

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. South Windsor Board of Education

Appearing on behalf of the Parent:

Parent, Pro Se

Appearing on behalf of the Board:

Attorney Linda L. Yoder  
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One American Row  
Hartford, CT 06103-2819

Appearing before:

Mary H.B. Gelfman, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Has the Board of Education offered a free appropriate public education in the least restrictive environment for Student?
2. If not, does Student require an increased amount of tutoring in reading and/or specific program components (i.e., Lindamood-Bell reading program)?
3. Is the Board responsible for reimbursement of special education services obtained by Parents, and funding of a Lindamood-Bell program in California for the summer of 2004?

**PROCEDURAL HISTORY:**

This hearing was requested on December 2, 2003, and a pre-hearing conference was held by telephone conference call on December 11, 2003. The hearing was scheduled for January 9, 2004, allowing for a mediation session scheduled for December 17, 2003. When mediation did not resolve the issues, the January 9 hearing session was postponed and the parties participated in an advisory opinion proceeding on January 23, 2004. The hearing convened on February 4, 2004, and concluded on February 25, 2004. To accommodate these dates, the deadline for mailing of the final decision and order was extended from January 16 to February 15, and thence to March 16, 2004.

**SUMMARY:**

The Board has identified Student is having a speech/language impairment, specifically an expressive language problem, and has provided a variety of services. The Parents have also provided a variety of services, including an intensive summer Lindamood-Bell reading program. Based on Student's reported progress, the Parents have asked that the Board fund Lindamood-Bell services provided in California last summer and planned for this summer, as well as providing Lindamood-Bell services during the school year.

This case includes a legal argument concerning the status of reading instruction for a student identified as language impaired. The Board had identified Student as also having a specific learning disability in addition to his language impairment, but based on his progress in reading subsequently found him ineligible as learning disabled. The Board has offered reading support within the "regular education" program.

Parents rejected the reading support program for a variety of reasons, primarily because it is not a dedicated Lindamood-Bell program. The Parents also rejected resource room support. Student continued to received speech/language therapy.

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.

**FINDINGS OF FACT:**

1. Student was born on July 27, 1988, and is now 15 years of age. (Exhibit B-24, 5 of 10)
2. The record for this hearing shows that Student has been evaluated many times:
  - Newington Children's Hospital (NCH) Diagnostic/Developmental Learning Assessment, March 9, 1994, by Joy E. Landsman, M.S.
  - Psychological Evaluation by Robert K. Riccio, Ph.D., Licensed Psychologist, June 1, 1994.
  - NCH Diagnostic Perceptual/Cognitive Assessment, March 1, 1995, by Joni L. Baldwin, M.A.
  - Educational evaluation, March, 1996, by Dana Silverman, Special Education Teacher.
  - Psychological Report, March 26 and April 9 and 23, 1996, by Angela B. Conochalia, School Psychologist.
  - Educational Consultations, June 4, 1997, and May, 1998, Ann Terezakis, M.A.,
  - Neuropsychological Evaluation, June, 1998, Mary L. Prevey, Ph.D., Clinical Neuropsychologist.

- Reading evaluation, April 23, 2001, by Joy Giuliano, Reading Consultant
- Speech and Language Evaluation, April 24, 2001, by Maureen DiSalvo, M.A./CCC, M.S. Ed., Speech-Language Pathologist
- Psychological Evaluation, May 4, 2001, by Ilene Grueneberg, Ph.D., Psychologist
- Speech and Language Evaluation, June 4, 2003, by Maureen DiSalvo, M.A./CCC, M.S. Ed., Speech-Language Pathologist.
- Educational evaluation, June 3, 2003, by N. Hayes.
- Cognitive Evaluation, September 12, 2003, by N. Carlson.

Whenever Student's intellectual ability has been measured, it has been found to be within the average range. (Exhibits P-1, P-4, P-5, P-10, P-11, P-19, P-23, P-24, P-29, P-30, P-31, P-33, B-2, B-3, B-4, B-13, B-14, B-18)

3. The 1994 psychological evaluation, provided by Parents, gave a diagnosis: Overanxious Disorder, R[ule]/O[ut] Attention Deficit Hyperactivity Disorder (ADHD). The 1996 psychological evaluation performed by a Board school psychologist noted behavior consistent with ADHD and recommended a consultation with the family's pediatrician, and counseling. The neuropsychological evaluation in 1998 noted Student's anxiety and the likely interaction of anxiety and his expressive language impairment. The neuropsychologist commented that her clinical impression was that Student did not "fully meet criteria for [ADHD]" and that "his "inattention" and off-task behavior seem to reflect processing deficits". The 2001 psychological evaluation noted that Student normally took Ritalin, but had not taken any on the day of the evaluation. This psychologist endorsed identification as having a language based learning disability as well as "Other Health Impaired". After providing recommendations for Student's academic program, this psychologist also recommended "involvement in an anxiety management or self-esteem group". (Exhibit P-4, 5; P-11; P-24, B-4)
4. After being identified as having a specific learning disability and a speech/language impairment affecting his expressive language, written language and spelling, Student was identified as in need of special education in 1995 and provided resource room support and speech/language therapy in the Board's elementary school. The Board agreed to place Student at Ben Bronz for fourth, fifth and sixth grades. Ben Bronz is a private school approved for special education placements by the State Department of Education. (Exhibits P-6, P-9, P-17, P-20)
5. Student attended the Board's middle school for seventh grade. The Planning and Placement Team (PPT) meeting held on June 17, 2001, to develop his Individualized Education Program (IEP) for seventh grade identified him as Language Impaired. Health concerns, Attention Deficit Hyperactivity Disorder and Overanxious Disorder, were listed under Present Levels of Educational Performance. His strengths were listed as: receptive language, visual learner, reading skills, and math skills. His weaknesses were listed as: expressive language, anxiety, attention, and elaboration – writing. His IEP goals and objectives for seventh grade were:
  - 1.[Student] will increase his organizational/study skills.

[Student] will utilize his planbook to record daily assignments and keep track of graded assignments in his record of achievement.

Evaluation procedure: planbook check

Performance criteria: successful completion of task/activity

[Student] will keep his papers organized by subject area in his binder

Evaluation procedure: notebook check

Performance criteria: successful completion of task/activity

[Student] will ask questions of the teacher for clarification of assignments or [if] he doesn't understand a concept.

Evaluation procedure: observation

Performance criteria: successful completion of task/activity

[Student] will create a plan for long term projects.

Evaluation procedure: work samples, job performance or products

Performance criteria: successful completion of task/activity

[Student] will become aware of his impulsivity and learn strategies.

Evaluation procedure: observation

Performance criteria: successful completion of task/activity

(%, Trials, etc) 80%

2. [Student] will improve his written expression skills.

[Student] will edit his work for spelling, capitalization, punctuation.

Evaluation procedure: work samples, job performance or products

Performance criteria: successful completion of task/activity

[Student] will revise his work to add more details.

Evaluation procedure: work samples, job performance or products

Performance criteria: successful completion of task/activity

3. To improve expressive language skills by meeting the following objectives in auditory & spoken language tasks.

[Student] will give complete verbal explanations and/or responses to auditory questions on selected and/or curriculum topics in open-ended format and in sentences conveying double-meanings or ambiguous (unclear) meanings.

Evaluation procedure: Achievement of objective

Performance criteria: successful completion of task/activity

[Student] will demonstrate understanding of conjunctions by forming compound and/or complex [sentences] to convey clear meanings on selected topics.

Evaluation procedure: work samples, job performance or products

Performance criteria: mastery

(%, Trials, etc) 80%

[Student] will generate word association (divergent categorization) via brainstorming and/or using graphic organizers (i.e. Venn diagrams, etc), via subcategorization (compare and contrast) tasks.

Evaluation procedure: Pre & post baseline data OR work samples

Performance criteria: mastery

(%, Trials, etc) 12 items in 60 seconds

4. [Student] will demonstrate improved self-esteem as he transitions to seventh grade.

[Student] will make positive statements about himself and his abilities.

Evaluation procedure: pre & post base line data AND staff observation

Performance criteria: percent of change, successful completion of task/activity, mastery  
(%, Trials, etc) 75%

[Student] will verbalize concerns and demonstrate positive problem solving skills.

Evaluation procedure: pre & post base line data AND staff observation

Performance criteria: percent of change, successful completion of task/activity, mastery  
(%, Trials, etc) 75%

[Student] will learn and utilize stress reducing strategies when feeling anxious or overwhelmed.

Evaluation procedure: pre & post base line data AND staff observation

Performance criteria: percent of change, successful completion of task/activity, mastery  
(%, Trials, etc) 75% (Exhibit B-6, 7 through 11)

6. Student's seventh grade IEP showed 3.75 hours per week of resource room support; 3.75 hours per week in co-taught English; 1.2 hours per week of speech/language therapy; and 0.5 hours per week with the school social worker. In his regular education classes, he would have the following modifications and adaptations:
  - Tests/quizzes/time: prior notice, extra time, pace long term projects, test study guides, extra response time, extra time- written work, modified tests as needed, and may take tests in the resource room.
  - Grading: no spelling penalty
  - Environment: preferential seating
  - Behavior management/support: positive reinforcement, cue expected behavior
  - Instructional strategies: check work in progress, monitor assignments, visual reinforcement, provide models, review directions, have student restate information, support auditory presentations with visuals (Exhibit B-6, 12 and 15)
  
7. The PPT met April 24, 2002, to review Student's progress in seventh grade and plan for eighth grade. Health concerns, Attention Deficit Hyperactivity Disorder and Overanxious Disorder, were listed under Present Levels of Educational Performance. Student was identified as Language Impaired, and his strengths were listed as: receptive language, visual learner, reading skills and math skills. His weaknesses were listed as: expressive language, anxiety, attention and elaboration – writing. Neither the documentary record nor the written summary of the PPT meeting listed specific progress on his seventh grade goals and objectives. The written summary of the meeting reported a good transition to T[echnology] E[ducation] and progress on speech/language goals. His progress on social work goals led the Social Worker to recommend reducing the time for social work services the next year, and offering “a group regarding transition to the high school” in the spring. His goals and objectives for eighth grade were:
  1. [Student] will improve his written expression skills.

[Student] will write a multi-paragraph piece with an introduction, body and closing.

Evaluation procedure: work samples, job performance or products  
 Performance criteria: passing grades/score, successful completion of task/activity  
 (% , Trials, etc) 80%

[Student] will edit his work for spelling, capitalization, punctuation and grammar.

Evaluation procedure: work samples, job performance or products  
 Performance criteria: passing grades/score, successful completion of task/activity  
 (% , Trials, etc) 80%

[Student] will revise his work to add details and specific examples.

Evaluation procedure: work samples, job performance or products  
 Performance criteria: passing grades/score, successful completion of task/activity  
 (% , Trials, etc) 80%

[Student] will spell words from the Dolch sight word vocabulary list.

Evaluation procedure: quizzes/tests  
 Performance criteria: successful completion of task/activity  
 (% , Trials, etc) 80%

2. To improve expressive language skills to support academic progress.

Respond to open-ended auditory questions to give complete verbal responses on selected topics and/or ambiguous sentences.

Evaluation procedure: work samples, job performance or products  
 Performance criteria: successful completion of task/activity

Form compound and/or complex sentences verbally by selecting or attending to meanings of conjunctions.

Evaluation procedure: work samples, job performance or products  
 Performance criteria: mastery  
 (% , Trials, etc) 85% (Exhibit B-9, 3, 5, 6 through 8)

8. Student's eighth grade special education services were listed: 3.75 hours per week, resource room support; 3.75 hours per week in co-taught English; and 0.6 hours per week speech/language therapy. No social work services were listed. In his regular education classes, Student would have the following modifications/adaptations:

Tests/quizzes/time: prior notice, extra time, pace long term projects, test study guides, extra response time, extra time- written work, modified tests, and may take tests in the resource room.

Grading: no spelling penalty

Behavior management/support: positive reinforcement, cue expected behavior

Instructional strategies: check work in progress, monitor assignments, visual reinforcement, provide models, review directions, have student restate information, support auditory presentations with visuals (Exhibit B-9, 9 and 12)

9. Report cards for Student’s seventh and eighth grade years showed the following grades:

Subject	7 <sup>th</sup>	8 <sup>th</sup>
English	A-	B+
Math	B-	B
Social Studies	B-	B-
Science	A-	B
Art	A-	A+
Technology Education	B+	A-
Family/Cons Sci	B	A-
Band	B	B
P.E.	B+	B+
Health	---	B+

Comments for seventh grade were: conscientious effort, 1; Pleasure to have in class, 2; Cooperative and attentive,1; A hard worker, 1; and Good class participation. Comments for eighth grade were: Pleasure to have in class, 1; Work rushed/poor quality, 1; Satisfactory effort, 1; Good class participation, 1; and Better test/quiz prep. needed 1. (Exhibit B-24, 8 and 9)

10. Student’s Connecticut Mastery Test results in grades 6 and 8 were reported as:

Date/grade	Mathematics	Reading	Writing
9/2000 Gr. 6	At/above goal	At/above goal	Below goal
9/2002 Gr. 8	At basic level	At goal	Proficient level

(Exhibit B-24, 1-2, 6-7)

11. The PPT met on May 13, 2003, to review Student’s eighth grade year and to plan for his transition to ninth grade at the Board’s high school. Student and both his Parents attended this meeting. Student was identified as having a speech/language impairment. Health concerns, Attention Deficit Hyperactivity Disorder and Overanxious Disorder, were listed under Present Levels of Educational Performance. The written summary of this meeting reports that Student “made good progress” and “academically, ... had a good year”. It was reported that Student “sometimes needs to be refocused in classes”. Student had met two [of four] writing goals. Student was reported to have made good progress in speech/language therapy. His speech/language goal and objectives were reported as “in progress”, with three listed as “satisfactory progress”. The therapist commented:  
 [Student] has made good progress in achieving his goal and objectives this year. He is able to form both compound and complex sentences verbally by selecting to meanings of conjunctions in structured activities. He continues to need help in expanding and elucidating his ideas and responses to questions and discussions without teacher cueing. Student’s strengths were listed as: receptive language, visual learner, reading skills and artistic ability. His weaknesses were listed as: expressive language and written expression- elaboration. (Exhibit B-10, B-11)

12. Goals and objectives for ninth grade were:

1. [Student] will improve written expression skills in order to express ideas/opinions and convey information to meet academic expectations.
  - Student will apply elaboration techniques (anecdotes, examples, memories, facts and statistics, personal feelings, quotations, etc) to assigned writing topics.
    - Evaluation procedure: work samples, job performance or products
    - Performance criteria: successful completion of task/activity
    - (%, Trials, etc) 75%
  - Student will demonstrate skill in writing by developing a multi-paragraph essay (descriptive, persuasive and/or narrative) which includes a well developed thesis statement and appropriate topic, supporting and concluding sentences and transition words.
    - Evaluation procedure: work samples, job performance or products
    - Performance criteria: successful completion of task/activity
    - (%, Trials, etc) 75%
  - Student will edit written work after writing first draft for vocabulary usage, topic sentence, support and elaboration, organization and focus, tense agreement and sentence structure and spelling.
    - Evaluation procedure: work samples, job performance or products
    - Performance criteria: successful completion of task/activity
    - (%, Trials, etc) 75%
2. To improve expressive language skills to support academic success using the 9<sup>th</sup> grade text structure.
  - [Student] will paraphrase selected curriculum topics on both auditory and written tasks, such as responding to questions, discussions, note taking base line 5/03 – approx. 55-60% 5/04 85%
    - Evaluation procedure: pre & post base line data, work samples, job performance or products
    - Performance criteria: passing grades/score, successful completion of task/activity
    - (%, Trials, etc) 85%
  - [Student] will respond to open ended auditory questions on selected topics giving complete verbal explanations using complete sentences (compound and complex) and elaboration (details and examples) when appropriate. 5/03 approx. 55-60% 5/04 85%
    - Evaluation procedure: pre & post base line data, work samples, job performance or products
    - Performance criteria: passing grades/score, successful completion of task/activity
    - (%, Trials, etc) 85% (Exhibit B-10, 1, 2, 6 through 8)
13. Student's proposed IEP for ninth grade listed 3 hours per week of academic support in the resource room and 0.75 hours per week of speech/language therapy. Modifications/ adaptations were listed for English, Science and Social Studies; extra time- tests: and for all classes; preferential seating, cue expected behavior, check work in progress, and review sessions as needed. In addition, "Regular education,



special education and speech and language should consult at least on a bi-weekly basis". (Exhibit B-10, 12)

14. Because Parents had requested tutoring in math and spelling, and reimbursement for prior tutoring, the PPT re-convened on June 4, 2003. Both Parents attended this meeting. Also on the agenda was planning Student's triennial re-evaluation. Student was described as "received B's all year and performed well with minimal assistance". It was agreed that Student's triennial would be performed earlier than scheduled, and specific evaluation instruments were discussed. Parents consented to the planned evaluation. No response to the Parents' request for tutoring was recorded. (Exhibits B-10, 2 and 4; B-12)
15. An educational evaluation of Student was administered on June 3, 2003. The evaluator commented that Student's academic achievement was average in Written Expression (fluency of production and quality of expression in writing), Broad Math (mathematics reasoning and problem solving, number facility, and automaticity), and Math Calculation Skills (computational skills and automaticity with basic math facts); and that his sight reading ability and math calculation skill are average, while his spelling was "very limited". His oral language skills were high average. His actual percentile scores on the Woodcock-Johnson III Tests of Achievement were reported as: Oral Language, 77; Total Achievement, 27; Broad Reading, 19; Broad Math, 43; Broad Written Language, 20; Math Calculation Skills, 40; Written Expression, 53. Percentile scores on Form A achievement tests were reported as: Letter-word Identification, 47; Reading Fluency, 11; Story Recall, 44; Understanding Directions, 84; Calculation, 49; Math Fluency, 29; Spelling, 4; Writing Fluency, 46; Passage Comprehension, 17, Applied Problems, 49; Writing Samples, 71. (Exhibit B-14)
16. A speech/language evaluation administered on June 4, 2003, reported percentile scores:  
Test of Language Competence-Expanded Edition: Making inferences, 50; Figurative language, 37; Receptive composite, 42; Ambiguous sentences, 1; Recreating sentences, 37; Expressive composite, 5.  
Test of Auditory Perceptual Skills-Upper Level: Number memory forward, 2; Number memory reversed, 16; Auditory sentence, 10; Auditory word memory, 14; Interpretation of directions, 47; Auditory word discrimination, 88; Auditory processing (reasoning), 37; TAPS Total score, 21.  
The evaluator concluded that Student made average scores in receptive areas and below average scores in expressive areas, and that he continued to be eligible for speech/language therapy. (Exhibit B-14)
17. On the Attention Deficit Disorders Evaluation Scales for Student, impulsiveness and/or hyperactivity were not found to be significant. Three teachers did report that Student "needs questions repeated", which may be a function of his language weaknesses and/or inattention. Two teachers reported that he was easily distracted and "does not always direct his attention to important information". (Exhibit B-15)

18. Parents were concerned about Student's reading progress. In testimony at the hearing, Parents reported various periods of tutoring, financed by the family. Eventually, they learned about the Lindamood-Bell reading program. They took Student to California during the summer of 2003 and enrolled him in an intensive Lindamood-Bell program. Standardized testing results, in percentile scores, reported by this program:

Name of test	Re-Test 5/26/01	Interim 6/19/03	Re-Test 8/28/03
Peabody Picture Vocabulary III	63	70	81
Detroit Tests of Learning Aptitude			
Word Opposites	16	63	63
Oral Directions	37	25	25
Test of Problem Solving-Adolescent	16	30	57
Woodcock Reading Mastery Test NU			
Word Attack	48	31	61
Slosson Oral Reading Test-R	43	38	43
WRAT-Revised/3			
Spelling	19	5	12
Arithmetic	42	37	---
Gray Oral Reading Test 3			
Rate	16	---	---
Accuracy	37	---	---
Passage	25	---	---
Comprehension	50	---	---
Gray Oral Reading Test 4			
Rate	---	9	16
Accuracy	---	16	16
Fluency	---	5	5
Comprehension	---	75	63

(Exhibit B-16 also P-32)

19. The Parents contacted an Independent Reading Consultant who works with adults as well as students in July, 2003, using many reading programs including elements of Lindamood-Bell. Because of Parents' concern, this Consultant started providing tutoring to Student without doing her own evaluation. She also spent time consulting with Parent, who was concerned that instruction be consistent with the Lindamood-Bell program. This Consultant started with Student's summer required reading as texts. After school started in the fall of 2003, the Board asked the Consultant to meet with Student's teachers and make suggestions. She agreed with prior recommendations that Student needed direct, systematic instruction in spelling and help with fluency and comprehension. She also agreed that a small group for reading could be helpful for students, as other students could provide an incentive. In discussing test scores, she recommended using percentiles to compare scores. After discussions with Parent in which the Independent Reading Consultant refused to use only Lindamood-Bell terminology in working with Student, she stopped tutoring Student. (Testimony, Independent Reading Consultant)

20. Another PPT meeting was called on September 15, 2003, to discuss Student's evaluation results. In response to Parents' concerns about the reading program, the PPT agreed to arrange a consultation between the Board's reading teacher and the Independent Reading Consultant who had been tutoring Student. The Parents repeated their request for a Lindamood-Bell reading program and for reimbursement of Student's summer program. Health concerns, ADHD and Overanxious Disorder, were listed under Present Levels of Educational Performance. His strengths were listed; visual spatial thinking, auditory processing, and artistic ability: and his weaknesses; expressive language. Parents requested that Student be removed from the reading program and also from resource room. The PPT listed 0.75 hours per week of speech/language therapy as Student's special education program. No modifications and adaptations for Student's classes were included in the revised IEP. (Exhibit B-17)
21. In place of Resource Room support, Student was assigned to a study hall. The Board's study halls do not provide individual help. (Testimony of Resource Teacher)
22. By letter dated October 6, 2003, the Board's Director of Special Services outlined a program offered for Student after consultation between the Board's Reading Consultant and the Parents' Independent Reading Consultant. After identifying spelling, fluency and comprehension as areas in which Student needed support, the Director proposed an individualized reading program and a Board-funded weekly session with the Independent Reading Consultant. Speech/language therapy at school would continue. (Exhibit B-19)
23. The Parents' response, a letter dated October 24, 2003, was to accept the speech/language therapy and to reject the reading program and tutoring. Parents also listed other areas in which the Board had not replied to their requests:
- The triennial re-evaluation had provided scores that could not be directly compared with previous testing results.
  - Class level placement and grading were criticized.
  - Funding of a specific math program had been requested.
  - Goals and objectives should be measurable.
  - The summer Lindamood-Bell program should be reimbursed. (Exhibit B-20)
24. Student's second quarter report card for ninth grade, 2003-2004, showed the following grades:
- |                       |    |                      |    |
|-----------------------|----|----------------------|----|
| Earth Science         | B  | Modern World History | A- |
| Graphic Communication | B- | English              | B+ |
| Algebra               | B  |                      |    |
- The Board offers four "levels" at the high school: level 4 is honors classes, and level 1 is for slow learners. Student is in level 3 classes, with the exception of level 2 for math. The Resource Teacher, who is his Case Manager, described his performance as "exceptional", noting that he has no modifications except extra time on standardized tests. (Exhibit B-24-10, Testimony of Resource Teacher)

25. Student's Case Manager has consulted with his teachers, who reported that he is doing very well, although he sometimes lacks confidence when presented with new material. After teachers encourage him, he usually can do the work. He has shown some anxiety about tests. This Resource Teacher also said: "I supported a Resource Room placement for him. He's doing well without Resource Room, so I revised my opinion." She also mentioned that Student can get help from his teachers by appointment. While his classroom teachers are ethically barred from accepting paid tutoring of current students, they do provide extra help after school. (Testimony of Resource Teacher/Case Manager)
26. The Board's Speech/Language Pathologist evaluated Student while he was in sixth grade at Ben Bronz, provided therapy to him in seventh grade, and evaluated him at the end of eighth grade. She noted his significant difficulties with expressive language, especially with open-ended questions and paraphrasing. When he didn't respond to directions, she repeated them. She mentioned that one wrong answer on the standardized tests frequently used could skew the age- and grade-equivalents. She observed that Student was "more nervous [about tests] than most students". (Testimony, Speech/Language Pathologist)
27. In testimony, Parents restated their request that reported evaluation results be "comparable" to prior scores. From time to time, Parents had been very upset by Student's grade level reading scores, which appeared to suggest regression. As an example of comparing scores, they cited a report from Ben Bronz that showed Student's performance on the Woodcock Johnson Psycho-Educational Battery in July, 1998, May, 1999, May 2000, and May, 2001. Also in testimony, the Board's Speech/Language Pathologist and the Independent Reading Consultant discussed the technicalities of standardized assessment scores. Because of the complexities of statistical methodology, the Independent Reading Consultant recommended comparing percentile scores, rather than grade- or age-equivalents. It must also be noted that test publishers revise and update tests, and that as children grow and learn, different test content is needed. Evaluators' comment on the reliability of scores: anxiety about a test, as reported in some of Student's evaluations, may impact scores. Another concern for the Board is the possibility that a frequently-tested student's scores may be influenced by a practice effect. (Exhibits P-4, P-24, P-27 (also B-5), B-4; Testimony, Parents, Independent Reading Consultant, Board's Speech/Language Pathologist)
28. In testimony, the Board's Director of Special Services described the proposed reading program. The Board's Reading Consultant uses several different reading programs, selecting programs and materials based on each student's needs. She works with students individually and in small groups. She is familiar with the Lindamood-Bell program. She serves students with, and without, disabilities. The Director thought that the Parents had misunderstood her responses to their questions about the program proposed for Student: instruction would be individualized. (Testimony of Board Director of Special Services)

29. Parents offered a Spring, 2000, article by Carolyn Isakson, Education Consultant in School Speech and Language Services at the Connecticut State Department of Education, discussing services for students with speech/language impairments. This article cites 34 C.F.R. § 300.532(h):

The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs whether or not commonly linked to the child's disability category.

This article also references two comments published with the IDEA Regulations in the March 12, 1999, *Federal Register*:

A basic assumption made in both the statute [IDEA] and these final regulations is that the programming and services for each "individual" child would be tailored to address the child's unique needs that impede the child's ability to make meaningful progress in the general curriculum. (p. 12592)

... [local school districts] must ensure that the services provided to each child ... are designed to meet all of the child's identified special education and related services needs, and not those resulting only from the disability area in which the child has been initially classified. (p. 12633) (Exhibit P-43)

30. At the end of the hearing, Parents revised their request for relief. They asked for: reimbursement of the 2003 summer Lindamood-Bell program; funding of a Lindamood-Bell program in the summer of 2004; and individual tutoring in reading in the Lindamood-Bell program during the school year. Although they had disagreed with the Independent Reading Consultant, they were willing to try working with her again. They withdrew their request for Kuman Math. They also reported that a psychological evaluation, requested by the Board, was scheduled. (Closing statement, Parents)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. There is no dispute that Student is eligible for special education and related services, to be provided at no cost to his parents, pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401, et seq., the regulations thereof, and §§ 10-76a-1(d) and 10-76a-2(n), Regulations of Connecticut State Agencies (R.C.S.A.).
2. Pursuant to 34 C.F.R. § 300.341, after a student is found eligible for special education services, a program must be devised to address his individual needs. In addition to educational needs, 34 C.F.R. § 300.346 requires that a student's strengths be considered.
3. Federal Regulations developed under the IDEA set forth the framework for adapting public school programs to address the needs of children with disabilities. 34 C.F.R. § 300.26, defines special education as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

§ 300.26(a)(3) *Specially-designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

§ 300.28 Supplementary aids and services. ... the term *supplementary aids and services* means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent possible.

§ 300.347 Content of IEP: the IEP for each child with a disability must include-

- (a)(1) A statement of the child's present levels of educational performance, including-
  - (i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children);

...

(a)(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to-

- (i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and
- (ii) Meeting each of the child's other educational needs that result from the child's disability;

(a)(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child-

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

(a)(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section.

...

(a)(7) A statement of-

- (i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and

- (ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of-
    - (A) Their child's progress toward the annual goals; and
    - (B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
- 4. The standard for review of special education programs for individual students with disabilities, established by the U.S. Supreme Court in the case of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), requires two tests: 1) were the procedural requirements of the Act complied with; and 2) was the educational program developed for the child reasonably expected to provide educational benefit. In addition, *Rowley* advises the courts to defer to the expertise of educators on issues of educational methodology.
- 5. Student has been evaluated many times. His intellectual abilities have always been found to be within the average range. Student has consistently demonstrated difficulties with expressive language, spelling, and written language. Although the annual statement of his Present Levels of Educational Performance cite ADHD and anxiety as health concerns, the more recent psychological and neuropsychological evaluations and behavior scales do not support the diagnosis of ADHD. It is possible that some of the scatter among his subtest scores actually reflects the impact of his language problem, or anxiety about test areas that are more difficult for him. Speech/Language therapy continues to be necessary for him, and classroom modifications and adaptations that support language should be reinstated.
- 6. Student had four goals for seventh grade:
  - 1. [Student] will increase his organizational/study skills.
  - 2. [Student] will improve his written expression skills.
  - 3. To improve expressive language skills by meeting the following objectives in auditory & spoken language tasks.
  - 4. [Student] will demonstrate improved self-esteem as he transitions to seventh grade.

The evaluation procedures and performance criteria were vague. There is no evidence on the record of this hearing that these goals and the objectives under each of them were evaluated by the PPT. In the record of the PPT annual review at the end of seventh grade, the School Social Worker reported that Student had met his social work goals, and the Speech/Language Pathologist reported his progress on "S/L goals". The goals and objectives were written in measurable language: there is no record that anyone performed the necessary evaluation. No written special education progress report was provided to Parents.
- 7. Student had two goals for eighth grade:
  - 1. [Student] will improve his written expression skills.
  - 2. To improve expressive language skills to support academic progress.

The Board's Speech/Language Pathologist provided a written evaluation that addressed Goal #2 and the objectives under it. Only a general comment regarding "good progress" can be assumed to cover Goal #1. Again, Parents were not provided with a complete, written progress report for Student's special education program.

8. Without specific evaluations of Student's progress in written expression in seventh and eighth grades, it is difficult to determine whether his goals for ninth grade are appropriate:
  1. [Student] will improve written expression skills in order to express ideas/opinions and convey information to meet academic expectations.
  2. To improve expressive language skills to support academic success using the 9<sup>th</sup> grade text structure.

"Making good progress" in a PPT summary is an inadequate evaluation upon which to base the subsequent year's program. Although the omission of documented evaluation of progress on Student's IEP goals and objectives in seventh and eighth grades is a serious procedural error, Student's performance in ninth grade demonstrates that this was not a fatal error.
9. Student's reported assessment scores support the Board's decision that he is no longer eligible for special education as a learning disabled student. However, his continuing eligibility because of his speech/language impairment requires the Board to provide an IEP that addresses all his needs. The question raised by his Parents is: does he have individual needs in reading? The Board's triennial reevaluation results support the Parents' position that Student has individual needs in reading. The Parents have refused Resource Room services for Student. Because Student does not demonstrate a severe discrepancy, the Board proposed reading services with the Reading Consultant. The Board provides individualized support in reading for any student that requires help. The Board offered an individually designed program, based on Student's needs: the Parents rejected that program.
10. Pursuant to Section 10-76h-14(a), R.C.S.A., the Board has the burden of proving that the program offered to Student is appropriate to his needs. The Board has met that burden. The Parents rejected some elements of the proposed program, and have been providing extensive support for Student's homework this year. Resource Room support and reading support might help with Student's homework issues.
11. The Board's contracting with the Parents' Independent Reading Consultant, and the statement of the Director of Special Services that whatever this consultant recommended would be provided by the Board, demonstrates good faith and an enormous effort to accommodate the Parents' desires for their son's educational program.
12. The Board is to be commended for considering the Special Education Resource Room and the Regular Education Reading Program as a continuum of services for students who require support in reading. While the bright line between "learning disabled under IDEA" and "not learning disabled under IDEA" suggests an obvious



distinction, in fact students' needs in reading can be served in many ways. By looking at the continuum and trying to select an appropriate reading program for Student that will also be accepted by his parents, the PPT was applying the advice provided in Carolyn Isakson's article, cited at Finding of Fact # 29.

13. Student's "regular education" classes may or may not require modification or adaptation for his language impairment. The professional judgment of the Board's PPT placed Student in regular classes with modifications in seventh and eighth grades. He received good grades both years and did well on the Connecticut Mastery Test in eighth grade. Student's relative success, as reflected in his second quarter grades in ninth grade, confirms that he can handle the classes to which he was assigned. If it appears that his homework is burdensome, he needs to talk with his teachers on an individual basis. It is also possible that modifications should be considered by the PPT
14. Student received, and benefited from, school social work services in seventh grade. At the PPT meeting that made plans for eighth grade, the Social Worker reported that he had met his social work goals, and suggested decreasing social work services. However, the Present Levels of Educational Performance sheet of his IEP still carries a diagnosis of anxiety. The PPT needs to determine whether anxiety is still a concern, and if so, how to address this issue in the IEP.
15. While Parents argue that Student has a learning disability because of his difficulties in reading and math, he does not qualify as learning disabled according to the 1999 Connecticut Draft Guidelines for Identifying Children with Learning Disabilities. The PPT should consider modifications in his classes and/or Resource Room support, in addition to the recommended reading program.
16. One of Student's needs at this time is to develop confidence and independence. Students starting high school need support from their families and school staff as they test their wings. Arranging to get extra help from his math teacher is an example of a new responsibility that Student can accept. This may not go as smoothly as Parents would like, but it is a necessary step toward independence.
17. Student's Parents have demonstrated great concern and support in providing a variety of extra educational services, beyond those offered by the Board. It is the belief of the Parents that without these extra supports, Student would not have progressed as well as he has in school. The Board's staff has proposed supports which have proven successful in the past, but were rejected by Parents this school year. The Parents insist on a specific methodology, the Lindamood-Bell program, to be delivered in a one-to-one setting, and also insist on more hours of service than the Board believes are needed. The teachers who testified at the hearing were experienced and well qualified. The Board has the legal responsibility for selecting educational methodologies for special education and regular education programs. The decision of which methodology to use for which student is also a Board prerogative.

**FINAL DECISION AND ORDER:**

The Board's special education program, as offered, including speech/language therapy and Resource Room support and a regular education reading support program, is a free appropriate public education in the least restrictive environment to Student's needs.

The Parents have not met their burden of proof that Student requires an extended year program; therefore, the Board is not responsible for reimbursement of the Lindamood-Bell summer program in 2003 nor for funding of this program in 2004.