

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

Appearing on behalf of the Parent: Attorney Lawrence W. Berliner
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Appearing on behalf of the Board: Attorney Michelle C. Laubin
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Appearing before: Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Were the Individualized Education Program (IEP) and the placement offered by the Board at the May 29, 2003, Planning and Placement Team (PPT) meeting appropriate to Student's special education needs in the least restrictive environment?
2. Is the placement offered Student by the Board reasonably safe, in terms of indoor air quality, for Student?
3. If not, is placement at Villa Maria for the school year 2003-2004 appropriate?
4. Is the Board responsible for funding Student's placement at Villa Maria?
5. Is the Board responsible for reimbursement of assistive technology costs to the Parents during the 2002-2003 school year, per a prior settlement agreement, and for continuation of assistive technology services in 2003-2004?
6. Did Student require assistive technology in 2002-2003 and/or 2003-2004, in order to benefit from special education?

7. Must the Board produce additional information/documentation concerning Environmental Air Quality inspections?
8. Is Lindamood-Bell instruction, an educational methodology, necessary for Student?
9. Does a special education hearing officer have the authority to enforce a prior settlement agreement between the parties?
10. Has the Board offered Student a safe school environment, pursuant to Section 504 of the 1973 Rehabilitation Act?

PROCEDURAL HISTORY:

This hearing was requested by a letter dated August 7, 2003, and received at the State Department of Education on August 11, 2003. The undersigned was appointed as Hearing Officer on August 12, 2003. The Parents requested that the Hearing Officer hear this case with another case, concerning Student's sibling, since many of the facts and witnesses would be the same for both cases. The Hearing Officer agreed to this plan at the pre-hearing conference, which was held on August 21, 2003, cautioning the Parents that the outcomes for the two children might not be the same.

The hearing convened on September 22, and continued on September 30, October 1, 20 (half day), and 23, November 3, 11, 13 (half day), 14 and 19, December 12, 16 and 18, 2003, and January 21 (half day) and 27, and February 26, 2004. A hearing session scheduled for January 5, 2004, was postponed due to the illness of the Hearing Officer, and a hearing session scheduled for February 6 was cancelled because schools were closed after a snowstorm. The Hearing Officer received the Board's brief on March 13 and the Parents' brief on March 14, 2004, and the Hearing Officer accepted responses and closed the record on March 22, 2004.

At the opening of the hearing, the Parents' attorney moved that the deadline for mailing the final decision and order for this case be extended to thirty days after the final session of the hearing. There was no objection from the Board, and the Hearing Officer so ordered. (Tr. 9/22/03) However, to conform to the requirements of Sec. 10-76h-9(c), R.C.S.A., the Hearing Officer also granted specific extensions of the deadline from September 25, to October 25, November 24, and December 24, 2003; and January 23, February 22, March 23, 2004, and April 22, 2004, to accommodate the Parties' requests for additional hearing sessions and the filing of briefs and responses. As additional hearing dates were scheduled and the deadline was extended, these matters were entered on the record of the hearing.

The Board moved at the September 22, 2003, hearing session that the Hearing Officer lacked authority to enforce a prior settlement agreement between the Parties, and that therefore an issue concerning services arguably under the settlement agreement should be dismissed. The parties submitted briefs regarding this issue: the Parents' brief was dated

September 25, 2003, and the Board's, September 26, 2003. (Exhibits HO-10 and HO-10a) At the September 30, 2004, hearing session, the Hearing Officer ruled that she lacked authority to enforce a prior settlement agreement, and modified that issue to:

Did Student require assistive technology in 2002-2003 and/or 2003-2004, in order to benefit from special education?

The Parents moved on September 22, 2003, that the Board be ordered to provide indoor air quality test results from the middle school proposed for Student. The Board responded that no further tests had been done and that the Board's experts had reported 1) there is no professionally recognized standard for safe indoor air quality and 2) that a child who is hypersensitive might have allergic symptoms in a room that tested well. The Board also commented that no indoor air quality test results had been provided for Villa Maria, the placement selected by the Parents. It was determined that no additional tests had been done and that all reports relating to the school Student had attended were part of the record of the hearing. The Hearing Officer deferred a decision on whether to order additional testing (Tr. 9/22/03).

The Parents moved on September 22, 2003, that the Board be ordered to reimburse the cost of Student's placement at Villa Maria as the "stay put" placement pending the outcome of the hearing. The Board argued that Villa Maria was not a "stay put" placement, since placement had been initiated by the Parents and there was no direct participation by the Board. The Hearing Officer deferred a decision on whether to order on-going reimbursement (Tr. 9/22/03).

The Board moved on September 22, 2003, that it be given access to any air quality test results from Villa Maria, testing done under the supervision of Student's Pediatric Allergist, and to that specialist's medical records of Student in advance of his testimony, scheduled for September 30. The Parents argued against this motion. The Hearing Officer responded by FAX dated September 24, ruling that while she had asked that all witnesses bring whatever records they had when they appeared, that did not mean that the Student's medical file would be automatically entered as evidence in the case. Specific documents in the medical file used by the witness in testimony are subject to inspection by opposing counsel at the time of the testimony, and any documents used in testimony could be offered in evidence subject to the usual requirements (Ex. HO-9; Tr. 9/22/03; 9/30/03).

After providing testimony on September 30, 2003, Student's Pediatric Allergist reported that he had suffered from symptoms of poor air quality in the hearing room, and asked that the hearing be re-located for his return on November 19, 2003. On November 7, 2003, the Parents' Attorney asked that all future hearing sessions be held at another location because of the air quality in the Board's conference room. Although no additional evidence concerning the air quality of the room was submitted by either party, the Hearing Officer requested that the Board find an alternative hearing room, citing 34 C.F.R. §300.511(d). Subsequent hearing sessions were held in a Board elementary school.

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. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

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

SUMMARY:

Student has been identified as learning disabled and in need of special education. Because of problems related to her allergies, Student received homebound instruction at the request of her Pediatric Allergist. After testing and modifications to reduce molds that were discovered in the school building to which she was assigned, the Board requested that Student return to school. Student's Pediatric Allergist opposed this return, and the Parents requested a hearing concerning placement for the 2002-2003 school year. This dispute was settled, and Student enrolled at Villa Maria, a private school approved for special education placements by the State Department of Education. On May 29, 2003, the Board proposed a placement for 2003-2004 at a Board middle school; the Parents preferred that Student continue at Villa Maria at Board expense, and requested a hearing.

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and all testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student is now 11 years of age (birth date April 6, 1992) and has been receiving special education services because of learning disabilities since third grade, (Ex. B-11)
2. The Board's School Psychologist has a B.S. and an M.A. in psychology, as well as a certificate of advanced study in the same subject. She holds a State Department of Education certificate as a school psychologist and has been employed by the Board as a school psychologist for seven years. She first met Student during her first grade year. Because of teacher concerns, early intervention services were provided: small group instruction in phonics and some classroom modifications. The School Psychologist sat on the Early Intervention Team, and she also investigated after Student's Mother called about Student being anxious about school. Early intervention continued in second grade, and Student's Mother requested an evaluation for special education: she reported that Student was struggling with academics, particularly reading. (Ex. B-98, B-99, B-106, B-107; Testimony, School Psychologist, Tr. 11/11/03)
3. Evaluations were performed in September and October, 1999. Student's Woodcock-Johnson Tests of Achievement- Form A scores were in the average range. Scores on the Slingerland Screening Tests for Identifying Children with Specific Learning Disability were more scattered: Student showed a weakness in remembering what she saw and

heard, and correctly recording it in written form. Woodcock reading scores were in the average range. A classroom observation report described Student as focused on the task at hand, and asking questions when necessary. She did not appear to be distracted by the activities of other children. Student scored a Full Scale IQ of 97 on the WISC-III, with a verbal IQ of 93 and a performance IQ of 102: in the average range in all areas. The evaluator noted “mild weaknesses” which might impact on reading and spelling. On the Behavior Assessment System for Children (BASC), Student scored in the average range in ratings by both parents and a teacher. Her mother noted anxiety. Modifications that had been made included: sits next to buddy, repeat directions, model work, small group reading, extra help spelling, aide in math. A speech/language (S/L) evaluation found Student’s phonological skills intact, and language skills in the high end of the average range. She did demonstrate an extended response time. (Ex. B-107, B-109, B-110, B-111, B-112; Testimony, School Psychologist, Tr. 11/11/03)

4. The PPT met on November 5, 1999, and determined that Student was not eligible for special education. She would continue to receive early intervention services, and her progress would be reviewed in March, 2000. (Ex. B-113; Testimony, School Psychologist, Tr. 11/11/03)

5. The PPT convened on October 3, 2000, to discuss Student’s continuing difficulties. Further evaluation was proposed, and the Parent consented. (Ex. B-5)

6. A psychological evaluation obtained by the PPT in October, 2000, included the following results:

NEPSY Core Domain

Attention/executive function domain: Tower, far below average; auditory attention/response set, average; visual attention, average; design fluency, far below average; and composite standard score, borderline.

Sensorimotor domain: fingertapping, average; imitating hand positions, average.

Visuospatial: design copying, average; arrows, average; composite score, average.

Memory and learning domain: memory for faces, average; memory for names, average; narrative memory, below average; and composite score, average.

Student’s performance on the Bender Gestalt Visual Motor Test showed age-appropriate visual-motor integration skills. (Ex. B-6; Testimony, School Psychologist, Tr. 11/11/03)

7. Student’s scores on the Wechsler Individual Achievement Test (WIAT) in October, 2000, were:

Test	Standard Score	Percentile
Writing	87	19
Spelling	93	32
Written expression	86	18

Student’s scores on the writing composite were characterized as “below average”. (Ex. B-7)

8. A curriculum based assessment included silent and oral reading. Student read well silently, but had some problems with comprehension:

The questions requiring synthesis of information to formulate an answer were difficult.

Her oral reading was better than her silent reading. (Ex. B-8)

9. A report from her classroom teacher included these comments:

[Student] needs much reinforcement and re-teaching in a one to one setting to grasp information. She performs better in a small group setting.

[Student] has difficulty retaining information.

[Student] often forgets the appropriate materials, books to bring home in order to complete homework.

[Student] needs to be re-focused often in all areas.

[Student] will become very easily distracted from the task at hand and will need to be refocused in order to continue working.

[Student] is often distracted and cannot complete work independently.

This teacher listed the modifications made for Student in the classroom: aide help in math; small group reading; buddy to check assignment pad; constant monitoring of progress; check work in progress; restate directions; extended time; and ask questions. (Ex. B-9)

10. A S/L evaluation the day of the PPT meeting noted seasonal allergies and periodic asthma. Her scores on the Test of Problem Solving, Revised (TOPS) were reported in the mid to low end of the average range. Scores for vocabulary and grammar were informally noted as below average. Scores on the Clinical Evaluation of Language Fundamentals, 3rd Edition (CELF) were compared with the previous year's scores and found to be in the average range both years. The summary noted weaknesses in verbal problem solving, organization of oral language, vocabulary and grammar. The S/L Pathologist made recommendations for the PPT. (Ex. B-12)

11. Student was identified as having learning disabilities at a PPT meeting held on November 28, 2000. The IEP adopted at that meeting gave the following present levels of educational performance:

Has asthma and allergies

Reading C, Math C+, Language C, Soc. Stud. B-, Science A-. Needs a lot of reinforcement and re-teaching to grasp info. Has difficulty understanding new info. Quickly, stating ideas, solving problems.

Needs refocusing, forgetful.

Motor development, age appropriate.

Communication: has difficulty holding onto, organizing and expressing verbal information. TOPS = 89 standard score; Classroom Problem Solving Scale, score =13 (22-40 is range).

Verbal IQ, 93; Performance IQ 102; Full Scale IQ 97.

Her strengths were listed: hard worker, motivated, visual-motor skills; and her concern/needs: written expression, oral expression, math and reading.

- [Student's] attention/executive function deficits impact her ability to organize, retain, retrieve, problem solve and strategize information. This significantly impacts her oral and written expression skills. (Ex. B-11; Testimony, Parent, Tr. 9/22/03; Testimony, School Psychologist, Tr. 11/11/03)
12. Student's IEP goals from the November 28, 2000, PPT addressed reading, written expression, math, and language. (Ex. B-11)
13. The November 28, 2000, IEP showed five hours per week in resource reading and writing; one hour per week in math resource; and one hour per week of language services with the S/L pathologist. Modifications/adaptations for Student's participation in regular classes were given: extra time for tests, all classes when needed; for organization, assignment pad and assign a partner; check work in progress, have student re-state information, encourage [Student] to ask questions, and aide assistance in math needed. (Ex. B-11, pp. 8, 11)
14. The PPT reconvened on January 23, 2001, and added more time for math resource. The PPT also modified curriculum and grades in social studies, math, and science. A math goal was added to Student's IEP. Classroom modifications/adaptations were listed for all academic classes as needed: extra time-tests; assignment pad; assign partner; check work in progress; have student restate information; encourage Student to ask questions. For social studies, science and math: modified grades; modified content. Math: aide assistance when needed. (Ex. B-14; Testimony, School Psychologist, Tr. 11/11/03)
15. The PPT convened on June 12, 2001, to review Student's IEP. Reading, writing and S/L services were continued: math support was increased to five hours per week in the resource room. More math objectives were added. (Ex. B-18)
16. In addition to services provided by the Board, Parents provided tutoring for Student during the summer of 2000 and 2001, because she seemed to be struggling in school. (Testimony, Parent, Tr. 9/22/03)
17. Student's health assessment forms as filled in by her Parent indicated no concerns about allergies on March 7, 1997 and April 24, 2000. (Ex. B-1 pp. 6, B-1 p. 8; Testimony, Parent 9/30/03)
18. Student's physician's medical evaluations provided to the school on April 11, 1997 and April 24, 2000, did not mention allergies or asthma. (Ex. B-1 p. 7, B-1 p. 9)
19. Student has a history of allergies and asthma. The school was first notified of her allergies on March 2, 1998. Student had an undated Individualized Health Care Plan citing her health history and providing for assessment of her condition by a school nurse and administration of emergency medication when necessary. However, the emergency medications provided to the school by her parents were unused in 1998, 1998-99, and 1999-2000. Among her recorded visits to the school health office were several each

school year with complaints of allergic symptoms: 1998-99, five; 99-00, four; 00-01, eleven. (Ex. B-1, pp. 1, 14-16; B-119, pp. 2-5)

20. Her allergies have been manifested as rhinitis, rashes, hives, eczema, headaches, stomachaches, nosebleeds, dizziness, and fatigue. (Testimony, Parent, Tr. 9/30/03; Testimony, Pediatric Allergist, Tr. 9/30/03)

21. Student was referred to a Pediatric Allergist, who first saw her on February 9, 1999. This specialist has almost thirty years of experience in his field, is Board-certified in pediatrics and allergy and immunology. Under the care of her Pediatrician and Pediatric Allergist, Student received allergy injections starting in the spring of 2001 and a variety of medications to treat her allergic symptoms. Some of these medications also had side effects that may have impacted on her classroom performance. (Ex. P-11; Testimony, Parent, Tr. 9/22/03; Testimony, Pediatric Allergist, Tr. 9/30/03)

22. The Board consulted AMC Technologies about indoor air quality questions raised at the elementary school attended by Student. On March 15, 2001, AMC inspected several areas of the building and conducted testing, including both air and carpet dust sampling, and submitted a report to the Board dated April 12, 2001. AMC recommended repair of any roof leaks, cleaning or removal of carpet, clean or replace all air filters, take steps to improve air circulation, and further investigation of the gym. The AMC report also listed several types of fungal spores found in the areas tested. (Ex. B-16)

23. AMC did some follow-up sampling on May 15, 2001, focusing on specific species of molds. Their June 4, 2001, report noted that there are “no widely accepted protocols or regulations” for this type of sampling. AMC recommended replacing filters on air handling units (AHU) and cleaning air ducts regularly. The areas around AHUs should be kept clean and dry, and roof leaks should be repaired immediately. (Ex. B-17)

24. On the advice of her Pediatric Allergist, Student was removed from school on September 11, 2001, and received homebound instruction (actually provided in the town library) for most of that school year. Student’s brief return to school (February and early March, 2002,) was for partial days and she was limited to areas in the building that had been remediated. However, her allergic symptoms returned after less than two weeks and she was again removed from school and placed on homebound instruction. (Ex. B-20, B-21, B-30, B-49, B-51, B-52, B-57, B-61, B-66, P-1, P-2, P-3, P-4, P-5; Testimony of Parent, Tr. 9/22/03, Tr. 10/1/03; Testimony of Pediatric Allergist, Tr. 9/30/03)

25. Student’s Pediatric Allergist and/or his partner sent letters on the following dates: September 11 and 17 and October 15, 2001; January 22 and March 5, 14 and 25, 2002, stating that Student was experiencing allergic reactions to the Board’s elementary school and requesting that she be placed on homebound instruction. At this hearing, Student’s Pediatric Allergist also stated that he believed that Student, due to her great sensitivity, was suffering serious health problems as a result of the air quality at her school. (Ex. B-20, B-21, B-30, B-51, B-52, B-61, B-65; Testimony, Pediatric Allergist, Tr. 9/30/03)

26. A PPT meeting was held for Student on October 5, 2001. Student had not been in school since September 11, and her assignments were being provided to her at home. The PPT planned a program of homebound instruction totaling 15 hours per week, plus 20 minutes of speech/language therapy. Student's special education and classroom teachers were to consult with the homebound tutor and monitor her progress. One language objective was replaced. (Ex. B-29; Testimony, School Psychologist, Tr. 11/11/03)

27. A PPT meeting was held on November 2, 2001. Parent had requested this meeting because she felt that Student needed more tutoring time. The PPT decided to perform curriculum-based assessments of Student's progress to establish whether more tutoring was needed. (Ex. B-33; Testimony, School Psychologist, Tr. 11/11/03)

28. Student's Pediatric Allergist provided several articles from professional journals that are relevant to this hearing.

Santilli, J. & Rockwell, W. (2003). Fungal contamination of elementary schools: a new environmental hazard, *Annals of Allergy, Asthma & Immunology* 90:203-208.

Rudich, R., Santilli, J. & Rockwell, W.J. (2003). Indoor Mold Spore Exposure: A Possible Factor in the Etiology of Multifocal Choroiditis, *American Journal of Ophthalmology*, 135:420-404.

Santilli, J. ((2002). Health Effects of Mold Exposure in Public Schools, *Current Allergy and Asthma Reports*, 2:460-467. (Ex. HO-2, HO-3, HO-5)

29. The Resource Teacher first met Student when she was hired to provide weekly tutoring in the summer between Student's first and second grade years. This Teacher has a B.A. in political science and secondary education, an M.A. in special education and a certificate of advanced study in collaboration and consultation in special education. She has seventeen years of experience as a resource teacher for the Board. She attended the June 1, 1999, early intervention meeting for Student, and performed some of the evaluations cited at Finding of Fact # 3. She later provided math support in the resource room, and was the math consultant for Student's homebound program. She gave Student a curriculum based assessment on November 13, 2001, and recommended to the PPT that homebound instruction time not be increased because Student appeared to be able to complete her work in the time allotted. When Student returned to school in early February, 2002, this teacher again provided her math support in the resource room. She felt that the Parent's Educational Consultant's evaluation results were consistent with earlier results in math. This teacher also observed Student on March 28, 2003, at Villa Maria. Her observation of a math class led her to question whether the material was too easy for Student. Her observation of a reading class led her to question whether the book assigned was too difficult for Student. Asked to comment on the Parents' preference for the Lindamood-Bell reading program, the Resource Teacher stated that she wouldn't want to be tied into one program and prevented from using other strategies. (Ex. B-36, B-98, B-107; Testimony, Resource Teacher, Tr. 11/19/03)

30. The record for the hearing includes a progress report for goals and objectives adopted on November 28, 2000 and June 12, 2001. The dates for reports are given as 2/01, 4/01, 6/01 and 11/02: the last date was corrected on the record to 11/01.

Reading goal: satisfactory progress for three quarters, mastered in fourth quarter.

Writing goal: satisfactory progress for four quarters in goal and two objectives; satisfactory progress in three quarters and mastered in fourth quarter for one objective.

June 2001 math objectives: satisfactory progress two quarters, four goals; two goals mastered in two quarters.

Language goal: satisfactory progress. (Ex. B-32; Testimony, School Psychologist, Tr. 11/11/03; Testimony, Elementary School Special Education Teacher, Tr. 1/27/04)

31. Reflecting on Student's removal from school, Parent reported that while she was on homebound instruction, her need for medication decreased and she generally "felt better". (Testimony, Parent, Tr. 9/22/03)

32. Reports of the curriculum-based assessments were presented at another PPT meeting on November 13, 2001. Student was doing well: homebound instruction would continue at 15 hours per week. Consultation between the tutor and the resource teacher was scheduled for one hour per month, with an extra half hour the first month after this meeting. (Ex. B-34, B-35; Testimony, School Psychologist, Tr. 11/11/03; Testimony, Elementary School Special Education Teacher, Tr. 1/27/04)

33. Goals were adopted at the November 13, 2001, PPT meeting in reading, written expression, math, and expressive reasoning. Most of the objectives under these goals were more advanced than those of the prior IEP, reflecting Student's progress in the curriculum. (Ex. B-35)

34. The November 13, 2001, PPT scheduled 14 hours of homebound tutoring per week with one hour of consultation between the tutor and the resource teacher, plus a half hour of speech/language therapy. Modification/adaptations listed: immediate feedback, provide models, modified science and social studies if needed. (Ex. B-35 pp.14, 17)

35. The PPT met again on January 22, 2002 to discuss Student's return to school. A partial day diagnostic placement was proposed. After the meeting, Parent called the Principal to agree to a partial return to school starting January 28, 2002. Student's Pediatric Allergist recommended that she spend her time at school in the resource room, which had been tested and found to have acceptably low levels of mold spores. Tutoring would be provided to supplement five hours per week of reading resource and five hours per week of math resource. S/L therapy would continue at a half hour per week. The PPT also recommended a psychiatric evaluation, which the parents rejected, and requested additional medical information for the school nurse. (Ex. B-39, B-40; Testimony, Parent, Tr. 9/22/03; Tr. 10/1/03)

36. Student's Pediatric Allergist reported results of skin testing for allergies performed on March 26, 2001, to the school on January 22, 2002. Student showed a moderate allergic reaction to molds. No further allergy testing has been reported to the school, nor was any additional testing offered on the record of this hearing. (Ex. B-57)

37. Testing of air samples at the Board's school by Parent on January 16, 2002, with equipment provided by Student's Pediatric Allergist, showed that two special education rooms with air purifiers had fewer than 1000 spores per cubic meter, but several other areas of the building had mold counts significantly higher. (Ex. B-57)

38. As Student's family and her Pediatric Allergist worked to determine the cause(s) of her difficulties, modifications were made in her diet, the family moved a pet dog out of the house, and indoor air quality tests were performed by the Parent in several places under the supervision of the Pediatric Allergist. The family changed the church they attended, and stopped visiting homes that appeared to exacerbate Student's symptoms. (Testimony, Parent, Tr. 9/22/03)

39. The Board consulted with an Industrial Hygienist, who inspected the elementary school building and conducted tests to measure indoor air quality. The Industrial Hygienist has a B.S. in biology with specialization in environmental studies and chemistry, and he is certified as an industrial hygienist by the American Board of Industrial Hygiene. He has over 25 years of experience in this field. After environmental testing had been completed, a letter from the principal and the superintendent of schools was sent to the parents of children enrolled in the school, enclosing the report. The Industrial Hygienist reiterated that there are no federal or state standards for allergens in schools and that exposure to allergens could be minimized but not completely eliminated. (Ex. B-44, pp. 1, 2, 10, B-116; Testimony, Industrial Hygienist, Tr. 12/18/03)

40. The Industrial Hygienist recommended:

- Provide faculty, staff and parents with the results of the survey of the building.
- Keep at least two windows open in each classroom when the school is occupied and/or open windows periodically to bring in fresh outside air.
- Remove the carpets in classrooms that have been identified with high fungal, bacterial, or dust mite allergen levels.
- Continue working on implementing earlier recommendations (cleaning heater fins, cleaning dust under gym stage, etc).
- Implement a formal cleaning plan that lists the cleaning tasks that will be performed along with the frequency for completion.
- Implement a formal building maintenance program that identifies the things that need to be performed to keep the building in good condition along with the frequency of completion.
- Remove the soft porous building materials in the Reading Room that were repeatedly exposed to moisture from roof leaks.
- Evaluate the extent of soft porous building materials affected by previous roof leaks and remove microbially impacted materials.

- Have staff and parents of students contact the school nurse if symptoms are experienced that may be related to the air quality at the school.
- Perform a follow-up evaluation if these recommendations have been completed and symptoms continue to be reported. (Ex. B-44, pp. 11-13)

41. The Board held a public meeting at the elementary school on February 6, 2002, to discuss the problem and remediation being undertaken. Student's Parents attended this meeting. (Ex. 16, 17, 44; Testimony, Parent, 9/22/03)

42. The PPT met on February 25, 2002, to review Student's diagnostic placement. Parents and teachers agreed that Student was doing well and was happy to be back in school. Student's Pediatric Allergist wrote on February 19, 2002, that she was doing well and could continue at school for thirty days, but only in the limited areas that had been tested as having low mold spore counts. (Ex. B-49, B-50; Testimony, Parent, 9/22/03; Testimony, School Psychologist, Tr. 11/11/03)

43. Parents arranged for an independent evaluation of Student, which was performed on February 4, 2002. This consultant has experience as a language arts teacher and a school reading consultant. She has a B.S. in education, an M.S. in reading, and a sixth year degree in educational leadership. The Educational Consultant who performed the evaluation attended the February 25, 2002, PPT meeting, although her written report came later. This Educational Consultant felt that Student had problems with phonological processing, organizing, and graphomotor tasks. She recommended working on phonological processing and the use of speech recognition computer software. (Ex. B-50, HO-8; Testimony, Educational Consultant, Tr. 10/1/03)

44. The Educational Consultant's undated written report of Student's evaluation performed on February 2, 2002, concluded with a list of recommendations. In testimony, she stated that she had not consulted with any members of the Board's staff and that she didn't know what Student's current program included, although Parents had provided school records. Several of the recommendations were similar to Student's current IEP goals and objectives. Recommendations which addressed areas not included in the current IEP were:

- Occupational therapy (OT) for graphomotor weakness.
- Reading fluency drills.
- Assistive technology (AT) to help with reading and writing, including software suggestions.
- Develop fluent decoding skills for reading, suggested specific reading program.
- Treatment for word retrieval deficiencies.
- Single step directions.
- S/L therapy to address phonological processing disorder and word retrieval difficulties.

(Ex. B-45, 9,10; Testimony, Educational Consultant, Tr. 10/1/03)

45. By letter dated March 5, 2002, Student's Pediatric Allergist recommended that she stop attending the elementary school. This recommendation was based on her history of allergies and a physical exam performed on March 4 that revealed a return of allergic symptoms. An additional letter requesting homebound instruction for Student was written on March 14, 2002, by the Pediatric Allergist's partner. (Ex. B-51, B-52)

46. The PPT met on March 13, 2002, to discuss the Educational Consultant's evaluation and to review Student's IEP. The Parents' Educational Consultant attended this meeting with Parents. Student was again out of school, per communication from her Pediatric Allergist. The PPT asked for a psychiatric evaluation and a second medical opinion concerning Student's allergies. PPT members questioned the content and conclusions of the independent evaluation. Questions also arose in testimony concerning the impact on Student's testing scores from all the testing being done on one day. Scores were compared with prior and subsequent testing, and the issue of "practice effect" was raised. The Board raised the ethical issue of an evaluator who also sells the software she recommends. The PPT proposed following up with an OT evaluation, Woodcock reading test, the Test of Phonological Awareness, Test of Word Finding, BASC and an AT evaluation, for which Parents gave consent. Teachers expressed concerns about Student's attention problems and her need for extra time to perform many tasks. Because of her current allergy problems, the PPT suggested another school in the district: Parents asked that any alternative school placement be tested for allergens before Student enrolled. Parents requested homebound instruction. The PPT requested more clarification of Student's medical status. (Ex. B-60; Testimony, Educational Consultant, Tr. 10/1/03; Testimony, School Psychologist, Tr. 11/11/03; Testimony, Special Education Teacher, Tr. 1/27/04)

47. The PPT re-convened on March 15, 2002. The Parents' Educational Consultant attended this meeting with Parents. Reading, math, writing and S/L goals were reviewed: Student was reported to be making progress on all objectives. Time remained an issue. The PPT offered a placement in a different elementary school, but refused testing of that building prior to Student's enrollment. The PPT refused to provide homebound instruction. Student received no educational services for several weeks. Options offered include: 1) partial school day in the resource rooms; 2) full day, access to whole building; and 3) full day in resource rooms. The PPT again requested a second medical opinion. The Parents again requested air quality testing of any building prior to Student's enrollment. (Ex. B-62; Testimony, Parent, Tr. 9/22/03; Testimony, Educational Consultant, Tr. 10/1/03)

48. At the March 15, 2002, PPT meeting, there was discussion of Student's "stay put" placement. Parents contended that it was homebound instruction; the PPT felt that it was placement in school. (Ex. 62; Testimony, Educational Consultant, Tr. 10/1/03)

49. Student's report cards for grades 2-4 showed the following grades:

	1999-2000	2000-2001	2001-2002
	Grade 2	Grade 3	Grade 4
Reading	C+, C+, B-, B	C, C+, B, B+	B+, B+, B

Mathematics	B, B-, B+, B	C, D+, C+, B	A, B, B, A-
Language	C, C+, C+, C	C, C, C, C+	B+, B, B, B
Spelling	C, C-, C-, C-	A-, B-, B+, B-	-
Social Studies	C, B, B	B-, B, B+, B	A, A, A-, A
Science	C, A-, A, C	A-, C, B, A-	A, B, C+, A
Art	B+, B, B, B+	B, B+, B, A	-
Music	B, B, B, B	B, B, C, B	-
Physical Education	B, B, B, B	B+, B+, B, B	-

The PPT had modified grades and curriculum in January, 2001. Almost all of the 2001-2002 school year, Student was individually tutored on homebound instruction. (Ex. B-3, B-19, B-78)

50. By letter dated March 26, 2002, another pediatric allergist summarized his consultation with Student, arranged by Parents as a second opinion. The consultation was based on a history and records provided by Parents: the consulting pediatric allergist did not perform skin testing. This consultant recommended that Student not return to the elementary school until remediation of mold had been completed. (Ex. B-66; Testimony, Parent, Tr. 9/22/03)

51. The Board's Reading Consultant has been employed by the Board for 30 years and has taught every grade from kindergarten through sixth grade before becoming a reading consultant 16 years ago. She is the reading consultant in the elementary school that Student attended. She holds a B.A. in elementary education and an M.A. in reading: she is certified in Connecticut as a reading consultant, grades K-12, and as an elementary school teacher. She uses a variety of reading programs, tailoring her choices to the needs of each student. She has had formal training in many programs. She participated in an early intervention meeting for Student on June 1, 1999, and PPT meetings for Student on November 5, 1999, October 3, 2000, November 28, 2000, March 13 and 15, 2002, and June 7, 2002. She has evaluated Student and provided direct reading services to Student as well as consulting with other staff members about her reading needs. While Student struggled with reading, she had usually tested within the average range. (Ex. B-5, B-11, B-60, B-62, B-79, B-98, B-113; Testimony, Reading Consultant, Tr. 12/12/03)

52. The Board's Occupational Therapist received a B.S. degree in OT and is licensed as an occupational therapist by the State of Connecticut. She has five years of professional experience providing OT to children, and is now employed by another school district. She evaluated Student on April 4, 2002, and reported that Student scored in the average range except for timed upper limb speed and dexterity, which was below average, and slow word production in writing. She subsequently provided OT services on six dates in the fall of 2002. At the May 29, 2003, PPT, she recommended that Student be re-evaluated to determine her status. (Ex. B-71, B-79; Testimony, Occupational Therapist, Tr. 2/26/04)

53. The Board requested a second medical opinion concerning Student's allergy problems and whether the elementary school was safe for her. Parents consented to this evaluation.

on April 11, 2002. The Board provided this evaluator with relevant school records, and Parents provided medical records. (Ex. B-73, B-74; Testimony, Parent, Tr. 9/22/03)

54. The Board's evaluation was performed by the Medical Director of the Occupational Medicine Department at Middlesex Hospital. In addition to an M.D. and a residency in family practice, this physician has an M.S. in administrative preventative medicine. He is board-certified in family practice and in occupational medicine. After taking a history from Student's Parents and reviewing medical records provided by her Pediatric Allergist, this physician's report, dated May 18, 2002, stated that he had insufficient data to establish her current allergies. His report included responses to specific questions asked by the Board.

1. From the information I have been provided, the examinee appears to have allergies to M. Pteryinissus and cat. This is based on testing done in 1999, at which time testing to alternaria, aspergillus and cladosporium were negative. It is not clear to me whether the examinee has allergies to these various molds, which were tested again on 3/26/01. The reason it is not clear is that on the same date the saline control also tested positive, which should have tested negative. In addition, IgE antibody levels to aspergillus, penicillium and stachybotrys have all been negative. The examinee may, in fact, be allergic to molds, but the documentation that I have been given is not definitive enough, in my opinion. The examinee clearly has the physical appearance of an atopic individual, i.e., one who has multiple allergies or is susceptible to multiple allergic reactions. In addition, the history given by the parents is very strong for symptoms occurring within school and abating when not in the school environment. When evaluating environmental irritants, this type of history carries very strong weight, even greater than laboratory testing. Given the mold spore counts that have been obtained in the [Board's] elementary school, it is possible this examinee is experiencing a toxic effect from the mycotoxins as opposed to a pure allergy effect. In my experience, atopic individuals tend to be somewhat more sensitive to other environmental irritants than the general population, although I am unaware of any literature or studies to substantiate this impression. Reactions expected to allergens in an individual can consist of mild itching, eczema, runny eyes, runny nose, cough and may be severe enough to be life threatening with urticaria, angioedema and circulatory collapse. This examinee does not have the severe form of allergic reactions per history.

2. No one can accurately answer the question as to what quantity of a substance will trigger an allergic or irritant reaction in any given subject. Allergen exposure specifically is very difficult to predict in that an allergic individual may exhibit severe reactions to a very small dose of the allergen on one occasion yet be able to tolerate a larger dose on another occasion. This is probably a result of the state of the individual's immune system at the time of the exposure, although the exact reason, as far as I know, is as yet unclear. Based on the testing that has been done at [Board's elementary] school, it is my opinion that molds exist in a sufficient quantity to produce mycotoxins that in a sensitive individual could result in a reaction that appears to be allergic or irritant. This examinee's symptoms, as

described by her parents and her treaters, in my opinion, could certainly be a result of exposure to such mycotoxins.

I am unaware of any credible research or opinion that would indicate exposures to molds that are in the [Board's elementary] school would result in learning difficulties or concentration problems. I am aware that learning difficulties and concentration problems may be associated with antihistamines.

3. The individual health care plan that I reviewed in the file appears to be appropriate to this examinee and has been signed off on by her personal physician.

4. I believe it would be ill advised to allow this examinee back into the [Board's elementary] school until remediation is complete and spore counts have dropped on average below 1,000 spores per cubic meter. Please see summary below.

5. If the examinee's reactions are less allergic and more due to mycotoxins, then one would expect her condition to remain indefinitely. On a positive note, from the history I have obtained, there appears to be no significant lower respiratory tract involvement from exposure, which bodes well for the examinee's long term health and would suggest that, if she is reacting to mycotoxins, the reaction is more of an irritant as opposed to an intoxication. This distinction is important in that if this is an irritant response, no long-term sequela is expected.

The relationship between the heating system and the existence of the offending irritants and/or allergens relates to a combination of the rate of fresh air inflow to the system and the actual existence of the offending agents within the building itself. If the heating system has been cleaned and is appropriately filtered it, in and of itself, is not the issue. Therefore, once being turned off, it should have no impact independent of fresh air turnover and remediation efforts.

6. There is no legitimate reason that I can ascertain that would preclude the examinee from attending another public elementary school within the school district, as long as the mold counts are within acceptable levels.

7. I have no further recommendations at this time for remediation in addition to those named already by your environmental consultants. If, after remediation efforts are complete, mold spores remain at unacceptable levels, I would recommend perhaps another aggressive look at the building to determine if there are other undiscovered sources of mold.

8. I have no further recommendations for remediation as recommended by AMC and [industrial hygienist] at this time. If the remediation efforts do not significantly reduce the molds, then consideration should be given to look more intently at the building structure itself to determine if perhaps additional sources have yet to be discovered.

This report included a summary:

Determining cause and effect of illness due to air quality is not always clear cut. The issue of indoor air quality in schools, and specifically mold, are, as you are aware, a somewhat controversial topic at this time. I am unaware of any agreement on an objective measure of "safe" levels of mold, though if the remediation efforts in [Board's elementary] school are capable of getting the average mold spore count below 1,000 spores per cubic meter, I believe this is a reasonable target. There are multiple research efforts currently underway to determine the true impact of indoor air quality and mold specifically in school settings. Until that research is completed, we must rely on clinical and technical judgment, as well as case experience. Unfortunately, there may be a large measure of bias, which influences peoples' perceptions and recommendations regarding the issue of indoor air quality.

My particular bias is that I believe there is sufficient case experience and scientific plausibility to presume that high levels of indoor mold may be harmful to some individuals. Based on the history of this examinee and the association of her severe symptoms with attendance at the [Board's elementary] school, along with the environmental assessment performed at this school, I believe there is reasonable medical probability that the examinee's symptoms while attending school are related to mold exposure.

I do not believe there is enough evidence to deem the [Board's elementary] school "unsafe" for the general population. However, I do believe it would be prudent with our current state of knowledge of environmental air quality to remediate to get the mold spore level to a reasonably low level, i.e., less than 1,000 spores per cubic meter. (Ex. B-74, B-75, B-77, B-118; Testimony, Occupational Physician, Tr. 12/16/03)

55. The Occupational Physician questioned the appropriateness of a physician without formal training doing indoor air quality testing. He recommended using a certified industrial hygienist for air testing. (Testimony, Occupational Physician, Tr. 12/16/03)

56. The Occupational Physician provided several articles from professional journals that are relevant to this hearing:

Rogers, C.A. (2003). Indoor fungal exposure, *Immunology and Allergy Clinics of North America*, 23.

Bush, R.K. & Portnoy, J.M. (2001). The role and abatement of fungal allergens in allergic disease, *Journal of Allergy and Clinical Immunology*, 107:S430-S440.

Etzel, R.A. (2001). Indoor air pollutants in homes and schools, *Pediatric Clinics of North America*, 48:1153-1165.

Hardin, B.D., Kelman, B.J., & Saxon, A. (2002). Evidence based statements, adverse human health effects associated with molds in the indoor environment, American College of Occupational and Environmental Medicine,

www.acoem.org.

(Ex. HO-26, HO-27, HO-28, HO-29; Testimony, Occupational Physician, Tr. 12/16/03)

57. The PPT convened on June 7, 2002, to review testing results and review/revise Student's IEP. The Parents' Educational Consultant attended this meeting with Parents.

After reviewing the OT evaluation, the PPT added an OT goal to the IEP and a half hour of OT services per week. A S/L evaluation dated April 9 and 26, 2002, reported results of the Phonological Awareness Test:

Task	SS	%	Task	SS	%
Rhyming	107	68	Segmentation	116	85
Isolation	102	41	Deletion	90	24
Substitution	98	98	Blending	111	74
Graphemes	100	37	Decoding	106	55

Student's score was reported as within the average range overall. The S/L Therapist noted weaknesses in expressive language. The PPT recommended a half hour of S/L therapy per week. The PPT offered an extended year program, to be provided at the library where homebound tutoring has been provided. Parents requested that the school be re-tested before Student enrolls in the fall: the PPT refused that request. (Ex. B-71, B-76, B-79; Testimony, School Psychologist, Tr. 11/11/03)

58. The Board hired a consultant to perform an AT evaluation. This Consultant has a B.A. in secondary school English and an M.A. in special education. She works with school districts, including this Board, to develop supportive technology in the classroom and to train school staff members. The report of her June 12, 2002, evaluation recommended that Student have access to a computer whenever she needed to write, at school and at home, and computer software: CoWriter 4000, IntelliTalk Two, and Inspiration. To help with reading, the Technology Consultant recommended a filter. The Technology Consultant also discussed her philosophy: technology supports offered to students with disabilities should interfere as little as possible in the student's ability to participate in regular classes. Voice recognition software creates noise and distraction for other students, and isolates a student using it in the classroom. She felt that it should be used only when no other alternative was successful. This Consultant also made an optional recommendation, the Kurzweil 3000, for text reading in long or complex assignments. (Ex. B-80; Testimony, Technology Consultant, Tr. 1/21/04)

59. Because of the on-going dispute concerning the safety of the elementary school for Student, Parents requested a hearing concerning Student's school placement for 2002-2003. This dispute was resolved in a settlement agreement. Student was enrolled by her Parents at Villa Maria, a private school approved for special education by the Connecticut State Department of Education, for the 2002-2003 school year. The Executive Director of Villa Maria confirmed that the contract for Student's placement was between Villa Maria and Student's Parents, and that the Board was not involved in the placement. Student's attendance has been very good at Vila Maria, and Parent reported that she was "off all medications". (Ex. P-25; Testimony of Parent, Tr. 9/22/03; Testimony, Executive Director, Tr. 10/23/03)

60. The PPT convened on August 16, 2002, to review air quality and AT reports and to plan for 2002-2003. The Parents' Educational Consultant and Attorney both attended this meeting with Parents: the Board was also represented by their Attorney. The PPT recommended a full-day placement at the elementary school Student had previously attended: this school had had extensive remediation work that the Board believed had

solved the mold problem. The PPT noted that air conditioning had been installed in the two resource rooms, and the carpet had been removed. The Parents expressed concern about the art room: the PPT stated that the art room would be tested, and if the indoor air quality was not appropriate, air conditioning would also be installed in that room. The PPT rejected the Parents' request for speech recognition software and Kurzweil 3000, and agreed to provide IntelliTalk 2, CoWriter 4000, Inspiration, and books on tape. The PPT would seek clarification from the Technology Consultant about the "optional" recommendation of the Kurzweil 3000. The PPT also rejected the Parents' Educational Consultant's request for additional goals. (Ex. B-85; Testimony, School Psychologist, Tr. 11/11/03)

61. The August 16, 2002, IEP listed five hours per week each of resource room support in reading and math, and a half hour each per week of OT and S/L therapy. Modifications and adaptations in regular education classes for Student were listed: IntelliTalk 2, Cowriter 4000, tape players, books on tape; for tests/quizzes/time, there would be a reduction of handwriting, extended time, study guides, small group testing in another area for standardized tests. Student would have modified grades and an assignment pad for homework assignments. Under environment, Student was to be given preferential seating, air quality testing would be performed when necessary, and air conditioners had been installed in the two resource rooms. Instructional strategies were use of target words and repeating instructions. (Ex. B-85, pp. 4, 5)

62. Student's Parent used equipment provided by the Pediatric Allergist to test the indoor air quality at Villa Maria. Despite several requests, no written report of that testing was offered in evidence at this hearing. (Testimony, Parent, 9/22/03, 10/20/03; Testimony, Executive Director, Tr. 10/23/03)

63. The PPT met on May 29, 2003, to plan for 2003-2004. Parents' Educational Consultant and their attorney attended this meeting with Parents: the Board was also represented by their attorney. The PPT recommended that Student attend the Board's Middle School for 2003-2004, rejecting Parents' request for another year at Villa Maria. Student's triennial evaluation would be held by November 3, 2003. The PPT offered a summer program at Villa Maria or a summer tutorial at either the Board's high school or the library. (Ex. 92; Testimony, Parent, Tr. 9/22/03; Testimony, School Psychologist, Tr. 11/11/03)

64. Student's present levels of educational performance as recorded at the May 29, 2003, PPT meeting:

Health & Development: Takes allergy shots, attendance good this year

Academic/Cognitive: Head of class in reading, 6th grade level reading; learning how to proof read and edit in writing; on level in math as judged by Key Math – 114 math concepts, operations 92, applications 100. Has mastered all goals for expressive and receptive language at Villa Maria.

Social/Emotional/Behavioral: Good friendships & gets along well with adults, social skills described as excellent.

Motor: Villa Maria describes it as somewhat weak. Handwriting needs improvement but uses correct strategies as aides.

Communication: May take a little longer to process but has good ideas, needs wait time.

Strengths were listed: reading – above average in comprehension; math skills; asks for assistance & values education. Good attendance. Handles academics well. Becoming more independent. Retains information. Described as articulate with good expressive & verbal skills. Creative & Artistic. Good listening comprehension. Good reading decoding.

Concerns/needs were listed: Visual-spatial affects writing skills particularly editing and revising. Needs some support in organizing work space. Some difficulty recalling math facts. Phonological awareness still an area of focus at Villa Maria. Villa Maria states that memory difficulties are present in multiplication facts and retrieval of information. Student's disability was described: attention-executive function defects impact her ability to organize, retain, retrieve, problem solve and strategize information. Oral & written skills [are] affected. (Ex. B-92, p. 4)

65. Student's report card for fifth grade at Villa Maria, when she was eleven years old, was in narrative format, describing progress and including recommendations in each subject area. Standardized test results were also reported:

Tests	Percentile	Standard Score	Grade Equivalent	Age Equivalent
Woodcock Reading Mastery (May 5, 2003)				
Word identification	55	102	5.1	10-9
Word attack	86	116	9.3	15-10
Word comprehension	62	105	5.6	11-0
Passage comprehension	55	102	5.3	10-7
Basic skills cluster	59	110	6.7	11-8
Reading comprehension cluster	59	104	5.4	10-9
Total reading cluster	67	107	5.9	11-2
Key math diagnostic inventory (May 14, 2003)				
Basic concepts	82	114	7.3	13.3
Numeration	95			
Rational numbers	63			
Geometry	75			
Operations	30	92	4.7	10.3
Addition	63			
Subtraction	37			
Multiplication	9			
Division	25			
Mental computation	50			
Applications	50	100	11.1*	5.5*
Measurement	63			
Time and money	50			
Estimation	50			
Interpreting data	50			

Problem solving	37			
Total test	50	100	5.4	11.2

In testimony, the Executive Director of Villa Maria stated that the “applications” scores (shown with * above) had probably been reversed in copying. (Ex. P-21, p. 10; Testimony, Executive Director, Tr. 10/23/02)

66. Comparison of standard scores (SS) and percentile scores (%) on the Comprehensive Test of Phonological Processing (CTOPP) administered by the Educational Consultant on February 4, 2002, and Villa Maria on May 13, 2003:

Subtests	Feb. 4, 2002		May 13, 2003	
	SS	%	SS	%
Elision	6	9	8	25
Blending words	3	1	12	75
Memory for digits	8	25	10	50
Rapid digit naming	3	1	8	25
Nonword repetition	6	9	8	25
Rapid letter naming	8	25	9	37
Rapid color naming	3	1	6	9
Phoneme reversal	6	9	8	25
Rapid object naming	3	1	3	1
Blending nonwords	11	63	12	75
Segmenting words	-	-	7	16
Segmenting nonwords	-	-	11	63
Composites				
Phonological awareness	61	<1	20	50
Phonological memory	66	<1	18	35
Rapid naming	59	<1	17	27
Alternate rapid naming	44	<1	9	1
Alternate phonological awareness	-	-	23	73

(Ex. B-45, pp. 3, 4, B-90; Testimony, Executive Director, 10/23/03)

67. Student completed the Test of Written Language, Third Edition (TOWL-3) at Villa Maria on January 27-31, 2003. Her subtest scores were:

Subtest	Percentile	Standard Score
Vocabulary	50	10
Spelling	37	9
Style	63	11
Logical Sentences	25	8
Sentence Combining	5	5
Contextual Conventions	91	14
Contextual Language	50	10
Story Construction	75	12

(Ex. B-86; Testimony, Executive Director, Tr. 10/23/03)

68. With the narrative reports for 2002-2003 and the standardized test scores, Villa Maria included draft goals and objectives for 2003-2004, with a list of specific materials and programs to be used. (Ex. P-21, P-22, P-23, P-24)

69. Student's placement at Villa Maria was continued by her Parents for the 2003-2004 school year. She is currently enrolled in the sixth grade. (Testimony of Parent, Tr. 9/22/03)

70. The Executive Director of Villa Maria has a B.A. in education and an M.A. in special education, and is certified as a special education teacher and as a school administrator by the Connecticut State Department of Education. The Executive Director testified that Villa Maria's "aseptic environment" was the result of an aggressive cleaning program. No special precautions are taken concerning dog or cat hair or dander brought into the school on children's clothing. Student's health has been reported as good during her attendance at Villa Maria, and she had 2½ days absence for illness in the 2002-2003 school year. The Executive Director described Parent testing the air quality in several parts of the school prior to Student's enrollment, although no indoor air quality test results were entered on the record of this hearing for Villa Maria. She also reported that Student used computer software to help with writing only at home. (Ex. P-25; Testimony, Executive Director, Tr. 10/23/03)

71. Student received no services from either a S/L pathologist or an occupational therapist at Villa Maria. There is only a part-time school nurse at Villa Maria, and no health office log entries from Villa Maria were provided for Student. (Testimony, Executive Director, Tr. 10/23/03)

72. The Middle School recommended by the Board for Student was praised by Student's Pediatric Allergist, who then questioned possible contamination of the building as a result of a "water intrusion" during the summer of 2003. No evidence was offered concerning complaints about indoor air quality in this building. An indoor air quality status report for this building, prepared by the Board of Education Plant Administrator and an Indoor Air Quality Specialist and dated September 10, 2003, described the building interior and identified areas of possible concern. On-going installation of roof air conditioning units was noted. Air filters were being changed four to five times a year and were treated with a biocide. Stained ceiling tiles had been replaced; inspection of the areas above stains showed no visible mold growth. The stains were related to old roof leaks that had since been repaired. Unit ventilators were being cleaned. Complaints from staff members have been investigated and remedied. In the preschool area, tile has replaced contaminated carpets, duct work and fans have been installed to bring in fresh air, unit ventilators have been set up to bring in fresh air, and damage from a steam leak has been repaired, including replacement of wood shelves. On a walkthrough of the building using the Tools for Schools format, other problems were identified and remediation is continuing. (Ex. B-95)

73. The school nurse assigned to the elementary school that Student attended has served in that position for thirteen years. She had developed an individualized health care plan

for Student, based on information from Parent. Although she was given medication for use if Student had an asthma attack at school, she reported that had never happened. Some of Student's health room visits were for allergic symptoms (see Finding of Fact # 19). (Ex. B-1; Testimony, School Nurse, Tr. 1/27/04)

74. The Board's S/L Pathologist has thirty-one years of experience with the Board, seven of those years as Team Leader for Speech/Language. She has a B.S. and an M.S. in S/L pathology and has taken advanced courses in speech pathology, special education and administration. She has used Lindamood-Bell program materials and has used the training videos and participated in in-service training for that program. She participated in the May 29, 2003, PPT meeting, and planned to incorporate Lindamood-Bell techniques in the 2003-2004 program for Student. However, she would also have used material from other reading programs with Student. (Ex. B-92, B-115; Testimony, Speech/Language Pathologist, Tr. 12/16/03)

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible for special education and is properly classified as learning disabled, pursuant to Sec. 10-76a(13), C.G.S., and 34 C.F.R. § 300.7(c)(10).
2. The standard for review of special education programs and placements was established by *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, EHLR 553:656 (U.S. 1982). This Supreme Court decision requires that the school district 1) meet the procedural requirements of the statute (IDEA) and 2) provide an educational program (IEP) and placement calculated to enable the student to achieve educational benefit.
3. The evaluations and progress reports confirm that Student had made reasonable progress in the Board's schools. She has continued to progress in the placement at Villa Maria initiated by her Parents.
4. The May 29, 2003, IEP and placement at the Board's middle school were appropriate for Student for the school year 2003-2004. In addition to using the Board's record of Student's progress, the IEP reflects some of the Educational Consultant's recommendations as well as information gathered from Villa Maria. The PPT also demonstrated willingness to further accommodate Student, if necessary, after her enrollment.
5. Underlying the issue of whether placement at the middle school will be safe for Student is the larger issue of whether such a determination can be made in advance of Student's actual enrollment. Student's Pediatric Allergist is enthusiastic about a testing device he has used, and is working for the establishment of a test standard of 1000 spores per cubic meter of air. Scientific articles by Santilli & Rockwell, Rudich, Santilli &

Rockwell, and Santilli discuss measurement issues, and appear to favor measurement of spore counts as the definitive method of determining the safety of a specific environment. However, the Occupational Physician and the Industrial Hygienist, with both professional training in this area and significant experience, stated that no standard for indoor air quality has been adopted by state or federal government agencies, or by professional organizations. Both these specialists testified that there is no scientifically-based standard for indoor air quality. These experts explained that the concentration of airborne mold spores varies greatly, both in time and in space. The Industrial Hygienist's focus is on the presence of water, usually from leaks, that fosters the growth of mold. The Industrial Hygienist cited complaints of related health problems by school staff members and students and the evidence of water leaks and inadequate cleanup after the repair of such leaks as significant indicators of indoor air quality problems in schools.

6. Several of the technical articles submitted confirmed the limitations of air quality testing. Etzel comments:

In general, it is not necessary to measure the quantity of mold spores in the air of a home or school. If mold is found, the occupants should start by determining the source of the water problem and fixing it. Mold cannot grow without a source of water.

Etzel considers a mold spore count of 1000/cubic meter "high".

Bush & Portnoy consider a count of 1000 or higher evidence of contamination, but their comments acknowledge the importance of observation of mold and dampness:

The presence of fungal growth in the home or office implies a problem with excessive dampness in the environment. Measures to decrease the infiltration of fungal spores from the outdoor environment, control indoor moisture problems, and clean or remove contaminated materials may improve the health of individuals with fungal-induced allergic diseases.

Rogers stresses the complexity of the problem of setting standards:

In the United States, no regulations exist for an unacceptable level of airborne fungi or their agents. Obstacles that prevent such a determination are the variation in human susceptibility to disease agents, lack of standardized protocols in measurement, and lack of data in relation to health effects.

7. The testimony of several people contributed to the Hearing Officer's understanding of air quality issues, including the need for a pragmatic approach. Student's Pediatric Allergist recounted the elimination of possible irritants and testing that led him to suspect the school environment was contributing to Student's allergy problems. He also noted that allergy medications probably contributed to Student's attention and learning problems. The Industrial Hygienist described his "walkthrough" of one school building and noted the importance of monitoring complaints. The Occupational Physician discussed the differences between the general population, people with allergies, and the rare individual who is extremely sensitive. From these people and from the scientific articles provided by Student's Pediatric Allergist and the Occupational Physician, I have concluded that Student is, or is at risk of becoming, an extremely sensitive person. Her reported reactions in school up to this time have not been life-threatening, although reactions together with medication necessary to control them have made her

uncomfortable and may have interfered with her attention and learning in school. She has had excellent attendance at Villa Maria and has required little or no medication there. The combination of thorough, systematic cleaning and maintenance, and monitoring of possible problem areas and complaints should provide a school environment in the Board's middle school as clean as that of Villa Maria.

8. The Occupational Physician pointed out some uncertainty concerning an actual diagnosis of allergy to mold spores. Student had tested negative to several molds in 1999. When she tested positive in 2001, she also had a reaction to the saline control. Her IgE antibody levels to molds were also reported as negative. The Board received a second medical opinion from a well-qualified consultant: this opinion supports the caution of Student's own Pediatric Allergist.

9. When Parents withdrew Student from school a second time, in early March, 2002, they requested homebound instruction at several PPT meetings and provided several letters from Student's Pediatric Allergist supporting this request. Section 10-76d-15(b), R.C.S.A., sets forth necessary conditions for homebound instruction. Subsection (1) applies to the facts of this case:

A physician has certified in writing that the child is unable to attend school for medical reasons and has stated the expected date the child will be able to return to the school.

The Parents and Student's Pediatric Allergist satisfied these conditions. The Board requested a second medical opinion. Initially, Parents provided a letter documenting a consultation with another pediatric allergist, selected and funded by Parents. The Parents consented to a second medical evaluation on April 11, 2002, and this evaluator's report was dated May 18, 2002. Meanwhile, Student did not receive formal homebound instruction for several weeks. While the PPT may have been sincere in their belief that it was safe for Student to return to the elementary school, disregarding a physician's requests for homebound was neither correct nor appropriate.

10. While there is no doubt that Student benefited from the small class sizes and systematic instruction in reading at Villa Maria, the IEP proposed by the Board was appropriate to her special education needs in the least restrictive environment. The Board's Reading Consultant uses many programs, selecting the programs that from her professional experience to address the specific difficulties of each student referred for reading support. A line of cases from *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 441 IDELR 156 (7th Cir. 1988), confirms that the school has the right to select methodologies based on student's needs. Parents may make suggestions at a PPT meeting, but a hearing officer has no authority to override the professional judgment of appropriately trained and certified school staff members.

11. The Parents ask the Hearing Officer to fund the purchase of computer software recommended by their Educational Consultant. The PPT considered these recommendations and offered some of the software in the program proposed in their school. They rejected purchase of the Kurweil 3000, but planned to discuss that with the Technology Consultant, who had classified that software as "optional" in her report. The

Parents claimed that software purchases were part of the 2002 settlement agreement with the Board, and asked this Hearing Officer to enforce that settlement agreement. While this Hearing Officer happened to preside over the hearing that was settled, she lacks the authority to address a settlement agreement, which is essentially a contract between Parents and the Board. Furthermore, the Board is not obligated to fund any equipment recommended in their IEP for Student when Student was placed unilaterally by her parents in a private school. No contract exists between the Board and Villa Maria, neither a general contract or a contract specifying purchase of equipment. Cases cited concerning settlement agreements (*Mr. J. v. Board of Education*, 98 F. Supp.2d 226 (D. Conn. 2000) and Connecticut hearing decision #01-179) are not directly on point with the facts of this case.

12. The Connecticut State Department of Education 1999 Guidelines for Assistive Technology discuss a continuum of devices:

If a low-tech device meets the child's particular needs, then the school is not obligated to purchase the high-tech device which may also solve the same problem.

This confirms the position of the Board's AT Consultant that technology support should be minimal unless a child requires more intrusive devices.

13. The "stay put" placement, pursuant to Section 10-76h-17, R.C.S.A., at the time this hearing was requested was either homebound instruction or enrollment in one of the Board's schools. Therefore, the Board was never obligated to fund the Parents' unilateral placement of Student at Villa Maria for the 2003-2004 school year.

14. Throughout this hearing, there was discussion of Student's right to a school environment that is safe for her. Sometimes, this right was characterized as flowing from Section 504 of the 1973 Rehabilitation Act. The Board's understanding of Student's medical problems had been based, in part, on observations of her at school, including relatively few visits to the health room and the fact that she never required emergency medication in school. While it is arguable whether Section 504 applies to this specific problem, in other cases eligibility has been denied if medication, or eyeglasses or hearing aids could enable the person with a disability to participate. During future discussions of placements for Student, her sensitivity to poor indoor air quality must continue to be an issue. Decisions concerning medication, however, are a matter for Parents and the treating physicians.

15. The Parents' Educational Consultant was an active advocate as well as an evaluator. While some of the questions raised by Board staff members were valid issues about her evaluations and her dual role as evaluator and salesperson, many of her suggestions were addressed by the PPT.

FINAL DECISION AND ORDER:

1. The IEP and the placement offered by the Board at the May 29, 2003, PPT meeting, for the 2003-2004 school year, were appropriate to Student's special education needs in the least restrictive environment.
2. Placement at the Middle School designated by the Board is appropriate to Student's special education needs in the least restrictive environment, and appears to be reasonably safe, in terms of indoor air quality, for Student.
3. Because the Board's placement is appropriate, it is not necessary to consider placement at Villa Maria for the school year 2003-2004.
4. The Board is not responsible for funding Student's placement at Villa Maria.
5. Some of the software recommended by the Educational Consultant was offered by the PPT in conjunction with the proposed placement in the Board's school. The Board is not obligated to fund purchase of such software for use in the Parent's unilateral placement, even if the use is confined to Student's home.
6. The Board has produced all the documentation it has concerning Environmental Air Quality inspections.
7. A special education hearing officer lacks the authority to order specific educational methodologies.
8. A special education hearing officer lacks the authority to enforce a prior settlement agreement between the parties.
9. The Board's PPT shall convene within 30 days of this decision to review Student's current status and to plan for her transition back into the Board's school. If additional evaluations are needed at this time they shall be performed as soon as possible, with the PPT re-convening to consider any subsequent IEP changes.

COMMENT ON THE CONDUCT OF THE HEARING

This hearing was undoubtedly longer than it could have been, but if separate hearings for the two siblings had been held, with many of the same witnesses covering much of the same material, the total of the two hearings might have been even longer.