

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Sylvia Ho, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board provide FAPE for the two years prior to the filing of the Hearing Request?
2. Did the Board offer FAPE for the 2015-2016 school year?
3. If the Board did not provide FAPE, is placement at the Pinnacle School appropriate?
4. Should the Parents be reimbursed for their unilateral placement of student at Pinnacle school?
5. Should Parents be reimbursed for tuition and education expenses for placement of Student at Lindamood-Bell for the summer 2015 and the 2015-2016 school year?
6. Should parents be reimbursed for their payment of evaluations of Student?
7. Should parents be reimbursed for their payment of occupational therapy services for Student?
8. Do the circumstances warrant an award of compensatory education?

**PROCEDURAL HISTORY:**

The Parent filed the Due Process Complaint/Hearing Request on September 30, 2015, which was received by the Board the same day. The Hearing Officer was appointed on October 6, 2016 and conducted a Prehearing Conference on October 29, 2015, wherein the hearing issues above were identified and an initial hearing date was scheduled for January 11, 2016. The January 11 hearing date was cancelled due to the Hearing Officer's scheduling conflict and rescheduled to January 20, 2016.

The hearing convened on January 20, February 23, March 1, March 15, March 18, March 21, March 23, April 26, April 27, May 5, May 17, May 26, June 9, June 24, June 28, June 29, and September 12, 2016. The Parents presented the following witnesses: Student, Mother, Father, Shelly Lacey-Castelot, Special Education Literacy and Assistive Technology Evaluator, Rebecca Vanech, Educational Evaluator, Lisa Stizver, Greenwich High School ("GHS") School Psychologist/Evaluator, Laura Conte, Education Director at Pinnacle School, Erin Knight, Special Education Teacher/Math Teacher, Pinnacle School, Dr. Vivian Koda, Neuropsychologist/Evaluator and Joanne Sabato, Pinnacle School Speech and Language teacher. The Board presented the following witnesses: Joan O'Day, GHS School Social Worker, Hildy Riccardi, GHS Regular Education English Teacher, Mara Adelsberg, GHS Guidance Counselor, Brigid Barry, GHS English Department Chair, Stephanie Ryan, GHS Regular Education History Teacher, Mary Beth Smith, GHS Regular Education English Teacher, Cassandra Echevaria, GHS Regular Education Reading Specialist, Karen Passamano, GHS Speech and Language Pathologist.

The Board's exhibits B-1 to B-2 and B-4 to B-41 were admitted as full exhibits. All pages in B-3 (which purported to be a copy of an Individualized Education Program ("IEP")) were stricken except for pages 31, 32 and 35. The parties agreed that Exhibit P-64 is an accurate copy of that IEP. (Transcript 1/20/16). Later Exhibit B-3A was substituted as the accurate IEP in question. The Parent exhibits P- 4 through P- 117 were admitted as full exhibits. Exhibit P-1 to P-3 were marked for identification purposes only. The Due Process Complaint/Hearing Request was admitted as HO-1. The parties' Joint Stipulation of Facts was read into the record and admitted as HO-2.

This Hearing Officer granted the parties' requests for extension of the mailing dates of the Final Decision as follows: On December 22, 2015, the mailing date was extended to February 12, 2016. On January 20, 2016, the mailing date of the Final Decision was extended to March 29, 2016 add hearing dates. On March 15, 2016, the mailing date of the Final Decision was extended to May 9, 2016 to add hearing dates. On April 27, 2016, the mailing date of the Final Decision was extended to June 9, 2016 to add hearing dates. On May 17, 2016, the mailing date was extended to July 1, 2016 to add hearing dates. On June 21, 2016, the mailing date of the Final Decision was extended to July 29, 2016 in order to add a hearing date. On June 29, 2016, the mailing date was extended to August 29, 2016 to add hearing dates. On July 18, 2016, the mailing date was extended to September 30, 2016. On September 12, 2016, the mailing date of the Final decision was extended to November 4, 2016 to allow the parties to submit briefs and proposed findings of fact by October 11, 2016. Both parties submitted briefs on October 11, 2016.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. See *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993). All motions that were not previously ruled upon are

hereby denied.

**SUMMARY:**

The issues in this Due Process hearing involve whether the Greenwich School Board failed to provide a free and appropriate public education to a high school student with the exceptionality of specific learning disability. Student's diagnoses are: language disorder, social pragmatic communication disorder, specific learning disorder with impairment in reading, comprehension, and attention deficit hyperactivity disorder combined type ADHD. Upon enrollment in the Board's high school, Student was at a 5<sup>th</sup> grade instructional reading level. Student received Special Education services through small group instruction in a resource room and individual and group instruction by a speech and language pathologist as well as a social skills group. After two years, Parents rejected the Board's proposed IEP and unilaterally placed Student at Pinnacle School. Parents seek reimbursement for tuition, education related services, and the Lindamood-Bell Visualizing and Verbalizing Program.

**STATEMENT OF JURISDICTION:**

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

**FINDINGS OF FACT:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on July 29, 1999 and currently lives in the town of Greenwich. (Stipulation of Facts)
2. Student has been described in different settings as "a wonderful kid with a big heart", kind, caring, "extremely polite and respectful" and someone "who puts forth her best effort"; "an outgoing, engaged, participatory student who wants to do well." (B-12, B-28, Testimony, Ryan, Testimony, Mother)
3. Student was born with severe health complications that required significant medical attention. Her early milestones were delayed and at approximately age 2, she was diagnosed with oculomotor dysfunction, binocular dysfunction and visual perception delay. (B-11, B-13, Testimony, Mother)
4. Student participated in the *Birth to Three* program for early intervention and began intensive speech therapy at 22 months. (B-13).
5. Student's diagnoses are: language disorder, social pragmatic communication disorder, specific learning disorder with impairment in reading, comprehension, and attention deficit hyperactivity disorder combined type ADHD. (Stipulation of Facts)

6. Student attended International School at Dundee, Riverside of the Greenwich Public Schools (GPS) from Kindergarten to 2<sup>nd</sup> grade and received special education and related services from GPS. During this time, the Student experienced difficulty socially, including social isolation and incidents of harassment and bullying. Parents requested intervention of school staff and were not satisfied with the school's response. (Testimony, Mother)
7. The Parents privately retained Dr. Nelson Dorta, PhD to conduct a neuropsychological evaluation of Student when she was in the second grade. Dr. Dorta's report included a thorough analysis of domains in the areas of the neurocognitive system critical to learning. With respect to academic functioning, Dr. Dorta noted that although oral reading speed was below average, Student's ability to decode was excellent. Student performed far below grade level in reading comprehension. Student's computational skills were in the above average range and accurate. Student's ability to write a story to a prompt picture fell in the average range. Her ability to elaborate was less developed in a higher level of writing calling for character and scene development. (B-13, Testimony, Mother)
8. Dr. Dorta's clinical impressions were that Student had persisting areas of deficit rooted in a likely neurodevelopmental disorder of genetic origin. Specifically, Student experienced problems with articulation, fluency as well as with higher order linguistic processing with the latter being further affected by poor sustained attention. Her non-verbal/visual spatial skills were weak, mostly at the levels of complex organization and integration of information. Student displayed below expectations in areas of executive functions and higher order problem skills. Dr. Dorta diagnosed Student as having Attention Deficit Hyperactivity Disorder Combined type (ADHD-C). He noted that Student's variable executive ability "was rooted in primary attentional and working memory deficits that result in "toppling" of the process needed for more complex problem solving. This combined with her language comprehension deficits does have adverse effect on her social and academic functioning. (B-13)
9. At the social level, her disabilities limit what she attends to in an interaction (e.g. missing nuances and cues due to inattention), and how well she understands the dynamics of the interaction (e.g. effect of the processing and integration problems). These difficulties also further complicate her ability to organize and remember complex information in the classroom and with peers. (B-13)
10. [Student] displayed great difficulties with reading comprehension and sequencing/comprehending verbally presenting information." In addition to ADHD-C, Dr. Dorta diagnosed Student with Reading Disorder (Comprehension subtype) due to language processing and working memory deficits and Language Disorder. (B-13)
11. Dr. Dorta recommended a number of strategies to assist Student in the classroom setting. One recommendation was to give information through both visual and auditory channels to help with encoding and consolidation of information. (B-13)

12. The parents unilaterally placed Student at Eagle Hill School (EHS) for grades 3-8. Parents felt that Student benefitted from small classes and direct instruction at Eagle Hill. While at EHS, the Student received direct instruction in reading. Student made slow but steady progress while Student was being educated at EHS. Student made friends and participated in team sports and was developing social skills. (B-25, Testimony, Mother and Father.)
13. As EHS's program ended at grade 8, Parents decided to re-enroll Student at Greenwich Public High School for two reasons: Student's older sister attended Greenwich High School Student and Student wished to attend the same school as her older sister. The course syllabus at Greenwich High School presented a variety of courses that Student would enjoy. (Testimony, Mother)

*Enrollment at Board School and Profile of Student's disabilities and unique needs*

14. Parents re-enrolled Student in GPS in spring of 2013 while Student was still attending the 8<sup>th</sup> grade at Eagle Hill and made a referral to Special Education and Related Services. (P-4 and P-5). A Planning and Placement Team meeting ("PPT") was held on May 7, 2013. The attendees were Brigid Barry, Administrator, Mother, Michael Galatioto, Regular Education Teacher, Cathy Mayo, Special Education Teacher, Joan O'Day, Social Worker, Karen Passamano, Speech and Language, Mara Adelsberg, Guidance and Lisa Stizver, Evaluation team. The Mother signed consent to the team's proposal to conduct an initial evaluation with the following assessments as part of the evaluation: individual administered assessments on executive functioning and working memory, reading, writing and math; rating social, emotional and behavioral observations and rating scales; receptive/expressive language assessments and a social/developmental history to determine social and academic functioning. (B-6).
15. The following psychological, intelligence and education assessments were conducted as part of the psychoeducational evaluation: a records review, classroom observations, and the following assessments: Kaufman Assessment Battery for Children - 2nd Edition (KABC-II); Wide Range Assessment of Memory and Learning - 2<sup>nd</sup> Edition Auditory Attention and Executive Functioning; NEPSY - 2<sup>nd</sup> Edition (NEPSY-II), Behavioral Assessment System for Children - 2<sup>nd</sup> Edition (BASC2) Parent and Teacher Rating Scales; Behavior Rating Inventory of Executive Function (BRIEF) Parent, Teacher and Self Report Rating Scales; Wechsler Intelligence Scale for Children -IV; Wechsler Individual Achievement Test - 3<sup>rd</sup> Edition- III; Clinical Evaluation of Language Fundamentals (CELF-4); Test of Language Competence-Expanded Edition (TLC-E); Test of Problem Solving -Adolescent: 2 (TOPS-A:2) and Social Language Development Test Adolescent.
16. The evaluators noted the following:
  - a. Student was observed to be on task 100% of the time, indicating that she was attentive and available for learning within a highly structured environment.

- b. In intelligence testing, Student obtained a Full Scale IQ score of 77, however Student's overall intellectual ability could not be interpreted meaningfully because there was too much variability in the four indexes that composed the IQ score. The Student's greatest weaknesses were in perceptual reasoning (Borderline range) and processing speed (Extremely Low range).
- c. In testing of cognitive and processing abilities (KABC-II), Student performed in the Low Average and Borderline ranges.
- d. While Student's working memory skills fell within the average range, Student's visual memory skills, which involved recall of visually complex scenes fell within the 2<sup>nd</sup> percentile at the lower end of the Borderline range. Although Student's ability to take in information in short-term memory, manipulate information to meet the task demand and produce an accurate response was an area of strength in a highly structured environment with minimal external, this would not be true of the classroom environment. In the classroom environment, she would experience difficulties in working memory and sustaining attention due to external stimuli.
- e. On the educational evaluation and achievement testing (WIAT- III), Student demonstrated average to high average writing skills, including spelling, formulating sentences with vocabulary words in context and writing a composition. However, Student had difficulty reading social situations; difficulty expanding and developing her language and ideas.
- f. The educational evaluation recommendations included support in the areas of reading comprehension, fluency and problem solving; having Student repeat and paraphrase what she has heard or understood in order to check accuracy and to provide an opportunity for rehearsal. Ultimately, teaching self-initiated "comprehension checking" strategies; information should be pre-organized to reduce demands on working memory; providing Student with greater organization for a task and demonstrating where to begin; a social skills group; providing opportunities for self-monitoring her task performance and social behavior; encourage Student to identify her strengths and weakness for specific tasks or activities; allow for comparison of pre-activity prediction and performance with post activity evaluation.
- g. In the assessment by the Speech and Language evaluator, Student scored lowest in the areas of Figurative Language -1% Very Low (TLC-Expanded Edition), Interpreting Intents, 1%- Very Low (TLC-Expanded Edition), Problem Solving - 7% Borderline (Social Language Development Test Adolescent), Making Inferences 7% (TOPS2-A), Determining Solutions 7% Borderline (TOPS2-A). The Speech and Language evaluator stated that "[Student's] ability to comprehend literal language is an area of strength, while her ability to comprehend information at the abstract level is a challenge for her."

17. At EHS, Student's 8<sup>th</sup> grade academic courses were Tutorial, Literature, World History, Writing and Math. In June of 2013, EHS produced an exhaustive report of Student's learning profile, instructional strategies and progress in all academic areas as well as suggestions for effective teaching strategies for Student. (B-25)
18. EHS's report presented Student's complex educational profile, strengths and weaknesses. The report outlined the need for direct instruction in areas of understanding abstract relationships; abstract problem solving and social thinking. Student's disabilities impacted her learning in the academic areas of reading, communication, speech and writing. Additionally, abstract words and ideas are difficult for Student to grasp without first providing background information, visual presentation and re-teaching with application of the abstract concepts to different situations. The relevant portions of the report of academic functioning and effective strategies and modifications are below. (B-25)
19. Student mastered skills in a small math class (1:4 teacher/student ratio) that consisted of small group instruction that emphasized concepts and operations, problem solving, number sense and units in practical application areas. Student received the following modifications to the math curriculum: providing study guides as reference, providing repeated exposure to instructed vocabulary words and concepts, providing ongoing review of previously instructed material, using a calculator to facilitate computational accuracy, providing teacher modeling, providing sample problems. (B-25)
20. Similarly, Student had mastered most of the mechanics of writing. She had totally mastered the ability to write an essay consisting of two to four paragraphs and had mastered in isolation five or more paragraphs. She could write paragraphs with a topic sentence, sort details related to a topic and develop and support main ideas. She required direct instruction to use vivid verbs and varied vocabulary. (B-25)
21. Student's disabilities had greatest impact in the areas of language arts, literacy and social studies. Her disabilities impaired her ability to comprehend figurative language and abstract concepts. The following are excerpts of the report that provide insight to the Student's level of performance and unique needs for instruction and modifications at the end of the 8<sup>th</sup> grade. (B-25).

#### Language Arts Tutorial Class

- a. Student received intensive remedial instruction in Tutorial for language arts during two school periods for 40 minutes totaling 80 minutes per day on a weekly basis.
- b. Though Student was in the 8<sup>th</sup> grade, the materials used in the class were written on approximately the 5<sup>th</sup> grade reading level. The 5<sup>th</sup> grade level was an instructional reading level geared to developing skills. The Tutorial was taught at a reading level higher than the Student's independent reading level through a small group with direct instruction by a teacher. (B-25, Testimony, Vanech)

- c. The concepts and skills being taught in the Tutorial were decoding; spelling rules and sight words; vocabulary words drawn from reading; comprehension and written expression. (B-25)
- d. Student had *mastered* the following skills at the 5<sup>th</sup> grade reading level at the end of the 8<sup>th</sup> grade:

Decoding: decoding one-syllable words and words containing instructed syllable types with affixes added; recognize word roots and affixes and use these to help decode unfamiliar words; decode instructed sight words.

Spelling: spell one-syllable word, words that contain vowel teams, words that contain vowel diphthongs and silent letter combination in words, spell words containing instructed syllable types with affixed added, spell instructed sight words, recognize word roots and affixes and uses these to help spell unfamiliar words, identify spelling)

Vocabulary words drawn from reading: use teacher or text provided clues to determining meaning and unfamiliar terms, complete objective format vocabulary exercises, apply knowledge of instructed vocabulary to comprehend reading.

Comprehension: recalls facts and details, sequence plot events, relate personal experiences in reading, apply previously read information to current reading.

Written Expression: use capitalization; use ending punctuation, write complete sentence. (B-25)

- e. Student had *mastered in isolation, but not in context*, the following skills at the 5<sup>th</sup> grade instructional reading level skill:

Spelling: correct spelling errors in composition.

Vocabulary words drawn from reading: complete oral sentences using instructed terms, incorporate vocabulary into written exercises, understand multiple means of vocabulary terms.

Comprehension: make predictions, make inferences, make reasonable emotional responses to reading, discriminate between relevant vs. irrelevant information, identify theme from context of reading.

Written Expression: identify instructed parts of speech, proofread for mechanical and contextual errors.



- f. Student required *direct instruction* by a teacher and was working on the following skills at the 5<sup>th</sup> grade reading level:

Vocabulary words drawn from reading: identify, define and utilize vocabulary terms, use resources to define unfamiliar vocabulary (e.g. notebook, study guide)

Comprehension: summarize a story, identify character traits, compare and/or contrast events, characters, settings, etc., form appropriate visual readings from the reading, develop opinions, etc., identify cause-effect and if-so relationships, compare/contrast books and themes interpret poetry.

Written Expression: summary paragraphs. (B-25)

- g. Classroom modifications that were identified as useful for Student included the following:
- i. Vocabulary: giving several opportunities to uses instructed vocabulary in structured activities, providing frequent review to ensure mastery.
  - ii. Comprehension: reviewing unfamiliar vocabulary and background information prior to reading, incorporating role play activities to aid in visualization, highlighting information that will help with interpretation of material, requiring uses of instructed reading strategies.
  - iii. Written Expression: providing a model, script or guided questions, encouraging completion of graphic organizers to organize and elaborate ideas. (B25)

#### Literature Class

- h. Student's Literature class instructed in reading comprehension, vocabulary, and literary concept skills. Student took this class for one period of 40 minutes per day weekly.
- i. The materials used to teach Student through reading for enjoyment to encourage independent reading. The materials were written on approximately a 4<sup>th</sup> grade reading level. Concept and skills included: a number of vocabulary words drawn from reading; literary concepts, including instruction of: author, setting, plot, characterization, conflict, imagery, point of view, tone, mood, flashback, foreshadowing, symbolism, stereotype, types of literature (fiction and nonfiction); Figurative language concepts instructed, included alliteration, irony, metaphor, simile; and comprehension.
- j. At the end of the 8<sup>th</sup> grade, Student had not totally mastered any of the skills in the class but mastered the following in isolation:

Comprehension: sequence plot events, identify character traits, and relate personal experiences to reading.

- k. Student required direct instruction by a teacher in the following areas:

Vocabulary: identify, define and utilize vocabulary terms, use teacher or text provided clues to determine meaning of unfamiliar terms, complete oral sentences using instructed terms, incorporate vocabulary exercises, understand multiple meanings of vocabulary terms, use resources to define unfamiliar vocabulary (e.g. notebook, study guide), apply knowledge of instructed vocabulary to comprehend reading.

Literacy concepts/ figurative concepts: alliteration, irony, metaphor, simile: define instructed literacy concepts, identify instructed literacy concepts, create examples of instructed literacy concepts.

Comprehension: recall facts and details, summarize a story, make predictions, make inferences, compare and/or contrast events, characters, settings, etc., apply previously read information to current reading, form appropriate visual images from the reading, develop opinions about the plot theme, characters' actions, etc., make reasonable emotional response to reading, discriminate between relevant vs. irrelevant information, identify cause-effect and if-so relationships, identify theme from context of reading.  
(B-25)

- l. Two areas of literacy instruction that had not yet been introduced to Student included comparing and contrasting books and themes, and interpret poetry. (B-25)

- m. Classroom modifications that were useful for Student included:

- i. Vocabulary: reviewing unfamiliar vocabulary words and background information prior to reading; providing several opportunities to use instructed literary terms in structured activities; providing frequent review to ensure mastery; giving several opportunities to use instructed vocabulary in structured activities.
- ii. Comprehension: Providing illustrations, pictures, objects to help visualize the reading; limiting the number of pages assigned; highlighting the information that will help with interpretation of material; requiring use of instructed reading strategies (e.g. reciprocal reading, summarizing scripts); requiring use of study guides or other resources as reference; encouraging the use of responses modeled by teacher.

World History I Class

- n. The History Program used a multimodal approach incorporating textbooks, lectures and visual aids that matched Student's ability.
- o. Student mastered some geography skills and required direct instruction to use grids and lines to find locations.
- p. The class studied historical themes and world religions. Student had *mastered* the following skill: define and utilize vocabulary terms; read and understand time lines.
- q. Student had *mastered in isolation but not in context* the following skills: sequence key historical events, discuss the importance of geographical features on the development of a culture, identify the cycles of exploration, immigration and development of societies, explain the impact of economics on the development of cultures.
- r. Student required *direct instruction* to explain systems of government and discuss the impacts of periods of peace and war.
- s. In the area of Comprehension and Applied Study Skills in the social studies class, Student *mastered* just one skill: use relevant information to make logical predictions.
- t. Student *mastered in isolation but not in context* the following skills: retain instructed information, generalize previously learned material to understand new concepts, compare and contrast concepts, discriminate fact from opinion, recognize and explain cause-effect relationships, take complete notes from lectures, identify main ideas, use unit chapter headings, prepare for objective tests, prepare for essay tests.
- u. Student required *direct instruction* for the following skills: take complete notes from written sources, paraphrase main ideas, use table contents, use glossary index, scan for pertinent information, formulate a working outline prior to researching, use varied resources to take notes and complete a rough draft and use corrections and suggestions to edit into a final product.
- v. Classroom modifications useful for Student in this class included the following:
  - i. Vocabulary: giving several opportunities to use instructed vocabulary in structured activities, providing frequent review to ensure mastery and retention, encouraging the use of study guides, glossaries or other resources to recall definition of terms.
  - ii. Comprehension: providing guided questioning, requiring use of specific strategies (e.g. listen for repeated information), anchoring more abstract concepts to background knowledge, moderating the rate of teacher speech, providing illustrations, pictures, objects, etc. to help visualize concepts under study.

- iii. Applied Study Skills: presenting notes on the board, requiring use of strategies to study for tests (e.g. review notes, create possible test questions); providing teacher or peer assistance to study for tests, and providing assistance to organize a project.

Pragmatic Language Report:

- w. At EHS, Student also participated in a weekly Pragmatic Language Group designed to provide explicit instruction in and opportunities to practice the abstract, dynamic concepts of language-based social thinking and related pragmatic language skills. Student required instruction in the following areas: use appropriate voice volume, greet adult and classmates, understand appropriate classroom routines and behaviors, offer compliments, address someone by name before beginning a conversation, interrupt conversations effectively, shift topic of conversation when appropriate. Group skills that Student required instruction in included: listen to others, take turns, share, offer compliments, remain with the group, transition out of the group, invite others to join a group, identify good sportsmanship.
22. The EHS report stated that a number of instructional strategies and modifications are most important to Student's success, which included the following:
    - Provide visuals when presenting information in a lecture format and providing her with extra time to copy notes
    - Provide direct instruction on comprehension strategies.
  23. Upon enrollment, Student took a writing test for English language placement. Previously, GHS had an English class with a level of instruction for students with special needs. At the time of her placement, GHS had phased out this English class. (Testimony, Barry).
  24. The writing test required Student to respond to one of a number of writing prompts. The directions included the following: "Before you write, you might want to list or outline some of the ideas that come to mind as you think about your topic." Of the prompt topics, two mentioned newspapers. One topic prompt asked the student to respond to the critique that newspapers and other forms of entertainment were examples that today's culture lacked creative imagination, good taste, artistic merit and adequately disciplined skills. The second topic prompt asked the writer to give examples of a recent newspaper article that revealed the strength or weaknesses of human beings. (P-96)
  25. Student responded with an essay about why newspapers can be fun and entertaining. Presumably, she meant to respond to the former topic prompt, as that prompt had both the words "entertainment" and "newspapers". Student missed the meaning of the topic question entirely. However, despite this, the GHS English Department Chair responsible for placement considered this off topic essay as 9<sup>th</sup> grade level and determined that the appropriate placement should be in English Language Arts 112, a 9<sup>th</sup>

grade English class for average students. She made this placement determination based upon her assessment that Student could write well-formed paragraphs. (P-96, Testimony, Barry)

*The Ninth Grade IEP*

26. The Board convened a PPT on June 20, 2013 to review evaluations and determine eligibility. The Board determined that Student qualified for Special Education and Related Services under a language-based learning disability. The Parents signed consent for special education placement. (Stipulation of Facts). At this time, the PPT had the results of the evaluations and the EHS report described above.
27. The attendees were: Lisa Strizver, Psychologist, Karen Passamano, Speech Pathologist, Cathy Mayo, Special Education Teacher, Lucy Arecco, Regular Education Teacher, Brigid Barry, Administrator, Joan O'Day, Social Worker, Mara Adelsberg, Mother and Father.
28. The Special Education teacher reviewed the proposed IEP. The Board members of the PPT proposed that the Student be in a regular education reading comprehension class. (B-5)
29. In addition, the PPT proposed the following services: Special Education: 11 sessions or 58 minutes per week of group instruction in the resource room. Related Services: 30 minutes of individual instruction in Speech, 30 minutes of group instruction in Speech and 58 minutes of group counseling. (B-5)
30. Program modifications included: Materials/Books/Equipment: may need modified worksheets, may need specific study guides, access to computer, calculator; Tests/Quizzes/Time: may take in Resource Room, may take in sections, may review before. Extra Time 200%, Modified Tests, Simplify Test Wording, Test Read; Grading: modified curriculum, Grade Effort plus Work, Modified Grades; Organization: may need study outlines, may circle multiple choice items - bubbler. Instructional Strategies: modified homework, and classwork, reteaching of material, check work in Progress, Concrete Examples, Extra Drills/Practice, Have Student restate information. (B-5)
31. The EHS report made frequent reference to reviewing unfamiliar vocabulary words and background information prior to introducing reading to increase reading comprehension. This was not included in the IEP. (B-5, B-25)
32. Lisa Stizver is a school psychologist and was on the evaluation team. She testified that one instructional strategy that would have assisted Student was pre-teaching information. However, this instructional strategy was not included in the IEP. (Testimony, Strizver, B-5)
33. Two additional instructional strategies were reported by EHS as being important to Student's success were not contained the IEP: They were: 1) Provide visuals when presenting information in a lecture format and providing her with extra time to copy

notes and 2) Provide direct instruction on comprehension strategies. Neither of these was included in the IEP. (B-5, B-25)

34. Annual Goal # 4 states: “[Student] will improve her reading comprehension in order to successfully complete her mainstream work”. This reading goal addressed a large part of Student’s disability in just one general goal for reading comprehension.
35. Objective # 1 states that “using mainstream and supplemental coursework, [Student] will identify details, verbally and in writing in response to questions for a given reading.” However, at EHS, Student had already mastered the ability to identify details. EHS reported mastery in the area of reading comprehension in recalling facts and details, sequence plot events, relate personal experiences in reading, apply previously read information to current reading. (B-5, B-25).
36. Annual Goal # 4, Objective #2 states that Student will “identify details to support a theme of a story in response to questions for a given reading selection”. However, Student had already mastered this skill in concept while at EHS. Student’s difficulty was with identifying the theme of a particular story, not in the details to support it. The problem was not that Student was not able to spot details once a story was presented. Student had already mastered these skills. (Testimony, Lacey-Castelot, B-5, B-25)
37. The difficulty in reading comprehension, according to the EHS report, was that Student could not understand the main idea of a story that is being presented. There was no goal directed to this difficulty. (B-5, B-25)
38. Shelly Lacey-Castelot is a highly qualified expert. She is the Director of Literacy Solutions, where she provides independent and Board recommended assistive technology and literacy-based evaluations, direct instruction, and consultation with PPTs. She has worked as a teacher in a number of public school systems in remedial reading and language arts to students with learning disabilities. She had also previously worked as a researcher in the use of assistive technology for students with reading disabilities. She testified that the appropriate goal in reading comprehension would have addressed the Student’s ability to “inference” as opposed to identifying details. She further testified that it was not appropriate for Student to use grade level curriculum materials given the Student’s 5<sup>th</sup> grade instructional level vocabulary and comprehension. (Testimony, Lacey-Castelot, P-54).
39. Annual Goal #6 stated that “[Student] will improve her essay writing skills in order to be successful in the mainstream classes. Objective #1 states that Student will “write at least two supporting details within each paragraph of an essay without repetition.” Again, this is a skill that Student had already mastered at EHS (B-5, B-25).
40. The 9<sup>th</sup> grade IEP provided for 30 minutes of individual speech and language on a weekly basis for two sessions of 15 minutes each. Additionally, Student participated in a group session for one hour a week with another student. Karen Passamano was the Student’s 9<sup>th</sup> grade Speech and Language Pathologist. She testified that she wrote the IEP goals and used a set of therapeutic materials called “Social Thinking” in

implementation of the IEP. She testified that she also used curriculum material that was being covered in class and used the material to determine whether Student was making progress. Ms. Passamano's data sheets consisted of pluses and minuses representing whether the Student correctly responded to her questions. She testified that based upon her sessions she would then convey Student's progress to Cathy Mayo, the Special Education Teacher. However, there is no record of what questions were being posed and what responses were gaged as appropriate. The Parents argue convincingly that Ms. Passamano's data is entirely subjective in nature. Further, it cannot be said that Ms. Passamano's related speech services could be direct instruction on reading comprehension. (Testimony, Passamano, B-5).

41. Student began to struggle with the English Language Arts and Social Studies curriculum from the beginning of the school year. One of the first books being read in the 9<sup>th</sup> grade English class was Antigone, a Greek play rich in figurative language. Parents began writing to school teachers about Student's difficulty reading the book and the stress Student was experiencing trying to understand the story. Throughout the year, the Parents witnessed the Student's anxiety and struggle with homework. (Testimony, Mother)
42. The Father testified that upon reviewing the books that Student was assigned for reading, he researched the Lexile level of the books online at the Lexile website to determine the grade level comprehension of the books. He found out that these textbooks were instructionally at the 9<sup>th</sup> grade level, far higher than the Student's ability to comprehend. (Testimony, Father, P-98, P-99).
43. The PPT met in March of 2014 at Parents' request. Teachers reported that the Student was making progress and reviewed Student's report cards. The team members agreed to revise the IEP to reflect an additional hour of resource room time for a writing module and "pull out" for speech therapy. However, the total service hours remained the same but merely shifted to resource room time. (B-4)
44. The Board presented high grades in Student's report as evidence that Student had been making good academic progress. Student consistently received A's in her classes. However, teacher witnesses could not definitively testify that the Student made progress in her classes (B-15, B-22)
45. The Student's modified grades in the A range reflected "Grade Effort plus Work." Given the fact the Student had been universally regarded by her teachers as conscientious and hardworking, the Board's supporting evidence is unconvincing. (B-5)
46. Further, the grades may not be a reliable indicator of what Student actually learned. For instance, Parents presented samples of the Student's work product and resulting grades. In a History class assignment to discuss why the Arab Spring failed, the Student wrote an unintelligible response and received a mark of 8/10 or 80%. In another assignment, the Student appeared to have copied and paraphrased the book jacket to a Harry Potter book as her book report. She received full credit and an excellent grade despite the

Mother calling attention to the fact that the Student had copied the book jacket.  
(Testimony, Mother, P-21, P-25)

47. Exhibit P-22 is a copy of the modified quiz for the book "Lord of the Flies" and study guide for the quiz. Many of the questions in the study guide mirror the test questions.
48. Student testified about her academic experience in her freshman and sophomore years at Greenwich High School. She testified that her experience in English and Social Studies were "not great," because she "read so many hard books both of those years." She testified that she could not understand the books she was reading. She testified "the plot was confusing" for "all of them". She testified that in her sophomore year, she had an aide that she shared with others in the class and that her resource room teacher for her freshman and sophomore year, Mrs. Mayo, helped her sometimes and would read the books to her *when she needed help with those classes*. (Testimony, Student).
49. The Board's regular education teachers testified that Student received support and instruction with her English and social studies assignments in class or the resource room but this is contradicted by what the Student reported to her parents and in a reading survey in school. The Mother testified that the Student was always anxious and overburdened with homework and frequently reported that she did not understand the books she was reading in English Language Arts. The Student reported in response to an "Independent Reading Survey" that only 0-25% of required reading was done with teachers. (P-12).
50. The Special Education Teacher was not a witness at the hearing. The IEP called for quarterly work samples and data sheets to support progress in reading and writing. The Board could not produce these samples or data sheets at the hearing. (B-5).
51. In the spring of her freshman year, Parents retained Rebecca Vanech to conduct an evaluation on Student's progress. The Mother testified that the Parents were getting assurances from teachers that the Student was doing well when at the same time Student was experiencing stress in keeping up with school work and reported that she did not understand much of what was going on in English and Social Studies. (Testimony, Mother)
52. Rebecca Vanech is a Connecticut and New York certified special education teacher and Kindergarten – Adult Literacy Specialist. She currently provides independent remedial tutoring and executive functioning coaching. She is a former special education teacher in both private and public schools. (P-55). She performed a reading evaluation of Student in May of Student's freshman year at GHS. Ms. Vanech testified that the Student was reading at the same instructional level at the time of her assessment as when the Student was in the 8<sup>th</sup> grade at EHS. Ms. Vanech's evaluation report demonstrates that the Student did not derive any educational benefit from the GHS program. (B- 25, Testimony, Vanech)

Tenth Grade IEP



53. The PPT met on June 11, 2014 to conduct an annual review and transition planning. The attendees were: Brigid Barry, Administrator, Mother, Father, Cathy Mayo, Special Education Teacher, Helen Blackburn, School Psychologist, Joan O'Day, Social Worker, Karen Passamano, Speech and Language pathologist, Mara Adelsberg, Guidance Counselor, Rosemarie Ampha, Administrator, Mother, Father, Attorneys Gerry McMahon and Danielle McGee, Parent Attorneys, Attorney Abby Wadler, Board Attorney.
54. Prior to this meeting, the Parents shared the results of Rebecca Vanech's evaluation. The school team members stated that they did not have enough time to review the evaluation. (P-64, Testimony, Mother).
55. The minutes noted that the Student was not eligible for assistive technology but that the team agreed at Parent request to conduct a consult with the district assistive technology coach during the next school year to determine appropriate technology recommendations. It is undisputed that this consult never occurred. (P-64).
56. The Greenwich Assistive Technology Review form was completed by the PPT and a check was placed next to the statement that "Assistive Technology is not necessary at this time. Student's needs are currently being met." However, the form also sets forth a number of considerations that were not checked as being considered, including the consideration that "Further investigation may be necessary to determine what, if any, assistive technology devices/services may be required." It appears that the school team determined that no assistive technology was necessary and foreclosed the possibility of any consideration. The only reason assistive technology was considered as a possible supplementary aid was because the Parents requested it. The team had never considered it as part of the planning process.
57. The Parents presented evidence, through their Literacy/Assistive Technology expert, Shelly Lacey-Castelot, that Assistive Technology would be beneficial for the Student's access to the curriculum. Ms. Lacey-Castelot testified that considering the Student's auditory problems and processing speed, one simple assistive technology could be an Echo smart recording pen or an audionote on her computer to allow her to have access to reviewing information she might have missed in class. She also testified that a text-to-speech software could help in reading by reducing the load on the Student's memory. The Board members of the team dismissed the possibility of the use of assistive technology using a pre-prepared checklist and moving on without exploration and fair consideration of useful tools to help the Student access the curriculum.
58. The PPT proceeded to present the proposed IEP for the next school year without reviewing or discussing Parents' private evaluation.
59. The PPT convened on August 26, 2014 to review the Vanech evaluation. The attendees were: Rebecca Vanech (identified by her maiden name Obrinsky), Educational Evaluator, Cathy Mayo, Special Education Teacher, Helen Blackburn, School Psychologist, Joan O'Day, Social Worker, Karen Passamano, Speech/Language, Cassie Echevarria, Regular Education Teacher, Mother, Father, Attorney Danielle McGee,

Parent Attorney and Attorney Abby Wadler, Board Attorney. The following changes were made to the IEP. Resource room time was change to a total of 96 minutes per 8 school days. Speech and Language time was to be 30 minutes per 8 days for group and 30 minutes per 8 days for individual instruction. Despite the concerns related in the evaluation, PPT reduced the special education hours by more than 4 hours per week in the 10<sup>th</sup> grade. Speech services time was also reduced. The minutes state that the special education teacher and literacy teacher “reviewed ways that the English/Social Studies classes, and the Literacy Workshop will address areas identified in the evaluation.” The IEP remained essentially the same as that presented in June of 2014 without the evaluation.

60. Exhibit P-14 is a copy of the Student’s Resource Room log from the 10<sup>th</sup> grade from October 2014 to March of 2015. It is quite apparent from reading the log that little, if any, time in the Resource Room were used to address Student’s IEP goals. Student reported time spent “relaxed”; did other topics such as wellness homework, American Sign Language homework, met with the social worker, worked on chemistry. (P-14).
61. Although the Board presented many general education teachers witnesses, the Board presented no evidence concerning special education services in reading, writing and math at the Due Process Hearing. Except for report cards, the Board presented no evidence of objective measures supporting progress in the special education program.
62. Student took the PSAT in the 10<sup>th</sup> grade. She scored in the 61<sup>st</sup> percentile in math, 17<sup>th</sup> percentile in critical reading and 9<sup>th</sup> percentile in writing skills. She scored 0 in reasoning and inference and 0 in words used to modify and compare.
63. Dr. Vivian Koda, is a CT and NY licensed neuropsychologist and Director of Neuropsychological Assessment Services, LLC, where she provides neurodevelopmental assessments of the cognitive behavioral function of adolescents. Dr. Koda conducted a neuropsychological evaluation of Student in the spring of the 10<sup>th</sup> grade. (P-53). Dr. Koda made a number of recommendations in the areas of reading, written language, math, executive function and social cognition. She recommended an extended school year program. For reading, she recommended support from a program such as Lindamood Bell Visualizing and Verbalizing program to help Student with concept imagery for reading and listening, writing and building vocabulary. Like Ms. Lacey Castelot, she recommended the use of recorded books, such as Bookshare. She also recommended technology for recorded text and an Assistive Technology assessment. (B-8)

#### 11<sup>th</sup> Grade IEP

64. A PPT was convened on June 3, 2015 to conduct an annual review and transition planning and to review Dr. Koda’s report. Again, the team noted that Assistive Technology was not required but a screen would be requested. It would appear that the 10<sup>th</sup> assistive technology consult never was conducted. Further, the team apparently failed to consider even the most basic assistive technology aids such as Bookshare, a library of recorded books. Considering the Student’s oculomotor disability, this could

have easily been added to the IEP. Nevertheless, the request for assistive technology was again dismissed out of hand and put off for a screening. In response to the neuropsychological report, the minutes state that team members “reviewed the recommendations by category and discussed how they are addressing each area in [Student’s] IEP. (B-2).

65. At the PPT, the Parents disagreed with the Team that the Student had made appropriate progress. They requested out of district placement in an integrated language program and the Visualizing and Verbalizing program at Lindamood-Bell. The Parents’ request was denied.
66. On July 1, 2016, the Parents sent notice that they were rejecting the 11<sup>th</sup> grade IEP and would be placing the Student at Pinnacle School in Stamford, Connecticut and seeking reimbursement for tuition and education related costs. (B-27).
67. The Father testified about how he had lost faith after the GHS staff did not appear to consider the independent evaluator’s recommendations and follow through with the promised assistive technology consult. The Student had spent almost two years at Greenwich High School. The Parents repeatedly raised the same concerns about the need for direct instruction and provided private evaluations with no response from the Board and the Student did not seem to be progressing. (Testimony, Father)

#### Pinnacle School

68. Pinnacle School is an Approved Special Education Program by the Connecticut State Department of Education. (Testimony, Conte)
69. When Student entered Pinnacle School, Student was still reading at a 5<sup>th</sup> grade instructional reading level. (Testimony, Knight).
70. This was the same instructional reading level the Student was reading at the end of the 8<sup>th</sup> grade at EHS. (B-25)
71. Pinnacle School staff provided direct instruction and employed many of the recommendations of Dr. Koda and Ms. Vanech. Additionally, a reading program was designed to meet the Student’s unique needs. By spring of the 11<sup>th</sup> grade Student was able to read independently at the 5<sup>th</sup> grade reading level, which is significant growth. Student has learned to employ reading strategies, internalize them and then employ them independently. Whereas, the Student was dependent upon prompting and cuing from GHS staff to apply strategies, Student is now able to employ the skills she learns independently. She uses assistive technology. She takes notes using a smart pen and uses the recording to create outlines to study or fill in missed notes independently. (P-115, Testimony, Knight).
72. Student’s speech and language teacher at Pinnacle discussed the progress that Student had made in areas of social cognition. At the hearing, she presented informal

monitoring data, consisting of subtests of CELF-4, to show that student had been making gains over months. (Testimony, Sabato).

73. Finally, Pinnacle School provides Student with independent life skills class called "Reality Bites" to prepare Student for transition after graduation. Student receives direct instruction and practice in real world skills (e.g. budgeting, balancing a checkbook, making thoughtful decisions while shopping) in preparation for transition into postsecondary life. (Testimony, Father, Testimony, Knight)

### CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
2. The purpose of the 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).
3. The Act defines FAPE as special education and related services which "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d)." 20 U.S.C. §1401 (8).
4. 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. Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
5. 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). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207
6. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in *Rowley*, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans, reflects a "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content

in an IEP.” 458 US at 206. “ *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities are tailored to meet the child’s unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5<sup>th</sup> Cir. 1989). Compliance with the IDEA’s procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273, 285 (2001).

7. However, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child’s educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the “loss of educational opportunities or seriously infringed upon the parent’s opportunity to participate in formulating the [IEP]...”
8. Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. *Amanda J. ex rel Annette J. v. Clark County Sch. Dist.* 267 F.3d 877 (9<sup>th</sup> Cir. 2001). An IEP addresses the unique needs of the child and cannot be developed if those people most familiar with the child’s needs are not involved or fully informed. IDEA expects strong participation at PPT meetings. *Warren G. v. Cumberland County Sch. Dist.* 190 F.3d. 80 (3d Cir. 1993). The IEP is to be a collaborative process developed by the parents of the student, educators and other specialists. *Hoening v. Doe* 484 US 305, 311 (1988).
9. The failure to provide meaningful participation to parents as a part of the IEP process can result in a denial of FAPE. School districts should consider input and placement options raised by parents. See *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900 (9<sup>th</sup> Cir. 2008), *cert. denied* 130 S. Ct. 90 (2009). The Parents provided the school with EHS’s comprehensive report and there is no evidence that the report was discussed or considered in developing the Student’s 9<sup>th</sup> grade IEP. As a result, the 9<sup>th</sup> grade IEP repeated many skills already mastered by the Student before entering GHS. Had the school team considered the report, an IEP would have been planned to meet the then present academic functioning of Student. Further, the failure to consider the report led to the school team overlooking important strategies for student success. If these strategies had been employed, the Student might have progressed. (Finding of Facts No. 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31)
10. The school team members of the 10<sup>th</sup> and 11<sup>th</sup> grade PPTs made predeterminations about the lack of need for assistive technology and refused to consider Parents’ evaluator’s suggestions. There was no discussion or consideration of Parent concerns. The 10<sup>th</sup> Grade Annual Review PPT deferred consideration for an assistive technology consultation to the beginning of the next school year. When the next school year came, the team did not follow through. Again in planning for the 11<sup>th</sup> Grade IEP, the team predetermined that there was no need for assistive technology. Again, the team deferred

the consideration AT screening to a later date. The minutes of the PPT indicate that a decision had been made without allowing full consideration of the usefulness of assistive technology. The fact that the Student has benefitted from assistive technology in her current placement is evidence that this procedural violation has resulted in loss of educational opportunity. (Findings of Fact No. 55, 56, 57, 64, 67, 71).

11. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP. The Supreme Court, however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires states to "maximize the potential of handicapped children" *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998), *citing Rowley, supra.*; *KP v Juzwic*, 891 F Supp 703, 71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful" way." *Walczak*, 142 F.3d at 130. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132.
12. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002) (*citing M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)).
13. The Student's program was not individualized on the basis of the student's functional status in the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> grade IEPs and did not meet the unique needs of Student. (Findings of Fact No. 38, 39, 40, 41, 42, 45, 46, 47, 48, 56, 57).
14. The Board, having the burden of proof, did not present any evidence that the Student received the specialized instruction as stated in the 9<sup>th</sup> and 10<sup>th</sup> grade IEPs. (Findings of Fact No. 50 and 61).
15. The evidence of the Student's Resource Room log is compelling. It demonstrates that a significant portion the Resource Room time was not dedicated to special education, but "relaxing" or doing other homework in other topics and not specialized instruction provided by the IEP. The Board did not present evidence to the contrary. (Finding of Fact No. 60).
16. If a district fails to provide a FAPE, the child's parent may remove the child to a private school and seek tuition reimbursement from the state. Under the *Burlington-Carter* framework, a parent may recover tuition reimbursement if: (1) the proposed IEP was inadequate to offer the child a FAPE, and (2) the private education services obtained by the parents were reasonably calculated to enable the child to receive educational benefits. *Sch. Comm. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156, 163 (4th Cir. 1991). In addition to the IEP context, evidence of actual progress is also a relevant factor to a determination of whether a parental placement was reasonably calculated to confer some educational benefit. *M.S. ex rel. Simchick*, 553 F.3d at 327.

17. The Parents have the burden of proving the appropriateness of the unilateral placement by a preponderance of the evidence. R.C.S.A. Sec 10-76h-14(c). The Parents have met this burden.
18. The unilateral placement at Pinnacle School is appropriate. (Findings of Fact No. 68, 69, 70, 71, 72 and 73).
19. The educational placements at the Visualizing and Verbalizing Program for the summer of 2015 and 2015-2016 school year were appropriate. (Findings of Fact No. 63 and 65).
20. The Parents did not present any evidence regarding the appropriateness of occupational therapy services and therefore did not meet their burden.

**FINAL DECISION AND ORDER:**

1. The Board did not offer appropriate programs for the two years preceding the Due Process Complaint.
2. The Board did not offer an appropriate program for the 2015-2016 school year.
3. The Student's placement at the Pinnacle School is appropriate.
4. The Board is ordered to reimburse the Parent expenses for their unilateral placement of Student at Pinnacle School.
5. The Board is ordered to reimburse Parents for tuition and education expenses for placement of Student at Lindamood-Bell for the summer 2015 and the 2015-2016 school year.
6. The Board is ordered to reimburse Parents for their payment of the private evaluations by Shelley Lacey-Castelot, Dr. Vivian Koda and Rebecca Vanech.
7. The Board is not required to reimburse Parents for their payment of occupational therapy services for Student.
8. The circumstances do warrant an award of compensatory education as outlined in paragraphs 4 to 6 above.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



\_\_\_\_\_  
Hearing Officer Signature

Sylvia Ho

\_\_\_\_\_  
Hearing Officer Name in Print