

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education

Appearing on behalf of the Student:

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Appearing on behalf of the Board:

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Appearing before:

Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board's proposed program for the Student for the 2011-12 school year is appropriate;
2. If not, whether the Parent's placement of the Student at Easton Country Day School is appropriate, and shall be reimbursed;
3. Whether the Board shall provide for the cost of transportation to Easton Country Day School, and the related services of a reading specialist, OT and PT;
4. Whether the Parent shall be reimbursed for the IEE;
5. Whether the Board committed procedural violations in that the Parent was not provided an opportunity to participate in the PPT meeting of September 6, 2011;
6. Whether the Student shall be provided an auditory processing evaluation;
7. Whether the Student shall receive an assistive technology re-evaluation;
8. Whether the Student is entitled to compensatory education.

SUMMARY:

The 16 year old Student, who has complex and puzzling maladies that have evaded definitive diagnosis, has been identified as eligible for special education under the category of other health impaired. The Board offered the Student an IEP at the Board high school for the 2011-12 school year. The Parent brought this request for hearing, seeking placement of the Student at Easton Country Day School, including cost of transportation and related services. She alleged that the Board committed procedural violations in that she was not allowed to participate in a PPT meeting, requested reimbursement for an IEE, and sought an auditory processing evaluation and an assistive technology re-evaluation.

PROCEDURAL HISTORY:

The Board received this request for hearing on September 26, 2011[H.O.-1] and a prehearing conference convened on October 11. At the prehearing conference, the parties had reported that they agreed to mediate this matter, and the first hearing date was scheduled for November 29. The parties did not subsequently mediate this matter.

The Board scheduled and convened a resolution session on October 4, but the Parent failed to attend the session and confirmed that she did not want to attend the resolution session. [Testimony Parent; Exhibits B-172, B-173, B-174, B-175, B-177, B-178]

Requests for extension of the mailing date of the decision were granted to allow the parties to schedule additional hearing dates and submit closing argument.

Prior to the first hearing date, the Board filed a Motion to Dismiss the compensatory education claim if it related to any other school years. The Parent filed an objection to the Motion to Dismiss. The Board's Partial Motion to Dismiss was granted on December 5. The compensatory education set forth in the issues was a remedy related solely to the 2011-12 school year.

The hearing convened on nine hearing dates from November 29, 2011 to March 5, 2012. On one of the hearing dates, January 3, the Parent did not appear as it was reported that she was attending some doctors' appointments for her other children. Counsel for the Parent was not aware of any details regarding these appointments and provided no documentation thereof, but the Board's counsel did not object to the continuation of the hearing to the next scheduled date since the Parent was to be the next and final witness for the Parent's case.¹

¹ *Comments regarding the conduct of the proceedings, Regs. Conn. Agencies §10-76h-16(b)*

From the first day of hearing, continuing throughout the course of the hearing, counsel for the Parent and the Parent were disrespectful to the hearing officer and to the proceedings. Counsel and the Parent would make outbursts and asides as well as comment after rulings were made by the hearing officer. The Parent also mocked the process, refusing to answer yes and no questions, and repeatedly responding with uh huh or ah huh rather than yes or no. When the Board counsel asked why she was having difficulty responding to the questions, the Parent sarcastically responded that she had a medical condition that prohibited her from answering questions called "yes-ism." The disrespectful and unprofessional conduct unnecessarily prolonged the hearing.

Written closing arguments were submitted by both parties on March 19, 2012.

The Parent's witnesses were Chris Quirk, director of the high school program at Easton Country Day School; Shelley Lacey-Castelot, education consultant from Literacy Solutions; Meryl Aronin, speech/language pathologist; Theodore Zanker, psychiatrist; and the Parent.

The Board's witnesses were Laura Evangelist, ACES OT; Lauren Evanovich, Board high school special education teacher; Kimberly Hartmann, ACES OT/AT consultant; Jeffery Lowell, Board school psychologist; Diane Henley, Board speech/language pathologist; and Patricia Moore, Board supervisor of special education services.

The Parent submitted exhibits numbered P-1 through P-25. Objections were sustained to Exhibits P-7, P-9, P-10, P-12, P-17 pages 1-2, P-22 and these documents were not entered as full exhibits. Objections were pending to Exhibits P-8, P-9, P-13, P-14, P-18, P-20, P-21 during the course of the hearing so that the Parent had an opportunity to establish relevancy, foundation or authenticity of the documents. As the Parent failed to address any of these exhibits during the course of the hearing, the objections are sustained. The remaining exhibits were full exhibits.

The Board submitted exhibits number B-1 through B-199. An objection to B-60 was pending at the conclusion of the hearing, and that objection is sustained. All remaining exhibits were entered as full exhibits.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

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

STATEMENT OF JURISDICTION:

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

FINDINGS OF FACT:

1. The Student is 16 years old and is currently attending the Parent's unilateral placement at Easton Country Day School approximately 2 to 3 days per week. [Testimony Parent, ECDS Director] As of the date when the school representative testified at the hearing, the Day School was looking into possible video conferencing for the Student on the other days, but it was not available for the Student at that time. [Testimony ECDS Director]
2. The Parent testified that she takes the Student into Easton Country Day School on Tuesdays and Fridays and on some Mondays, but doesn't take her every day because she has a car with 150,000 miles on it and she has a day care. [Testimony Parent]
3. It is undisputed that the Student is eligible for special education and related services under the category of Other Health Impaired (OHI). [Testimony Parent, Exhibit B-157]
4. The Student has a complicated and complex medical history which must be discussed as these issues implicate her education in various ways. Some of the maladies are suspected, but not confirmed. She reportedly suffers from fatigue and dystonia, a neurologically based movement disorder. She has been diagnosed as bipolar and the Student may have a mitochondrial disorder. There are concerns that there are some effects of polypharmacy, due to the Student's medications. There has also been a concern that the Student's maladies are related to Munchausen by proxy syndrome. [Testimony Psychiatrist, Board Supervisor; Exhibits B-126, B-127, B-133] There is no consensus as to the Student's diagnoses. [Testimony Parent]
5. The Student's psychiatrist, who has been treating the Student since 2005, testified that he initially thought the Student had bipolar disorder with a great deal of irritability. She started to develop neurological signs which the psychiatrist thought might be early signs of tardive dyskinesia. The psychiatrist stopped the Student's prescription for Seroquel, but her condition worsened. The Student continued on Lithium and Abilify. According to the psychiatrist, Lithium has a limited therapeutic safety range, and if these levels are not maintained there can be serious neurological symptoms, including confusion and muscular dystonia, abnormal movements of the muscles or abnormal spasms of the muscles which can be as mild as facial tics to more severe muscle spasms. The psychiatrist noted that he saw facial twitches on the Student that were consistent with dystonia. [Testimony Psychiatrist]
6. It was suspected that the Student had a mitochondrial disorder, a medical disorder that is not an area of expertise of the psychiatrist. In this disorder, there are toxic metabolic brain problems. The psychiatrist reported that the family has applied for acceptance into a study with the NIH rare diseases program, but no further evidence was submitted regarding the status of this submission. [Testimony Psychiatrist]
7. The Student's psychiatrist continued to believe that the Student met the diagnostic criteria for bipolar disorder, mixed, with intermittent psychotic features, but he wasn't sure whether there was an underlying genetic or biological predisposition. He also was considering that

the symptoms that look like bipolar disorder might be caused by the mitochondrial abnormality. The Student has exhibited symptoms of significant mood instability and irritability, fluctuating with periods of significant depression. The psychiatrist is unsure whether these symptoms were a result of the bipolar disorder versus the organic brain disorder, secondary to the mitochondrial malfunction. [Testimony Psychiatrist]

8. The Student's complex issues have an impact on her education. People with mitochondrial disorder have problems with fatigue, dystonia, and visual acuity and fluctuation. Children with bipolar disorder quite often have executive functioning issues, and it is quite common for these children to have difficulty with written expression. [Testimony Psychiatrist]
9. During the 2010-11 school year, the Student was receiving homebound tutoring at the request of the Parent and with the agreement of the Board. [Exhibit B-115]
10. In January 2011, the Planning and Placement Team (PPT) convened to review the Student's evaluations, conduct an annual review and for transition planning. At that time, the team reviewed the occupational therapy (OT) and physical therapy (PT) evaluations. The OT evaluation identified that the Student demonstrated the underlying sensory and motor foundations necessary to participate in school based tasks. The PT assessment suggested that the Student was able to transfer from the wheelchair independently, able to sit to supine independently, able to sit unsupported with feet on floor for two minutes and to ambulate with close supervision of a therapist. Due to unsuccessful attempts to coordinate meeting times with the Parent and the Student, the assistive technology (AT) and psychological evaluations were not complete by this PPT meeting. [Testimony ACES OT; Exhibit B-109]
11. At that time there were no concerns expressed by the Parent as to the reading instruction, and no request for a reading evaluation. [Testimony Board Supervisor]
12. In January 2011, the Area Cooperative Educational Services (ACES) AT consultant was asked to re-evaluate the Student's AT needs. The referral questions addressed the need to access and complete homebound work and the Student's need for voice recognition assistance due to fatigue. The AT consultant recommended that the Student have a new laptop with a full version of Microsoft Office including the voice to text capabilities, Excel and PowerPoint, with internet access and a noise canceling microphone; a digital tape recorder; training to set up and use the technology and a reevaluation of the technology needs when the Student's environment changes from homebound to a different environment. [Testimony ACES AT Consultant, Exhibit B-112]
13. A psychoeducational evaluation was conducted in January and February 2011, with the report finalized in mid-March. The Student was administered the Weschler Intelligence Scale for Children – Fourth Edition (WISC-IV) to assess her cognitive ability, which was found to be in the average range of functioning with a full scale IQ of 94. The Student was also administered the Weschler Individual Achievement Test – Third Edition (WIAT-III) to assess her academic achievement. Her composite scores were average on Oral Language (SS 95), low average on Total Reading (SS 86), average on Basic Reading

(SS 95), below average on Reading Comprehension & Fluency (SS 80), below average on Written Expression (SS 81) and below average on Mathematics (SS 84). [Exhibit B-115]

14. The PPT convened on March 15, 2011 to review the evaluations, review/revise the Individualized Education Program (IEP) and for transition planning. The PPT reviewed the Student's psychoeducational testing, the PT consultation and the AT assessment. The school nurse reported on the communication regarding the Student's medical status from her physician, Dr. Gould. The report from Dr. Gould was that the Student has medical issues, but whether they are mitochondrial in origin, due to another malady and/or complicated by the regimen of medications was not known. The PPT agreed that the Student continues to be eligible for special education under the primary disability of OHI and that she will continue homebound services. No other options were considered and rejected at this PPT meeting. [Exhibit B-115]
15. In March 2011, a few days after the PPT meeting, the Parent requested an evaluation in reading and writing skills in an email to the Board. This was the first time she brought up this request. The school psychologist had evaluated these areas by the time of the email from the Parent, which results were reviewed at the PPT meeting on March 15. [Testimony Board Supervisor, Exhibits B-118, B-115]
16. A decision was issued by Hearing Officer Gelfman on April 20, 2011 in the case filed by the Parent. The Final Decision and Order stated:
 - a. Since homebound instruction was approved by the PPT on 11/9/2010, the issue of the Student's stay put placement is moot.
 - b. Since homebound instruction was provided at the 11/9/2010 PPT meeting, this issue is moot and therefore dismissed.
 - c. While there has been a problem of Student's fatigue limiting the amount of homebound instruction, such instruction should have included Spanish as requested by the Parent. In order to make up lost time in Spanish, the Board shall devise an extended year program for the 2011, to provide Spanish instruction to the Student sufficient to meet credit requirements.
 - d. The PPT shall consult with the Student's pediatrician concerning her availability for additional homebound instruction. Such consultation may be in person at a PPT meeting or through the school nurse.
 - e. Since almost all of the equipment recommended by the AT evaluators has been provided (or is on order) this issue is moot and is dismissed.
 - f. Student has received AT, OT and PT evaluations and consultations. This issue is moot and is dismissed.

- g. Student has received counseling. However, she remains isolated from her peers. The PPT shall explore the possibilities of an electronic connection via her school-provided computer that would enable her to observe and participate in one class on a regular basis.
 - h. The adaptations, modifications and accommodations documented in the Student's current IEP are sufficient.
 - i. Testing accommodations have been provided in Student's IEP, including the opportunity to take district wide tests apart from other students and to extend the time for completing the tests. She also has been allowed to use her computer, and when necessary to have test questions read to her. The accommodations shall be considered at each PPT meeting, and updated as necessary. [Exhibit B-122, *Final Decision and Order, Case No. 11-0144*]
17. On May 4 the Student's physician, Dr. Gould, emailed notification to the Board that she was no longer the Student's pediatrician. [Exhibit B-125]
18. Dr. Maddox drafted a correspondence to the Board dated May 9 in support of the continuance of the Student's homebound instruction for the remainder of the current 2010-11 school year, indicating that he remained hopeful that the Student could be integrated back into the school system in the next school year. [Exhibit B-126]
19. Dr. Maddox drafted another correspondence related to the May 9 "encounter date" which was dated May 19, and received by the Board on May 20. He noted that he is currently the Student's pediatrician, and had previously been her pediatrician from spring 2009 to spring 2010. He noted that her medical diagnoses at that time were "Asthma, Bipolar disease, Movement Disorder NOS, she has cervical vertebral spine abnormality of unknown etiology and has had abnormal levels of organic acids in her blood and urine which have led some specialists to believe she has [g]lutaric [a]cidemia while some do not." [Exhibit B-127]
20. The school nurse drafted an updated health report for the Student on May 19, 2011. The health problems noted were "[s]ignificant medical history for asthma, juvenile bipolar disorder, ADHD, GERD, dystonia, severe muscle cramps, dyslexia, conversion disorder, metabolic disorder, possible glutaric acidemia Type 1, possible mitochondrial disorder, ataxia, abnormal posturing, cervical lordosis and neurodegeneration of discs at multiple levels." Her medical consultants/providers identified included Dr. Stephen Maddox, current pediatrician; Dr. Charles Duncan, YNHH, pediatric neurology; Dr. Robert Greenstein, UConn Health Center; Dr. Margaret Seashore, Yale, Genetics; Dr. Richard Kelley, John Hopkins, Metabolic Department, Dr. Theodore Zanker, psychiatrist; Dr. Szekely, Yale, Genetics and Neurology Department/Pain Management; Dr. Graf, Yale, Neurology; Dr. Diluna, Yale, Neurology; Dr. Brenda McClain, Yale, Pain Management, Dr. Bacal, Ophthalmologist and Dr. Leisel Gould, former pediatrician. The school nurse noted that there was a documented concern of polypharmacy use by some of the consulting physicians which could contribute to the confusing array of clinical symptoms that the Student exhibits, challenging a definitive diagnosis of "presumed mitochondrial

disease.” At this time, the Student’s current medications included Lithium, Clonipine, Benadryl, Ativan, Zantac, Singular, Zyrtec, Cogenti, L-Dopa (L-Dopa reportedly taken only a few days). [Exhibit B-133]

21. The AT consultant held a training and consultation at the Student’s home on May 26. Prior to this visit, the Student’s laptop was set up for voice recognition, but in reviewing the laptop it was found that the audio input was not being received or processed properly. The AT consultant continued with the training, and thereafter took appropriate and reasonable steps to troubleshoot the problem with the audio on the laptop. [Testimony ACES AT Consultant, Exhibit B-136]
22. The PPT convened on May 31, 2011, to implement the decision and orders from Case No. 11-0144. [Exhibits B-130, B-139] At the PPT meeting, the team recommended continuation of the March 31, 2011 IEP until June 24, 2011, extended school year (ESY) in the area of Spanish in school beginning June 6, door to door transportation for the duration of ESY, beginning 2011-12 school year with the current goals and objectives in a school environment and scheduling of the next PPT meeting for September 6 to review and revise the IEP. [Exhibit B-139]
23. At this PPT meeting, after a lot of discussion, the Parent said she wanted reading assessments completed because the Student’s reading was below average. The Board denied the request as the Board members of the PPT indicated that they had sufficient information from the psychoeducational evaluation completed by the school psychologist as well as the other assessments. [Testimony Board Supervisor]
24. The Parent did not challenge the results of the school psychologist’s evaluation, and she didn’t disagree with any of the Board’s evaluations. The paperwork from the May 31 PPT was revised to include the correction that the Parent requested an independent reading evaluation. [Testimony Board Supervisor, Exhibit B-140]
25. Dr. Maddox, one of the Student’s physicians, submitted a letter after the May 31 PPT meeting indicating that he was in favor of her attending school for a small portion of the day provided she has transportation to and from the building and doesn’t have to walk extensively during the time period, and as long as she is allowed adequate rest time during the school session. [Exhibit B-141]
26. On July 6, the Board requested a special education due process hearing on the following issues:
 - a. Is the Board entitled to an order allowing the Board to proceed with a medical evaluation of the Student by a physician designated by the Board in order to provide the Student with FAPE?
 - b. Is the Board entitled to an order allowing the Board to proceed with a psychiatric evaluation of the Student by a psychiatrist designated by the Board in order to provide the Student with FAPE?
 - c. Was the academic achievement evaluation conducted by the Board appropriate to assess the Student’s reading skills?

- d. If the Board's achievement evaluation was not appropriate, is the Parent entitled to an independent reading evaluation at public expense? [Exhibit B-145, Case No. 12-009]
27. In 2011, the Student was seen by a physician at Yale who wanted the Student admitted in order to come off all of her medications to allow him to evaluate her neurological condition. The Parent disagreed with this, and the physician filed a DCF Form 136 report of suspected child abuse or neglect. The psychiatrist submitted an affidavit in July 2011 in response to the Form 136 report. In the affidavit, Dr. Zanker opined that ". . . while anything is possible, I think it's very unlikely that this is a case of Munchausen's by proxy." [Testimony Psychiatrist, Exhibit B-138]
28. At this time, the Yale physicians thought that a diagnosis of conversion disorder would be appropriate for the Student. Conversion disorder is when people can develop similar symptoms to dystonia, but they're more related to some sort of severe psychological stress that presents itself as physical symptoms. In his affidavit Dr. Zanker opined that ". . . while this is possible in [the Student's] case (anything is possible), I don't think this is likely." [Testimony Psychiatrist]
29. During the summer 2011, the Student attended a summer program at a Board high school for Spanish. The Student attended the summer school program for 11 days for her Spanish course, and was compliant and exhibited the stamina to complete the lessons. [Testimony Special Education Teacher, Exhibit B-150]
30. The Parent had Miriam Cherkes-Julkowski, Ph.D. conduct an educational evaluation of the Student during July and August 2011. Dr. Cherkes-Julkowski's noted more significant deficits than were noted in the psychoeducational evaluation, and recommended a "carefully designed and orchestrated intervention" with a total school environment for high functioning students who have learning disabilities with various recommended interventions, instruction in decoding, reading comprehension support, targeted response to fluency, methodical program in instruction of math computations and concepts, a speech/language evaluation and continued consulting with an AT and OT. [Exhibit B-152]
31. The Student attended the first day of the 2011-12 school year, September 1, under her IEP for the previous year. Her hours included a modified day schedule which was going to continue until the PPT meeting scheduled for September 6. The Student did not attend the second day of school. [Testimony Special Education Teacher]
32. As previously planned in May, the PPT convened to review and revise the Student's IEP on September 6, 2011. [Exhibit B-139, B-153, B-157]
33. Prior to the PPT meeting, the Student's physician submitted a letter about his recommendations, as he was not able to attend the PPT meeting. This medical update letter discussed the Student's current medical status, noting that her abnormal movements and spasms had greatly decreased and that she had suffered a few episodes of lethargy and

severe weakness over the summer. Her physician noted that it was his goal to have the Student attend a full school day, and recommended that certain steps be taken to ensure that the day goes as smoothly as possible including that the Student be provided extra time to get from class to class; allow her access to sugar containing drinks or snacks if she feels dizzy, shaky or weak; allow for a low protein diet for meals at school and allow access to an elevator. [Exhibit B-154]

34. The PPT convened on September 6, 2011 to review and revise the Student's IEP. At the PPT meeting, the team recommended that the Student return to the Board high school with a full day program, that the Student receive a research based reading instruction, that the school nurse design a health care plan, that door to door transportation be provided and that the Student receive 3.5 hours of direct reading instruction, 7 hours of resource support including preteaching, 3.5 hours of support in U.S. History II, .5 hours per week of social work support and 5 hours per month for each of the ACES provided services of physical therapy, occupational therapy and assistive technology. The PPT was scheduled to reconvene the week of October 3 to review progress and the consultation updates. [Testimony Board Supervisor; Exhibit B-157]
35. The Student's IEP goals included: (1) Demonstrate an improvement in word recognition and decoding skills necessary to read for information and understanding; (2) Demonstrate an improvement in comprehension skills necessary to read for information and understanding; (3) Demonstrate an improvement in written language skills necessary to write information, understanding and written expression; (4) Demonstrate an improvement in mathematical concepts, reasoning and computation necessary to develop problem solving skills and to utilize mathematics to address everyday problems; (5) [The Student] will demonstrate an improvement in social skills; (6) Explore a variety of careers and vocations in relation to her interest and skills; (7) Student will complete a series of activities in order to prepare her to transition to competitive or supported employment. [Exhibit B-157]
36. The Student's school week included 22.5 hours per week with nondisabled peers, and 14 hours of special education. [Exhibit B-157]
37. At the PPT meeting the Board speech language pathologist recommended an observation in the classroom. This observation was not able to be completed subsequently as the Student was not present at the school. [Testimony Board SLP]
38. During the PPT meeting, the Parent's consultant Dr. Cherkes-Julkowski was provided a significant amount of time to go over her report. The Easton Country Day School director was provided an opportunity to speak, but did not contribute during the meeting. Due to his schedule conflicts, he had to depart from the PPT meeting prior to its conclusion. While there were many people at the PPT meeting, the Easton Country Day School director testified that all people in the room were appropriate to contribute to the PPT. [Testimony ECDS Director]

39. At beginning of the September 6 PPT meeting, all attendees introduced themselves, and the Parent had no objection to these attendees and did not seek to reschedule the PPT meeting. [Testimony Board Supervisor]
40. At the PPT meeting the Student presented a PowerPoint for approximately 10 to 15 minutes. She was upset and emotional and didn't finish her presentation, although she was encouraged to do so. [Testimony Special Education Teacher, Board Supervisor; Exhibit B-158]
41. During the PPT meeting, the special education teacher presented the goals and objectives. The Parent needed to leave the meeting, so the teacher wanted to ensure that they were reviewed before the Parent departed from the meeting. She recommended that the Student use the Read 180 program and Lexia Learning supplementary software, as well as receive preteaching for content areas. Both Read 180 and Lexia are scientific researched based interventions. The special education teacher recommended these programs as they target the increase in reading goals and the basics of reading that were discussed at the PPT meeting. [Testimony Special Education Teacher, Exhibit B-157]
42. The Student's IEP provided for appropriate modifications and accommodations, including the AT recommended by the consultant. The Student's health concerns were also addressed at this meeting, as it was planned that the school nurse would develop a health care plan for the Student. This consultation with the nurse never occurred as the Student did not return to the school under this IEP. A PPT meeting was scheduled to convene one month later to review the program in place to make sure the Student's needs were being met and to see if anything needed to be altered. [Testimony Special Education Teacher]
43. The Parent did not object to the IEP at the meeting, and did not ask for placement at Easton Country Day School. [Testimony Board Supervisor]
44. At this hearing, the Parent indicated that she disagreed with the Student's program for the 2011-12 school year, not based on goals and objectives, but on over-arching issues of safety and that the school has a nurse only one day per week. [Testimony Parent] The Parent made no such objection to the IEP at the PPT meeting. [Testimony Board Supervisor, Exhibit B-157] The Student's physician did not include a necessity to have a full time nurse as an accommodation for the Student in his list of steps required for the Student to be in school full time. [Exhibit B-154] Moreover, the Parent presented no credible evidence to substantiate her claim that the Student was unsafe at the Board high school.
45. Subsequent to the PPT meeting, on September 7 the Board's attorney submitted a notice to withdraw the pending Case No. 12-0009. The Board's attorney noted that at the PPT meeting additional medical information was provided by the Parent, which was reviewed, and an IEP was developed for the Student. Therefore, at that time, the Board was not requesting a full medical or psychiatric evaluation of the Student. In addition, the Board withdrew its request as it appeared that the Parent's request for an independent evaluation

did not meet the requirements of 34 C.F.R. Section 500.502(b) in that the Parent did not disagree with the reading evaluation conducted by the Board. [Exhibit B-159]

46. Following the PPT meeting, the Student came into school on September 7. She was provided the curriculum based assessments provided to all incoming students. Her math assessment placed her at Algebra I or higher. Her Read 180 lexile placed her in the range of a ninth grader. These beginning of the year assessments were substantially different than the results obtained by the Parent's consultant Dr. Cherkes-Julkowski, which had concluded that the Student had trouble doing basic math and had other significant deficits. The Student didn't exhibit the alleged severe deficits on the curriculum based assessments. [Testimony Special Education Teacher] The Board evaluations, assessments and experience with the Student are more accurate indicators of the Student's strengths and weaknesses, and are found to be more reliable than the results of the Dr. Cherkes-Julkowski evaluation.
47. On September 11, the Parent sent an email notification to the Board's supervisor that the Student would be out of school this week and continuing to visit Easton. In this email the Parent alleges that the Student is not safe in the public school system. [Exhibit B-160]
48. On September 21, the Board's request for hearing, Case No. 12-0009, was dismissed by the hearing officer. [Exhibit B-165]
49. Through an email sent Sunday, September 25, the Parent requested this hearing. [Exhibit B-166]
50. Subsequent to the filing of the request for hearing, in October and November 2011 the Parent had a speech language pathologist, Meryl Aronin, assess the Student. [Exhibit P-24] While the SLP concluded in his summary that the Student presents with a written and oral expression language disorder, he testified that the Student's errors in speech could be due to fatigue or other factors. [Testimony Private SLP]
51. The Student has never attended the school under the proposed IEP. [Testimony Parent]
52. The Board school psychologist compared the results of the Board's psychoeducational testing and the results from Dr. Cherkes-Julkowski's educational evaluation. He concluded that the Student knows the rules of decoding, and can effectively decode words, particularly in light of her score on the pseudoword decoding subtest. He opined that the Student might have abnormal visual scanning, which would need to be tested to determine whether the discrepancy could be explained by a visual perceptual difficulty or a visual scanning error. This testing, evaluations for Visual Perceptual Organization (Koppitz II) and visual scanning behavior (WISC-IV Cancellation and WJ III Pair Cancellation), was offered at a subsequent PPT in December 2011, but the Parent declined the testing. [Testimony School Psychologist, Exhibit B-196]
53. The Board's speech language pathologist recommended a speech language evaluation (CELF 4) to assess Speech and Language and an audiological evaluation to assess at the

December 2011 PPT, to which the Parent did not consent. [Testimony Board SLP, Exhibit B-196]

DISCUSSION/CONCLUSIONS OF LAW:

The Parent brought this action in accordance with the Individuals with Disabilities Education Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. It is undisputed that the Student is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the disability category Other Health Impaired pursuant to state and federal laws. See Conn. Gen. Stat. §§ 10-76 *et. seq.*; the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, *et seq.*

The standard for determining whether a FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry set forth in Rowley asks first whether the procedural requirements of IDEA have been reasonably met and, second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207

The Parent's claim that she was not allowed to participate in the September 6, 2011 PPT meeting is entirely without merit. The Parent and Student were allowed to speak at the meeting. The Parent's consultant presented her educational evaluation results for 30 to 45 minutes during the meeting. The Parent was provided an opportunity for full participation in this meeting. Nothing in the record supports the conclusion that there were any procedural violations which resulted in a denial of FAPE to the Student.

The second prong of Rowley is the determination of whether the Board offered the Student an appropriate IEP. The proper gauge for determining the IEP is substantively

appropriate is the question of “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). Meaningful educational benefits are “not everything that might be thought desirable by loving parents.” Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2nd Cir. 1989). Rather, school districts are required to provide a “‘basic floor of opportunity’ . . . [by providing] access to specialized services which are individually designed to provide educational benefit to the handicapped child.” Rowley, *supra*, 458 U.S. at 201; *see also* K.P. v. Juzwic, 891 F. Supp. 703, 718 (D.Conn. 1995) (the goal of the IDEA is to provide access to public education for disabled students, not to maximize a disabled child’s potential)

The Board’s proposed IEP for the Student includes appropriate goals and objectives that address the Student’s demonstrated weaknesses, including weaknesses in math and reading noted on the psychoeducational evaluation, providing education utilizing scientifically research based interventions and appropriate related services in the area of AT, OT and PT, as well a health plan to address any current medical issues that may arise or need to be addressed in the school setting. The IEP provides all essential components necessary to enable the Student to obtain educational benefit in the Board school, and can follow all the steps suggested by the Student’s treating physician for participation in a full school day. The Student’s physician recommended that the Student could attend a full day of school, and did not suggest that the Student required a full time nurse in order to attend school.

The proposed program is individualized and based on the Student’s assessments and performance, and is provided in the least restrictive environment. The Board has appropriately considered and concluded that the Student can be educated in the regular classroom, with the use

of supplemental aids and services, and the proposed IEP has mainstreamed the Student to the maximum extent appropriate. P. v. Newington Board of Education, 546 F. 3d 111 (2d Cir. 2008), citing Oberti v. Board of Educ., 995 F. 2d 1204 (3rd Cir 1993). Nothing in the record supports a conclusion that the Student requires a private placement to obtain educational benefit. The Board has demonstrated that the IEP for the 2011-12 school year offers the Student a FAPE.

Because the IEP offers an appropriate program in the LRE, the Parent is not entitled to reimbursement for any other placement, nor the cost of transportation and related services, as the IDEA “does not require [a local educational agency] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility *if that agency made FAPE available to the child and the parents elected to place the child in a private school facility.*” 34 C.F.R. § 300.403(a) (emphasis added); see also M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F. 3d 60, 66 (2d Cir. 2000)²

The Board has developed and offered an appropriate IEP for the Student for the 2011-12 school year. Therefore, the Parents’ request for placement at Easton Country Day School and the cost of transportation and related services must be denied.

The Parent is not entitled to reimbursement for the costs of her IEE conducted by Dr. Miriam Cherkes-Julkowski and Meryl Aronin. A parent only has a right to an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the public agency. 34 C.F.R. §300.502(b)(1) The Parent did not articulate that she disagreed with the Board’s psychoeducational evaluation. She seemed to be seeking a more in-depth analysis of the assessments completed by the Board. The Board’s evaluation of the Student was

² Only if it is concluded that the IEP is procedurally or substantively deficient must we reach the final step and ask whether the Parents’ placement is appropriate to meet the needs of the Student. A.C. and M.C. v. Board of Education of Chappaqua Central School District, 553 F. 3d 165, 51 IDELR 147 (2nd Cir. 2009)

appropriate, and the Parent is not entitled to reimbursement for the Dr. Cherkes-Julkowski evaluation. Moreover, if the Parent is also seeking reimbursement for the Meryl Aronin speech evaluation as part of her claimed reimbursement for the IEE, that request is denied. The Board did not have an opportunity to have their own speech/language pathologist observe the Student in the classroom as recommended by the September 6 PPT or conduct its own speech and language evaluation of the Student.

The Student is not entitled to compensatory education, as the Board's program for the 2011-12 school year was appropriate and there were no procedural violations which resulted in a denial of FAPE.

The Board's AT consultation completed by the ACES AT consultant was comprehensive and appropriate. The Parent's request for an AT re-evaluation is, therefore, denied.

While the issues included a request for an auditory processing evaluation, no evidence was presented during the hearing regarding the alleged need for an auditory processing evaluation, nor was there evidence that such an evaluation was requested at a PPT meeting. Therefore, the request is denied as this issue has been abandoned by the Parent.

The hearing officer has authority to order evaluations as part of a hearing order. Regs. Conn. Agencies §§10-76d-9(c)(4), 10-76h-13. The Board shall evaluate the Student in the following areas to better understand the Student's possible weaknesses.

The Parent shall fully cooperate in making the Student available for the evaluations, and this hearing officer order hereby overrides the lack of parental consent to these evaluations. The placement of the Student at the Board high school shall not be delayed pending the evaluations.

The evaluation reports shall identify any recommended changes or additions to the Student's goals and objectives to address any identified weaknesses, and the PPT shall convene to implement any such recommended changes/additions to the Student's IEP.

The Student shall be evaluated for visual perception and visual scanning behavior as identified by the school psychologist. The evaluations for Visual Perceptual Organization (Koppitz II) and visual scanning behavior (WISC-IV Cancellation and WJ III Pair Cancellation), and any additional or similar testing in the area of visual perception and visual scanning, shall be completed by the school psychologist or other evaluator selected by the Board who meets the criteria required by the public agency, if any, in accordance with 34 CFR Section 300.502(e).

The Student shall also be evaluated through a speech language evaluation and an audiological/hearing evaluation as recommended by the Board's speech language pathologist. This testing shall be completed by the Board speech language pathologist and/or any other evaluator selected by the Board who meets the criteria required by the public agency, if any, in accordance with 34 CFR Section 300.502(e).

FINAL DECISION AND ORDER

1. The Board's proposed program for the Student for the 2011-12 school year is appropriate.
2. As the Board's proposed program for the Student for the 2011-12 school year is appropriate, the Parent is not entitled to reimbursement for the placement at the Student at Easton Country Day School, and the Board is not responsible for the cost of transportation to Easton Country Day School and the related services of a reading specialist, OT and PT.
3. The Parent shall not be reimbursed for the IEE, including the Education Evaluation completed by Dr. Cherkes-Julkowski and the speech and language evaluation completed by Meryl Aronin.
4. The Parent was provided a full opportunity to participate in the PPT meeting of September 6 and therefore, the Board did not commit procedural violations relating to the PPT meeting.
5. The Student is not entitled to an auditory processing evaluation.
6. The Student is not entitled to an assistive technology re-evaluation.
7. The Student is not entitled to compensatory education.
8. The Board shall conduct the additional evaluations/assessments as identified in this decision. The lack of parental consent to these evaluations is hereby overridden.