

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student C. v. Greenwich Board of Education

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Appearing on behalf of the Board: Attorney Valerie E. Maze  
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Appearing before: Attorney Gail K. Mangs, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

**Parent Issues:**

1. Did the Board provide an appropriate educational program to C. in the 1996-1997 and 1997-1998 school years?
2. If not, is C. entitled to compensatory education for those years?
3. Did the Board offer an appropriate educational program to C. for the school years 1998-1999, 1999-2000, 2000-2001, and 2001-2002?
4. If not, did the Eagle Hill School provide an appropriate educational program and placement for C. during those years and if so, is C. entitled to reimbursement for the cost of Eagle Hill during those years?

**Board Issues:**

1. Are parents' claims regarding any educational program in the public schools dating from more than two years prior to the date the request for due process was filed barred by the applicable statute of limitations?

2. What is the standard of review with respect to educational programs the Board offered as to a child who was not enrolled in the Board's schools at the time the programs were offered or thereafter, but instead continued to be unilaterally placed in a private school?

### **PROCEDURAL HISTORY:**

This hearing was requested on January 31, 2002. The prehearing conference was convened on February 4, 2002. Hearing dates were initially set for March 6, 11, 14, 18 and 21, 2002. The following additional hearing dates were added: April 11 and 24 and May 3, 15, 16, 23, and 31. Final arguments were heard on May 31, 2002 and the date for the mailing of the final decision and order was changed to June 17, 2002. The parent called the following witnesses: C.'s mother, Abigail Hanrahan (C.'s tutorial teacher at Eagle Hill), Pam Fortin (C.'s educational advisor at Eagle Hill), Dr. Armin Thies (neuropsychologist), and Bonnie Strunin (Board speech and language pathologist). The Board called the following witnesses: Phyllis Conley (Board Assistant Director of Special Education), Marlene Fitzmaurice (Board special education teacher), Dr. John Seidel (Board school psychologist), Ginny McAuliffe (Board special education teacher), Karen Mabee (Board Assistant Principal), and Robert Cunningham (former Board educational evaluator). The record was closed on May 31, 2002.

### **SUMMARY:**

C. is a severely learning disabled student who has also been diagnosed with a speech and language disability. He has received special education services since he entered the Board's schools. In the first and second grades, C. was placed in regular education classes but was pulled out for resource room assistance and speech and language therapy. Based upon his inability to make progress in reading and writing and the results of evaluations, the PPT recommended that C. be placed in a self-contained classroom for third grade. His parents resisted although they eventually agreed to a trial placement. Some progress was noted and the placement became permanent until the end of third grade. During these years, C.'s mother investigated other learning opportunities for C. and paid for outside tutors and a summer program at the Eagle Hill School. Unsatisfied with C.'s slow progress, C.'s mother requested that the PPT pay for C. to be placed at the Eagle Hill School for fourth grade. The PPT refused this request but C.'s mother placed C. at her own expense. During the summer of 2001, C.'s mother requested a hearing in order to obtain an independent neuropsychological evaluation; a settlement was reached by the parties. On January 31, 2002, this hearing was requested challenging the programs provided and/or offered by the Board since the 1996-1997 school year. C. has spent the fourth through seventh grades at the Eagle Hill School.

### **FINDINGS OF FACT:**

1. C. was born on March 11, 1989. He began receiving speech and language therapy when he was three years old. While in kindergarten, C. was identified as having a specific learning disability as well as a speech and language impairment; special education services were provided. By early second grade, he was receiving 1 1/2 hours of daily resource room assistance and speech and language therapy twice per

week although all academic instruction was given in the regular education classroom. As a second grader, C. struggled with the reading, writing and spelling skills that most first graders had already mastered. Although he seemed to know the letter sounds, C. was unable to blend the sounds in order to actually read or write. When material was read to him, however, his level of comprehension was grade appropriate. Articulation was also noted as an area of difficulty for C. but math was considered an area of relative strength. C. exhibited some attentional difficulties, but the PPT believed that this was due to frustration. (Exhibits P-26, P-38, B-18, B-21, B-24, B-30)

2. During C.'s second grade school year, his mother hired a private tutor. In a letter to her attorney dated February 25, 2002, C.'s mother described her increasing frustration with C.'s academic delays during the 1996-1997 school year. At one point, after requesting C.'s educational records and being told that some of the records were missing, she threatened to hire an attorney. After being told by a Board employee that C. was probably dyslexic, C.'s mother learned all she could about the disability and hired a tutor from Eagle Hill. She also pushed the Board to hire a reading specialist and paid for C. to attend the Eagle Hill summer program during the summer of 1997 when the Board refused to fund the placement. (Testimony of Mother, Exhibit P-18)
3. Evaluations were performed in May, 1997 (the end of C.'s second grade year). On the speech and language evaluation, C.'s expressive language performance was two standard deviations below the mean. Word retrieval, recall for auditory information, and phonological analysis skills were weak. As part of the psychological evaluation, C. received a performance score of 112, verbal score of 90 and full scale score of 100 on the WISC-III. His non-verbal ability fell within the high average range and was significantly discrepant from his verbal ability (low average range). A significant weakness was noted in expressive vocabulary. On the WRAT-R, C.'s reading and spelling skills fell below the first percentile; arithmetic skills were at the 21st percentile. Other testing instruments revealed weaknesses in auditory and visual memory, phonological processing, visual-motor skills, and attention. (Exhibits B-33, B-34, B-35)
4. Based upon the results of the evaluations, the PPT, with the agreement of C.'s parents, determined that a neuropsychological examination was needed to better understand C.'s learning processes. This evaluation was performed in August, 1997 by Dr. Armin Thies, Board Certified Clinical Neuropsychologist from the Yale Child Study Center. Dr. Thies determined that C. had a diffuse language impairment characterized by oral dyspraxia (poor articulation); dysgraphia due to poor fine motor control; impaired word selection, naming and word finding; impaired spelling; errors of syntax in speech, and, what Dr. Thies termed "dysnomic dyslexia" or a combination of an inability to correctly label letters with their phoneme equivalents and an inability to correctly label words in sight reading which compromises basic naming and word finding. Dr. Thies concluded that C. will auditorily acquire information at a low average level but will be impaired in his ability to acquire information by reading; therefore, C. required a highly individualized plan of reading

instruction and an emphasis on experiential learning methods. (Exhibits B-38, B-39, B-43A) .

5. Based on Dr. Thies' evaluation, the PPT recommended that C. be placed in a self-contained, learning disabilities intensive support class. This placement was made diagnostic for the fall of C.'s third grade year (1997-1998) based upon the parent's desire to be able to quickly move C. out of the classroom if they determined that the placement was not satisfactory. Speech and language services were also provided. C.'s parents were not happy about a segregated setting but agreed to this placement on the trial basis. PPT meetings were held every two weeks to monitor C.'s progress. The class was located at a school other than C.'s home school and the classroom was located between two special education preschool classrooms. Transportation was provided by a small school bus which, according to C.'s mother, made C. very self-conscious; in addition, the bus ride was quite long so C.'s mother began to pick him up each day. (Testimony of Mother, Exhibits B-48, P-18)
6. Overall, C. made a good adjustment to the new classroom. Focus and attention were initial difficulties but C. improved in these areas during the fall of 1997. C.'s teacher reported that his reading fluency was improving as was his attitude toward independent completion of work. At bi-weekly PPT's, C.'s parents indicated that C. seemed comfortable with the class and they noted some positive growth. C.'s parents were informed about their right to a due process hearing at every PPT meeting; in addition, the complete procedural safeguards were handed to the parents at every PPT meeting and the parents signed to indicate that they had received a copy of the safeguards and did not have any questions regarding the safeguards. An occupational therapy (O.T.) evaluation performed in November, 1997 indicated that C. might benefit from O.T. services; group O.T. services were added to the IEP once per week for 45 minutes. In addition, C. began to occasionally attend a collaboratively taught science and social studies class. At the PPT convened on January 9, 1998, it was agreed that the self-contained placement would become C.'s permanent placement for the remainder of the school year. (Exhibits B-51, B-52, B-53, B-54, B-55, B-56, B-57, B-58, B-59, B-60, B-61, B-62, B-63)
7. By the end of third grade, C., according to his teachers, was reading at a mid-first grade level and was at the third grade level in math. The team recommended that C. continue to attend a self-contained classroom for fourth grade with mainstreaming for specials, keyboarding instruction, a collaborative science/social studies class, and continued O.T. and speech and language services. An extended school year was also offered. At the PPT meeting convened on June 2, 1998, C.'s mother stated that due to his learning disabilities and academic needs, she was considering sending C. to the Eagle Hill School where she believed he would have more in common with the rest of the students and would not feel so different. She felt that C. missed his friends and was becoming withdrawn; in addition, she saw little reading progress. The Board special education supervisor suggested that C.'s mother take some time to think about this decision. In addition, she pointed out the line at the bottom of "Summary of Special Education Due Process Procedures for Parents, Staff and School District," a summary prepared by the Board (Exhibit P-21) and given to parents that states, "\*\*\*\*If there is a due process hearing, a student will remain in his/her present

placement until a decision is rendered by the hearing officer.” This summary is printed on the back of the PPT Summary Letter, which is mailed to parents after PPT meetings as a cover sheet for the PPT summary. This is in addition to the “Procedural Safeguards in Special Education” prepared by the State of Connecticut Department of Education, Division of Educational Program and Services, Bureau of Special Education and Pupil Services which is given to parents at each PPT meeting (Exhibit B-15A). C.’s mother testified that Board representatives told her that hearings could take up to a year to complete; she was concerned about C. having to remain in what she felt was an inappropriate self-contained setting during a possibly protracted hearing. She also testified that she always knew due process was an option but that she did not really investigate the possibility because she chose instead to put her efforts into trying to work with the PPT to develop an appropriate program. (Testimony of Mother, Exhibits B-63, B-69, B-15A, P-18, P-21, P-52)

8. Section I (D) (14) of the “Procedural Safeguards in Special Education” states: “A statute of limitations applies to special education due process. A party has two years to request a hearing from the time the action is proposed or refused regarding the identification, evaluation or educational placement of or the provision of a free appropriate public education to the child who requires or may require special education and related services. If the parent is not given notice of the procedural safeguards, the two-year limitation shall be calculated from the time notice of the safeguards is properly given.” (Exhibit B-15A)
9. C. has been a student at the Eagle Hill School in Greenwich for the 1998-1999, 1999-2000, 2000-2001, and 2001-2002 school years. Eagle Hill is a private, language-based ungraded remedial program for children with learning disabilities. The school is divided into an upper and lower school; the average student-teacher ratio in the lower school is 3:1 and in the upper school, 4:1. Each student has an educational advisor and receives a daily tutorial in language arts plus three additional language classes; additionally, classes in math, science, social studies and computer instruction are provided. Speech and language services, counseling, and motor training are offered on an as-needed basis. There are also opportunities for the students to be involved in various team and individual sports and other extra-curricular activities. (Exhibits P-17, P-118, P-119)
10. Initially, Eagle Hill teachers found C.’s attention to be inconsistent; he required teacher cues to maintain focus. He also required adult mediation in some of his peer interactions. Testing performed by Eagle Hill in September, 1998 placed C.’s skills at the mid-second grade level in math, and early first grade level in reading. In his first Eagle Hill report, dated December, 1998, it was reported that C. was decoding on the 2nd/3rd grade level if provided with teacher support, encouragement and correction. He could complete literal, creative, and interpretive comprehension questions when the teacher used guided questioning to lead C. to the answers and unfamiliar vocabulary and information were pretaught. He could write simple sentences and correct spelling errors with adult intervention. C. could spell other than consonant-vowel-consonant words only when teachers dictated the words in an exaggerated manner with specific letter sounds enunciated clearly and slowly. C. required teacher guided questioning and cueing in order to define temporal and

directional concepts. Once per week, C. received articulation therapy for correction of his "r" sound. During the 1998-1999 school year, C. had classes in math, writing, oral language, and a core class that covered science, social studies and oral literature in addition to his tutorial. (Testimony of Pam Fortin, Exhibit P-3)

11. In the June, 1999 Eagle Hill report, C. was described as being able to independently decode first grade material; he could decode second and third grade material only with teacher support, encouragement and correction and when unfamiliar words were pretaught. The Eagle Hill headmaster recommended that C. return to Eagle Hill for the 1999-2000 school year. (Exhibits P-4, P-5)
12. C.'s tutorial teacher for the last three years, Abigail Hanrahan, testified that she tutors C. and one other student for 80 minutes per day in reading and language arts; this comprised approximately one-third of C.'s total academic time. In the tutorial, decoding is emphasized along with life skills reading using newspapers, menus, movie listings, and the sports pages; C. is now able to glean some information from the newspaper in his high interest areas (sports and automobiles). She employs a multisensory approach to phonics to teach spelling, sight words, word patterns, word attack strategies and writing. She described C.'s current independent reading level as being at the 2nd grade level. She testified that C. began at the first grade level with a limited sight word vocabulary and currently, in the seventh grade, C. knows about 90% of a sight word list that most students know by second grade. He has studied all phonemes but can not apply this knowledge automatically. His vocabulary and store of background knowledge are relatively limited. He also mishears some words and with his short term memory problems, it is difficult for C. to retain new words. Writing skills are also covered in the tutorial. P-15, P-23, P-24 and P-25 were offered as writing samples, but as the tutorial teacher testified that these samples had been prepared with teacher guidance and were mostly typed by her, it appears that C. can not actually do much independent writing. (Testimony of Abigail Hanrahan, Exhibits P-15, P-23, P-24, P-25)
13. In the December, 1999 and June, 2000 Eagle Hill reports, C.'s occasionally impulsive classroom behavior was noted. In both reports, he was described as needing teacher support, encouragement and correction during oral reading to decode first and second grade level material. Other decoding, spelling and comprehension skills were described as being similar to the December, 1998 report. C. still required teacher assistance to write expanded simple sentences and single paragraph compositions as well as to respond to reading comprehension questions. It was again recommended that C. return to Eagle Hill for the 2000-2001 school year. During the 1999-2000 school year, C. also had classes in math, writing, oral literature and United States History in addition to his tutorial. (Exhibits P-7, P-8, P-9)
14. In the spring of 2000 at Eagle Hill, C. scored at the 1.6 grade equivalent level on the comprehension portion of the Gilmore Oral Reading Test. On the Slosson Oral Reading Test, his score fell at the 2.0 grade equivalent level. In the spring of 2001, C.'s comprehension score on the Gray Oral Reading Test fell below the 1.9 grade equivalent level. In the spring, 2002, C.'s comprehension score on the Gray Oral

Reading Test fell at the 2.8 grade equivalent level, or about the first percentile. (Exhibits P-114, P-115, P-121)

15. Reports for the 2000-2001 school year noted C.'s occasional need for adult intervention in his peer interactions and his continuing distractibility and need for teacher cueing to maintain focus in the classroom. It was noted, however, that C. could now independently decode second grade material and could decode at the third grade level if provided with vocabulary preteaching and teacher support, encouragement and correction. The headmaster again recommended that C. return to Eagle Hill for the 2001-2002 school year. During the 2000-2001 school year, C. had classes in math, writing, literature, science, and instructional strategies, in addition to this tutorial. He received speech and language instruction once per week. (Exhibits P-10, P-11, P-12)
16. The December, 2001 Eagle Hill report noted that C. was upset at the beginning of the school year due to his retention in the lower school while his friends moved on to the upper school. Most students at Eagle Hill move to the upper school at age 11 or 12 but C. was retained in the lower school because Eagle Hill staff felt C. should remain with his tutorial teacher who, due to scheduling difficulties, would be unable to instruct C. if he moved to the upper school. Arrangements were made to allow C. to meet with his friends during lunch, sports and other activities. Attentional difficulties were noted in history and writing although this was not an issue in his tutorial where there were only two students. C.'s decoding skills were again described as independent at the second grade level and reaching the third grade level only with teacher assistance. During the 2001-2002 school year, C.'s classes, in addition to his tutorial, included math, writing, literature, and world history. Speech and language instruction was increased to two sessions per week. (Testimony of Pam Fortin, Exhibit P-22)
17. On April 27, 1999 and May 16, 2000, the Board Director of Pupil Personnel Services sent C.'s parents letters notifying them of their right to receive special education services from the Board and offering to schedule an IEP team meeting to develop an IEP. (Exhibits B-70, B-71)
18. C.'s mother testified that she met with Attorney Howard Klebanoff in January or February of 2001 to explore legal options both because Eagle Hill employees suggested that she had misunderstood the law, and because the tuition was so expensive. In a letter dated February 8, 2001, Attorney Howard Klebanoff contacted the Board of Education's Superintendent notifying him that he represented C.'s mother and requesting copies of C.'s educational records. (Exhibit B-72)
19. A PPT was convened on April 2, 2001. The team proposed a multidisciplinary evaluation. C.'s mother requested that Dr. Thies perform an additional evaluation. The team did not then agree to this request. (Exhibit B-3)
20. Between April and June, 2001, the Board performed psychological, speech and language and educational evaluations. On the WISC-III, C. received a verbal score of 84, performance score of 91, and a full scale score of 86. Based on these scores and

the subtest scores, the evaluator concluded that C. functions within the low average to average range of cognitive functioning. Other psychological testing revealed deficiencies in short term auditory memory for language, eye/hand dexterity and receptive language comprehension. In speech and language testing, C. demonstrated deficits in both receptive and expressive language; he demonstrated difficulty organizing unfamiliar information and answering higher level critical thinking questions. Academically, C.'s math skills fell within the low average to average range (21st percentile) on the Wechsler Individual Achievement Test ("WIAT"). C.'s reading scores on the WIAT fell at the first percentile; his writing score was below the first percentile. His scores on the Gray Oral Reading Test-3 fell below the first percentile in all areas. C.'s overall writing score on the Test of Written Language-3 also fell below the first percentile. The evaluators concluded that C.'s reading and writing scores are so deficient that he would be unable to succeed in curricula that requires reading and writing without extensive supports. (Exhibit B-4)

21. The Board's school psychologist, Dr. John Seidel, who performed the psychological evaluations discussed above disagreed with Dr. Thies' description of C.'s disability as "dysnomic dyslexia". He sees C.'s dyslexia as severe, but not so extraordinary as to deserve a new label. In addition, he agreed with Dr. Thies that C. is sensitive and needs to have his level of self esteem maintained, but he testified that C. is no more sensitive than most severely learning disabled students. (Testimony of Dr. John Seidel)
22. Robert Cunningham, who performed the educational evaluations of C. for the Board in the spring of 2001, testified that C.'s only method of identifying words is to sound them out. With longer, less predictable words, this method slowed him down so much that he lost whatever comprehension he had obtained of the passage by the time he reached its end. While C. relies on phonetic analysis for encoding and decoding, this skill is not sufficiently developed to allow him to read and spell effectively. Since C. has made only about one year's growth in reading in three years, it appears that the approach that has been used to teach reading needs to be altered. Mr. Cunningham testified that the research suggests there is an "AHA!" moment in reading instruction when the student finally "gets it." He felt that C. had not experienced that moment and that four years was too long to wait. C. needs exposure to other reading strategies (such as word attack through syllabification rather than phonetic analysis). (Testimony of Robert Cunningham)
23. On the Stanford Diagnostic Reading test administered to C. in September, 1998 by Eagle Hill, C.'s total score fell at the 1.1 grade equivalent level. By September of 1999, his reading score fell at the 1.6 grade equivalent level and in April, 2001, C. scored at the 2.6 grade equivalent level. Pam Fortin sees this last score as most accurately reflecting C.'s current reading ability; for anything beyond the second grade level, C. requires assistance and modifications. On the Stanford Diagnostic Math test, C.'s score fell at the 2.1 grade equivalent level in September, 1999 and the 4.4 grade equivalent level in April, 2001. (Testimony of Pam Fortin, Exhibits P-2, P-112, B-96)



24. C.'s mother observed a seventh grade resource room and seventh grade collaborative language arts class at Western Middle School on May 3, 2001. In a letter to her attorney, she stated that she did not feel either class could meet C.'s needs. She saw the resource room as too chaotic with little actual work being done and almost no one-on-one assistance. She described the language arts class as working with material significantly above C.'s reading level. (Exhibit P-14)
25. A PPT was convened on June 12, 2001. There were several misunderstandings as to this meeting. There was a question as to who was supposed to have invited an Eagle Hill representative to the meeting; apparently, such an invitation was never extended although this appears to have been an oversight. The Board's assistant director of special education, Phyllis Conley, thought the Board evaluations and proposed IEP were going to be reviewed but when neither C.'s attorney nor a representative of Eagle Hill were able to attend the meeting, the review of the IEP was put off. In any event, goals and objectives were discussed (although placement was not) and the Board evaluations were presented. In addition, C.'s mother presented a prepared statement in which she stated that the classrooms she observed at Western Middle School could not meet C.'s needs. She requested placement of C. at Eagle Hill for the 2001-2002 school year, reimbursement of tuition paid to Eagle Hill for the past three years, compensatory education for the second and third grade years, an independent evaluation by Dr. Thies, and an independent speech and language evaluation. The PPT tabled discussion of Dr. Thies and placement for 2001-2002 and refused Eagle Hill reimbursement for the previous three years. (Testimony of Mother, Phyllis Conley, Exhibits B-6, B-78, B-101, P-107)
26. On June 25, 2001, another PPT was convened even though C.'s mother and her attorney chose not to attend. At that meeting, the Board offered a neuropsychological evaluation by Dr. Triozzi and an independent speech and language evaluation. In addition, an IEP was proposed that included placement in a special education program at Western Middle School with daily resource room, special education math and English classes, and collaboratively taught science and social studies classes with one to one aide support. Weekly counseling and speech and language services twice per week were also proposed. Western Middle School offers numerous after school clubs and extra-curricular activities. (Testimony of Karen Mabee, Exhibits B-8, B-82, B-105)
27. C.'s mother testified that she sent the Board a letter from Florida in late June, 2001 stating that she would be sending C. to Eagle Hill for the 2001-2002 school year. Ms. Conley testified that she does not recall receiving anything written with regard to C.'s attendance at Eagle Hill for the 2001-2002 school year, but that she did not expect to see C. at Western Middle School when school opened in the fall of 2001. (Testimony of Mother and Phyllis Conley)
28. C.'s mother requested a due process hearing to obtain an evaluation by Dr. Thies and an independent speech and language evaluation. The parties arrived at a settlement agreement in July, 2001 in which the parents withdrew their request for the speech and language evaluation and the Board agreed to fund Dr. Thies' independent evaluation. (Exhibits B-7, B-9, B-10, B-11, B-81)

29. Dr. Thies performed his second neuropsychological evaluation of C. in August, 2001. His report, dated September 1, 2001, notes clearer articulation but states that C. continues to display a diffuse impairment of language with significantly deficient linguistic processing, reading and writing skills insufficient to use as classroom learning tools, impaired word selection, naming and word finding, writing impeded by impaired spelling, punctuation, capitalization and syntax construction, and impaired verbal memory. In addition, Dr. Thies continues to view C. as demonstrating dysnomia which results in a poor prognosis for acquiring reading and writing skills sufficient for use as learning tools. Therefore, reading and writing interventions should focus on the development of a functional use of these skills rather than an over-emphasis on the phonetic decoding of sound/symbol relationships. Dr. Thies does not recommend spending one-third of C.'s academic time on decoding. When presented with C.'s current level of reading, Dr. Thies testified that this slow progress just confirms his poor prognosis for C.'s ability to acquire more than functional reading skills, and, at C.'s age, continued work on basic skills means a loss of content area time; the two areas must be balanced. Content area instruction will require modifications so that reading and writing are not necessary. C. will best learn with nonverbal methods of instruction; he can adequately comprehend oral material when provided with visual support. Finally, Dr. Thies stressed the importance of maintaining C.'s level of self esteem. (Testimony of Dr. Armin Thies, Exhibit B-12)
30. Karen Mabee and Ginny McAuliffe observed C. in his tutorial at Eagle Hill on November 26, 2001. While they found the environment to be nurturing, they characterized the lesson as very structured with an emphasis on drilling. Even with over an hour of drilling, C. seemed unable to carry the lesson over to the reading of a text; he seemed to be highly dependent on teacher cueing. (Testimony of Ginny McAuliffe and Karen Mabee, Exhibit B-101)
31. A PPT was convened on November 29, 2001 to discuss the final proposed IEP for the 2001-2002 school year. Pam Fortin participated by telephone. The final proposed program at Western Middle School included one period per day of resource room assistance, skills English and skills math classes (special education classes which range in size from 7 to 10 students), a regular education reading class with up to 10 students, a collaborative science class with one on one paraprofessional support, and unified arts which includes music, art, gym, and technology education on a rotating basis. The content of skills English varies depending upon the skills and needs of the specific students but does cover grammar, phonemic awareness, writing and literature in a multisensory manner. Most of the students in the reading class can independently decode at least at a fourth grade level although the literature studied in class is also presented on tape or is read aloud. The IEP also included twice per week direct speech and language services, counseling once per week and as needed, and an extended school year program. Additional reading, writing and problem solving goals were added as was a focus on reading comprehension with a reduced emphasis on decoding skills. Recommended modifications and adaptations included use of the computer or Alpha smart, supplementary visuals, alternate and supplemental reading materials, preteaching, and an after school homework plan. C's mother agreed to

revisit Western Middle School to observe the proposed placement. During this meeting, Pam Fortin admitted that C. had not yet reached the “AHA!” moment in decoding; that is, the moment when he actually “gets it” and breaks the code. (Testimony of Ginny McAuliffe and Robert Cunningham, Exhibits B-13, B-102)

32. In the design of the proposed IEP, the PPT made the decision that C.’s reading progress was so incremental for his age and for the level of intensive, individualized instruction that he had received for over three years, as to suggest that he may be approaching a ceiling. Information provided by the most recent evaluation by Dr. Thies and the evaluation performed by Board employees in the spring of 2001 further reinforced this opinion. Therefore, they decided not to eliminate but to de-emphasize decoding and to look at a strategy-based approach to reading comprehension, assistive technology, and greater exposure to the regular education curriculum. In addition, Board employees testified that considering the minimal gains C. had made at Eagle Hill, there was no benefit to keeping him in such a segregated setting; therefore, it was now time to give him greater exposure to a broad-based curriculum and to in-school socialization experiences with typical peers. (Testimony of Phyllis Conley and Dr. John Seidel)
33. C.’s mother revisited Western Middle School with Pam Fortin on December 1, 2001. Although she did not observe the classes in their entirety, Pam Fortin testified that the classes she observed, skills English, skills math, and technology, were orally-based and not sufficiently hands-on for C. Nothing was written on the board in math (a worksheet was used) and the English lesson was not reinforced with any reading material. She does not think the placement proposed by the Board is appropriate and believes that decoding instruction is still essential to C.’s program. Ms. Fortin testified that C.’s move into uncontrolled reading, that is, using reading materials where the word patterns are not strictly controlled, shows great progress for C. She sees C. as on the cusp of making a decoding breakthrough; therefore, she supported keeping C. in the lower school in the fall of 2001 with the same reading/tutorial teacher. She also testified that C. is one of the lowest functioning students at Eagle Hill and, due to the very serious nature of his learning disability, is only able to make progress at an incremental rate. (Testimony of Pam Fortin)
34. C. participates in many activities with a diverse group of peers. He is involved in the Boys’ Club and plays on townwide baseball and basketball teams. During the summer, he attends regular camps. (Testimony of Mother)

### **CONCLUSIONS OF LAW:**

1. There is no dispute that C. is qualified to receive a free and appropriate public education (“FAPE”) as a student with a specific learning disability under the provisions of Connecticut General Statutes section 10-76 et seq. and the Individuals with Disabilities Education Act (“IDEA”) 20 U.S.C. 1401 et seq. Both parties agree

that C. is a severely learning disabled student; even at Eagle Hill, which serves only learning disabled students, C. is one of the lowest performing students.

2. The standard for determining whether FAPE has been offered or provided begins with the two prong test established by the Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 459 U.S. 176 (1982). First the procedural requirements of the IDEA must have been met by the school district. Second, the individualized educational program must be reasonably calculated to enable the child to receive some educational benefit.
3. Since Rowley, courts have clarified the requirements of FAPE to hold that individualized educational programs offered to children with disabilities must provide more than a trivial educational benefit. (See Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988), cert. denied 488 U.S. 1030 (1989) and Oberti v. Board of Education of the Borough of Clementon, 995 F.2d 1204 (3rd Cir. 1993)). However, the IDEA does not require that the educational potential of each child be maximized. (Rowley at 189).
4. In addition to the provision of FAPE, the law also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled (34 C.F.R. 300.550(b)). Education must be provided in the least restrictive environment (“LRE”) appropriate to meet the unique needs of each disabled student.
5. C.’s mother unilaterally placed C. at Eagle Hill in the fall of 1998 after making the determination that the IEP offered by the Board on June 2, 1998 was not appropriate. This due process hearing was requested on January 31, 2002. Connecticut General Statutes Section 10-76h(a)(3) states, “A party shall have two years to request a hearing from the time the board of education proposed or refused to initiate or change the identification, evaluation or educational placement or the provision of a free appropriate public education placement to such child or pupil provided, if such parent, guardian, pupil or surrogate parent is not given notice of the procedural safeguards, in accordance with regulations adapted by the State Board of Education, including notice of the limitations contained in this section, such two-year limitation shall be calculated from the time notice of the safeguards is properly given.” In addition, in a letter to Attorney Winona W. Zimmerlin from the United States Department of Education, Office of Special Education and Rehabilitative Services (OSEP) dated October 19, 2000, it was stated, “While the IDEA is silent with respect to a limitation period, generally, IDEA claims begin to accrue when a plaintiff knows or should have known of his or her claim under the IDEA.” In addition, OSEP found Connecticut’s limitation to be consistent with IDEA. Thus, a parent’s action against a school district accrues at the time the board of education acts or refuses to act. From that time, a parent who disagrees with the board has two years to request a hearing challenging the board’s action. Therefore, C.’s mother should have requested a hearing by June, 1999 for any actions taken by the Board with which she disagreed for the school year 1996-1997 and June of 2000 for the school year 1997-1998. Based upon the Connecticut statute and the OSEP opinion, the parent’s claims for the school years 1996-1997 and 1997-1998 are barred.

6. As to the school years from 1998 and thereafter, the years that C. attended Eagle Hill, the mother's action first accrued when she disagreed with the IEP proposed on June 2, 1998. To appropriately challenge this action, she should have requested a hearing by June 2, 2000. To give her more leeway, an argument might be made that the action accrued in September, 1998 when she actually placed C. at Eagle Hill. In any case, a hearing was not filed within the appropriate time limit.
7. However, the statute allows for the tolling of the statute of limitations if the parent did not receive appropriate notice of the procedural safeguards. C.'s mother claims that this is the situation here. She asserts that due to the sentence contained in the Board's summary of due process rights that states that a student must remain in their placement until a decision is rendered by a hearing officer (see Finding of Fact No. 7), she assumed that C. had to remain in the Board placement if she pursued a due process hearing. First, it is clear that C.'s mother received the Procedural Safeguards publication prepared by the Connecticut State Department of Education, in which due process rights are more fully delineated, many times (see Findings of Fact No. 6 and 7). The statute requires that notice of the procedural safeguards be given out, not that every safeguard is explained in full. In addition, C.'s mother often signed forms stating that not only had she received the publication but that she did not have any questions about them. The summary of due process rights that may have misled C.'s mother does not purport to replace the official booklet of procedural rights.
8. Second, C.'s mother has been an active and vocal advocate for her son. After she learned that C. had dyslexia, she learned all that she could about the disability. She sought out services and hired a tutor from Eagle Hill. She threatened to hire an attorney when she felt her son's rights were being violated (see Finding of Fact No. 2). After research and much consideration, she finally made the difficult decision to send C. to Eagle Hill on a full time basis. It is somewhat incredible that a mother this resourceful and so involved in her son's education would not have asked, when confronted with the somewhat confusing statement in the Board's summary, "Does this mean I can't send my son to Eagle Hill if I request a hearing?"
9. Third, C.'s mother was quite clear that she always knew that the due process hearing system was available to her but that she chose not to pursue that route (see Finding of Fact No. 7).
10. Therefore, claims for the school year 1998-1999 are also barred. From C.'s unilateral placement at Eagle Hill in 1998 until an IEP was proposed by the Board on June 25, 2001, there was no action taken by the Board with which the parent expressed disagreement. During this time period, the record only contains two letters sent by the Director of Special Education to C.'s mother on April 27, 1999 and May 16, 2000, offering to schedule a PPT meeting if she wanted the Board to plan an educational program for C. C.'s mother did not respond to these letters.
11. Finally, C.'s mother consulted an attorney in January or February of 2001 to explore her legal options (see Finding of Fact No. 18). At that point, with competent legal counsel advising her, there is no reason why a due process hearing challenging the Board's IEP could not have been requested; this would have tolled the statute of

limitations earlier. But the hearing that was finally requested (in June, 2001) was with regard to evaluations. A hearing regarding the Board's programs was not requested until a full year later. Therefore, for this hearing requested on January 31, 2002, the parent's action accrued on June 25, 2001, when the Board proposed an IEP with which C.'s mother disagreed.

12. Whether or not the Board intended to mislead the parent or the parent truly was misled, it is recommended that the Board cease printing and distributing their summary of due process rights and issue only the pamphlet published by the State Department of Education.
13. The parent's claim for the school year 2001-2002 can be addressed. Under the line of cases that includes Burlington v. Dept. of Educ., 736 F.2d 773 (1st Cir. 1984), *aff'd* 471 U.S. 359 (1985) and Florence County Sch. Dist. Four v. Carter, 510 U.S. 359 (1985), a parent can unilaterally place their child in a private school and seek payment for such placement from their school district. Such funding requires a finding that the Board's proposed program was not appropriate, and second, that the parental placement is appropriate. Under Regulations of Connecticut Agencies Sec. 10-76h-14, the Board of Education has the burden of proving the appropriateness of the child's proposed educational program by a preponderance of the evidence while the Parents must prove the appropriateness of their private placement.
14. 20 U.S.C. 1412(a)(10)(C)(iii) states that reimbursement for private school placement may be reduced or denied if, at least 10 days prior to the child's removal from the public school, the parents did not give written notice to the public agency of their rejection of the public placement and their intent to enroll their child in a private school at public expense. The statute is permissive in that it states that the reimbursement *may* be denied, not that it must be. While there is some dispute as to whether C.'s mother gave actual written notice, there is no real dispute as to whether the Board knew that C. was going to be enrolled at Eagle Hill (see Finding of Fact No. 27). From 1998 on, the Board clearly knew that C.'s mother would be sending C. to Eagle Hill; it was never a surprise. Furthermore, as previously stated, the Director of Special Education, recognizing that C. was enrolled at Eagle Hill, sent letters offering to schedule an IEP meeting if they wished to receive a program from the Board (see Finding of Fact No. 17). The Board can not claim that they had no knowledge of C.'s placements at Eagle Hill. Therefore, reimbursement of Eagle Hill tuition is not barred by this statute.
15. New evaluations provided greater insight into C.'s needs by the time the 2001-2002 school year was being planned. It is clear from the Eagle Hill reports that C. made limited reading and writing progress (see Findings of Fact 12 through 14) and continued to need extensive support. Most testing put C.'s independent reading level at about the second grade level; Eagle Hill representatives agreed that this was an accurate assessment of C.'s reading level (see, for example, Finding of Fact No. 12). This equates to approximately one year of reading progress in three years of extremely intense, small group instruction for up to one-third of C.'s academic day. After over three years of such instruction, C. has not yet cracked the code that will open the door to independent reading. Eagle Hill recognized this in their decision to

keep C. in their lower school. While it is understood that part of this decision was a result of the school's scheduling needs, the fact is that C. was retained in the lower school because Eagle Hill felt C. needed to remain with the same reading tutor if he was to make further reading progress; C. has not internalized many of the reading skills he needs to become a functional reader.

16. Recent evaluations performed by Dr. Thies and the Board confirm C.'s limited reading progress. Robert Cunningham credibly testified that the phonetic analysis approach that C. is using impedes his reading rate and negatively impacts on his reading comprehension (see Finding of Fact No. 22). Dr. Thies testified that the current reading level attained by C. confirms his prognosis that C. will probably never attain more than a functional level of reading.
17. Therefore, in planning for the 2001-2002 school year, sufficient information was available to realize it was time to look at C.'s educational program in a different way. Based upon some of this information, the Board began to design an educational program in June, 2001. After Dr. Thies' evaluation became available, they further refined the program resulting in the proposed IEP of November 29, 2001. While the Board's instincts were correct in creating a program that de-emphasized (without eliminating) decoding, gave C. exposure to the content of an age appropriate regular education curriculum, provided speech and language services with a speech therapist and offered counseling to help maintain C.'s self esteem, important elements of an appropriate program were missing. With C.'s reading and writing skills at such a low level, one period per day of resource room will not be enough to pre and post-teach new material, assist him with class assignments, administer tests, listen to books on tape, and provide all the other assistance necessary to support a severely learning disabled student. In addition, the proposed reading program centers on a reading class designed for regular education students who are not reading at grade level. While C. needs to move away from the intense emphasis Eagle Hill has placed on decoding instruction, placement in a reading class for under performing regular education students will not meet his needs. While C. needs the comprehension skills that this class emphasizes, his reading level is so far below the students in this class that such a placement will not help him develop any functional reading skills. Therefore, the Board's proposed program was not reasonably calculated to provide more than trivial educational benefit.
18. While the Board program as finally proposed was not appropriate to meet C.'s needs, the program at Eagle Hill was also not completely satisfactory. At the end of the 2000-2001 school year, it was fairly clear that the reading instruction that Eagle Hill was providing for C. was not working as hoped. There were, however, many positive aspects to the program. First, the entire school is geared to the needs of learning disabled students so that every teacher and every class uses the necessary modifications and adaptations. There are ample opportunities for pre and post-teaching, and materials and curriculum appropriate to meet C.'s needs were available throughout the day. C. also continued to make progress in math (see Finding of Fact No. 23), and, despite his incremental reading progress (which may be all that he is capable of), he is slowly moving into uncontrolled reading and is willing to search for information in a newspaper. Finally, Eagle Hill has helped C. become a more

confident learner. It is now clear that C. was reaching a reading plateau. C. must be offered new approaches to reading instruction including de-emphasizing decoding and increasing the time spent on comprehension and functional skills. But even if spending up to one-third of C.'s academic time on decoding was not appropriate (and in reality, a portion of this time at Eagle Hill was actually spent on more functional skill building), this leads to the conclusion that over two-thirds of C.'s academic time at Eagle Hill in the 2001-2002 school year was appropriate to meet his needs. Therefore, on balance, it is concluded that Eagle Hill did provide an appropriate program in the least restrictive placement for the 2001-2002 school year.

19. It should be noted that the Board has made an admirable attempt to design an appropriate program for C. The Board has the resources and teacher expertise to provide such a program if the deficiencies noted in Conclusion of Law No. 18 are considered and dealt with. The Board's teachers and evaluators provided credible testimony and demonstrated an impressive insight into the nature of C.'s disabilities and needs. There is no doubt that C. can receive an appropriate program from the Board and his transition back to the Board's schools could occur successfully in the very near future if both parties make a concerted effort.

**FINAL DECISION AND ORDER:**

1. The Parent's claims for the school years 1996-1997 through 2000-2001 are barred by the applicable statute of limitations.
2. The Board did not provide an appropriate program to C. for the school year 2001-2002.
3. Eagle Hill did provide an appropriate program to C. for the school year 2001-2002.
4. The Board is responsible for all tuition and other associated educational costs incurred by the parent in placing C. at Eagle Hill for the 2001-2002 school year.
5. The Board appropriately offered to plan IEP's for the school years in which C. was in his unilateral placement.