

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing on behalf of the Parent: Attorney Thomas J. O'Neill, Day, Berry & Howard, LLP, One Canterbury Green, Stamford, CT 06901

Appearing on behalf of the Board: Attorney Marsha Belman Moses, Berchem, Moses & Devlin, P.C., 75 Broad Street, Milford, CT 06460

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board's Program for the Student for the 2004-2005 school year is appropriate.
2. If not, whether the Parent's proposed placement of the Student at the New York School for the Deaf is appropriate.

SUMMARY:

The hearing impaired six year old Student who is profoundly deaf, and communicates through signing, has been placed in the Board's program which provides 15 hours of instruction from a teacher of the hearing impaired, speech and language services, and mainstreaming for specials. A sign language interpreter is available for the Student, but also has job responsibilities of serving as a lunchroom and classroom aide. The Board had also proposed transporting the Student more than one hour each way to a program at the American School for the Deaf and offered a program at another elementary school with fewer hours with the teacher of the hearing impaired.

An evaluation completed by the American School for the Deaf found that the Student's expressive vocabulary skills were significantly delayed, testing at the 5th percentile. The ASD evaluators recommended that the Student would benefit from placement in an educational environment which emphasizes development of expressive and receptive language skills through signed communication and English. They further recommended that the youngster required exposure to conceptually correct American Sign Language as well as English word order and syntax. True use of a total communication philosophy was highly recommended, and the evaluators suggested that placement with hearing impaired same age peers might be necessary to facilitate language development.

The Parent brought this hearing request, seeking placement of the Student at the New York School for the Deaf.

PROCEDURAL HISTORY:

The Parent requested this hearing on July 8, and a prehearing conference was held on Friday, July 16. The mailing date of the decision was initially extended so that the parties could attempt to settle this case. Additional extensions were granted at the request of the parties, and without objection from the opposing party. The hearing proceeded on 14 days, on September 9, September 10, October 22, October 25, October 26, October 29, November 5, December 9, December 16, December 21, February 4, March 10, March 14 and March 28. The attorneys submitted briefs on April 27.

The Parent's witnesses were the Mother; Susan Avery, evaluator from the American School for the Deaf; Jennifer Preston, the Board's teacher of the hearing impaired; and Rhoda Naylor, a Birth to Three provider of services for children with hearing loss.

The Board's witnesses were Gina Gardella, a Board special education teacher; Stacy Colcone, a Board kindergarten teacher; Chris Olden, a Board sign language interpreter/aide; and Jennifer Preston, the Board's teacher of the hearing impaired.

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

FINDINGS OF FACT:

1. The Student is six years old, and is currently in kindergarten at a Board elementary school. The Student is identified as eligible for special education and related services as Hearing Impaired/Deaf. [Exhibit B-71]
2. The Student's ability to hear was first questioned when the Student was 6 to 8 months old by the Parent, but the doctor reportedly stated to the Parent that the Student was fine. [Exhibit B-1] On December 29, 1999, after the Parent continued to have concerns regarding the Student's ability to hear, the Student was tested at the audiology department of Norwalk Hospital. After this testing, and the subsequent brain stem auditory evoked response exam completed when the Student was 18 months, it was confirmed that the Student had a profound hearing loss bilaterally. [Exhibit B-3]
3. The Parent contacted the Birth to Three System, and a developmental assessment was completed by the Early Childhood Intervention Program from the American School for the Deaf [ASD]. The Student was found to be automatically eligible for Connecticut's Birth to Three services based upon the hearing loss condition,

and it was recommended that the Student be enrolled in a Birth to Three program specifically designed for hearing impaired children. [Exhibit B-1]

4. An Individualized Family Service Plan [IFSP] was developed for the Student on January 26, 2000. Services included speech therapy and a teacher of the hearing impaired. The service plan was reviewed in November 2000, at which time the transition to special education was discussed. [Exhibit B-2]
5. The Student was referred to the Board for special education by the Connecticut Birth to Three System on November 30, 2000. [Exhibit B-4]
6. At the initial Planning and Placement Team [PPT] meeting convened on January 26, 2001, the Board's observations and the ASD developmental assessment were reviewed. The Student was determined eligible for special education as "deaf." The Board members of the team suggested placement at the Board's Kendall school program, and indicated that the PPT would reconvene after the Parent had an opportunity to explore the preschool program. [Exhibit B-13]
7. The PPT reconvened on March 19, 2001. The team agreed that the Student should be enrolled in the special education inclusion program, and receive speech and language services and services of the teacher of the deaf. [Exhibit B-19]
8. When the Student first came into the class she had excellent fine motor skills with very limited communication skills. She knew a few signs, and would gesture. She was amplified at that time with bilateral hearing aides. She was profoundly deaf, and while the hearing aids did help to amplify the sounds, she didn't benefit greatly from the aids. At that time, the Parent wanted the Student to be aural, but with the Student's degree of hearing loss, the special education teacher explained to the Parent that the Student would benefit greater by having sign language, so the Parent agreed with teaching the Student signing. At that time, the Parent did not know sign language, and communicated with the Student through gestures. [Testimony Ms. Gardella]
9. In the Student's program, the Student began to learn the proper signs at school, but at home the Student and Parent would use gestures and made up signs. The Student would be frustrated by this. The teacher made efforts to make sign consistent, by sending home handouts with the correct sign. The teacher also encouraged the Parent to enroll in a sign language course at Norwalk Community College. [Testimony Ms. Gardella]
10. In the summer of 2001, the Student was implanted with a Nucleus 24 cochlear implant. [Testimony Mother, Exhibit B-24] The implant was initially stimulated on July 25, 2001. [Exhibit B-24] The Student did not attend the Board's summer program as she was to be undergoing the surgery for the cochlear implant that summer, and the Student had preoperative appointments prior to the surgery date. [Testimony Mother]

11. In September 2001, the Student returned to the same program in which she was enrolled in June. The Parent explained to the teacher about the cochlear implants, and provided the teacher with written documentation cautioning that static electricity could cause problems with the device. The Parent also gave the Board permission to consult with audiologist about the cochlear implant. [Testimony Mother]
12. In the fall 2001, the Student's teacher continued to teach all the children in her class sign language as the teacher was fluent in sign. When the Student returned to school with her cochlear implant, it was clear that the use of the device frightened the Student. The Student was frightened by the sounds she was hearing, so the teacher tried to acclimate the Student to the sounds through tapes of environmental sounds with pictures, and training her to decipher the sounds she was hearing. [Testimony Ms. Gardella]
13. The Student began to be more aural with the cochlear implant, and while she still used signs, the teacher noted that the Student was able to start speaking, with words that were intelligible. [Testimony Ms. Gardella]
14. The PPT reconvened in October 2001, at which time the minutes reflect that the Student's hours of services were increased to 15 hours per week. At this time, the Board reported that the Student was unhappy, stubborn and uncooperative. [Testimony Mother, Exhibit B-23] Before the implant, the Student had used her voice at times, but when the cochlear implant was on, the Student was afraid of her voice, and of other sounds, according to the Parent. [Testimony Mother]
15. During the 2001-2002 school year, the Student's Individualized Education Program [IEP] included four measurable annual goals. The Student mastered or had satisfactory progress on one goal, which was development of self-help skills, which had been considered an area of strength based on her present level of educational performance when the IEP had been drafted. After the IEP had been implemented for one year, the student had satisfactory progress on one objective in her preacademic skills goal, with "ongoing progress" on the remaining preacademic goals. She concluded the year with "ongoing progress," not satisfactory progress or mastery on development of her social skills, with the same "ongoing progress" in her communication skills. The communication skills measurable goals included the following objectives: [the Student] will increase receptive vocabulary, [the Student] will increase number of signs, [the Student] will increase number of expressive language skills. [Exhibit B-19]
16. The PPT reconvened on January 9, 2002, at which time the team increased the Student's hours, but did not revise the Student's IEP goals and objectives. [Exhibit B-27]

17. At the time of the January 9 PPT meeting, the Board members of the team inquired as to the status of the Student's cochlear implant. [Exhibit B-27]
18. At this time, the Student continued to be unreceptive to using the cochlear implant, according to the Mother. [Testimony Mother]
19. On April 25, 2002, the Parent submitted a notice to the school that the Student would not be attending school from Monday, April 29 until June 7, or until further notice. [Exhibit 34] The Parent and the Student went to Egypt at that time, for an extended stay. [Testimony Mother]
20. Prior to the Student leaving school in April 2002, an annual report of the Student's progress was completed. The report noted that "[The Student] is frequently stubborn and uncooperative which has had an impact on her learning. Due to her apparent lack of interest and motivation, [the Student] is not always attentive to the lessons and the teacher signing. She needs reminders to watch the teacher signing the lessons. Directions often need to be repeated verbally and in sign language. [The Student] does better in activities of her choice, rather than teacher directed activities. For example, during familiar songs and dances at circle time, she will not actively participate."
21. Although the Student had not yet returned to the district, the Board members of the PPT met on June 10, 2002 to review the Student's progress in the 2001-2002 school year, and to plan a program for the Student upon her return from Egypt. [Exhibit B-38]
22. The PPT members planned a program for the Student to continue the Student in the preschool special education program, with 25.25 service hours from the special education staff, 2 hours of the teacher of the hearing impaired and 1 hour from the speech pathologist. [Exhibit B-38]
23. In September 2002, the Board administrator of special services sent a letter to the Parent regarding the Student's enrollment status. The administrator noted that the Board had anticipated that the Student would be attending the summer school program, but that the Student had not attended it. In planning for the 2002-2003 school year, it was noted that the Parent was to enroll the Student in the planned program, with a request for additional services. On September 10, 2002, the correspondence noted that the Board was informed that the Student and the Parent were returning to Egypt and would not return to Norwalk until November 9, 2002. The Parent was requested to contact the Board upon return to Norwalk. [Exhibit B-39]
24. On January 30, 2003, the Board administrator contacted the Parent regarding the Student's lack of attendance in the program. The Board was under the impression that the Parent and Student had returned to Norwalk sometime in December 2002, prior to Christmas, but the Student had not yet been attending the Board's

- program. The Board was requesting the status of the Student's enrollment.
[Exhibit B-40]
25. From September through December the Student was in a home based program in Egypt for 12 hours per week. The Student and Parent returned to Connecticut in December 2002, but the Student did not return to the program until February 3, 2003. [Testimony Mother, Exhibit B-38]
26. The time in Egypt didn't impact the Student's skills, according to her teacher. When the Student came back to her program, the teacher felt that the Student was more mature, eager to comply and did everything in an age appropriate manner. [Testimony Ms. Gardella]
27. At some point when the Parent and the Student were in Egypt together, either something was wrong with the cochlear implant device, or it was perceived that something malfunctioned, and the Student had a strong negative reaction to it. It appeared that the device was shocking the child, and scared the child. Subsequently, the Parent decided not to reintroduce the cochlear implant use for the Student. [Testimony Mother] The ASD evaluator noted that other students she has worked with who had cochlear implants have had experiences similar to the Student's experience. When those students went through the metal detector, there was a very loud and scary sound, and those students did not want to put the cochlear implant back on. [Testimony Ms. Avery]
28. The Student's primary method of communication since that time has been through sign language, as was noted by the Student's special education teacher in May 2003, when she reported the Student's progress. It was noted that "[The Student] has a profound hearing loss. In June 2001, [the Student] had a cochlear implant put in. She wore it for almost a year. [The Student] resisted wearing it at home. Her mother reports that [the Student] did not seem happy with it. [The Student] is no longer wearing the processor. *[The Student's] main form of communication is through signing.* [The Student] did not attend school from the end of April 2002 until February 2003. She was in Egypt with her mother." [Exhibit B-41, Emphasis added]
29. In June 2003, the teacher of the hearing impaired summarized the Student's progress. In that summary the teacher noted that the Student no longer utilized the cochlear implant as the Mother had reported that the Student was shocked by the speech processor and is now afraid to use it. [Exhibit B-43] The teacher indicated that the Student participates in small group activities with direct instruction in sign language and voice, noting that the Student is a little inconsistent with her ability to identify colors with sign language. It was noted that the Student is "progressing with identifying numbers 1-5, but does not yet have one to one correspondence. . . we have worked on identification of common objects. [The Student] required several exposures before being able to identify them independently. [The Student] uses nonstandard signs and is reluctant to

- make the change to ASL. [The Student] is able to sign the alphabet with assistance.” At the time of this assessment, the Student used only one or two signs at a time to express herself, and did not yet use short sentences to communicate her wants and needs. [Exhibit B-43]
30. The teacher of the hearing impaired concluded her annual review of the Student’s program, recommending that “[i]t is my professional opinion that the least restrictive environment for [the Student] would be in a total communication classroom for the deaf. A mainstream classroom with a sign language interpreter would not allow her opportunities for direct communication with peers in her language and communication mode. In addition, her opportunity for direct instruction in her language and communication mode would be limited to service hours provided by the teacher of the deaf.” [Testimony Ms. Preston, Exhibit B-43]
31. On June 2, 2003, the PPT convened to review the Student’s program and the reports of the Student’s special education teacher and teacher of the hearing impaired. Despite the teacher of the hearing impaired’s recommendation for an intensive program which would allow the Student opportunities for direct communication with peers in her language and communication program, the Board members of the PPT recommended enrollment in the Student’s home school kindergarten with 2.5 hours of special education services per week, 2 hours per week of the teacher of the hearing impaired and 1 hour of speech and language per week. At this PPT meeting, the Parent requested placement of the Student at the New York School for the Deaf, which request was rejected by the Board. [Exhibit B-44] After this PPT meeting, the Board’s teacher of the hearing impaired told the Parent that the Student should be in a school for the deaf. [Testimony Ms. Preston]
32. Also, after the PPT meeting, the special education teacher who had been working with the Student approached the director of special education to express her concern about the planned program for the Student. The teacher was not comfortable with the decision to place the Student in the mainstream kindergarten, as the Student was not accustomed to using a sign language interpreter. [Testimony Ms. Gardella] It is unclear why both the teacher of the hearing impaired and the special education teacher failed to share their concerns with the members of the PPT at the PPT meeting, but this is an indication that free discussion and collaboration of all PPT members’ opinions was not the norm in these PPT meetings.
33. The Parent disagreed with the placement at the kindergarten program, and the Student was maintained in the preschool program with the special education teacher. [Testimony Mother] The PPT met on October 2, 2003 to review the Student’s placement. In the interim, between the June and October 2003, the preschool program was a “program of continued intervention.” At this PPT meeting, the Parent again requested enrollment in the New York School for the

- Deaf [NYSD] and an independent evaluation. The Board members of the PPT recommended enrollment in the same preschool program that the Student was enrolled in the previous year, with 25.25 hours of services provided by the special education staff, 2 hours of services from the teacher of the hearing impaired and 1 hour of speech and language services. The Board agreed to conduct an independent evaluation. [Exhibit B-48]
34. The Board's teacher of the hearing impaired rejected the NYSD placement because from what she understood from her education law class at Southern Connecticut State University, sending someone out of state is not the least restrictive placement. [Testimony Ms. Preston] The Student's former special education teacher did not know why the placement of the Student at the NYSD was rejected at this PPT, although she attended the PPT. [Testimony Ms. Gardella, Exhibit B-48]
35. American School for the Deaf [ASD] conducted a psychoeducational evaluation of the Student in November 2003. The summary of the testing noted that the 5 year old, 5 month old Student had a bilateral severe to profound hearing loss, and that she has a cochlear implant but is not currently using it. The Student's level of nonverbal cognitive functioning was assessed using the performance scale of the WPPSI-III and was found to be in the superior range. The Student's processing speed index was in the average range, and her visual-motor skills indicated age appropriate skills on the VMI. The Student's receptive vocabulary skills were found to be age appropriate at the 53rd percentile rank, while her expressive vocabulary skills were at the 3 year, 5 month level, and at the 5th percentile. [Exhibit B-52]
36. The American School for the Deaf [ASD] evaluators recommended that the Student would benefit from placement in an educational environment "*which emphasizes development of expressive and receptive language skills through signed communication and English. This is a youngster who requires exposure to conceptually correct American Sign Language as well as English word order and syntax. True use of a Total Communication philosophy is highly recommended.*" The recommendations noted that "*For a period of time, placement with hearing impaired same age peers may be necessary to facilitate this language development. . . [and that] given [the Student's] innate intelligence and receptive language skills, her placement must provide appropriate academic challenges.* According to the evaluators, the student's placement "*should focus on the development of language, academic readiness, early literacy skills and social interactions.*" [Exhibit B-52]
37. The ASD evaluators also recommended reintroduction of the cochlear implant within the educational program, as research suggests that implanted children benefit from consistent auditory input. Regular MAPpings and aural habilitation were highly recommended. [Exhibit B-52] ASD works with students who have worries about using cochlear implants. They try to desensitize the students to

- their worries, increasing the volume and intensity over a slow and gradual time. [Testimony Ms. Avery] The Parent disagreed with the recommendation that the cochlear implant should be reintroduced. [Testimony Mother] When parents refuse to restart the cochlear implant, the ASD staff initially encourages it, but eventually the staff has to respect the parent's wishes. [Testimony Ms. Avery]
38. The ASD evaluator noted that the Student has a significant expressive delay. Linguistically, literacy skills are very difficult, a struggle for deaf children, the evaluator noted in her testimony. ASL is conceptual and expands. The Student must learn this movie-like language to become an abstract thinker. [Testimony Ms. Avery]
 39. The Parent received the report by ASD approximately two months after the evaluation. [Testimony Mother]
 40. On February 25, 2004, the PPT convened to review the ASD evaluation. The Student's current program was continued, while placement at the New York School for the Deaf was explored. [Exhibit B-56]
 41. The PPT was scheduled to reconvene on March 30 [Exhibit B-57] and April 6 [Exhibit B-61]. In response to the cancellation of these PPT meetings, the Parent wrote a letter to the Board requesting that the meeting be scheduled as soon as possible, waiving her five day notice rights. The Parent also requested that the current placement and the following year's placement be considered at the PPT meeting. [Exhibit B-62]
 42. The only goal mastered by the time of the annual review in April 2004, was the goal that the Student would indicate yes/no by signing appropriately. [Exhibit B-44]
 43. The PPT reconvened on April 16, 2004. At this annual review PPT, the Parent continued to request placement at the New York School for the Deaf. The Board offered placement at the American School for the Deaf in West Hartford, Connecticut, which the Parent objected to, due to the distance between Norwalk and West Harford. The Board also offered a program in a mainstream kindergarten class, at Fox Run elementary school, with 2 hours per week of services from the teacher of the hearing impaired and 1 hour per week of speech and language services. The one goal which was set forth in the Student's IEP was that the Student would improve her communication abilities. The objectives proposed included that (1) the Student will use 3 word combinations to state information using hand signs, (2) the Student will use 3 word combinations to request using the carrier phrase "I want . . ." using hand signs; and (3) [the Student] will imitate C-V, V-C, CVC syllables upon request. It was planned that the PPT would reconvene after the Parent had an opportunity to visit the American School for the Deaf. [Exhibit B-65]

44. The Board's most significant objection to the Parent's proposed placement of the Student at the New York School for the Deaf was the tuition cost at NYSD, which the Board noted at the PPT was \$60,000. [Exhibit B-65] The Board told the Parent that the school was too expensive and that if the Board spent money sending the Student to NYSD, there would not be enough money to pay for the teachers, resulting in loss of jobs. [Testimony Mother]
45. The Board's recommendation that the Student be placed at the American School for the Deaf was an assertion that the Student required such a placement in agreement with the recommendations in the ASD evaluation. [Exhibits B-65, B-52] The Board's recommendation that ASD was an appropriate program for the Student was an implicit recognition that the Student required such a program, including an opportunity to be with more than one peer who uses sign language. [Testimony Mother] It is completely unclear what the basis of the other recommendation of placement at Fox Run elementary school, as that program would not meet the needs of the Student, as were discussed in the ASD evaluation.
46. At the conclusion of the 2003-2004 school year, the Student's expressive skills were still behind. The teacher noted that the Student didn't know the correct signs. The Student's teacher couldn't really place the age level of the Student's expressive language at that time. [Testimony Ms. Gardella]
47. The distance for the Student to the New York School for the Deaf was 25.3 miles, and took the Parent 47 minutes to get there from her home during rush hour. [Testimony Mother, Exhibit P-11] The distance from the Student's home to the American School for the Deaf was 72.4 miles. It took the Parent 1 ½ hours to drive to ASD from her home. [Testimony Mother, Exhibit P-12] The Parent's objection to the program for ASD is that the time of travel and distance to the program is excessive for the six year old Student. [Testimony Mother] The Parent felt that the program at ASD and the NYSD were about the same, except for the traveling distance. [Testimony Mother] The ASD evaluator concurred as to the distance from Norwalk to West Hartford, indicating that it took her 1 ½ hours to travel the distance, and noted that that would be an awfully long day for a six year old. [Testimony Ms. Avery]
48. The PPT was scheduled to convene on June 9, 2004, but the Parent cancelled the PPT. [Exhibit B-66] The PPT was rescheduled for June 15, but the Board cancelled that PPT meeting when the Parent's attorney appeared at the PPT. [Exhibit B-71]
49. The Parent requested this due process hearing on July 8, by a request submitted by her attorney. [Exhibit HO-1]
50. On August 30, 2004, the PPT reconvened. This PPT meeting was contentious, as it was being held on the eve of the school year, and also within 10 days of this

hearing convening. The Board proposed a program in one of its elementary schools with 15 hours per week of the teacher of the hearing impaired, a full time sign language interpreter [31.25 hours weekly], and 1.5 hours of speech and language services. The Student's previous special education teacher noted that the Student needs a total communication program, and that the Student would need to learn to watch the sign language interpreter, not the teacher. The goals and objectives for the school year were revised and written to include: (1) the Student will develop speech reading skills; (2) the Student will utilize the sign language interpreter to maximize access to curriculum and communication in a variety of settings, (3) the Student will develop expressive and receptive sign language skills, (4) the Student will improve her communicative abilities as measured by the objectives including (a) the Student will use 3 word combinations to state information using hand signs, (b) the Student will use 3 word combinations to request using the carrier phrase "I want" using hand signs, and (c) the Student will imitate C-V, V-C, C-V-C syllables upon request. [Exhibit B-71] The program included mainstreaming for specials, and placement in a self contained classroom with one other hearing impaired Student, with instruction being provided by a teacher of the hearing impaired in the self-contained classroom. [Testimony Ms. Preston, Ms. Colcone]

51. The Parent agreed to this program merely as an interim program while the hearing was pending. [Testimony Mother]
52. As of the August 30, 2004, communication remained high on the list of the Student's educational needs, according to her former teacher. She noted that the Student's receptive and language should be expanded. [Testimony Ms. Gardella]
53. The classroom teacher who was assigned to the Student did not know sign language when the Student entered her kindergarten class. [Testimony Ms. Colcone, Mother] The Student was placed in a setting in which an interpreter was supposed to be signing everything that the classroom teacher said. This was different than the prior school year, when the Student was placed in the setting with the special education teacher who was fluent in signing. [Testimony Mother]
54. The teacher of the hearing impaired has never worked with a student who was not amplified, and profoundly deaf, as the Student is. The teacher of the hearing impaired opined that, since the Student is interacting appropriately with her peers, her current placement satisfies the need to facilitate her language development. The teacher of the hearing impaired also noted that the Student required an interpreter in the mainstream, to know what was going on, stressing that it was essential to have a full-time sign language interpreter. The more sign language the Student is exposed to, it would benefit her, according to the teacher of the hearing impaired. The teacher of the hearing impaired noted that if the Student was placed in a mainstream class with an interpreter, she'd fall behind. [Testimony Ms. Preston]

55. The teacher of the hearing impaired was surprised about the program planned at the August 30, 2004 PPT meeting at the eve of the school year, as the teacher of the hearing impaired was to set up a completely new program for the Student for the new school year that would commence on September 1. This was also the first time the teacher was going to teach a kindergarten curriculum. [Testimony Ms. Preston] The classroom teacher first became aware that the Student would be in her classroom the day before school started. The classroom teacher had never worked with a hearing impaired child before, and never worked with an interpreter before. She did not know any sign language at the beginning of the year. [Testimony Ms. Colcone]
56. Starting at the beginning of the 2004-2005 school year, the Student was in the self-contained classroom with one other hearing impaired, being taught by the teacher of the hearing impaired, with the sign language interpreter present in the classroom as an aide/interpreter. The Student began her day in the mainstream kindergarten classroom, and would spend three hours in the self-contained classroom. The teacher of the hearing impaired worked on pre-teaching, direct teaching in concepts and language, as well as in content areas of reading, math, writing and science. The teacher of the hearing impaired used the Reading Milestones program, which is a reading program for students with hearing impairments. [Testimony Ms. Preston, Ms. Colcone, Ms. Olden] The teacher of the hearing impaired is not fluent in ASL. [Testimony Ms. Preston]
57. By this time, the Mother felt as though the school staff was tricking her, and she was very suspicious. [Testimony Mother] The Parent indicated that the Student's current teacher of the hearing impaired was coached by the Board's attorney that even if the Student would be better off in a school for the deaf, the standard is "appropriate." [Testimony Mother]
58. The sign language interpreter scheduled a series of classes for a staff at the school entitled "Learn American Sign Language." [Exhibit B-76] This was merely an introductory class to give teachers some background information on deafness and sign language. It was a course to understand the deaf culture and what type of difficulties a deaf child would have. Only 5 classes were scheduled, and the last class was cancelled when only one teacher attended. [Testimony Ms. Olden, Exhibit B-76]
59. The Parent has observed the Student at school, and noticed that the sign language interpreter would be off talking to another student, and not attending to the communication needs of the Student. [Testimony Mother] If the Student is not able to use the interpreter, she will be losing huge pieces of information, the ASD evaluator noted. According to the ASD evaluator, the interpreter should be in front beside the classroom teacher so that the child's visual field is narrow. The interpreter should be there to be a communication facilitator, and interpreters should usually be just one on one, not interpreting for more than one child. [Testimony Ms. Avery]

60. The Student has been mainstreamed in specials, including music. Inclusion of the Student in a music class would have no benefit without amplification, unless the class is highly visual, according to the ASD evaluator. [Testimony Ms. Avery]
61. The Parent is concerned that the Student is not in the appropriate educational environment, as she should be with other hearing impaired peers, staff and teachers who know how to communicate with her. [Testimony Mother] Exposure to ASL is necessary now, as it is critical to the Student's abstract thinking ability. [Testimony Ms. Avery]
62. The ASD evaluator testified that the Student should be in a total communication program, and sign language and fluency of sign language is absolutely necessary in a total communication program. The term total communication is using everything and anything you need to to make the Student understand. It's ASL, signed English, spoken English, a conglomerate of communication. If the interpreter is not the one speaking, it would not be a total communication program. A regular classroom teacher doesn't know how to expressively meet the needs of a hearing impaired child, as they are not aware of linguistic support needed to understand English.
63. In a total communication classroom there must be a lot of visual reinforcement, repetition and language practice all of the time, according to the ASD evaluator. There is a slower pace, waiting until all eyes are on teacher. The only way to facilitate language development is to be around deaf children or teachers of the deaf who know how to teach the language. For a period of time, the ASD evaluator recommended that the Student be placed with hearing impaired same age peers for as long as needed to support her conceptual understanding. A school for the deaf would satisfy this need to be with more than one other same aged peer, and would be an appropriate placement. If the Student doesn't have strong language abilities and is not able to think in the abstract, she will not be able to access the public school curriculum with ease, and will fall behind because she won't understand the vocabulary used. It would be appropriate for the Student to be in a community where there is access to communication through signing throughout the day. For this Student, her education must be infused with vocabulary, and learn to use the ASL descriptors. [Testimony Ms. Avery]
64. The ASD evaluator explained that ASL is very difficult, and takes years to learn. It is a conceptual language that requires constant exposure to provide the incidental learning that other children receive from learning, and it is very difficult for deaf children to develop the abstract thought process, smooth problem solving and clear thinking that are needed for sign language. Even if a child has a superior IQ, if she is not appropriately exposed to and not taught ASL, then developmental milestones will move much more slowly than if she were in a stimulating and integrative language-rich environment. [Testimony Ms. Avery]

65. It is much better to have a teacher who signs if the child is not using speech, according to the Birth to Three service provider. A child who is profoundly deaf, as the Student is, can benefit from being around hearing impaired peers as this allows her people to sign with, and without that, it can affect behavior, emotional well being, every part of her. [Testimony Ms. Naylor]
66. While the classroom teacher is enthusiastic, and appears to bring good spirit to her classroom, she does not have an appropriate background and experiences to teach this hearing impaired Student in her classroom. Placement and the provision of education and services in her classroom is not appropriate. She never read the report from ASD. Her knowledge of the difference between ASL and English is minimal. Through no fault of her own, as she had another educational conflict, the classroom teacher attended only a portion of two classes of the one hour introduction to sign language courses taught by the sign language interpreter, which is the only formal sign language training she's received. She's never heard the phrase total communication before. She admitted that if the interpreter leaves the room, the Student might have trouble following what was happening in the classroom. [Testimony Ms. Colcone]
67. This is the first year that the sign language interpreter has been assigned to more than one student, as she now has interpreting responsibility for two students. Besides not being a one on one interpreter for the Student, the sign language interpreter also has other non-interpreting responsibilities at the school, as she is an interpreter/aide. [Testimony Ms. Olden] The Student does not have the services of a full-time sign language interpreter, which is expressly contrary to the Student's IEP. [Exhibit B-71] The sign language interpreter also does not solely facilitate communication, she makes determinations of how much guidance the Student needs as a kindergartener, and what is interpretable. The sign language interpreter independently makes a determination that she won't interpret one on one conversations for the Student. The sign language interpreter said that there is a code of ethics for interpreters, with guidelines that provide that she must ensure that the intent and content are conveyed. [Testimony Ms. Olden] The sign language interpreter does not appropriately convey the communication to the Student.
68. The sign language interpreter routinely determines not to interpret what is going on in the classroom, stating that "if it's visual enough and clear enough, I don't get involved." Other than the basic signs known by the classroom teacher, no other teachers sign to the Student. [Testimony Ms. Olden]
69. The Student's communication skills have not appropriately progressed. The Student attempts to vocalize now, but the speech is unintelligible. According to the Student's sign language interpreter, the Student's signing skills are still quite variable. At times the Student's signs are descriptive, with rich language. But the Student also does what the sign language interpreter called "mumbling" where she signs with her hands in her lap. While the sign language interpreter chalked

that response up to “typical kindergarten behavior” her background is limited as this is the first year the interpreter has interpreted for a Student younger than second grade and her only certification she holds is a college degree in interpreting, therefore the interpreter’s conclusion is given little weight.

[Testimony Ms. Olden] The Student has not strung more than one sentence together in ASL. The only time she has communicated in more than one sentence, it’s a combination of ASL, some gestures and nonstandard signs.

[Testimony Ms. Olden]

70. The sign language interpreter testified that the Student’s vocabulary is “huge” compared to the beginning of the year, in the manner in which she is using her signs, the interpreter didn’t quantify this alleged “huge” growth. [Testimony Ms. Olden] This “huge” communication growth is unsupported by any other evidence in this hearing, and therefore, the interpreter’s conclusion is given no weight.
71. The sign language interpreter is not a one to one interpreter for the Student, as she also interprets for another hearing impaired student in the school. In addition, the interpreter repeatedly testified that her school responsibilities are not solely to be an interpreter, as she was an “interpreter/aide”. Stating that her job description was in existence before she was employed by the Board schools, the interpreter said she’s bound by her duties as set forth in the description. She serves as an aide in the lunchroom, getting napkins and straws for the children, trying to keep them quiet, teaching them manners and keeping the noise level down. At lunchtime, she views herself as a lunch aide, who happens to be an interpreter. As an aide in the classroom, she helps out wherever it’s needed. For example if another child is having difficulty counting to 14, she’ll scoot down to their level and count together, or, if a child is having difficulty zipping up a jacket, she’ll do this. [Testimony Ms. Olden]
72. The interpreter does not appropriately view her position as a communication facilitator for the Student. She views her position as one to interpret, to be a tutor in academics, and to teach the Student independence. [Testimony Ms. Olden]
73. The interpreter disagreed with the code of ethics statement that the interpreter should be used solely for the purpose of language accessibility and interpretation of the teacher’s voice, repeating that her job is not interpreter but interpreter/aide, so that code of ethics is not based on her job description. The interpreter agreed with the statement from the interpreter’s code of ethics that the interpreter’s job is to faithfully transmit the content of the speaker, allowing the instructor’s intent to be communicated, but the interpreter fails to follow this tenet. She also says she has no option to have an opinion on the ethical provision for interpreters that teachers should refrain from asking an interpreter to perform other tasks, as she is an interpreter/aide. [Testimony Ms. Olden] All the while the interpreter/aide is handling other responsibilities of her job description, she is not appropriately attending to the communication needs of the Student, and she is not serving as a full-time interpreter, as it set forth in the Student’s IEP. This appears to show that

- the Board is more interested in saving money, and not funding a lunch room aide/classroom aide for other students, rather than faithfully following the services to be provided to a Student in accordance with her IEP. This also has the appearance that the Board is having the Student fit into an existing staffing situation that provides for an interpreter/aide, rather than providing what the Student requires, based on her unique needs and in accordance with services set forth in her IEP.
74. Moreover, when the interpreter is making decisions on whether or not to interpret for the child, she is also not appropriately serving as the Student's interpreter, and is failing to faithfully transmit the content of the speaker, allowing the instructor's intent to be communicated.
75. The sign language interpreter has also been involved in disciplining the child, when she doesn't believe she is finishing her work appropriately, which is contrary to the code of ethics for interpreters which provide that the interpreter should be impartial. Disciplining students is not being impartial. [Testimony Ms. Olden]
76. As this hearing was progressing, the Board convened a PPT in October 2004. The Parent did not attend. At this PPT, the Board finally recommended 10 to 12 one hour parent education/counseling sessions to assist the Parent in accessing the deaf community and the resources available for the hearing impaired children in the community. The Board also considered, once again, offering to change the program, changing to a co-teaching model. The Parent did not attend this PPT, and the Board did not implement any of the proposals. [Testimony Ms. Preston, Exhibit B-88]
77. The Student has always had strengths and superior cognitive functioning. At the beginning of the school year, the Student knew eight of her colors and her shapes. She was good at writing her name independently, knew most of her upper case and some of her lower case letters, could identify her numbers one through ten and was more advanced academically than most of the other students in her class. In these academic areas, the Student did progress in her work this school year. [Testimony Ms. Colcone]
78. Nevertheless, the Student's communication still has many gaps. There are signs she doesn't know, and she continues to work on question words. According to the teacher of the hearing impaired, she needs exposure to more language and to be able to communicate more ideas with detail. [Testimony Ms. Preston]
79. While the classroom teacher opined that the Student has shown much growth in signing during the school year, her opinion is not given substantial weight, as the classroom teacher's signing ability is basic. [Testimony Ms. Colcone]

80. The Board had retained ASD to provide consultation to the Board's program. ASD's consultative report dated October 7, 2004, based on an observation of the Board's program on September 24, faulted the Board in having a two separate classroom approach, and recommended a collaborative teaching model, where the classrooms would merge into one classroom, to have the teacher of the hearing impaired provide instructional support in the larger classroom, with pull-outs that include pre and post teaching related to the classroom content occurring in the larger classroom setting. In that consultative report, it was recommended that the small group/learning activities should be connected with and supportive of the content within the larger classroom. The consultative report further recommended that the "interpreter should be used *solely* for the purpose of language accessibility and interpretation of the teacher's voice." [Emphasis added] It was noted that the classroom teacher provides the instruction to the class, and that it is the interpreter's role to interpret only and not to offer any clues or facial expressions of recognition for the correct response. [Exhibit B-82a]
81. The ASD consultants conducted a follow-up review of the Board's program, but the report was not submitted as an exhibit by the Board by the conclusion of the hearing. The Board was provided an additional hearing date to secure the testimony of ASD in its case, prior to the conclusion of the case. The Board did not secure the voluntary appearance of the ASD consultants, nor did it subpoena the witness[es].

CONCLUSIONS OF LAW:

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14. The Board has not met its burden in this case.
3. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. No evidence presented indicates that the Board failed to comply with the procedural requirements of the Act, and the Parent has made no claim of procedural violations.
4. The second inquiry is a determination of whether the Individualized Educational Plan [IEP] is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.

5. The requirement of a free appropriate public education is satisfied by “providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Board of Education v. Rowley*, 458 U.S. at 201 Such instruction and services must be provided at public expense, must meet the State’s educational standards, must approximate the grade levels used in the State’s regular education, and must comport with the child’s IEP. *Board of Education v. Rowley*, 458 U.S. at 203
6. The IEP should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Hendrick Hudson v. Rowley* 458 U.S. at 204 When the child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade is one important factor in determining educational benefit. *Mrs. B. ex rel M.M. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2d Cir. 1997), citing *Board of Education v. Rowley*, *Id.* This standard, however, contemplates more than mere trivial advancement. *Id.*
7. The Student has made only trivial advancement in this case in the critical area of communication. Educational benefit contemplates more than the mere trivial advancement that this Student has made.
8. In developing an IEP for a child who is deaf or hard of hearing, it is necessary to consider the opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode. 34 C.F.R. Sec. 300.346(a)(2)(iv)
9. The U.S. Department of Education issued guidelines as to factors to consider when formulating an IEP and determining placement for a deaf child. School districts were directed to consider factors when developing an IEP for a deaf student, and to determine placement on the basis of the individual needs of the Student in the setting, including: (1) communication needs and the child’s and family’s preferred mode of communication; (2) linguistic needs; (3) severity of hearing loss and potential for residual hearing; (4) academic level; (5) social, emotional and cultural needs, including opportunities for peer interactions and communication. In the policy guidelines, it was noted that any setting which does not meet the communication and related needs of a child who is deaf, and therefore does not allow for the provision of free appropriate public education cannot be considered the least restrictive environment for the child. According to the guidelines, the Secretary recognized that the regular classroom is an appropriate placement for some children who are deaf, but for others it is not. Subsequently, this policy guideline was clarified that the notice was not intended to alter the Board’s obligation to educate a deaf student in a regular classroom *if* the student could receive a free appropriate public education in that setting. *OSEP Memorandum 94-15*, 20 IDELR 1181 (OSEP 1994)[Emphasis added]

10. The Board is dissatisfied with the Parent's decision to not reintroduce the cochlear implant. While it is appropriate, as ASD does, to encourage the Parent to attempt whatever amplification will assist the Student in acquiring speech and enhancing their communication, it is also appropriate to acquiesce to the Parent's wishes. As the Department of Education guidelines provide clearly, the Board must consider the family's preferred mode of communication. The Student's mode of communication is through signing.
11. The Board's program is not appropriate as it fails to implement the current IEP, and the current program is not appropriate. The Student's significant weakness noted in the ASD evaluation was in her expressive language. The Student required an educational environment that emphasizes development of expressive and receptive language skills through signed communication and English. The evaluators highly recommended the true use of a total communication philosophy. The Student's current program does not employ true use of a total communication philosophy as contemplated by the ASD evaluator, and as is necessary for the Student. In addition, the Student requires placement with hearing impaired same age peers to facilitate this language development. The Student needs more than one hearing impaired peer for her language development. The Board's program also lacks the appropriate use of a sign language interpreter, and does not provide the Student with a full-time interpreter, but a shared interpreter who also has other job responsibilities.
12. Determining what was the Student's program was an ever-changing concept for the Board. The Board initially offered ASD, a school for the deaf. The travel time to ASD exceeds one hour each way. In accordance with state regulations, total travel time shall not exceed one hour each way to and from a special education facility. The regulations further provide that all decisions relating to travel time shall take into account the nature and severity of the child's exceptionality and child's age, and written parental consent to longer travel time shall be obtained prior to implementing the transportation service, and shall be subject to the approval of the state board of education. Regs. Conn. Agencies Sec.10-76h-19 Therefore, the ASD placement, in the absence of parental consent to the longer travel time, is not appropriate.
13. At the same time the Board offered ASD, it also offered a program at Fox Run elementary school. This placement included services from a sign language interpreter, a teacher of the deaf for two hours per week, and a speech and language therapist for one hour per week. This is not a total communication classroom, and the Student's preschool special education teacher and the teacher of the hearing impaired both felt this program was not appropriate for the Student. The program at Fox Run was also not an appropriate program for the Student.

14. The Board also was contemplating a co-teaching model at the PPT meeting of October 19, 2004, but no recommendation for that model was made, and co-teaching was not implemented.¹
15. While it is important to review and adjust the Student's program to adjust to her changing needs, there was never a sense that the Board knew what would be an appropriate program for the Student. ASD offered a total communication program, but the travel time was excessive in terms of the regulatory provisions, and in terms of the young age of the child. No other program suggested by the Board offered a total communication program in accordance with the ASD evaluation recommendations. The Board has simply not offered an appropriate program for the Student.
16. In its brief, the Board asserts that the Parent's requested relief should be denied based on their claim that the Parent has been unreasonable in many respects, including that the Parent did not have the child participate in the program the summer in which her cochlear implant surgery was completed, in that the Parent removed the Student from the program when she went to Egypt for an extended stay, and in that the Parent perceived and charged that the Board's witnesses were not candid in their testimony and in their interactions with the Parent. While the Parent's actions were far from exemplary, the Parent's trepidation with the Board's actions were not entirely without reason. The Board did suggest that the Student required a school for the deaf, but suggested one that required excessive traveling for a six year old child. Then, when the Parent suggested the New York School for the Deaf, the Board has tried to characterize this placement, which is much closer than the American School for the Deaf, as further travel, and then also rejected NYSD on the basis of cost. Board staff appeared to be uncomfortable during the PPT meetings to share their views, stating later their disagreements to decisions already made at the meetings.
17. The Parent appeared obviously stressed with her daughter's education and her hearing impairment. In October 2004, the Board had finally offered some assistance through parent training/counseling for the Parent. [Exhibit B-88] This type of service, if utilized will help alleviate this stress for the Parent.
18. The Board's program does not address the communication and related needs of this child who is deaf, and therefore, does not allow for provision of a free appropriate public education in the least restrictive environment for the child. Therefore, it is concluded that the Board's program for the Student is inappropriate.

¹ In a rather contentious discussion, the Board also considered placement of the Student at the Blackham school program in Bridgeport at a PPT meeting. [Exhibit B-71] This program was not recommended for the Student, and would not have provided an appropriate program for the Student, in accordance with the recommendations of the ASD evaluators.

19. When it is determined that the Board's program is inappropriate, the parent is entitled to placement at the Board's expense if the parent's private school placement is appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). The Board has asserted that the Parent's proposed placement is too restrictive. Parents seeking an alternative placement are not subject to the same mainstreaming requirements as a school board. *M.S. ex rel S.S. v. Board of Education of the City of Yonkers*, 33 IDELR 183 (2nd Cir. 2000), citing *Warren G. v. Cumberland County School District*, 190 F. 3d 80, 84 (3d Cir. 1999) (The test for the parents' private placement is that it is appropriate, and not that it is perfect) Under the appropriate standard, a disabled student is not required to demonstrate that she cannot be educated in a public setting. *Ridgewood Board of Education v. N.E.*, 30 IDELR 41 (3d Cir. 1999), citing *Florence County School District Four v. Carter*, 501 U.S. 7 (1993) Under IDEA, the relevant question is not whether a student could in theory receive an appropriate education in a public setting but whether he will receive such an education. *Id.* Under the Board's IEP for the 2004-2005 school year, the Student has not received such an appropriate education.
20. The Parent's proposed program is placement at the New York School for the Deaf, or a similar program. In determining whether this more restrictive placement is appropriate, it is essential to look at the language and communication needs of this hearing impaired student, and determine the least restrictive environment *for this particular child*.
21. The testimony presented and the exhibits submitted support the Parent's assertion that this is an appropriate program for the Student, as it is a school for the deaf, which provides for a total communication program. NYSD is located in White Plains, New York, the closest school for the deaf to the Student's home in Norwalk. NYSD offers extensive services in the Student's communication and language mode, including total communication classrooms, extracurricular activities such as sports and girl scouts, instruction in all academic areas by teachers of the deaf, sign language classes, parent support groups, summer and after school activities and counseling. [Testimony Mother; Exhibits P-13, P-14]
22. The Board's program is not appropriate for this Student at this time. The Parent has articulated a proper placement for the Student at the New York School for the Deaf, or a similar program. As ASD is more than one hour traveling distance from Norwalk, it is not found that that placement is appropriate, in the absence of the Parent's consent to allow the Student to travel such a distance for the program.
23. When it is determined that a private placement desired by the parent is proper under IDEA, and that the IEP with placement in a program at the public school is inappropriate, it is "clear beyond cavil" that "appropriate" relief would include a direction that the school official develop and implement at public expense an IEP placing the child in the private school. *Burlington School Committee*, 471 U.S. at 369-370

24. It is troublesome that this hearing decision has concluded in May of the school year, as this hearing request was filed in July 2004. The attorneys for both parties initially requested an extension of the mailing date of the decision to attempt to settle the case. This request was granted, and the first hearing date was scheduled for September 9, at the request of the parties. The hearing proceeded for 14 days, six days for the presentation of the Parent's case. The Board's case commenced on November 5, and did not conclude until March 28. Both attorneys requested an opportunity to submit post-hearing briefs, and an extension of the mailing date to allow for the submission of the briefs. The Parent's attorney agreed to every request for extension of the mailing date of the decision, although the hearing officer had availability to conclude the hearing in a shorter time span.
25. The Board, after requesting and obtaining many extensions of the mailing date of the decision, now seeks a finding that it would be moot to place the Student in the Parent's requested placement, as the school year is concluding. This would be unfairly penalizing the Parent who is unable to unilaterally place the Student due to finances. Moreover, such a decision would provide an incentive to boards to prolong hearings as a matter of course, and then claim that, since the hearing lasted so long, the claim is now moot. This is not within the spirit of IDEA, and it is a repugnant assertion. The Student's remedy in this matter is not barred due to the prolonged time span of the hearing.
26. Appropriate relief is the relief designed to ensure that the Student is appropriately educated within the meaning of IDEA. *Parents of Student W. v. Puyallup School District no. 3*, 31 F. 3d 1489 (9th Cir. 1994)
- “Relief designed to cure deprivations under 20 U.S.C. § 1412(2)(B) must accord with congressional intent. See *Burlington*, 471 U.S. at 370-371, 105 S. Ct. at 2003. In *Burlington*, the Supreme Court held that tuition reimbursement constitutes appropriate relief under the EHA because it "merely requires the Town to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP." 471 U.S. at 370-371, 105 S. Ct. at 2003. Furthermore, tuition reimbursement addresses "[a] child's right to a free appropriate public education," and *satisfies the congressional intent to provide relief which remedies the deprivation of that right*. *Burlington*, 471 U.S. at 370, 105 S. Ct. at 2003, (emphasis in original). *Miener v. State of Missouri*, 800 F.2d 749 (8th Cir. 1986) extended this rationale to compensatory education, adding that the School District "should [not] escape liability for [educational] services simply because [the parent] was unable to provide them in the first instance. . . . We are confident that Congress did not intend the child's entitlement to a free education to turn upon her parent's ability to 'front' its costs." *Miener*, 800 F.2d at 753. The *Miener* court reasoned that compensatory education, like tuition reimbursement, cures the deprivation of a handicapped child's statutory rights, thus providing a remedy which Congress intended to make available. 800 F.2d at 753; accord *Burr v. Ambach*, 863 F.2d 1071, 1078 (2d Cir. 1988), vacated and remanded

on other grounds sub nom. *Sobol v. Burr*, ___ U.S. ___, 109 S. Ct. 3209 (1989), reaff'd, 888 F.2d 258 (2d Cir. 1989), cert. denied, ___ U.S. ___, 110 S. Ct. 1298 (1990) ("We do not believe that Congress intended to provide a right without a remedy"); *Jefferson County Bd. of Educ. v. Breen*, 853 F.2d 853, 857-58 (11th Cir. 1988) (both remedies necessary "to preserve a handicapped child's right to a free education.") *Miener* also noted that compensatory education satisfies Congress' intent to channel available resources to programs benefiting the handicapped. 800 F.2d at 753, citing *Smith v. Robinson*, 468 U.S. 992, 1020, 104 S. Ct. 3457, 3474, quoting 121 Cong.Rec. 19501 (1975)" *Lester H. v. Thomas Gillhood*, 916 F. 2d 865 (3rd Cir. 1990)

27. Therefore, the Student is entitled to an order of compensatory education² to be placed at the New York School for the Deaf, or a similar placement which does not violate the transportation provisions of the state regulations. The Student is not barred from a remedy, even though the issues presented in this case addressed the 2004-2005 school year. The Student should not be penalized for the attorneys' agreements for extensions of the mailing date of the decision which extended the decision date into May 2005, for a hearing filed in July 2004.

28. The Student is entitled to a six month placement at the New York School for the Deaf, including placement during the summer program 2005.

FINAL DECISION AND ORDER:

1. The Board's program is not appropriate.
2. The Parent's proposed placement at New York School for the Deaf, or a similar program, is appropriate.
3. The Student shall be placed at the New York School for the Deaf, or a similar program, for a period of six months.

² This is not a case of alleged procedural violations where the parent claims an award for compensatory education for gross and egregious procedural violations, *See., e.g., Student v. Plainfield Board of Education*, 103 LRP 57498, *Conn. SDE 03-101*, but rather a case where the compensatory education is appropriate when the parent is unable to front the cost of a placement, and the hearing lasts almost the entire school year. The Student should not be penalized for the length of the hearing, so this remedy is appropriate.