that time, her speech and language services were reduced to ninety minutes; and six and a half hours of support with the special education teacher in class and in resource, with no delineation as to how much time was spent in each setting. Seven hours of support with the paraprofessional in class were also added to address reading and written expression. (Exhs. B-

17, B-18).

7. On February 1, 2006, a PPT was convened at which time the Student's IEP was modified, reducing her special education in reading and written expression to eleven hours per week (six hours with the special education teacher and five hours with a paraprofessional). Her speech and language services were increased to two and one-half hours per week as a result of an additional one hour per week service from the regular education teacher or a paraprofessional to be provided in the regular classroom. (Testimony of Lacey; Exh. B-22)
18. In November of 2006, the services provided by the special education teacher were reduced to six hours, the services provided by the paraprofessional in the area of reading and written expression were to be five hours; and one hour per week of speech and language services were to be implemented by the regular education teacher and paraprofessional. This reduced her overall service hours by two and a half hours per week. (Exh. B-22)
19. On November 21, 2006, the Parent alerted the School that the Student was experiencing significant declining self-esteem issues that were becoming alarming. The Parent requested private placement at a school such as Hope Academy, Eagle Hill or BBA. The Parent gave the PPT a copy of a card written by the Student during school saying she did not know how to read a book and she was crying but could not get any help. The Student wrote an additional card from "your sad" daughter stating that no one wanted to play with her and she wanted to go home. No response was given regarding the request for reading programs, no changes were made to the IEP, and no response was given regarding the request for private placement. (Testimony of Parent; Exhs. P-14, P-15)
20. On December 19, 2006, a PPT convened which recommended, and the Parents agreed to, an Occupational Therapy Evaluation for the Student to assess her handwriting, visual-motor, and visual-perception skills. The PPT also offered the Student an extended school day twice each week to provide additional reading instruction in the Wilson Reading Program, in addition to her existing special education and compensatory services. The Parent initially refused these extra services, but, by letter dated January 8, 2007, the Parent indicated that these services would be accepted, though considered insufficient, if they were provided during the regular school day. The Board responded to the Parent, indicating that it did not feel it was in the Student's best interest to remove her from instruction in the general curriculum during the school day to receive the additional Wilson Reading Program support. (Testimony of Lacey; Exhs. B-26, B-27, B-29, B-30)
21. In October 2004 and March 2006, the Student was administered the CMT. Her raw score in mathematics decreased from a 58 to a 48 and she went from a mastery of ten out of twenty-five content strands to mastering four out of twenty-one content strands. She had not mastered any content strands in reading or writing in 2004 and again did not master any content strands in these areas a year and a half later. In 2006, her scores placed her in the below basic level in mathematics and reading; and the basic level in writing. (Exhs. B-11, B-23, B-24)
22. By way of letter dated January 8, 2007, the Parent advised the Board that she rejected the total program proposed by the Board as it did not meet the Student's educational needs in that it lacked a small, highly structured, language-based school environment. (Testimony of Parent;

Exh. B-29)

23. The Board's proposed reading program of the Wilson Reading Program for one hour twice per week, after school, was not appropriate. The Student required an intensive language-based program throughout her school day. (Testimony of Ciocca, Testimony of Parent)
24. By way of letter dated January 12, 2007, the Board refused to place the Student at BBA. (Exh. B-30)
25. During January 2007, the Student was re-evaluated by school psychologist Christina D'Agostin. Pursuant thereto, the Student scored as follows:
 - A. Full Scale of 78 on the WISC-IV, which falls in the borderline range and places her at the 7th percentile in relation to children her age in the standardization sample;
 - B. On the Verbal Comprehension Index (VCI), which measures verbal reasoning and provides information about the Student's language reasoning, expressive language, comprehension and knowledge of word meanings, the Student scored 87. This falls within the low average range and places her at the 19th percentile;
 - C. On the Working Memory Index (WMI), the Student scored a 74 which places her in the 4th percentile and falls within the borderline range on tasks which measure auditory attention, concentration, and auditory short-term memory;
 - D. On the Processing Speed Index (PSI) which measures planning along with the speed of mental processing and examines visual short-term memory, visual scanning ability, visual-motor coordination, visual discrimination, and concentration the Student scored 80 which is the 9th percentile and falls within the low average range;
 - E. On three subtests comprising the NEPSY Attention and Executive Functioning domain the Student scored 74 which is the 4th percentile and placed her within the borderline range;
 - F. On Language, the Student scored 78 which placed her in the 7th percentile and within the borderline range. The re-evaluation also determined that the Student's scores on Attitude Toward School, Depression, Interpersonal Relations, Self-Esteem, and Self-Reliance fell within the "At-Risk" range. (Exh. B-33)
26. The Student had significant difficulty with writing such that her handwriting legibility decreased with written classroom tasks. No services were offered other than an occupational therapy consult "as needed." No assistive technology evaluation was offered nor was there a plan to address the Student's weaknesses in writing. The IEP provided for "access" to computer, Alpha Smart or similar device. (Testimony of Hale; Exhs. B-32, B-35)
27. Throughout 2005 and significantly increasing through October 2006, the Student went to the nurse's office an extraordinary number of times due to her anxieties in school and sought early release on many occasions. This lessened during fifth grade after the Parent admonished the

Student that she could no longer constantly come to pick her up. The Student did not exhibit this anxiety during weekends or vacations. She also did not exhibit such anxiety after placement at BBA. (Testimony of Parent, Testimony of Sharp; Exh. P-13)

28. On January 30, 2007, a PPT convened and reviewed the Student's triennial evaluations, which included Occupational Therapy, Psychological, Speech and Language and Academic Achievement Evaluations, as well as the Student's academic performance and testing with the Parents. The Occupational Therapy Evaluation determined that the Student's handwriting became poor when she had to write for prolonged periods of time. The Psychological Evaluation indicated that the Student was at risk for depression. The PPT added thirty (30) minutes of group counseling with the school psychologist, an extra block of math instruction with the special education teacher, and felt placement of the Student in the public school was appropriate. The Parent requested that the Board fund a placement of the Student at BBA. (Testimony of Lacey; Exhs B-32, B-33, B-35, B-36)
29. In January 2007, the Student was re-evaluated for Speech and Language. She was administered the Clinical Evaluation of Language Fundamentals-4, which she was also given in March of 2004. Her score in core language decreased from a 78 to a 68, in receptive language her score decreased from an 88 to a 64, in expressive language her score decreased from a 77 to a 73, and in language content her score decreased from a 78 to a 74. (Exhs. B-6, B-25, B-34)
30. In January 2007, the speech and language pathologist determined that the Student had significant weaknesses in the areas of language memory and phonological memory skills which appeared to be adversely impacting her academic success in the classroom. The PPT reduced the pull out time with the speech and language pathologist from one hour to a half an hour, increased the time the speech and language pathologist was in the classroom from a half hour to one hour, and removed the one hour of speech and language services to be carried over by the regular education teacher and paraprofessional. (Exhs. B-25, B-26, B-34)
31. By letter dated February 21, 2007, the Parents notified the Board of their unilateral placement of the Student at BBA, effective March 5, 2007. (Exh. B-36)
32. The Developmental Reading Assessment ("DRA") assesses a primary student's development as a reader over time. In December of 2003, the Student scored 14. This placed her reading level at the end of first grade. At that time, she was almost halfway through second grade. In September of 2005, she scored 18, placing her reading level at the beginning of grade two. She was in fourth grade at the time. Later that year, in January of 2006, she scored 24, placing her well into a second grade reading level. In January of 2007, the Student's independent DRA level was 34. This placed her at the third grade level. The Student was halfway through fifth grade at the time. The Student was less than a half year behind grade level in reading in 2003. However, by 2007, she was two and a half years behind grade level in reading. (Exhs. B-1, B-21, B-34a, B-35)
33. In January of 2007, the Student was given the Diagnostic Achievement Battery ("DAB-3"). Out of thirteen subtests, she scored below average on six measures and poor scores on three measures. She scored below average or poor on all composite scores. (Exh. B-34a)

34. In January of 2007, the Student was given the GE Test of Coding Skills. She had not mastered reading any words with more than one syllable. An example of a word with more than one syllable would be "circle." With regard to spelling, she mastered only two sections and they were of single syllable words. (Testimony of Lacey; Exh. B-34a)
35. In April of 2007, the Parent and Ms. Mather, the Student's fifth grade regular education teacher filled out Behavior Rating Scales. The Parent rated the Student as "at risk" in the areas of anxiety and attention problems. Ms. Mather rated the Student in the clinically significant range in the areas of attention problems and learning problems. (Exh. B-43)
36. The Parent placed the Student at BBA March 5, 2007. By agreement dated March 22, 2007, the Board paid for the Student's BBA placement for the remainder of the 2006-07 school year and the summer of 2007. The agreement called for a transition program back to the public schools at the end of the 2006-07 school year and that placement in the public schools would be the Student's stay put placement in the case of any dispute. The parties agreed to mediate and an agreement was executed on March 22, 2007. In accordance with the Agreement, the Board paid for the Student to attend BBA from March 5, 2007 through the remainder of the school year as well as the summer program, including transportation. (Exhs. B-36, B-42)
37. During May through July 2007, Dr. Cristina Ciocca, a Clinical Neurologist, performed an Independent Neuropsychological Evaluation of the Student, which included but was not limited to, extensive observation of the Student, record review, and interviews. Dr. Ciocca opined as follows:
- A. The PPT made no adjustments to the Student's exceptionality to account for the multi-faceted presentation of her disability, despite the findings of the evaluations by Dr. Suscovich and Dr. Reynolds - which were comparable to the PPT findings;
 - B. The Student became increasingly frustrated and her progress inconsistent according to a 2005 PPT;
 - C. Further assessment was conducted by the school in early 2007 but the follow up discussion and IEP did not seem to reflect substantial change to accommodate for the new findings and clarify the discrepancies noted;
 - D. The Student presents with a complex, multidimensional learning disability impacting a myriad of cognitive processes. While the Language Impairment exceptionality is accurate, it only explains some, but not all, of her symptoms;
 - E. The Student transitioned well into BBA and "thrived from the very specialized instruction." (Exh. B-50)
38. Dr. Ciocca further opined that the Student had problems with attention, both auditory and visual, concentration and visual scanning, problems with executive functioning, planning, organization, problems with memory, problems processing auditory information, as noted by her history of being unable to follow directions in class. Dr. Ciocca also found expressive and receptive language difficulties, verbal fluency difficulties, problems with phonemic awareness.

She fit the dyslexia phenomenon. She also had difficulties in the non-verbal domain, including visual perception, visual abstraction, visual ground and complex visual memory. If she is handed a task with multiple steps or a lot of information, she will become overwhelmed and potentially miss information and possibly withdraw. On achievement testing, the Student showed weaknesses in reading, writing and mathematics. (Testimony of Ciocca; Exh. B-50)

39. Pursuant to Dr. Ciocca's testing, the Student had very low scores on the Gray Oral Reading Test ("GORT"), which required her to read passages. The Student's accuracy, meaning her ability to read what was actually in the text was at a grade level of 1.7. Her oral reading quotient had declined from 85 in 2004 to 41 on her testing in 2007. She had great difficulty in the area of spelling. In the area of writing, the Student showed ability in coming up with ideas but difficulty getting the story down on paper. Dr. Ciocca opined that the Student would not independently access assistive technology and that it needed to be built into her routine. (Testimony of Ciocca; Exhs. B-12, B-50)
40. Repetition is crucial for the Student as her improvement is dramatic with repetition. Instructors must go slow and make sure the Student understands a concept before moving on. Failure to do so would result in frustration and somatic complaints. When at BBA, even with all the structure, the Student still required breaks on her own to be able to make it through the process. (Testimony of Ciocca).
41. The Board should reconsider the Student's exceptionality as "multiple disabilities" in order to more comprehensively appreciate the multi-factor basis of her learning issues. (Exh. B-50)
42. The PPT proposed a more intensive, Orton-Gillingham Reading Program if the Student transitioned back to the public school. However, for logistical reasons, that program could not be implemented with the same frequency as that at BBA.
43. Had the Student entered the public school for the 2007-2008 school year, Jill Hale would have been her special education teacher, case manager and reading teacher. Ms. Hale had not received training in the Orton-Gillingham Reading Program or in Cyberslate. (Testimony of Hale; Exh. B-50)
44. On June 5, 2007, a PPT convened and recommended that the Student transition to Dag Hammerskjod School ("DAG"), the middle school in Wallingford. During the 2007-2008 school year, the middle school consisted of 800 students, approximately 200 in sixth grade and 250 in seventh. Four elementary schools feed into the middle school. The Student's average class size would be 22 with two instructors - either a classroom teacher and a paraprofessional or the classroom teacher and the special education teacher. (Testimony of Hale)
45. The noise level at DAG is significantly higher than at BBA. As regards this Student, the attention paid to a clearly distracted and off-task student at DAG is minimal, the support available in the mainstream classes is minimal, and the curriculum is challenging. At BBA the Student was generally engaged and appropriate, the environment was distraction-free, and the pace was appropriate. (Testimony of Ciocca; Exh. B-50)
46. While placed at BBA in a class size of four to five students, the Student required constant

cueing to stay on task. The average class size in the proposed 2007-2008 program was approximately 22. (Testimony of Hale, Testimony of Sharp)

47. The proposed program for the Student, if she transitioned back to the public school involved large classes, even with two teachers. The environment would be overwhelming with outside interruptions, noise level, and excessive distractions that would compete with the Student's significant processing and underlying attentional weaknesses. The pace would be faster than at BBA with rapid shifting and transitions between multiple tasks creating an excessively stressful and overwhelming environment for the Student. Moreover, the Student would struggle to keep up with the class due to the difficulty level of the material. Significant modifications to the level of work and material would be required which would reinforce her perceived difference from that of her peers. (Exh. B-50)
48. The transition plan for the Student consisted of attending the standard scheduled sixth grade orientation along with all other new students from the four elementary schools who were also transitioning. Additionally, the Student would have one visit with Ms. Hale to tour DAG. (Testimony of Hale; Exh. B-44)
49. The Student had significant difficulty transitioning from class to class even in the small structured setting of BBA. Other than providing the Student with her schedule, nothing was proposed to help her with transitions. (Testimony of Hale)
50. This transition plan was completely inappropriate for this Student who had demonstrated difficulties with transitions, and was not sufficiently comprehensive to meet the Student's needs.
51. Ms. Hale lacked training and familiarity with the reading program at BBA. Ms. Hale also was not certain of the content of the BBA program. (Testimony of Hale).
52. The "Let's Read" at BBA takes the original Let's Read first book that just deals with two short vowels and develops a full curriculum including decoding multi-syllabic words. The Let's Read at Ben Bronz instruction combines visual decoding, auditory processing, phonemic awareness, and connects encoding with decoding. It's a very integrated decoding package based on the linguistic theory. The Student would be provided appropriate assistive technology. (Testimony of Sharp)
53. At BBA, the students are tracked in each class utilizing a charting system on the black board. Every teacher utilizes this tracking system. (Testimony of Hale)
54. The program proposed by the Board for the 2007-08 school year consisted of mainstream science, social studies, language arts, math, health, gym and unified arts. The Student would have received pull out services for two hours and fifteen minutes in reading, one and a half hours in math, forty-five minutes in writing and two hours and fifteen minutes for fluencies. She would have received speech and language services for two hours and fifteen minutes per week and counseling for a half an hour per week. She would have received a total of nine hours and thirty minutes pull out and twelve hours of inclusion services. Given her available resource time, this would have left approximately fifteen minutes per week to do spelling instruction,

learn the missed science and social studies curriculum, get pre and post teaching of concepts, prepare long-term projects as well as to work on homework. (Testimony of Hale)

55. The Board failed to explain nor was any evidence offered to clarify why the 2007-2008 IEP required repeatedly pulling the Student out of classes when in December 2006 the PPT refused to provide Wilson Reading Program during school hours as they did not feel it was in the Student's best interest to remove her from instruction in the general curriculum during the school day. (Testimony of Lacey; Exhs. B-26, B-29, B-30)
56. The 2007-2008 program proposed by the Board also included thirty minutes of resource time, two of those days would be spent on reading, two on math, and one on writing. This left no time to work on missed instruction, spelling, long term projects, homework pre and post teaching as well as any other issues that came up throughout the year. She would be in a small group as opposed to one on one during this period. She would have also had a study hall three days a week. This was not reflected in her IEP as support time, although she could have possibly received some support with either Ms. Hale or the paraprofessional, with at least one of those days spent working with the paraprofessional as opposed to Ms. Hale. (Testimony of Hale; Exh. B-44)
57. The Student did not make adequate progress during fifth grade. There was inadequate support as regards the inclusion aspect of her program. The IEP for 2007-2008 and 2008-2009 is very similar to the IEP for 2006-2007. (Testimony of Hale)
58. The paraprofessionals had high school diplomas and outside of observation, they had no formal training. (Testimony of Hale)
59. The Board intended to obtain training on Cyberslate, one of the programs utilized by BBA and effective for the Student. As of the date of the hearing, no one in the district was trained in Cyberslate nor would other students be utilizing the program. At BBA two employees each spend half of their week working on updating the fluencies on Cyberslate and academic teachers spend fifteen minutes per each academic area in monitoring the fluencies alone. Cyberslate is an appropriate and effective program for the Student and she has demonstrated progress in its use while at BBA. (Testimony of Hale, Testimony of Mancusi, Testimony of Sharp)
60. Ms. Hale had no training in Cyberslate and would have forty-five minutes per week to update and look at the Student's progress on Cyberslate, and forty-five minutes per day to do planning and prep time as well as meet with teachers for all students on her caseload. She would have to give up one of those times to work on Cyberslate. (Testimony of Hale)
61. The Student would have access to the two computers in the mainstream classroom. The computers were located against the wall of the classroom which would require the Student to leave her desk and exclude herself from her peers. If they were occupied, she would have to leave the room to access a computer. The Student would also have to determine and access these at her own volition. It is not likely that the Student, being hypersensitive about being viewed as different from her peers, would leave her seat and distinguish herself in this manner while her peers remained at their desks. The Student has never been referred for an assistive

technology evaluation. (Testimony of Hale)

62. The Student should have had an assistive technology evaluation. (Testimony of Hale, Testimony of Ciocca)
63. The Board issued a report card for the Student for the first quarter of the fifth grade. Pursuant thereto, the Student was below grade level in reading. (Exh. B-49)
64. On January 25, 2008, Dr. Ciocca attended a PPT to review her evaluation which involved extensive observation of the Student at BBA. The purpose of the PPT was to review results of the Student's Independent Neuropsychological Evaluation. The PPT recommended that the Student return to DAG and proposed a program. Dr. Ciocca disagreed with that program which consisted of fourteen hours and fifteen minutes of inclusion services in the mainstream class and five hours and forty- five minutes of pull out services. (Testimony of Ciocca; Exh. B-55)
65. On January 25, 2008, Dr. Ciocca, who performed the evaluation, attended the PPT and discussed her findings. The PPT agreed that the results of the evaluation were consistent with prior evaluations. The PPT proposed a program for the Student to return to the public school. The Parent rejected that program and requested continued placement at BBA. (Testimony of Hale, Testimony of Parent; Exh. B-55)
66. The Student's 2007-2008 program at DAG required substantial modifications to the curriculum. This includes modified tests, modified expectations, modified homework and graded based on her IEP which means graded on ability as opposed to actual performance. (Testimony of Hale)
67. Pursuant to the Board's proposed program, the Student would experience multiple "pull outs" from the regular education classroom and then enter the classroom in the middle of the instruction. This includes gym. Not only would the Student be denied receiving the educational benefit of the missed classroom time but she would be repeatedly entering classes that had already started. Other students would necessarily see the Student entering the classroom, including gym teams that had already been picked and games that had already started. This would adversely impact the Student who is already experiencing significantly declining low self-esteem issues and at risk of depression by singling her out and emphasizing her being different from her peers. (Testimony of Hale, Testimony of Ciocca; Exhs. B-33, B-43, B-50)
68. Pursuant to the Board's proposed 2007-08 school year program, the Student would have missed three out of five social studies classes per week. The class is taught at the sixth grade level, while the Student is three years behind, and although the co-teaching model permits the effort to modify each and every lesson, the Student would not receive an educational benefit thereby. Additionally, she would have missed the first fifteen minutes of math and language arts every day to do the Cyberslate fluencies, which would be done in the back of the classroom while other students were doing their work. She would also have missed two out of five days of science per week as well as the first fifteen minutes of gym or unified arts twice per week. The Student would be "struggling" in every class. (Testimony of Hale, Testimony of Mancusi;

Exh. B-55)

69. During 2007-2008, Ms. Hale had 16 children on her caseload. This includes science where, she would have had three other students that she was responsible for in the class in addition to the Student; and social studies where she had four other students. If more than two students required attention Ms. Hale would pull a paraprofessional from another student in another class. There was no identified plan if all five required attention. (Testimony of Ms. Hale)
70. On June 2, 2008, a PPT convened wherein the program proposed for the 2008-09 school year, the Student's seventh grade, is similar to the program proposed for the 2007-08 school year. Ms. Hale would be the reading teacher but would not be the special education teacher. (Testimony of Hale; Exhs. B-55, B-59)
71. Pursuant to the Board's proposed program, during the 2008-09 school year, the Student would receive the same level of services that were offered at the January 2008 PPT. In seventh grade, however, the Student would miss (a) the first period of geography three out of five days per week; (b) the first fifteen minutes of the first period of math each day to do fluencies; (c) the first fifteen to twenty minutes of language arts to do fluencies; and (d) the first period of physical education and unified arts per week to do fluencies. (Testimony of Hale; Testimony of Mancusi; Exhs. B-55, B-59, B-51)
72. BBA evaluated the Student in February of 2007, April 2007 and March 2008 and determined that her reading score increased ten points in one year while at BBA resulting in a nearly one and a half year gain during that time period. She increased her grade level functioning in nearly all areas. Her short term memory for numbers reversed increased by ten points. (Exh. B-59)
73. BBA consists of 60 students and 20 teachers. There would be an average of five students in the classroom with the Student. During the 2007-08 school year at BBA, the Student started her day with practice reading, practice decoding, phonemic awareness in a class with one teacher and three to four children. She had basic skill fluency practice and organization in addition to morning meeting. Her second block included a meta cognitive program. Her third block included direct instruction in decoding. Her fourth block was direct instruction in math. Her fifth block was direct instruction in literature. She then had lunch and recess. Her afternoon program was self-contained and included reading comprehension and written language integrated with science and social studies content and a supervised study hall to increase independent work abilities. She did her keyboarding and math fluencies via the Cyberslate program under the supervision of a teacher and her reading fluencies with a good teacher or reader to keep track of errors. (Testimony of Sharp)
74. In order to see improvement in formal test scores, a student would require two years of sustained intervention. The Student's writing samples from BBA showed progress. (Testimony of Ciocca)
75. The Student "enjoys going to school" at BBA. (Exh. B-50)
76. Contrary to BBA's program, the Board's proposed schedule for the 2007-08 school year

involves (a) co-taught, large classes; (b) math class with material that was difficult as was the seating arrangement and organization of the classroom; (c) lack of appropriate direct support and structure for the Student's level of difficulties; and (d) the Student missing significant time from class to do fluencies. Her executive functioning difficulties as well as problems with integrating and sequencing and organizing information, would make it very difficult for her to walk into a situation where she's missed instruction, try to catch up, and stay within the pace of the classroom. (Testimony of Ciocca)

77. Teaching the Student requires working at her pace and level, utilizing a lot of repetition and hands-on, as well as multi-modal kind of teaching to ensure that she fully understands and encodes information before the educator moves on. Failure to do so would lead to confusion, frustration, and then anxiety that would lead to either somatization or withdrawal for the Student. (Testimony of Ciocca)
78. On June 2, 2008, the PPT convened and recommended that the Student be placed at DAG for the 2008-09 school year. The Parent rejected that recommendation and requested continued placement at BBA. (Testimony of Hale, Testimony of Parent; Exh. B-59)
79. When the PPT continued to recommend that the Student be transitioned to DAG, it disregarded Dr. Ciocca's evaluation. No other recent evaluations were reviewed at the PPT. The most recent evaluation prior to that of Dr. Ciocca was the Psychological Re-evaluation dated January 24, 2007, the Special Education Speech-Language Re-evaluation Report dated January 30, 2007, the Occupational Therapy Evaluation dated January 16, 2007, the Academic Achievement Evaluation Report dated January 30, 2007, and the April 2007 Psychological Re-evaluation Addendum. (Exhs. B-32, B-33, B-34, B-34a, B-43)
80. The PPT failed to consider the progress the Student made academically, socially, and emotionally at BBA as well as the comprehensive evaluation by Dr. Ciocca which incorporated independent testing, extensive record review, and multiple extended observations of the Student at BBA. Conversely, the above-described evaluations were performed prior to the Student's placement at BBA and, while Mr. Mancusi and Ms. Hale observed the Student at BBA, these observations were limited, brief, and did not even involve the full school day. Further, Mr. Mancusi maintained a significant bias which compromised his objectivity in that he contends that all students can be educated in the public schools absent significant disruptive behavior. Neither Ms. Hale nor Mr. Mancusi had worked with the Student nor had the level of involvement with her in comparison to that of Dr. Ciocca, Ian Spence, and Dr. Sharp. Further, they did not adequately review the BBA program so as to reliably opine as to whether the Student should be transitioned to the public school. (Testimony of Ciocca, Testimony of Hale, Testimony of Mancusi, Testimony of Sharp; Exh. B-55)
81. As of January 2008, Ian Spence and Dr. Sharp had worked with the Student for almost one year. Dr. Ciocca had tested the Student on June 20, 2007, June 28, 2007, July 25, 2007, and observed her on May 16, 2007 and June 18, 2007. Other than Mr. Mancusi and Ms. Hale's brief visit to BBA, the PPT team lacked adequate familiarity with the Student and had failed to adequately investigate or consider BBA. (Testimony of Hale, Testimony of Mancusi, Testimony of Sharp; Exh. B-55)

82. The Student progressed well at BBA, including achieving Honor Roll for all four quarters. There was no comparable period of progress when the Student was enrolled in the public school. (Testimony of Parent, Testimony of Hale, Testimony of Lacey, Testimony of Mancusi; Exhs. P-7, P-8, P-9)
83. At all times mentioned herein and relevant thereto, the Board had not considered any programs for the Student other than those within the Wallingford public school system. The Board also failed to adequately review the program at BBA, including the number of hours devoted to reading and the number of students at BBA. (Testimony of Hale, Testimony of Mancusi)
84. During the period of 2004 through February 2007, the Student failed to demonstrate adequate progress. The IEP as well as the proposed IEP were both inadequate to afford the child an appropriate public education. The private education services obtained by the Parent were appropriate to the Student's needs as demonstrated by her progress while at BBA and her significant lack of progress prior to such placement. (Testimony of Parent, Testimony of Ms. Hale, Testimony of Ciocca, Testimony of Sharp)
85. The Student has benefitted and will continue to benefit from BBA which provides a more intensive, structured, language-based program with a small student to teacher ratio as well as an appropriate environment by way of less distraction, noise, and other conditions, to address the Student's complex needs within the classroom setting. The program proposed by the PPT for 2007-2008, and 2008-2009 would be overwhelming to the Student and she would not receive an educational benefit nor FAPE. Transitioning the Student to DAG in both the 2007-2008 and 2008-2009 school years would be counterproductive to her progress. (Testimony of Hale, Testimony of Mancusi, Testimony of Ciocca, Testimony of Sharp; Exh. B-50)

CONCLUSIONS OF LAW:

1. The Student qualifies for, and is entitled to receive, a free and appropriate public education with special education and related services under the provisions of state and federal laws. CGS § 10-76, *et seq.* and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. § 1401, *et seq.*
2. IDEA opens the door of public education to children with disabilities. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982). Under IDEA, a local education association ("LEA"), such as the Board, must provide to each qualifying student a FAPE in the least restrictive environment, including special education and related services. 20 U.S.C. §1401(18).
3. The purpose of IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes special education and related services "designed to meet their unique needs and prepare them for further education, employment and independent living" and to "ensure that the rights of children with disabilities and parents of such children are protected . . ." 20 U.S.C. §1400 (d)(1).
4. An "appropriate" education is one that is reasonably calculated to confer some educational benefit. *See Board of Educ. of the Hendrick Hudson Central Sch. Dist v. Rowley*, 458 U.S.

176, 206-7 (1982); *Walczak v. Florida Union Free Sch. Dist.* 142 F.3d 119,130 (2d Cir. 1998).

5. "Special Education" means: "specially designed instruction at no cost to parents to meet the unique needs of a child with a disability." 20 U.S.C. § 1401(25).
6. "Related Services" means: transportation, and such developmental, corrective, and other supportive services (including speech/language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children. 20 U.S.C. § 1401(22).
7. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including academic and functional goals, designed to (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability." 20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(a)(2)(I); *Roland M. v. Concord School Committee*, 910 F.2d 983, 987 (1st Cir. 1990), *cert. denied* 499 U.S. 912 (1991).
8. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the Parent, the results of the initial or most recent evaluations, and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1). Courts must also consider whether the program is "individualized on the basis of the student's assessment and performance" when determining the appropriateness of an IEP. See *A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D.Conn. 2001), *aff'd* 47 Fed. Appx. 615 (2d Cir. 2002) (citing *M.C. ex rel. Ms. C. v. Voluntown Bd. of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D.Conn. 2000)). The PPT appears to have ignored Dr. Ciocca's evaluation which was the most recent evaluation, the well-founded concerns of the parents, the Student's demonstrated strengths while at BBA, as well as her consistent academic, developmental, emotional, and functional needs.
9. In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an IEP. The IEP is intended to be "the result of collaborations between parents, educators, and the representatives of the school district." *Lillbask v. Connecticut Dep't of Educ.* 397 F.3d 77, 2005 U.S. App. LEXIS 1655 (2d Cir. Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential it must provide "meaningful" opportunities and the possibility for more than trivial advancement. *Walczak, supra*, 142 F.3d at 130.
10. The standard for determining whether FAPE has been provided is set forth in *Rowley, supra*. The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met;

and second, whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” *Rowley, supra*, at 206-207.

11. Although the procedural requirements of IDEA have been met, the second prong of *Rowley* requires a finding that the IEP is “reasonably calculated to enable the child to receive educational benefit.” The Supreme Court, has made clear that “appropriate” under the IDEA does not require that the school districts “maximize the potential of handicapped children.” *Walczak v. Florida Union Free School District*, 142 F.3d 199, 130 (2d Cir.1998), citing *Rowley, supra*. Rather, school districts are required to provide, as the “basic floor of opportunity . . . access to specialized services which are individually designed to provide educational benefit to the handicapped child.” *Rowley, supra*, at 201; *see also K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995) (Goal of IDEA is to provide access to public education for disabled students, not to maximize a special education child's potential). In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive “meaningful’ educational benefits.” *Ms. B. v. Milford Board of Education*, 103 F.3d 1114, 1120 (2d Cir.1997). The Court of Appeals has also cautioned that meaningful educational benefits are “not everything that might be thought desirable by loving parents.” *Tucker v. Bay Shore Union Free School Dist.*, 873 F.2d 563, 567 (2nd Cir.1989). “Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial.” *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985). “Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability.” *Ms. B. v. Milford, supra* at 1121. When determining the appropriateness of a given placement courts will also consider evidence of a student's progress in that placement.
12. In determining whether the second prong of *Rowley* is met, the requirement of a FAPE is satisfied by “providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Rowley, supra*, 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. *Id.* at 203. The IEP should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. “ *Id.* 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 benefits. *Mrs. B. Ex rel M.M. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2d Cir. 1997), citing *Rowley, supra*. This standard, however, contemplates more than mere trivial advancement. *Id.* The Student’s proposed IEP was not reasonably calculated to provide the Student with educational benefit. As Ms. Hale testified, the Student’s fifth grade (2006-2007) inclusionary program failed to provide adequate supports and she failed to achieve appropriate progress.

Moreover, the Students’ proposed program needs to be in place when she enters the program and the Student should have a full educational program on day one. At all times mentioned herein and relevant thereto, while the IEP recites its intent to utilize Cyberslate, there remains no one in the district trained in its use nor can the Board even state the time requirements for training of staff in this program. Further, in December 2006, the Board refused to implement

the Wilson Reading Program during school hours maintaining that removal from the classroom would be too disruptive for the Student. Inexplicably, the June 2007 PPT, and the June 2008 PPT, proposed a program that requires repeated pull outs from the classroom for the 2007-2008 and 2008-2009 school years, respectively. There was no plan to address the missed instruction during the pull outs.

It is uncontroverted that the Student suffered severe anxiety, stress, and was clinically at risk for depression while at public school. Instead of preventing its re-emergence, the proposed program is likely to exacerbate the Student's stress and place her at risk of increasing anxiety and depression. The proposed program involves multiple transitions, no plan for supportive transitions within the schedule, constant removal and reentering of the classroom, only provides voluntary "access" not reserved use of assistive technology and only at the Student's own volition, and fails to provide FAPE.

13. In determining whether the IEP was reasonably calculated to confer educational benefits, it must be determined whether the IEP states (1) the child's present level of educational performance; (2) the annual goals for the child; (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 educational 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 the goals are being achieved. *MS. v. Yonkers*, 231 F.3d 96 (2nd Cir. 2000) citing *Walczak v. Florida Union Free School*, 142 F.3d 119, 122. The Board's proposed IEP for the 2007-2008 and 2008-2009 school years was not appropriate. It was not reasonably calculated to enable the Student to obtain education benefit. It was not drafted based on the Student's individual needs, it was not based upon objective criteria and evaluation procedures on an annual basis when, among other things, it failed to adequately consider Dr. Ciocca's evaluation as well as the educators who were working with the Student on a daily basis and were most familiar with her progress. It also failed to provide the appropriate services and supports for the Student to obtain educational benefit.
14. The Board has the burden of proof by a preponderance of the evidence that the program for the 2007-08 and 2008-09 school years was appropriate. RCSA §10-76h-14(a). *See also, Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998). The Board failed to meet its burden of proof as to the appropriateness of the program offered to the Student in 2007-2008, and 2008-2009.
15. While the Board asserts that it purports to offer the Student an appropriate program in the public school which it claims to be in the least restrictive environment, that assertion lacks merit. First, the manner in which the Board would implement the IEP appears to be more restrictive than the private school placement, as it is planned that she will repeatedly be removed from the classroom, isolated within the classroom from her peers, suffer repeated unsupported transitions, and fail to receive instruction within the classroom in core academic subjects. There was no stated plan to compensate the Student for the instruction that would be missed during these pull outs. There was also no appropriate plan for transition to the public school as well as no plan to provide support for the Student while transitioning to her classes throughout the school day.

Second, the least restrictive environment does not trump the requirement that a child receive FAPE. If a child's placement does not provide "significant learning" or "meaningful benefit" to the child, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in that more restrictive program. See *Dighton-Rehoboth Regional Sch. dist.* 4 ECLPR 721 (SEA MS 2006). The record establishes that the Student made limited progress during the three year period from second to fifth grade. The most liberal interpretation of the evidence is that she advanced one full year in reading during that three year period. In comparison, the Student advanced a full year during the one year she was at BBA.

16. The Student requires that the curriculum and expectations be extensively modified to the extent that it would be significantly different from the curriculum and expectations of the rest of the students. If a child's program requires so much alteration that it does not resemble the general education program, it is no longer appropriate. *Jay School Dept v. Maine State Educational Agency*, 39 IDELR 259 (D.Me. 2002).
17. The federal law requires that handicapped children be educated with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. §1412(a)(5); 34 C.F.R. §300.114. However, a district must make any placement and service decisions for a child based on their individual needs. 20 U.S.C. 1401(29); 34 C.F.R. §300.39, see also *Oberti v. Board of Education of Borough of Clementon School District*, 995 F.2d 1204,1214 (3d Cir. 1993). A comparison must be made between the educational benefits the child will receive in the regular classroom and the benefits the child will receive in a segregated program. *Id.* at 1220. A segregated setting may be the most appropriate and least restrictive environment for a student. *Connecticut Final Decision and Order 00-180*, Conclusion of Law No.6 (November 30, 2000) (citing *DeVries v. Fairfax County School Board*, 882 F.2d 876 (Cir. 1989)). Where a student demonstrates stagnant or negative progress in the mainstream, a private placement that provides appropriate supports and services for the student to make progress becomes the least restrictive environment. *W.M. and K.M. v. Southern Regional Bd. of Educ.*, 46 IDELR 101 (D.N.J. 2006), see also, *J.D. v. N.Y.C. Dept. of Educ.*, 550 F.Supp.2d 420 (D.NY 2008). Where a student requires substantial instruction it is not appropriate to place him/her in the mainstream even with pull out supports and services. *Duneland Sch. Corp*, 31 IDELR 222 (SEA IN 2000). It is well settled that the least restrictive environment for a child depends on his unique needs. The program proposed by the Board for the 2007-08 and 2008-09 school years does not meet the Student's needs. The program at BBA offers the components necessary for this child to receive an appropriate education as described by Dr. Ciocca. Therefore, the program offered by BBA is the appropriate environment for this student.
18. The Board failed to provide the related services required by the Student to benefit from her education. Despite an occupational therapy assessment clearly delineating the difficulty the Student had with writing within the classroom, no services were offered and no clear plan was put into place to alleviate these difficulties within the IEP outside of student-initiated "access" to assistive technology. Further, despite her clear regression on the Clinical Evaluation of Language Fundamentals from 2004 to 2007, the Student was offered speech services for the 2007-08 and 2008-09 school year at the same level she had been provided these services when she had previously attended the public schools, where she experienced the regression. The Board's failure to provide appropriate services in these areas resulted in a denial of FAPE.

19. IDEA requires that the IEP team shall consider whether the Student requires assistive technology. 20 U.S.C. §§1412(a)(1), 1412(a)(12)(B)(I); 34 C.F.R. §300.105 The Board did not refer the Student for an assistive technology evaluation, despite her documented weaknesses in reading and writing and despite the fact that the special education teacher at DAG supported the Student having such an evaluation.
20. When it is determined that the Board's program is inappropriate, the parent is entitled to reimbursement if the parent's private school placement is appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985).
21. When parents seek reimbursement of expenses incurred at a private school, an award will be entered in their favor if it appears "(1) that the proposed IEP was inadequate to afford the child an appropriate public education, and (2) that the private education services obtained by the parents were appropriate to the child's needs." *M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ.*, 226 F.3d 60, 66 (2d Cir. 2000); Walczak, 142 F.3d at 129. If a board of education is not offering FAPE under IDEA, a parent can be reimbursed for alternate education programs in which they unilaterally place their children, even if such programs are not otherwise appropriate. See, *Florence County Sch. Dist. Four v. Carter*, 114 S Ct. 361 (1993); see also, 20 U.S.C. §§ 1401(a)(18), 1415(e)(2). The proposed IEP for 2007-2008 and 2008-2009 school years was inadequate to afford the Student FAPE. The program at BBA was appropriate for the Student's needs for 2007-2008 and continues to be appropriate for 2008-2009. No contrary reliable evidence was submitted.
22. A Board may not predetermine a placement for a student with a disability and must come to the table with an open mind and consider the unique needs of the child. *Deal v. Hamilton County Bd. of Ed.*, 42 IDELR 109 (6th Cir. 2004). Participation of parents must be more than a mere form; it must be meaningful. See also *Knox County Sch.*, 315 F.3d at 694-95. The preponderance of the evidence establishes that although the Board considered different levels of service within the mainstream program, they never even considered any program other than the mainstream program. The preponderance of the evidence also establishes that the Board did not consider the individual needs of this Student.
23. The appropriateness of a private school placement is not held to the same FAPE standard as a public school. *Florence County v. Carter*, 510 U.S. 7 (1993). A private school, given its more limited resources, cannot be subject to the same mainstreaming requirements. The test is not whether the private placement is perfect but that it is appropriate. *Warren G. v. Cumberland County Sch.*, 190 F. 3d 80, 84 (3d Cir. 1999). When a public school's IEP is unable to provide a child with FAPE, it must assume the costs of educating a child in a more appropriate environment, which may include a private school. 20 U.S.C. §1412 (a)(10)(B). Progress demonstrated in a private school that was unable to be achieved in the public school has been found to render the private school program appropriate. *G.W. v. New Haven Unified Sch. Dist.*, 46 IDELR 103 (D.Calif. 2006).
24. BBA is small, structured and appropriate for the Student.
25. The great weight of the evidence supports that the Student has made progress at BBA and that

the program provides meaningful benefit to the Student. The Board shall reimburse the Parent for the cost of the private placement and the Student shall continue to be placed at BBA for school year 2008-2009, as it is appropriate, providing her meaningful educational benefit.

FINAL DECISION AND ORDER:

1. The Board's IEP, program and placement for the 2007-2008 and 2008-2009 school years was not appropriate for the Student's needs. The Board thereby denied FAPE to the Student;
2. The program at BBA is appropriate and provides meaningful education benefit to the Student;
3. The Board shall reimburse the Parent for the cost of the private placement for the 2007-2008 school year.
4. The Board shall place the Student at BBA for the 2008-2009 school year and shall convene a PPT meeting to write an IEP consistent with placement at BBA, including transportation as a related services.