

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Shelton Board of Education

Appearing on Behalf of the Student:

Attorney Anne Tremainis
Law Office of Anne Tremainis, LLC
10 Wall Street
Norwalk, CT 06850

Appearing on Behalf of the Board:

Attorney Christine Chinni
Chinni & Meuser LLC
One Darling Drive
Avon, CT 06001

Appearing before:

Attorney Brette H. Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board fail to provide the Student with a Free Appropriate Public Education in the Least Restrictive Environment for the 2011-2012 school year?
2. Did the Board fail to provide the Student with a Free Appropriate Public Education in the Least Restrictive Environment for the 2012-2013 school year?
3. Did the Board fail to provide appropriate evaluations of Student during the 2011-2012 and 2012-2013 school years?
4. If the Board's evaluations were not appropriate, were evaluations obtained by Parents appropriate?*
5. Did the Board fail to propose an appropriate program for the 2013 Extended School Year and 2013-2014 school year?
6. Did the Board commit procedural violations including, but not limited to the following:
 - a. failure to allow Guardians to be equal and/or meaningful participants in the Individualized Education Program ("IEP") team process;
 - b. failure to share information prior to scheduled PPT meeting; and/or
 - c. failure to convene legal PPT meetings, with the appropriate staff at the table.
7. If the 2013-2014 program is not the appropriate program is placement at Villa Maria School the appropriate program?
8. Is the student entitled to compensatory education for the 2011-2012 and 2012-2013 school years, including Extended School Year services for the 2012 and 2013 summers?

*In the prehearing memorandum, the issue that is numbered 4 in this Final Decision and Order relating to the appropriateness of the Parent's evaluations above was numbered 5. For clarity of legal analysis the issue that was previously the number 5 issue was moved so that it immediately followed the issue of whether the Board failed to provide appropriate evaluations.

PROCEDURAL HISTORY:

The Guardian filed a Request for Special Education Due Process Hearing which was received on August 26, 2013. The undersigned Hearing Officer was appointed on the same date. At the prehearing conference which was held on September 11, 2013, the original mailing deadline for the Final Decision and Order was established as November 9, 2013. Upon setting a hearing schedule of six dates over a period beginning October 17, 2013 and ending on November 22, 2013, the parties agreed to jointly request an extension of the mailing deadline in order to accommodate the numerous hearing dates. This request was granted and a new mailing deadline of December 9, 2013 was established.

Counsel for the Guardian requested that the hearing be open to the public during the prehearing conference. The hearing was opened to the public pursuant to an order in the Memorandum to the Parties after Prehearing Conference, dated September 22, 2013. Counsel for Guardian requested a postponement of the October 17, 2013 hearing date (the first scheduled hearing date) so that the parties could participate in a resolution conference. This request was granted on October 10, 2013. On October 10, 2013, Counsel for the Board requested a continuance of the October 22, 2013 hearing date in order to allow sufficient time for the Board to provide Guardian with a list of exhibits before the exhibits were due to be exchanged. Counsel for Guardian agreed to this request. The hearing was postponed until November 1, 2013 and commenced on that date.

On October 22, 2013, Counsel for the Board filed a Motion to Compel the Parents to Attend a PPT meeting on November 1, 2013, before the commencement of the hearing. A Response to Motion to Compel was filed by Counsel for the Guardian on October 25, 2013. On October 30, 2013, the Hearing Officer issued an order compelling the PPT meeting to take place on November 1, 2013.

A Motion to Preclude Testimony from Grandparent's Proposed Witness was filed on December 9, 2012. A Response to Motion to Preclude Testimony from Grandparent's Proposed Witness was filed on December 12, 2013. The Motion to Preclude Testimony was denied on December 19, 2013 and the witness who was the subject of the Board's motion, Dr. Rena Schine, was permitted to testify.

The hearing convened on November 1, 2013, November 15, 2013, November 22, 2013, December 6, 2013, December 20, 2013, January 9, 2014, January 16, 2014, February 4, 2014, February 7, 2014, March 4, 2014, March 13, 2014, April 22, 2014 and April 28, 2014. Successive 30 day extensions of the mailing deadline were requested and granted in order to accommodate the extensive hearing schedule. Briefs were submitted by the Parties on June 20, 2014. The final extension request granted resulted in a mailing deadline of July 6, 2014.

The Guardian's witnesses were Guardian, Dr. Michael Cohen "Neuropsychologist", Mary Ann Tynan "Villa Maria Admissions Director", David DeLucia "School Psychologist" and Psychologist Dr. Rena Schine "Educational Consultant".

The Board's witnesses were Anne Hamilton, "Principal", Debra Tucker "Special Education Teacher – D.T.", Linda Philie "School Social Worker", Amy Herold, "Speech and Language Pathologist", Amanda Clark, "Special Education Teacher – A.C." Laura Ferraro "School

Counselor”, David DeLucia, “School Psychologist” and Tracey Sedlock “Regular Education Teacher”.

Guardian’s Request for a Special Education Due Process Hearing was entered into evidence as Hearing Officer Exhibit 1 (HO-1).

Guardian’s exhibits were marked with the initial P pursuant to the normal procedure for marking exhibits. It is acknowledged that Guardian in the present case is the Grandparent and not the Parent. Over the course of the hearing Guardian submitted exhibits numbered P-1 to P-73.

On April 11, 2014, Guardian sought to introduce an additional supplemental exhibit P-73, an ADHD, August 19, 2011. This exhibit was excluded as untimely.

The Board submitted exhibits numbered B-1 to B-25, which were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

Student is a 10 year old boy with significant and complex educational, emotional, developmental and medical needs, resulting at least in part, from Fetal Alcohol Syndrome and a near drowning that resulted in hypoxic injury. Student is currently unilaterally placed by his Guardian in Villa Maria, a private Special Education school. Student made two threatening statements during the 2012-2013 school year. The Guardian and Board dispute whether the genesis of these threats was home or school-based. Guardian filed a Request for Special Education Due Process Hearing claiming the Board did not have an appropriate program in place for the Student for the 2011-2012 and 2012-2013 school years and failed to propose an appropriate program for the Extended School Year of 2013 and the 2013-2014 school years. Guardian is also claiming that the Board failed to conduct appropriate evaluations of the Student and that the private assessments and evaluations that she had obtained are appropriate and should be reimbursed by the Board. Guardian also claims that the Board has violated Guardian and Student’s procedural safeguards under the Individuals with Disabilities Education Act (“IDEA”). Compensatory education was requested as a remedy.

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 October 15, 2003, and is now 10 years of age. Student presents with a complex array of medical conditions and disabilities. In 2010, Student had been diagnosed with Fetal Alcohol Syndrome ("FAS"), Attention Deficit Disorder with Hyperactivity ("ADHD") predominantly combined type, Anxiety Disorder, Developmental Delay, Sensory Integration Dysfunction, Developmental Coordination Disorder, and Mental Disorder Not Otherwise Specified, due to medical conditions. (B-2) Student also experienced a hypoxic injury due to a near-fatal drowning accident on April 5, 2005. (B-2) More recent evaluations have included DSM V diagnoses of Social Pragmatic Communication Disorder, Specific Learning Disorder with Impairment in Reading, Written Expression, and Mathematics, Autism Spectrum Disorder, Other Specified Neurodevelopmental Disorder and Mild Neurocognitive Disorder Due to Another Condition. (P-42)
2. Student's eligibility category during the 2011-2012 and 2012-2013 academic years was Other Health Impaired ("OHI") as indicated on all relevant IEP documents. (B-1, B-3, B-4, B-5, B-9, B-12). Student's eligibility category was changed to Multiple Disabilities at a PPT meeting held on November 1, 2013. (B-20) This is the eligibility category recommended by the Neuropsychologist retained by Guardian to conduct an evaluation. (Testimony, Neuropsychologist; P-42) Guardian disputes the eligibility category of Multiple Disabilities proposed by her witness, believing that Traumatic Brain Injury is the appropriate classification. (Testimony, Guardian)
3. For the 2011-2012 and 2012-2013 school years, Student was not generally included by peers in any activities after school, with the exception of going to the house of a neighbor, whose son was friends with Student's brother, and playing video games in 2012. (Testimony, Guardian) These visits ended after a month when Guardian discovered the violent nature of the games being played. (Id.)
4. During the 2011-2012 academic year Student was in 2nd grade. (B-1)
5. Guardian reported student was well behind academically in Grade 2 and reading at a Kindergarten level. (Testimony, Guardian) She reported that his writing and mathematics were very poor and that Student could not memorize his math facts. (Id.) Guardian did report that the Student did well in Social Studies and Science. (Id.)
6. On April 12, 2011, during a PPT meeting the Guardian shared concerns about Student's ADHD and impulsivity. (Testimony, Speech and Language Pathologist; B-1)
7. On October 7, 2011, a PPT meeting was held to review and revise Student's IEP and to review an evaluation conducted by the Connecticut ADHD Center. (B-3) At this PPT meeting the Team modified Student's Social/Behavioral Goals to reflect new objectives. Goals addressing the Social/Behavior sphere included learning problem solving in a group setting and

demonstrating an improvement in social skills (Id.) An example of an Objective included in support of those goals is: Student will be able to engage in three back and forth conversational exchanges when novel topic is introduced. (Id.) Social/Pragmatic language testing was also recommended by the Team and consented to by the Guardian. (Id.) A follow up PPT meeting to discuss the testing in two weeks was scheduled. (Id.) At the time of the October 7, 2011 PPT meeting, Student was receiving 5.50 Special Education hours each week in addition to Speech and Language Therapy and Counseling. (Id.)

8. On October 28, 2011, a PPT meeting was held to review the pragmatic/social language evaluation recommended and agreed to by the PPT during the October 7, 2011 PPT meeting. (B-4) Guardian related concerns at this meeting regarding the Student's eating habits in school, and the Team included a commitment of the Team to ensure that Student ate the food he selected. (Id.) At the PPT meeting, Student's counseling was increased to two 20 minute sessions per week and an opportunity to participate in an informal social skills group every week was also to be provided to Student. (Id.) A general Goal of demonstrating an improvement in social/pragmatic language skills replaced the Social Behavioral Goals from the prior IEP, with some of the objectives from the October 7, 2011 Social Behavioral Goals carrying over to the new Goal and additional objectives added. (Id.)

9. In April 23, 2012, when the PPT met they increased Student's Special Education hours in his IEP to include an additional 2.5 hours per week of directed reading instruction and included a commitment to monitor Student's eating (B-5)

10. Guardian was concerned that activities and meetings were arranged for Student during his recess time in Grade 2, such as a Lego group. (Testimony, Guardian)

11. On September 7, 2012, Guardian raised numerous concerns in a meeting with Special Education Teacher A-C, including academics and social skills. (P-53) Guardian was also concerned about bullying during lunch and recess. (Id.) The response of Special Education Teacher A-C was to indicate she and the Regular Education Teacher would keep an eye out for such bullying behavior. (Id.)

12. During the Student's 3rd grade year, Student saw School Social Worker twice a week. (Testimony, School Social Worker) The School Social Worker found Student to be very, very quiet at the beginning of his third grade year and worked with the student on social skills, relating to other students, and coping skills. (Id.) Guardian and School Social Worker discussed issues with personal space at beginning of 2012-2013 school year and School Social Worker addressed the issue by facilitating Student's seat being moved. (Testimony, School Social Worker) Bullying was not an issue raised by Student in counseling, nor was it raised with School Counselor by Guardian. (Testimony, School Social Worker)

13. Guardian did make School Social Worker aware of her concern that Student was not making friends during the 2012-2013 school year. (Testimony, School Social Worker) The School Social Worker did not share Guardian's concerns based on her observation of the Student in the classroom, lunch groups and her work with Student's whole class. (Id.)

14. The School Social Worker was unaware of school refusal issues raised by Guardian during the 2012-2013 school year. (Testimony, School Social Worker)

15. Homework was an ongoing struggle for Student in the 2012-2013 academic year. (Testimony, Guardian.)

16. Student was observed by School Social Worker to be dejected on one occasion during the 2012-2013 school year and that was on the day following the March 2013 PPT meeting. (Testimony, School Social Worker) Other than that incident, she found him to be a happy child. (Id.)

17. Student's regular education teacher utilized a behavior management system that involved moving a clip from red to yellow to green in response to behaviors. (Testimony, School Social Worker) School staff determined that they would utilize this behavior management system in response to an incident on December 18, 2012, upon Student's return. (Testimony, School Social Worker)

18. On October 9, 2012, Guardian sent an email to Student's Special Education Teacher in which she expressed concern over scores on a Math pre- and post-test, an informal behavior rating given by the Occupational Therapist on a form for Karate, which resulted in Student not obtaining a particular belt level with his class peers. (B-25) Guardian also raised the idea of having an IPAD for Student. (Id.)

19. On December 12, 2012, an incident occurred in which Student became angry with a girl in line at school and threatened to shoot her. (P-6) A Crisis Intervention Team (CIT) meeting was held on that same day, which was attended by the acting principal, the school psychologist, Mrs. Sedlock, and Ms. Reynolds. The CIT determined that the consequences for Student's threat would be to write an apology letter and miss a recess. (Id.) The team also determined that Guardian should be provided with a list of community resources and that the Guardian, who was in the building at the time, would be contacted about the incident. (Id.) The CIT discussed Student's obsession with the military and the fact he wore military gear and pretended to be a soldier. (Id.) The Guardian was present during part of the CIT meeting and recommendations were made to Guardian to obtain counseling for the Student. (Testimony, School Social Worker; P-7) Student also expressed he thought his medication was not working. (Id.)

20. In 2013, Student was taking the medication Focalin and Intunin to address ADHD with which the Student was diagnosed when he was 2 and a half years old. (B-22, P-42)

21. School Social Worker described the December 12, 2012 threat incident as an aberration for the Student. (Testimony, School Social Worker). School Social Worker spoke with Student on the date of the incident and described Student as "mortified" and "sad" about the incident. (Testimony, School Social Worker) Student went on to describe being frightened by his own thoughts and having violent nightmares. (Id.) Student stated he was worried about the guns in his home and that he could not control his own thoughts. (Testimony, School Social Worker; P-6). Guardian also stated concerns about the presence of guns in the home. (Testimony, School Social Worker; P-6).

22. School staff did not recommend any increase or modification to School Based Counseling component of Student's IEP in response to either incident. (Testimony of School Social Worker) The School Based members of the PPT felt issues being presented were home-based and as such were addressed by outside counseling. (Testimony, School Social Worker) Student continued to express anxiety about guns on December 13, 2012. (Testimony, School Social Worker).

23. On December 14, 2012, the Sandy Hook tragedy occurred in Newtown, Connecticut.

24. On December 17, 2012, another incident occurred involving the Student. On this occasion the Student made a comment at the end of the school day that he was going to "hijack the school". (P-7)

25. On December 18, 2012, the CIT met again to address the threat to hijack the school. (P-7) The CIT determined Student was in a state of emotional crisis and Guardian was asked to meet with staff regarding the incident and given a Shelton Public Schools Safe Return Form. (Testimony, School Social Worker; P-7) This form was to be tendered to a mental health professional who was qualified to conclude that the student is mentally competent at the time of his assessment and is capable of function in the school environment without being a danger or causing disruption to himself or others. (P-7) School staff informed Guardian that she needed to have this form filled out in order for Student to return to school. (Testimony, School Social Worker; P-8)

26. Student again expressed remorse when the December 18, 2012 incident was discussed with School Social Worker. (Testimony, School Social Worker) In this conversation, Student appeared fearful and expressed that "I don't want to see anymore dying. I want the war to end." (Testimony, School Social Worker)

27. On December 18, 2012, a report to the Connecticut Department of Children and Families (DCF) was made by Shelton school staff. (Testimony X) As required by DCF, a written form documenting the oral report was generated and sent to DCF. (P-10) The information noted in the "Nature and extent of the injury(ies), maltreatment or neglect" section of the form was "Child has great fear of weapons and violence to the extent that he cannot sleep well has nightmares and his thoughts fixate on fear and violence. Yet his grandfather has several guns (safely secured in a safe) in house that frighten [Student]."(Id.) The report indicated that Guardian had expressed concern that her husband would not remove the guns from the house even though their presence was causing stress. (Id.) (Testimony)

28. On December 18, 2012, DCF notified the Acting School Principal, who had filed the written report, that the report had not been accepted, because the reported information did not meet the statutory definition of abuse, neglect or at risk. (P-11)

29. On December 19, 2012, Student was discharged from Yale-New Haven Hospital Pediatric Emergency Department. (P-12) A Yale-New Haven Hospital Return to School Certificate and the Shelton School Safe Return form were executed by a Psychiatric APRN at Yale-New Haven Hospital. (P-7, P-12). Clinician recommendations upon discharge were that

[Student] would be seen at Yale Child Study Center and 211 mobile crisis could be used at the school for future concerns. (P-7)

30. After the CIT meeting on December 12, 2012, a Community Resource Manual containing Crisis Hotline Numbers, Hospital and Emergency Services, Specialized Psychiatric Services, Area Counseling Services and Parenting Services was provided to Guardian by School Psychologist. (Testimony, School Social Worker; P-9)

31. It is undisputed that no PPT meeting was called to address any of the incidents in December involving threats. (Testimony, School Social Worker)

32. Guardian had a Neuropsychological Evaluation "Virginia Evaluation" conducted in Virginia in 2012. (Testimony of School Psychologist; B-2) The evaluation was conducted for purposes of litigation in connection with Student's injury. (Testimony, Guardian) In the Spring of 2012, Guardian dropped off the Virginia Evaluation, after removing the first 5 pages. (Testimony, School Psychologist) It is unclear to whom at school the evaluation was initially provided, but it was passed around among Student's School-based PPT members. (Id.) While the Virginia Evaluation was discussed in an informal meeting, it was not discussed at a PPT meeting. (Id.) The first 5 pages were provided to the Board when Counsel for the Guardian submitted them with the rest of the pages of the evaluation as an exhibit for this hearing. (P-2)

33. On January 3, 2013, Guardian inquired of the Special Education Teacher as to whether [Student] has ever had a formal reading evaluation, because she could not locate one in her records and wanted to make sure her records were complete. (P-13)

34. On February 6, 2013, school year, Student took part in an incident involving a post it note. (Testimony, Guardian) Student was upset that students from the religion class in the evening were touching things in his desk. (Id.) In response Student enlisted the help of another Student to write a warning "Go away. You will die" for him on the post-it note to put in his desk (Testimony, Guardian; P-5) School psychologist called Guardian into school about post it note and Student's Consequence for note was a conversation with school psychologist. (Testimony, Guardian).

35. On March 5, 2013, Guardian followed up with Principal via email regarding Student being excluded from sitting next to some boys on the bus and Student saying he was excluded because "they say I'm weird". (P-17) The Principal responded that the School Social Worker was speaking to Student about his bus ride each day and inviting Guardian to discuss strategies being put in place to address the issues. (Id.) Guardian expressed a desire to be informed of whether the students involved were identified and had the rules reviewed with them. (P-17) Principal responded on March 11, 2013, with assurances that both she and the Social Worker spoke to students involved. (P-21)

36. A Notice of PPT meeting was sent on February 15, 2013 for a meeting to be held on March 8, 2013. (P-15) The PPT meeting was held instead on March 13, 2013. (P-18)

37. On March 13, 2013 a PPT meeting was held; Guardian had a Family Advocate in attendance. Other attendees were the Principal, Guardian, Regular Education Teacher, Special Education Teacher A-C, School Psychologist and Occupational Therapist. (P-17) Two IEP documents were issued as a result of this meeting: one that addressed Student's program through the end of third grade (P-17) and one that was the plan for Student's coming fourth grade year, 2013-2014. (P-18) In the IEP for the rest of the 2013 school year, Special Education hours were again increased at this meeting from 8.17 set in April 2012 to 13.17 in March 13, 2013. (Id.) Writing instruction was increased to 2.5 hours and moved to the Related Service Room from the general education classroom. Reading Instruction was increased to 3.75 hours in the regular classroom and 3.75 in the Related Service Room. (Id.) Academic Support in the form of summer instruction for 3 hours in a 4 day cycle was also included on the service grid. (Id.)

38. The Guardian rejected the proposed additional services referenced in the March 13, 2013 IEP because the Student would be pulled out for the services, and might potentially be with younger students. (Testimony, Guardian; P-18)

39. For the 2013-2014 academic year, the Board's IEP indicated the advocate requested that a list of parent concerns be attached to the IEP, concerns about 2013 ESY for Student were shared and a list of triennial tests was offered. (Testimony, School Psychologist; P-18) The triennial testing was originally due in October of the 2013-2014 academic year, but the PPT decided to address testing earlier, so they would have better information. (Testimony, School Psychologist) No decisions were made regarding the summer program and reimbursement requests made by Guardian at the March 13, 2013 IEP because the Director of Special Education from the Board was not in attendance. (Testimony, School Psychologist; P-18)

40. Parent concerns appended to March 13, 2013 IEP for the 2013-2014 school year clearly articulate bullying as a concern. (P-18) Guardian, in her response, identified needs for neuropsychological testing, an Assistive Technology ("AT") Evaluation, Speech and Language Therapy, a Functional Behavioral Analysis and Behavior Intervention Plan, with oversight by BCBA, goals and objectives to address executive function deficits, and peer-reviewed phonics based Reading program, grounded in Orton-Gillingham methodology in one to one or small group setting. (P-18)

41. On March 14, 2013, Guardian requested schedule matrix for Student and the incident reports regarding suspension of Student. (P-23)

42. On March 14, 2013, Special Education Teacher sent an email to Guardian in which she indicated that she was working with the Team to gather information requested and waiting to hear back from the Director of Special Education regarding her requests. (P-22)

43. On March 20, 2013, Principal sent Guardian a letter with a link to the Shelton Board of Education Manual so that Guardian could access the Board of Education definitions and policies. (P-19) Principal also indicated she was enclosing a copy of information regarding the December 18, 2012 incident and Student's daily schedule with a key and targeted vocabulary from the Speech Language Pathologist. (P-19)

44. On March 21, 2013, Guardian sent an email to the School Psychologist inquiring as to whether a PPT meeting was necessary to go over the tests for the Triennial Evaluation and to receive answers to requests made at March 13, 2013 PPT Meeting (P-25, B-24). The School Psychologist responded on that same day that the Triennial Testing must be determined at a PPT. (Id.) Also on March 21, 2013, Guardian sent an email to Special Education Teacher asking for the age and grade of the students in the classes for which Student is pulled out for math and reading instruction. (P-26) Guardian was specifically seeking to learn whether Student's peers in these groups were ability matched or age matched. (P-26).

45. On March 22, 2013, Guardian sent an email to School Psychologist requesting a list of tests proposed for Triennial Evaluation for Guardian and husband's review and execution, despite the School Psychologist's response a day earlier that this was not an option. (P-25, P-27) Guardian also requested a written response to Guardian's requests made at March 13, 2013 meeting, specifically regarding ESY and reimbursement. (P-27)

46. On March 25, 2013, School Psychologist indicated that the Director of Special Education required that a PPT meeting take place to address the outstanding issues, and that the Director was willing to meet in advance of the PPT meeting. (P-28)

47. On March 26, 2013, Guardian sent an email to Principal listing IEP discrepancies she had identified and inquiring about documentation relating to the December 18, 2013 incident, and school disciplinary procedures. (P-29)

48. On April 9, 2013, Guardian sent a letter in response to an Invitation to PPT registering concerns that Student's regular education teacher wasn't invited and objecting to the purpose of the PPT meeting stated in the invitation: Review or Revise IEP, Program Review, Progress Review. (B-24) Guardian requested the purpose be stated thusly: "Other= Reconvene PPT to answer Parent requests made a previous PPT meeting in March 2013." (Id.)

49. On April 17, 2013, a Licensed Clinical Social Worker with the Yale Child Study Center who had been treating Student through the Yale Child Study Center Outpatient Clinic since January 2013 wrote a letter describing her treatment and observations of the Student, outlining Student's diagnoses, and suggesting consideration of out of district placement. (P-32)

50. The Yale Clinician who treated Student did not observe Student in school environment. (Testimony, School Social Worker) The School Social Worker disagreed with Yale Child Study Center Clinician's assessment in April 2013 that Student didn't play and that he was very impaired and didn't act like a normal person. (Testimony of School Social Worker)

51. On April 18, 2013, a PPT meeting was held during Guardian's request for reimbursement for psychiatric evaluation for return to school, summer placement at Harbor Light Foundation Camp, and ongoing treatment at Yale. (B-12) A request for an Out of District Placement was also denied. (Id.) The Yale Child Study Center Clinician received approval to come and visit. (Id.) This visit never occurred.

52. On May 2, 2013, Parent sent a written response to April 18, 2013 IEP detailing her concerns. (P-34)

53. The School Psychologist invited Guardian to attend a meeting in advance of the PPT scheduled for June 14, 2013, to discuss the test results. (B-24) Guardian agreed to come to a meeting on June 10, 2013. Id.

54. Guardian cancelled the June 14, 2013 PPT meeting because the ADOS-2 had not yet been received by June 13, 2014 and the Assistive Technology assessment was received on June 12, 2013. (B-24) Guardian asked to table the PPT until September 2013. (Id.) As of June 26, 2013, the ADOS-2 report had not been received by Guardian. (Id.)

55. The date on the ADOS-2 report conducted by Cooperative Educational Services staff is June 17, 2013. (B-15)

56. Student was unilaterally placed in the Harbor Light Foundation Camp by Guardian for the 2013 school year. (Testimony, Guardian) Harbor Light Foundation Camp does not provide an academic program. (Id.)

57. Guardian expressed concerns about Student being tutored or taught in the hall outside of the classroom, but could not recall who had informed her that Student had been tutored in this location. (Testimony of Guardian)

58. In June 2013, Guardian retained Neuropsychologist to conduct a Neuropsychological evaluation because she was seeking outplacement for the Student (B-20). The Neuropsychologist conducted an observation in the Student's school on June 10, 2013 and issued his evaluation on July 19, 2013. (P-42)

59. On July 31, 2013, Counsel for Guardian sent a request for mediation to the Connecticut State Department of Education.

60. On August 5, 2013, in response to the request for mediation, Counsel for the Board sent an email to Counsel for Guardian requesting that a PPT meeting be convened in the first week of September, 2013 to discuss Dr. Cohen's evaluation and the assessments conducted by the Board that were not reviewed in June. (B-17) The Board also requested that mediation be scheduled after the proposed PPT meeting was held. (Id.)

61. On August 7, 2013, Counsel for the Guardian responded that she was amenable to mediation so long as it took place in August. (B-17) It was unclear from the communication as to what the Guardian's stance was on the request for a PPT meeting. (Id.) Later that same day, Counsel for the Board renewed the Board's request to convene a PPT meeting to review the evaluation and assessments and indicated the Board would not proceed to mediation before the PPT reviewed the reports in relation to the Student's program for the 2013-2014 academic year (Id.)

62. On August 9, 2013, Counsel for the Guardian indicated that the June, 2013 PPT was canceled because the ADOS was not completed and that she would confer with Guardian about the Board's requests.

63. On August 9, 2013, the Guardian sent a written notice to the Board of her intent to unilaterally place Student at Villa Maria. (B-16) Contained in this Notice was an offer to make Student available for evaluations. (Id.)

64. On August 14, 2013, the Board sent notice to Guardian through Counsel acknowledging receipt of the notice of unilateral placement and offering two dates on which a PPT meeting could be held: August 20, 2013 and August 26, 2013. (B-17)

65. On August 18, 2013, Guardian sent an email to the ADOS-2 evaluator requesting the scoring of the test and stating her assumption that the evaluator did not review Student's file prior to testing and expressing her unmet expectation that specific professional recommendations would be contained in the evaluation. (P-38)

66. On August 26, 2013, the Board received the Request for Special Education Due Process Hearing. (HO-1)

67. On August 28, 2013, Counsel for the Board sent an email seeking a response to the August 14, 2013 email containing a request for PPT meeting. (B-18) Counsel for the Guardian responded on that same day indicating that since the dates tendered had passed she would not be choosing one and offered again to engage in mediation. (Id.)

68. Also on August 28, 2013, the ADOS-2 Evaluator sent a letter to Guardian in which she responded in detail to each of the issues raised by Guardian in her August 18, 2013 email. (P-38)

69. On September 5, 2013, the Director of Special Education for the Shelton Public School District passed away. (B-18)

70. On September 6, 2013, Counsel for the Guardian, sent an email to the Board inquiring again about mediation. (B-18) Counsel for the Board responded on September 18, 2013 requesting a resolution session rather than mediation and providing dates of September 27, 2013, September 30, 2013 and October 1, 2013 as potential session dates. (Id.)

71. On September 20, 2013, Counsel for the Board requested a response to the September 18, 2013 email. (B-18) On October 3, 2013, Counsel for the Board provided new potential dates for the resolution session of October 7, 2013, October 8, 2013, and October 10, 2013. (Id.) The parties subsequently agreed to a resolution session on October 9, 2013. (Id.)

72. The October 9, 2013 resolution session was unsuccessful. (B-19)

73. Pursuant to an Order of the Hearing Officer, a PPT meeting was held on November 1, 2013. (B-20) In attendance at the November 1, 2013 PPT meeting were the Principal, Guardian, Student's Special Education Teacher from Grade 3, Student's Regular Education Teacher from

Grade 3, School Psychologist, Speech and Language Pathologist, School Social Worker, Occupational Therapist, Assistive Technology Evaluator, Acting Assistant Director of Special Education, Parent Advocate for Guardian and Counsel for the Board and Guardian. (Id.)

74. The purpose of the November 1, 2013 PPT meeting was to review or revise the IEP, determine continuing eligibility, program review, and review of Triennial Evaluations not previously discussed. (Id.) The PPT recommended implementation of the IEP developed on November 1, 2013, implementation of the AT evaluation recommendations (including use of an IPAD), a psychiatric evaluation to be conducted at Board expense, and postponing ESY eligibility until the next annual review, which was scheduled for March 13, 2014.

75. On November 1, 2013, the PPT reviewed the AT assessment, ADOS-2, and the Neuropsychologist's July 19, 2013 evaluation and heard reports on assessments performed by classroom teacher at the end of 2012-2013 year and CMT-MAS results. (B-20) Current goals and objectives and the service grid were discussed. (Id.) The PPT agreed that Student's primary disability should be changed from OHI to Multiple Disabilities. (Id.) While the Prior Written Notice section of the IEP indicates no proposed actions were refused, the PPT summary makes clear that the Guardian did not agree with the proposed program. (Id.)

76. On November 8, 2013, Guardian sent a lengthy response to the IEP generated on November 1, 2013. (P-48)

77. In all IEPs developed during the statute of limitations period beginning August 26, 2011, on the Special Factors, Progress Reporting, Exit Criteria page, the IEP indicates that for students whose behavior impedes his learning or that of others, the PPT has considered strategies, including positive behavioral interventions and supports to address that behavior and IEP Goals and Objectives have been developed to address the behavior. (B-3, B-4, B-9, B-12, B-20, P-17, P-18, P-33) The list of accommodations to be provided to Student remains equally consistent. (B-3, B-4, B-9, B-12, B-20, P-17, P-18, P-33)

78. Student's DRA score on March 13, 2013 was noted as an independent 10 and instructional 12 on one page and an independent 12 on another. (P-18) The DRA on April 18, 2013 is independent 8 and instructional 12. (B-19)

79. On November 8, 2013, after the hearing had commenced, Dr. El-Fishaway, "Psychiatrist" whom Guardian retained to treat Student following the incidents of threatening behavior in December 12, 2012, issued a written report. (P-49) Prior to the commencement of the hearing, no written report was generated and shared with the school and no evidence was presented in the hearing that oral communications had occurred between Board staff and the Psychiatrist. By virtue of it being generated after the last PPT meetings in March, April and November of 2013, the November 8, 2013 evaluation could not have been shared with the PPT team nor considered with the team.

80. On December 13, 2013, after the due process hearing had commenced, Guardian's Educational Consultant issued a Summary of Information, which summarized the Consultant's review of Student's educational records and recent evaluations. (P-59) This Summary, by virtue

of it being generated after the last PPT meetings in March, April and November of 2013, could not have been shared with the PPT team nor considered with the PPT team.

81. Extensive testimony was given on Student's progress at Villa Maria, the school where Student was unilaterally placed. (Testimony, Guardian, Villa Maria Admissions Director) The school provides exclusively small group and one to one Special Education instruction. (Id.) Villa Maria's schedule does not indicate a time when speech and language services are offered, however speech and language services are offered Testimony, ;Admissions Director Villa Maria; B-21) The schedule does not indicate a time when counseling is offered, however, there is a social development class on Wednesdays from 12:15-12:55 p.m. (Testimony, Guardian; B-21)

82. After February 2012, no further incidents of threatening statements by Student in school occurred.

83. The IEP Progress Reports generated by Student's teachers for the 2011-2012 and 2012-2013 school year indicate satisfactory progress and eventual mastery by Student of his IEP goals. (B-6, B-8, B-11, B-13)

84. Achievement testing scores for psycho-educational assessments conducted by Board's school psychologist show limited progress in a few areas, with scores remaining stagnant or declining in others. (Testimony, Neuropsychologist, School Psychologist; P-1, P-36)

85. Board has a policy in which when they hold an Annual Review PPT, and there are changes to be made to the existing IEP for the remainder of the school year, they issue an IEP document with those revisions. (Testimony, School Psychologist) The Board also issues an IEP for the upcoming school year. (Id.) As a result of this practice there are occasions when two IEP documents, are issued with the same date covering two discrete periods of time. (Id.) If there are no modifications needed for the period running from the date of the annual review to the end of the school year, the Board generates one IEP document for the coming school year. (Id.)

86. Student's Full Scale IQ went from 79 to 85 between Student's first and third grade years. (Testimony, School Psychologist; P-1, P-36) This increase is not statistically significant. (Testimony, School Psychologist)

87. In the 2013 school year, the Board conducted the following evaluations: 2 Lexile results summaries for the Student's third grade year; a Psycho-Educational Evaluation, dated June 3, 2013; an Assistive Technology Evaluation, dated June 4, 2013; an ADOS 2, dated June 17, 2013; a Speech and Language Triennial Evaluation, dated June 14, 2013; an Occupational Therapy Evaluation, dated 5/20/2013; and a Qualitative Reading Inventory, not dated but part of the 2013 Triennial testing packet. (B-14, B-15, P-3, P-14, P-35, P-36)

CONCLUSIONS OF LAW AND DISCUSSION:

A determination of whether or not Board's program for Student was appropriate must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student. *Board of Education of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 553 IDELR 656. Under *Rowley*, a two part test must be met to find a program appropriate. The first prong of the test requires a finding that the Board complied with the procedures set forth in the IDEA. *Id.* The second prong requires a finding that the IEP was reasonably calculated to enable the child to receive educational benefits. *Id.*

PROCEDURAL VIOLATIONS

The Guardian alleged the following procedural violations in her brief: failure to allow Guardians to be equal and/or meaningful participants in the IEP team process, failure to share information prior to scheduled IEP meetings and failure to convene legal PPT meetings with appropriate staff at the table. In addition to those procedural allegations listed in her Request for Special Education Due Process Hearing, Guardian included a kitchen sink of additional allegations in her Post Hearing Brief. Specifically, Guardian alleged the Board violated Student's Procedural Safeguards by failing to conduct a Functional Behavioral Analysis and write a Behavioral Intervention Plan, failing to follow proper procedure when they suspended Student, failing to follow proper procedure when Student was bullied, and 16 "selected IEP violations" with a reference to exhibits where she stated further examples could be found.

Meaningful Participation

For the period beginning in August 26, 2011, Guardian was invited and attended all scheduled PPT meetings, with the exception of the meeting she cancelled in June of 2013, because the ADOS-2 was not yet complete and the AT evaluation had only just been provided. Guardian shared information and concerns with the School-Based Members of the PPT. The concerns raised by Guardian did in some instances lead to modifications of the IEP, by the PPT.

The recording of Guardian's concerns and opinions and refused actions were not always documented on the IEP documents to the extent she would have preferred. Guardian drafted written responses which she asked to be appended to two IEP documents in 2013 so that her comments could be accurately and completely reflected in the record. The record reflects that Guardian's written statements to append her comments to the IEP were honored.

For the 2011-2012 academic year, Student mastered the majority of his IEP goals and objectives. Guardian was invited to attend and did attend all PPT meetings during this academic year. When evaluations obtained by Board and Guardian were tendered for consideration during the 2011-2012 academic year at PPT meetings, modifications to the IEP resulted. For example, in April 23, 2012, when the PPT met they increased Student's Special Education hours to include an additional 2.5 hours per week of directed reading instruction. Concerns raised by Guardian regarding Student's eating were considered and addressed in the IEP.

Based on a review of the IEPs and Progress Reports and testimony in evidence, there is no basis for a finding that the Guardian was denied a meaningful opportunity to participate in the PPT process.

Failure to Share Information before PPT Meeting

The Board did not fail to share information prior to a scheduled IEP meeting. Only one instance of failing to share information prior to a scheduled IEP was raised in the hearing and that pertained to the Assistive Technology and ADOS-2 evaluations. The former because it was tendered a day before the scheduled PPT leaving little time for Guardian to review and evaluate. In response, Guardian cancelled the meeting.

Concern was expressed regarding a pre-meeting which School Psychologist offered to have before a PPT meeting to review results of evaluations. Guardian's belief that such a meeting is inappropriate, and suggests that the PPT is pre-determining outcomes, is undermined by the fact she was invited to attend the meeting. An initial exposure to recent test results in advance of a meeting to discuss those results is an additional opportunity for the Guardian to understand the results, which did not operate to prejudice the Guardian in any way.

Failure to Convene Legal PPT Meetings with Appropriate Staff at the Table

A procedural violation did occur when the Board failed to have a properly constituted PPT on March 13, 2014. Pursuant to 34 CFR § 321, the PPT must include: the parents of the child, not less than one regular education teacher of the child (if the child is in the regular education environment), not less than one special education teacher of the child, and a representative of the public agency- who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about the availability of resources for the public agency, and whenever possible the child with the disability.

By failing to have Director of Special Education at the PPT table on March 13, 2013, the Board failed to have a properly constituted PPT because he was apparently the only person who had the authority to discuss resources. The result of the Director's absence was that Guardian was forced to wait until another PPT was convened in order to obtain responses to her outstanding requests. The fact that the next PPT meeting did not occur until April 18, 2013 was a result of Guardian's initial unwillingness to attend another PPT meeting and her desire to do things through email instead. The fact that another PPT meeting had to take place at all, was the responsibility of the Board.

The failure to have the Director of Special Education present at a meeting did not operate to deny the Student a Free Appropriate Public Education because the actions eventually refused by the Director did not change Student's receipt of services or special education in the period between the first and follow up PPT meetings (specifically reimbursement for evaluations already conducted and ESY placement that hadn't yet been made).

Functional Behavioral Assessment and Behavioral Intervention Plan and Suspension

The School's response to the Student's threatening behavior in School was to call a Crisis Intervention Team meeting and make recommendations regarding accessing mental health services outside the school. Aside from one incident in the following February involving a post-it note that was written by another student, Student's threatening behaviors did not manifest themselves again for the rest of the school year. Given that Student's two threatening incidents

occurred within a week of each other and have not occurred since, the evidence shows that Student learned from this experience and changed his behavior going forward. The Student was removed from School out of concern for his emotional safety and the safety of others, for only so long as it took to get confirmation that Student was not a threat to himself or others. It is notable that despite the intervening occurrence of the Sandy Hook tragedy, and the heightened state of alert of all schools at that time, Student was allowed to return to the school almost immediately.

“Dual” IEP Process

Guardian alleged an inherent procedural violation in the Board’s “dual” IEP document process, because of the lack of ability to “close out” the IEP that was generated to run from the date of the IEP (March in the present case) to the end of the academic year. The rights of Student are preserved by the ability of the PPT to be convened in the beginning of the following year should the progress reports issued at the end of the year indicate any deficiency in Student’s achievements of his Goals and Objectives.

Failing to Follow Proper Procedures Regarding Bullying

Counsel fails to cite what IDEA procedural safeguard was violated by the Board in her general statement that alleged violations of the State of Connecticut anti-bullying statute, nor was this issue explained in Guardian’s pleadings.

Miscellaneous IEP Violations

To the extent Guardian has claimed deficiencies in the drafting of the Student’s IEP’s, she failed to explain how each of them operated to deny the Student a FAPE. While there were instances of inattentive drafting, these did not operate to deny the Student access to his education.

SUBSTANTIVE VIOLATIONS

To demonstrate a child has received an educational benefit, that benefit must be more than de minimus; there must be some tangible gain in abilities. *Polk v. Central Susquehanna Intermediate Unit 16*, 441 IDELR 130 (3d Cir. 1988), *cert. denied*, 111 LRP 3226, 488 U.S. 1030 (1989). While the achievement of goals and objectives is one measure of a meaningful educational benefit, the provision of FAPE does not necessarily require that a student achieve each IEP goal and objective. Under the IDEA, Student is entitled to receive the services enumerated in the IEP, but no guarantees are made as to educational success or outcome. See *Walczak v. Florida Union Free Sch. Dist.*, 27 LRP 4661, 142 F.3d 119 (2d Cir. 1998).

2011-2012 SCHOOL YEAR

For the 2011-2012 academic year, the IEP goals and objectives in the April 4, 2011 IEP as subsequently modified by the October 7, 2011 and October 28, 2011 were reasonably calculated to provide Student with an educational benefit, as evidenced by the satisfactory progress and mastery of Student’s Goals in Student’s Progress Reports.

EXTENDED SCHOOL YEAR 2013

Limited evidence was presented on the Board’s and Guardian’s respective proposed programs for ESY for the 2013 Summer. The ESY program proposed by the Board contained both academic and counseling components linked to Student’s IEP goals and objectives. Guardian’s

unilateral placement of Student in a private camp, because she believed that the Student did not have a good experience in a prior year was not sufficient to support a finding that the Board's program for the 2013 year was not appropriate and that Student should have been placed in a private camp without any academic component.

2012-2013 SCHOOL YEAR

The 2012-2013 academic year presented a considerable number of challenges for the Student, the Guardian and the School-Guardian Relationship. Guardian claims that Student was denied a FAPE because he was the subject of bullying. In support she cited school refusal and anecdotal instances she observed in school and a bus incident she learned about through her other grandson. Guardian also cited endorsements made in evaluations she obtained regarding Student. With the exception of the completion of ratings scale by Board staff it did not appear that there was direct communication between evaluators and school staff, particularly as it pertains to the Student's perceived issues with peers. Despite repeated statements that suggested that Student was called weird by multiple students, only one such incident was actually reported and documented. In that incident Student perceived he was being excluded from sitting with children on the bus one day, because they said he was weird. The evidence also shows that the School took appropriate action to address this incident.

The evidence is clear that Guardian raised the concern of bullying in September 2012 and again on March 2013. The School's response was that they would keep an eye out for that kind of behavior. Board staff testified credibly that they didn't observe this behavior towards Student, and in fact Student had friends in the school setting. Student's lack of friendships outside the school could implicate his ability to generalize social skills to home and the community and it could also implicate parenting deficits.

The evidence presented at the hearing also demonstrated a disparity between Student's stagnant or declining performance on achievement testing over a three year period and Student's mastery of IEP goals and objectives as reported by members of the PPT. If the Board had made no revisions to its IEP when presented with additional relevant information pertaining to Student, it would be easy to find that the achievement scores were flat or declining because of the level of instruction. This however was not the case, despite Student's mastery of goals and objectives for the 2012-2013 school year, the PPT clearly recognized that Student's unique needs required greater intervention as time progressed, as evidenced by the steady increase in Special Education hours and increased service hours for the Student.

The Board first proposed a 2013-2014 IEP Program for Student in the spring of 2013. This program was based on Student's achievement of IEP goals and objectives to date and prior evaluations. The triennial testing had yet to occur and so could not inform Student's program at that time. The IEP Goals and Objectives and Services at the time of the initial proposed program were reasonably calculated to confer a meaningful educational benefit. Upon receipt of the triennial testing and consideration of Guardian's IEE, significant modifications were made to the proposed program as determined on November 1, 2013. These modifications directly address concerns raised by Guardian and are grounded in the most recent evaluations of Student. As the Guardian refused the increase in education and service hours in Spring of 2013, we cannot know

whether or not the proposed changes in Student's program for the end of the year would have begun to address the achievement gap between Student and his peers.

EVALUATIONS

The Board Evaluations of Student

The Board's evaluations of Student were appropriate. The Guardian, in her brief, does not specify which, if any, of the evaluations conducted by or at the request of the Board during the 2011-2012 and 2012-2013 school years were inappropriate. A review of the exhibits submitted reveals that no evaluations conducted by or at the request of the Board during the academic year of 2011-2012 were submitted as an exhibit. For the academic year of 2012-2013, the Board evaluations included: Lexile results summaries for the Student's third grade year; a Psycho-Educational Evaluation, dated June 3, 2013; an Assistive Technology Evaluation, dated June 4, 2013; an ADOS 2, dated June 17, 2013; a Speech and Language Triennial Evaluation, dated June 14, 2013; an Occupational Therapy Evaluation, dated 5/20/2013; and a Qualitative Reading Inventory, not dated but part of the 2013 Triennial testing packet. These evaluations did not appear to have any deficiencies on their face.

The Guardian appears to be asking the Hearing Officer to make inconsistent findings. She is requesting a finding that the evaluations provided by the Board in the instant years were inappropriate, while simultaneously requesting that the Hearing Officer find the Neuropsychologist's and the Educational Consultant's critiques of the Board's program for the Student credible, even though to a significant extent both professionals rely on the Board's own testing results to support their claims. No evidence was offered that the data utilized by the Board in conducting its evaluations was compromised. No evidence was offered that the professionals employed or retained by the Board to conduct the evaluations and assessments were inexperienced or lacked the skills to successfully perform the assessments and evaluations and analyze and report the data collected. In the absence any such evidence, it cannot be concluded that the Board's evaluations were inappropriate.

To the extent Guardian claims evaluations were not done that should have been, the evidence shows that the Guardian chose not to participate in a PPT to discuss the evaluations that had been done for the triennial until ordered to do so in November. This choice precluded a discussion of whether those triennial tests were appropriate and sufficient to gain a full understanding of the Student.

It is difficult to ascertain from Guardian's brief which evaluations Guardian is requesting be found appropriate. In Guardian's brief, she lists several private evaluations obtained by the Guardian: A 2011 evaluation conducted by the CT Center for ADHD (a document not in evidence having been excluded due to untimely submission); a 2012 Virginia neuropsychological evaluation (conducted for the purpose of litigation arising from Student's traumatic brain injury and shared informally with School Psychologist); 2013 Connecticut Neuropsychological Evaluation (conducted after the Triennial Evaluation); 2013 Psychiatric Evaluation (generated after the commencement of the due process hearing).

34 CFR § 300.502 (b) sets out the criteria that must be met in order for a Parent to be entitled to an Independent Educational Evaluation at public expense. The first criteria is that there must be

an evaluation obtained by the public agency, with which the parent disagrees. 34 CFR § 300.502 (b)(1)

If the parent disagrees with a Board evaluation and requests an IEE at public expense, the Board must either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. CFR § 300.502 (b)(2) (i) and (ii)

In the present case, the Guardian has not provided evidence that the Guardian disagreed with any of the evaluations conducted by the Board staff or at Board's request. As there was no disagreement, there could be no request for an IEE in response to the disagreement, nor was any such request documented. As the Guardian has not met the threshold requirements necessary to trigger analysis of whether the Guardian is entitled to an IEE at public expense, the Hearing Officer lacks the authority to order that an IEE be conducted at public expense.

The Hearing Officer's authority to order reimbursement as a remedy must have some basis in law. Guardian does not cite any legal authority entitling her to reimbursement for reimbursement of the emergency room visit relating to the Board's request for completion of a safe to return form or the counseling provided by the Yale Child Study Center Outpatient Program.

Guardian's assertion that the Board required a psychiatric evaluation before the child could be returned to school is unsupported by the evidence. The Return to School Form states that a psychologist or psychiatrist needed to execute the form before the Student would be allowed back in school. It is undisputed that upon receipt of the Return to School form completed by a psychiatric APRN at Yale New Haven Hospital the Student was allowed to return to school the next day. It is unclear what led to Guardian's belief that a psychiatric evaluation was required *after* the Student was allowed back to school. In any event, whatever actions were taken by Dr. El-Fishaway at the request of the Guardian, no report or written evaluation was generated by him until after the due process hearing began and no communications between the school and the psychiatrist ever took place.

Counseling was suggested by the CIT after the December 12, 2012 incident and a list of community resources was provided to the Guardian. There is no evidence to support a finding that counseling was *required* by the school system. The Yale-New Haven Hospital psychiatric APRN indicated that follow up would be with the Yale Child Study Center on the Return to School form. The decision to seek counseling at the Yale Child Study Center or through any other provider was that of the Guardian.

REIMBURSEMENT

In order to be entitled to receive reimbursement for the cost of Guardian's unilateral placement of Student at Villa Maria, it must first be demonstrated that the Board's program was inappropriate to meet Student's needs. Once this is established, Guardian's chosen placement must be shown to be appropriate for Student. Finally, equitable factors must be found weigh in favor of reimbursement. *T.Y. v. New York City Dep't of Educ.*, 53 IDELR 69 (2d Cir. 2009), *cert.*

denied, 110 LRP 28696 , 130 S. Ct. 3277 (2010). The placement selected by Guardian may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. 34 FR § 300.148 (c)

In the present matter, because the Board has met its burden of establishing that its program for the Student is appropriate, a finding that Villa Maria was appropriate is unnecessary.

FINAL DECISION AND ORDER:

The Board's program for the 2011-2012, 2012-2013, 2013 ESY 2013-2014 academic years were appropriate.

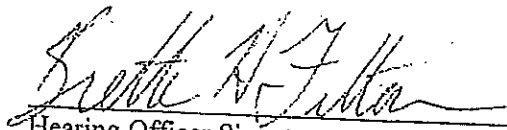
The evaluations conducted by the Board and at the request of the Guardian were appropriate.

The Board is ordered to implement the testing and/or evaluation components set forth in the November 1, 2013 IEP, as soon as is possible so that the Student may be evaluated and a PPT meeting be held without delay to review the evaluation and develop appropriate programming for the Student going forward.

No compensatory education is awarded.

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

Brette H. Fitton
Hearing Officer Name in Print