

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Granby Board of Education

Appearing on behalf of the Parents: Attorney David C. Shaw, Law Offices of David C. Shaw, LLC, 34 Jerome Avenue, Suite 210, Bloomfield, CT 06002-2463

Appearing on behalf of the Board of Education: Attorney Michael P. McKeon, Sullivan, Schoen, Campane & Connon, LLC, 646 Prospect Avenue, Hartford, CT 06105-4286

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

This hearing was requested on November 22, 2004. This hearing officer was assigned to the case on that date. A prehearing conference was held on December 1, 2004. Hearing dates were scheduled for January 5, 19, 21 and 25. The Parents' attorney requested a 45-day extension of the decision deadline, which was granted. The decision deadline was extended from January 6 to February 20, 2005. The parties were directed to file witness lists and exhibits by December 29, which they did. The Parents filed Exhibits P-1 through P-114. The Board filed Exhibits B-1 through B-88.

The hearing convened on January 5, 2005. The parties requested time to discuss a possible settlement. After one hour, they reported that the case would not settle. The first matter heard was objections to exhibits. The Parents objected to Exhibit B-84. The Board pointed out that it was the same document as Parents' Exhibit P-107. The objection was overruled. No other objections were raised to any exhibits, therefore, all were received into evidence as full exhibits. The November 22 request for due process was marked as Hearing Officer Exhibit (HO) 1. The parties presented opening statements. The Parents then presented testimony from the Mother. There was a discussion of the need for more hearing dates. The Parties agreed to postpone the January 19 hearing date and requested two additional days. January 27 and February 1 were added and the decision deadline was extended to February 25, 2005.

On January 14, the Parents' attorney filed Parent Exhibit P-115. On January 21 the Exhibit was entered into evidence without objection. The Parents presented testimony from Michelle Schneider, an educational consultant. On January 25, Kristen Viesselman, Clinical Director of Lindamood-Bell in Stamford, testified. On January 27, the Parents presented the Father's and the Student's testimony and rested their case. The Board began its case in the afternoon of January 27 with testimony from Thomas F. DiCorleto, Director of Special Services. The Board continued its case on February 1 with testimony from Mr. DiCorleto and John

Andros, Special Education Teacher. A date was added on February 17 for the Board to complete its case with testimony from Christopher Saunders, Reading Teacher and Reading Consultant. The decision deadline was extended to March 14, 2005. The Board rested its case without calling Virginia Cizman, the Student's summer 2004 tutor, or Jennifer Ranney, the Student's current tutor. The Parents requested a date to present possible rebuttal testimony. March 1 was agreed on with the decision deadline extended to March 25, 2005. At the close of the hearing on February 17, the parties requested 30 days to file simultaneous briefs and to file reply briefs, which was granted. The Parents' attorney was given one week to decide whether they would present rebuttal testimony. The Parents' attorney filed a notice that he wished to present Dr. Joan Nicoll-Senft on March 1. This testimony was heard on March 1 and both parties rested.

Briefs were due on March 31, reply briefs on April 11 and the decision deadline was extended to May 6. On March 25 the Board's attorney requested a five-day extension of time to file briefs, which was granted with consent of the Parents' attorney. The schedule was amended to briefs by April 5, reply briefs by April 18 and the decision deadline extended to May 11. The Parents' attorney filed a timely brief. On April 6 the Hearing Officer wrote to the attorneys to advise them that she had not received a brief from the Board's attorney. The Parents' attorney objected to the Board's attorney filing a late brief. On April 7 the Board's attorney wrote the Hearing Officer and explained that he had been out of the office since April 5 and neglected to have his secretary copy and mail his completed brief. He filed the brief by hand-delivery on April 7. On April 13 the Board's attorney filed a request for a one-week extension of time and, on behalf of the Parents' attorney, a nine-day extension to file reply briefs. The request was granted and the schedule was amended to April 25 for the Board's reply brief, April 27 for the Parents' reply brief and the decision deadline was extended to May 20. Both parties filed timely reply briefs. On May 18 the Hearing Officer reset the decision deadline to May 23, which reflected the first business day after the full 24 days following the close of the record on April 27. In his reply brief, the Parents' attorney reiterated his objection to the Board's late filing of its main brief. The objection is overruled. The late filing was due to inadvertence and there was no delay or harm to the Parents' case.

The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record.

ISSUES

1. Did the Granby Board of Education offer the Student a free appropriate public education ("FAPE") in the least restrictive environment for the 2004-2005 school year?
2. If not, is the Board required to provide the Student the requested 240 to 360 hours of instruction in Stamford at the Lindamood-Bell reading program including transportation?
3. Is the Board responsible for the costs of the independent evaluation of the Student by Ms. Schneider?

4. Should an order be issued that a mutually acceptable independent consultant be appointed to assist the Planning and Placement Team (PPT) in developing and implementing an appropriate IEP?

SUMMARY

The Student is a 15 year-old ninth grade student at the public high school. He has been in the Granby school system since second grade. The parties agree that he is entitled to special education under the category of specific learning disability. The Student has had longstanding difficulties with reading. The parties disagree widely as to the extent of the problem and the best method to address it. The Parents believe that they have been patient in allowing Granby to remediate the reading problem, but now the Student is in high school and, according to the Mother, he can't read. The Board contends that the Student has made progress, but that given his low average cognitive abilities, he cannot be expected to read at grade level. In January 2004 the Parents requested mediation, which the Board agreed to. An agreement was made in February 2004 whereby the Student attended the Lindamood-Bell reading program in Stamford for 12 weeks from March 9 to June 8, with one-to-one reading instruction provided four hours per day, five days per week, for a total of 240 hours. The Board paid the costs of the program (\$16,560), but not the transportation. The Parents transported him, which required one of them to miss a day of work, pick the Student up at 11:30 a.m. at school, drive the Student from Granby to Stamford, wait for him to finish class at 5:30 p.m. and drive him home to Granby. During this period of time the Student missed part of each school day, including his English and reading classes at the middle school.

At the conclusion of the program, Lindamood-Bell recommended an additional 240 to 360 hours of instruction. The Parents requested a summer program there, but the PPT recommended a summer tutoring program with a Granby staff member, Virginia Cizman, who was trained in the Lindamood-Bell methodology and who had been the Student's second grade teacher. After 48 hours of tutoring the Student from June 30 through August 27, 2004, Ms. Cizman recommended that he continue specialized reading tutoring services for at least two hours, and preferably four hours, per day. The Board has admittedly provided only two hours per week of tutoring services, but argues that the PPT's recommendation of four hours per week was adequate and that the Student did not avail himself of the other time because he chose extracurricular activities, specifically the wrestling team. The Parents argue that the instruction should have been provided during the school day, that the reading class offered the Student is inappropriate and that the Student should be in a mainstream English class with appropriate supports and services.

The Findings of Fact incorporate various portions of the Parties Proposed Findings of Fact, which were not disputed.

FINDINGS OF FACT

1. The Student has a birth date of August 11, 1989 and is currently enrolled in the ninth grade at Granby Memorial High School. Exhibits B-3; B-87.

2. The Student attended the Plainville Public Schools for kindergarten and first grade. Testimony of Mother. Although both the Student's mother and his first-grade teacher in Plainville believed that the Student was lagging behind his peers, there was no referral to special education. Id.

3. The Student transferred to the Granby Public Schools in second grade, and the Granby staff "immediately realized there w[ere] some issues that C[.] was having, and . . . had a PPT meeting, and . . . made recommendations for testing." Id. See also Exhibit B-3. At its October 2, 1997 meeting, the Student's PPT recommended a multidisciplinary evaluation – or "TEAM Review" -- which consisted of background and referral information, a parent perspective sheet, a pre-assessment consultation, a psychological evaluation, an educational evaluation, a speech and language evaluation and an occupational therapy evaluation. Exhibits B-3; B-4; and B-6. These evaluations were conducted in October and early November of 1997. Exhibit B-6.

4. The Wechsler Intelligence Scale for Children – Third Edition ["WISC-III"] was administered to the Student in October 1997 as part of the TEAM Review. Id. at 8-11. The Student's IQ scores were as follows: Verbal – 88; Performance – 84; Full Scale – 85. Id. at 9. These scores indicated that the Student's overall cognitive functioning fell within the "Low Average" range. Id., p. 12. The psychological evaluation further determined that the Student's "early school years were complicated by personal and family incidents which impacted with his attendance and school functioning," and that as a result of these complications, the Student's "fund of background information and vocabulary development may have been influenced by a lack of cultural and experiential opportunities and exposure to various concepts." Id. at 12.

5. As part of the TEAM multidisciplinary evaluation, the Student was provided with an educational evaluation that utilized, in part, the Woodcock-Johnson Educational Battery – Revised ["WJ"] and the Wechsler Individual Achievement Test ["WIAT"]. The WJ found that the Student had a grade equivalency of 1.1 in reading, while his results on the reading component of the WIAT placed him at a 1.0 grade equivalency. Id. at 15. At those levels, it is anticipated that a student cannot read at all, and that generally such student has, at best, only pre-reading skills. Testimony of DiCorleto. The Student's scores on the WJ and the WIAT placed him, respectively, in the 1st and the 2nd percentiles, "which means almost nobody else at that age level has that lack of reading skills." Id. and Exhibit B-6 at 15.

6. The PPT reviewed the TEAM evaluations at its December 2, 1997 meeting, at which time it also identified the Student as having a specific learning disability in the areas of reading, written language and, to a lesser extent, mathematics. Exhibits P-10; B-11. There were multiple indications of processing difficulties, which were most likely the reason he was a virtual non-reader when he entered second grade. Testimony of DiCorleto.

7. The Student's Mother testified that the Student "was still at a first grade level at the end of second grade." Mother's Testimony. At the time the Student was evaluated in October and November 1997, he was already over a year below his grade and age levels. Exhibits P-6 and B-6 at 15-18. The Student was identified on December 2, 1997, only six months before the end of the second-grade school year. Exhibits P-10 and B-11.

8. The Board generally administers norm-referenced achievement testing every year as well as reviews work samples and teacher evaluations in order to determine the child's progress. DiCorleto Testimony. The achievement testing that was administered by the Board in May 1998 indicated that in the six months between November 1997 and May 1998, the Student's reading composite score in the WJ had improved from a grade equivalency of 1.1 years to 1.6 years, an increase of five months, and his age equivalency had grown from 6.4 years to 7.0 years, a six-month increase. Exhibits P-6 and B-6 at 15; P-18 at 2 and B-17 at 16. Similarly, during the approximately six months between late-October 1997 and May 8, 1998, the Student's grade equivalency in spelling increased from 1.5 years to 2.0 years, a five-month improvement, and his age equivalency had grown from 7.0 years to 7.6 years, an increase of six months. Exhibits P-6 and B-6 at 16; P-18 at 3 and B-17 at 17. Also during that same six-month interval, the Student's math composite scores had improved from a grade equivalency of 1.9 years to 2.9 years, an increase of one year, and his age equivalency increased from 7.5 years to 8.0 years, an increase of five months. Exhibits P-6 and B-6 at 18; P-18 at 4 and B-17 at 18. Finally, the Student's grade equivalency in numerical operations more than doubled over that same period, from 1.2 years to 2.5 years, with a corresponding increase in age equivalency from 6.9 years to 8.0 years. Id.

9. The WIAT demonstrated comparable growth between November 4, 1997 and May 8, 1998. In Broad Reading the Student had a six-month increase in grade equivalency from 1.0 to 1.6 years with a four-month improvement in age equivalency, from 6.6 years to 7.0 years. Exhibits P-18 at 7 and B-17 at 21. In Broad Math, the Student had a seven-month growth in grade equivalency, from 2.2 to 2.9 years, and a one-year increase in age equivalency, from 7.0 to 8.0 years. Id. Also, in Broad Written Language, the Student demonstrated a seven-month improvement in grade equivalency, from 1.3 to 2.0 years, and a one-year increase in age equivalency, from 6.6 to 7.6 years. Id. In Broad Math, the Student moved from a functional level of "below average" to "average," and in Broad Written Language he improved from "well below average" to "below average." Id.

10. By the Student's April 15, 1999 PPT meeting, near the end of the Student's third-grade year, he had demonstrated what the PPT termed "great gains . . . in all areas – math, reading, and writing." Exhibit P-33. Although the Student had only been in special education since December 1997 he had progressed two years in reading, from pre-first grade to the end of the second-grade, which was "wonderful progress." DiCorleto Testimony. Specifically, the March 1999 WIAT achievement testing showed that his standard score in reading had increased from 74 to 86, rising from the fourth percentile to the nineteenth. Exhibits P-18 at 2; P-33 at 5. The Student's standard score in spelling increased from 82 to 87, improving from the twelfth to nineteenth percentiles. Id. at 3 and 5. Finally, his standard score in math reasoning increased from 96 to 105, a leap from the 39th percentile to the 63rd percentile, and his standard score in

numerical operations improved from 87 to 103, an increase from the nineteenth percentile to the 58th percentile. Id. at 4 and 5.

11. The Student's reading goal for the 1999-2000 school year, during which he was in fourth grade, was to increase his reading skills from the end of the second-year level to the mid-fourth grade level. Exhibit P-33 at 6. By May 2000, the Student's instructional reading level was at the fourth-grade level, and he was able to read a mid-fourth grade passage with 96% accurate decoding and 90% comprehension. Exhibit B-28 at 3. During the fourth grade, the Student had made "incredible gains" in his ability to address elements of a writing prompt with clear focus and adequate elaboration at or above the Connecticut Mastery Test goal. Id. at 2, 3. His written expression standard score had improved from 99 to 101, with a corresponding increase from the 47th to 53rd percentile. Exhibits P-33 at 5; B-28 at 5. By the end of the fourth grade, the Student's scores in numerical operations had increased from the 58th to the 66th percentile., and he was "achieving above his measured ability and at grade level . . . and no longer require[d] a goal in . . . math." Exhibit B-28 at 7.

12. In October and November 2000, the Board conducted a triennial reevaluation of the Student. Exhibit B-31. On the WISC-III, the Student's overall level of cognitive functioning was found to be in the low-average range. Id. at 4. More specifically, he had the following IQ scores: Verbal – 85; Performance – 84; Full Scale – 84. Id. at 3. Furthermore, on the WIAT, the Student performed within his ability range in the areas of math, reading and writing. Id. at 8. In fact, he was functioning at or above his ability level in the areas of reading and writing. Id. at 9. His reading tests indicated that the Student read at the second grade instructional level. Id. at 10-12. Even at that level his reading speed was below average. Id. at 12. The Student was in the fifth grade at that time.

13. In summarizing the results of the Student's October-November 2000 triennial evaluations, the Student's multidisciplinary evaluation team determined:

Since [the Student's] academic achievement scores appear to be commensurate and at times higher than would be anticipated by his ability level he no longer appears to be experiencing academic difficulties due to a learning disability.

Id. at 17.

14. At its November 30, 2000 meeting, the PPT reviewed his recent triennial evaluations report and determined that as the result of his "current functioning commensurate with his ability, it is recommended that [the Student] be dismissed from special services programming as he no longer qualifies." Exhibit B-33 at 2.

15. On November 30, 2000 the Student was exited from special education. Exhibit B-34. The Team recommended that the Student continue to receive informal support services and reading services through the remainder of fifth grade and into sixth grade. Exhibit B-33. From December 2000 through March 12, 2002, when the Student's PPT recommended that he be placed back in special education, he received reading support and many modifications from his

teachers. In grade six, the Student transitioned to the middle school. The Team recommended a formal placement in the resource room on March 12, 2002. Exhibit B-36. The Team drafted goals and objectives in the areas of reading, written language, mathematics and school behaviors. Id. at 6-9.

16. The Student's current levels of performance in reading, written language and mathematics were based on the Conn. Mastery Testing in 2001. The Team also referenced the 2000 scores in the triennial evaluation. The IEP provided four hours in the resource room, six hours with the reading consultant/T.A. and 0.25 hour with the school psychologist. Id. at 11.

17. On May 2, 2002 the PPT held an annual review meeting for the Student's sixth grade and developed an IEP for his seventh-grade year. Exhibit B-40. The current IEP goals were continued for the 2002-03 school year. Id. Extended year services were provided with tutoring in the summer. Exhibit B-42.

18. On January 29, 2003, the PPT met to modify the IEP. The team increased the Student's weekly resource room time from four hours to six hours. Exhibit B-44. The Student continued receiving six hours each week in reading instruction. The "severity of his reading disability" was noted. The goals and objective were not changed. Id.

19. On March 25, 2003 the PPT met for an annual review and transition planning. Recent scores revised WIAT-II were also reviewed. The Student scored in the average range for the mathematics composite, in the low range in the written language composite and the low-average range for oral language. On the spelling subtest he scored in the intellectually deficient range. Exhibit B-48 at 1-2. On the reading subtests he scored 70 on word reading (2d percentile); 94 for reading comprehension (34th percentile); pseudo word decode/encode 93 (32d percentile); and 84 on reading composite (14th percentile). He was in the low range on word reading, the average range on reading comprehension and pseudo word tests and in the low average range on the reading composite. Id. at 3. Nonetheless, during the Student's 2002-2003 seventh-grade school year he made satisfactory progress on all of his goals and objectives. Exhibits B-40 at 6-9; and B-51. A reading goal was added for eighth grade: "#4 C[.] will achieve one year's growth in the area of reading." Exhibit B-47 at 9.

20. The Board administered a triennial evaluation in November 2003. Exhibit B-52. The November 2003 triennial reevaluation utilized the newly normed and revised WISC-IV. Id. at 3; DiCorleto Testimony. The WISC-IV yielded results that ranged from borderline to average, with a Full Scale IQ of 75, which was in the borderline range. On the Perceptual Reasoning Index, the Student scored in the average range. His reasoning abilities are a relative strength for him. His Working Memory Index scores placed him in the extremely low range. His Processing Speed Index scores were in the borderline range. Id. According to the test publisher, one would normally expect student scores to fall approximately ten points on the new instrument. DiCorleto Testimony. Consequently, a Full Scale IQ of 75 on the WISC-IV during the first year it is being used would be comparable to an 85 on the WISC-III. Id. These factors were not mentioned in the triennial report or explained to the Parents prior to the hearing.

21. Based upon his scores on the WISC-IV, it was determined that the Student “would be expected to encounter extreme difficulty finishing tasks on time and on taking timed tests.” Exhibit B-52 at 4-5. Additionally, he “would be expected to struggle with the demands placed on him in the language-related curriculum.” Id. This is because in middle school there is a substantial amount of complex vocabulary specific terminology, and sequential directions that would be difficult for him to follow. DiCorleto Testimony. In short, “he would be expected to have difficulty meeting the demands of the regular education curriculum,” because his ability to reason and understand would be more limited than the vast majority of his classmates. Id.

22. The Student’s overall cognitive profile was deemed to have “educational implications for C[’s] academic success.” Exhibit B-52 at 5. The Student’s working memory index on the November 2003 psychological evaluation was 62, which is about as low as an individual can score. DiCorleto Testimony. Working memory deficits can manifest themselves in the context of a teacher using terminology and defining terms, which the student will quickly forget unless it is presented in a very slow, sequential manner and reinforced visually. Id. In other words, without significant assistance in a regular curriculum with regular expectations, the Student would experience a lot of difficulty. Id. Nonetheless, the results of the WISC-IV were “consistent with C[’s] achievement in reading and writing activities.” Exhibit B-52 at 4.

23. During the 2003-2004 school year, while the Student was in eighth grade, he continued to receive Resource Room services and also continued to participate in an intervention math class, which presented the same concepts as would be found within the regular eighth-grade mathematics curriculum. Id. at 10. He was receptive to working with the Resource teacher in the area of written language, and was receiving support through the use of the Wilson Reading program for 1.5 hours each week in addition to the other five hours of reading instruction contained in his IEP. Id. See also Exhibit B-47 at 11. The Wilson program emphasized phonemic awareness and utilized a multi-modality approach to recognizing sound/symbol relationships. Exhibit B-52 at 11.

24. Achievement testing that was administered by the Board in January 2004 showed an increase in the Student’s spelling standard score on the WIAT-II from 69 in 2003 to 71, and an improvement from 82 to 96 in written expression. Exhibit B-70 at 2. Similarly, between 2003 and 2004 the Student improved in numerical operations from a standard score of 93 to 102. Id. at 4. A Reading Evaluation was conducted using the Slosson Oral Reading Test, the Woodcock Diagnostic Reading Battery and the Qualitative Reading Inventory-3 (QRI-3). The Student received a total reading score of 89 (23rd percentile). On the QRI-3 the Student was found capable of reading 7th/8th grade materials at an independent level. Exhibit B-54. The report concluded that the Student "is making satisfactory progress toward his goals."

25. At the Student’s January 21, 2004 PPT meeting, his Parents requested that the Board pay for instructional costs and travel related to 240 hours of instruction over twelve weeks at Lindamood-Bell in Stamford. Exhibit B-56 at 2. They presented test results on the Student from Lindamood-Bell from April 14, 2003. Exhibit B-55. Rebecca Dantas, C[.]’s resource room teacher wrote a note to Mr. DiCorleto stating: "I do feel he would benefit from a solid 20-30 min block 3x week instruction. At the present time he is getting 10-15 min. squeezed out of his Resource Room." Id. at 1. The Lindamood-Bell results differ from those obtained by the Board's

reading consultant in January 2004. The tests administered were different, but the grade level scores were substantially lower on the Lindamood-Bell results. The Gray Oral Reading Test reported a 1.9 grade level. Compare Exhibits B-54 and B-55. During the meeting, the Team discussed the fact that the Student's cognitive index scores ranged from borderline to average and added that his working memory index is extremely low, which adversely affects his reading. Id. In fact, the Team noted that the Student's school performance was actually "quite good considering the impact of the cognitive deficits." Id. The Team declined the Parents' request for payment of the Lindamood-Bell program. Id.

26. On January 22, 2004, Mr. DiCorleto wrote to the Student's mother, reiterating the discussion at the prior day's PPT meeting. Exhibit B-57. Mr. DiCorleto noted that the Student's "academic progress has to be compared to his academic ability." Id. Mr. DiCorleto additionally advised that the Student's "working memory difficulties specifically impede his reading performance," but that "[d]espite these difficulties he ha[d] shown progress in the reading area." Id. Mr. DiCorleto urged the Student's mother to meet with the Student's special education and reading teachers to review the skills he was being taught and how his growth was being gauged. Id. Mr. DiCorleto then offered to meet with her and review her concerns were she still to believe after meeting with the Student's teachers that he had not made progress. Id. On the same date, the Parents requested mediation of their request for the Lindamood-Bell program. Exhibit P-75.

27. On February 25, 2004, the Student's mother provided the Board with a copy of Lindamood-Bell's "Treatment Recommendations" for the Student, which specified four hours per day of intensive "sensory-cognitive training" for a minimum of 200-240 hours. Additional test results from a pre-test on February 19, 2004 were included. Some scores were higher and some were lower than the April 2003 testing. Exhibit B-58.

28. Following mediation on February 26, 2004, the Board and the Parents came to an agreement under which the Board agreed to pay for Lindamood-Bell instruction from March through early June 2004. Exhibit P-76; DiCorleto Testimony; Exhibits B-59. The Lindamood-Bell program sent periodic progress reports to the Board. Exhibits B-60 through B-67. The Student's program focused on decoding and encoding. He worked with two of their instructional programs - Seeing Stars, which focuses on decoding, and Visualizing and Verbalizing, which focuses on improving oral and written language comprehension, critical thinking, problem solving, and following directions. Viesselman Testimony. During the twelve weeks the Student attended Lindamood-Bell in Spring 2004, he was only in school for 3.5 – 4.0 hours a day. Father's Testimony. The Board did not provide transportation. The Student's father would pick him up from the middle school at 11:30 in the morning and they would leave Lindamood-Bell to return home at 5:30. Father's Testimony. It would take approximately 1.5 hours to drive from Granby to Stamford, and "much longer to come back." Id. Consequently, the Student would leave home for school at 7:00 in the morning and not return home from Lindamood-Bell until around 7:00 or 7:30 at night. Id.; and Student Testimony. This created a financial burden for the Parents since one of them had to miss work in order to transport the Student. Testimony of Mother and Father. The Student was very interested in and receptive to the Lindamood-Bell Program. Id. The Father noted that at some time after starting the program, C. was excited that he was able to read signs on the highway, something he couldn't do before.

29. At the Student's June 8, 2004 PPT meeting, the Team developed an IEP with six goals, reading, math, written language skills, study/organizational skills, social skills and a transitional goal towards pursuing post-secondary interests. The reading goal is as follows:

#1 To improve reading skills as evidenced by CAPT-like activities in grade nine classes, achieving a grade of C or better.

Obj. #1 C[.] will improve sight vocabulary as evidenced by an increase in (expansion of) word knowledge.

Obj#2. C[.] will improve reading comprehension (literal, inferential, and critical) in fiction and non-fiction.

Obj. #3. C[.] will identify and use test-taking strategies to improve test scores in content area classes.

Exhibit B-69 at 6. For this goal, he was to receive four hours per week with the reading teacher/T.A. in the Resource Room. Id. at 15. The Parents requested an additional twelve weeks of Lindamood-Bell instruction, which the Team declined. Id. at 2-3. Ms. Viesselman, Clinical Director of Lindamood-Bell in Stamford attended the PPT meeting and reported on the Student's gains in the program as shown in the testing results. His scores on the Gray Oral Reading Test has increased from 3.4 in February 2004 to 8.5 grade level on June 3, 2004. Exhibit B-67. The Team instead recommended a minimum of forty hours of tutoring in reading and math over the summer by Virginia Cizman, who had taught the Student when he was in second grade, and who also attended the PPT meeting. Id. In fact, during Summer 2004, Ms. Cizman provided the Student with 48 hours of tutoring. Exhibit B-73 at 5; DiCorleto Testimony. The PPT also recommended that the Student receive four hours per week in the Resource Room, an additional four hours per week of small-group reading instruction, and sixteen hours per week of paraprofessional support. The PPT also recommended reconvening around October 1, 2004 to monitor the Student's program. Exhibit B-69 at 1, 15.

30. The Student's current levels of performance were discussed. In May 2004 the Student achieved a score of 89 (23rd percentile) on the total reading test portion of the Woodcock Diagnostic Reading test. Exhibit B-69 at 5. Ms. Viesselman reported consistent gains by the Student in all reading areas. Id. at 2. On June 2, 2004, the Student scored a 76 (5th percentile) on the Test of Written Spelling-3. Exhibit B-70 at 3. The Student's schedule for ninth grade provided that all of his classes were in the regular education environment. Exhibit B-72.

31. Ms. Cizman is "an expert and master teacher in the teaching of reading and the basic skills of reading, especially to students who have reading disabilities." DiCorleto Testimony. She has extreme expertise in teaching reading and is familiar with the requirements of the high school. Id. In fact, she had previously taught Mr. DiCorleto's daughter in reading. Id. Ms. Cizman's tutoring was helpful for the Student. Father's and Student's Testimony.

32. Prior to commencing her tutoring, Ms. Cizman consulted with Christopher Saunders, who would be the Student's ninth-grade reading teacher during the 2004-2005 school year, regarding the summer tutorial program. Saunders Testimony. After Ms. Cizman commenced tutoring the Student, she continued to consult with Mr. Saunders. Id.

33. Ms. Cizman, who has training with the Lindamood-Bell program, continued the Student's instruction in spelling with the "Seeing Stars" words #301-400, where he left off in that program. The Student was working on learning 10 words at a time. In addition she worked with the Student on decoding multisyllabic vocabulary words from the World Civilization and Science textbooks he would be using in ninth grade. They read together high interest newspaper articles and his summer reading book, which was too difficult for him. Ms. Cizman took the Student to the library and with the librarian's help, they chose six books on his reading level. Ms. Cizman also obtained material from Mr. Saunders on the "Making Inferences" Level D. The Student read short selections and was scored on which statements were literal and which were inferences. She also worked with him on math skills in each session by giving him a post-test on each chapter of his eighth grade math book, looking for weak skills to work on. Most of his scores were in the 60's. Exhibits B-73; P-94. In mid-July through August 30, Ms. Cizman also worked with the Student on written expression. Id.

34. Mr. Saunders agreed with Ms. Cizman's decision to use materials from the ninth-grade science and social studies curriculum that the Student would be studying during the 2004-2005 school as a means of introducing him to some of the concepts and vocabulary he would be dealing with. Saunders Testimony.

35. At the conclusion of her tutorial during Summer 2004, Ms. Cizman made several detailed recommendations for the special education/resource teacher, reading teacher/specialist and math teacher. She concluded with the following: "Consideration may need to be given for some kind of **creative scheduling** which would allow C[.] to take a smaller academic load which would give him more time to receive reading/writing tutoring within the school setting." Exhibit B-73 at 7. She ended with the comment: "He can't read to learn if he still needs to learn to read." A handwritten note was added: "I was getting emotional about this, but it's true. C[.] is very teachable, dyslexic but teachable. If he was my kid, I'd send him somewhere to teach him what he should have been taught. We need to do some creative scheduling and direct skills teaching." Id. Ms. Cizman wrote in a separate report entitled "Summer Tutoring: Comments/Observations/Recommendations," that the Student read at a first grade fluency rate. His written expression skills were compared to writing in a foreign language.

C[.] is so busy decoding, (since his visual word memory is limited) that he can not simultaneously attend to punctuation, capitals, and semantics and his message. His working memory, as noted in his gr 8 team evaluation, is his greatest deficit area. This has a significant impact when he is writing, which requires the processing of numerous tasks simultaneously. Reading has been very difficult, but writing requires a degree of spelling proficiency that he does not have yet.

Id. at 9. She recommended continuation of "specialized reading tutoring services, specifically oral reading fluency, spelling, writing and continued decoding a minimum of 2 hours/day, preferably 3 to 4 hrs. (perhaps in addition to or in place of gr 9 English and Reading classes)." Id.

36. The Student's PPT met on September 29, 2004 to review or revise the IEP. The

attendees were the Student, his Parents, Joan Barnoski, Special Education Coordinator, Mr. Andros, Special Education teacher and the Student's Case Manager, Caryn Neff, Regular Education teacher, Aimee Martin, School Psychologist, Mr. Saunders, Ms. Cizman and Kathy Sutton, Consulting Teacher. No changes were made in the IEP goals and objectives. Exhibit B-75. The Student was having difficulties in his ninth-grade English class. Id. at 2; Andros Testimony. The Student and his parents were concerned that English was requiring a great amount of preparation and causing him anxiety. Saunders Testimony. His parents were worried that although he was putting a substantial amount of work into his English class, he still might not succeed. Andros Testimony. Consequently, at the September 29 meeting, the Team sought a creative schedule, which would be flexible enough to provide the Student with extra support during the school day. Id. The Team discussed different options and then decided to provide him with English credit for the one-to-one work he was doing in conjunction with his reading class. Id.; Exhibit B-75 at 2, 3. The Student was withdrawn from his ninth grade English class. An LRE checklist was completed, which indicated that such removal was necessary for the Student to receive specialized reading/writing instruction. Exhibits B-75 at 5; B-77.

37. At its September 29 meeting, the PPT further agreed that the Student was benefiting from the reading class and that he should remain in the course for the full ninth-grade year. Exhibit B-75. Mr. Saunders shared the importance for C. to participate in group reading activities that develop understanding through contextual clues. Ms. Cizman agreed with this recommendation. It was also decided that the Student would receive an additional four hours per week of tutoring in reading, for which he would receive one elective credit. Dragon Speak was presented as an option for assignments with a written component. Reading options such as on-line texts and Kurzweil were presented. The Student was also to receive typing support on the Imagewriter. The IEP was not changed as recommended by Ms. Cizman. Id.; and Exhibit B-76.

38. The PPT recommended that the tutoring occur in eighth period, which was the time slot from the ninth grade English class. The tutoring was to meet the Student's need for a comprehensive reading program in a one-to-one setting. Ms. Cizman agreed that the Student had mastered the ability to read words through a full understanding of phonetic rules. Her concern was for his program to emphasize increasing fluency. The purpose of the tutoring was to instruct writing and reading through the existing written language and reading goals. Ms. Cizman's recommendations from the summer program were to be incorporated into the tutoring plans. The Father requested the continuance of the Lindamood Bell program. A PPT meeting was to be scheduled on or about November 1, 2004 to review the program. Id.; and Exhibit 76.

39. On October 5, 2004 the Mother wrote a letter to Mr. DiCorleto requesting an independent evaluation of the Student's program. Exhibit B-78.

40. On October 22, 2004 Ms. Schneider spent an entire day at school with the Student from approximately 7:30 a.m. to the final bell, except for the lunch period. Schneider Testimony. This was not a typical day for the Student because he was mostly taking tests that day. Andros Testimony. Ms. Schneider reviewed the Student's educational records, including the testing summaries and the June 8, 2004 IEP. Schneider Testimony. She wrote a detailed report with recommendations and opinions regarding the Student's program, which she found inadequate and inappropriate to address his needs. Id. and Exhibit P-114. The Student made significant progress in the 12-week Lindamood-Bell program. After four months of treatment at

Lindamood-Bell, the Student's word attack skills remained the same, as did his spelling skills. Exhibit P-114 at 5. The Student's fluency was reported at 4.4 grade equivalent in June 2004 by Lindamood-Bell, however Ms. Cizman found fluency in late June to be at the first grade level. Compare Exhibits P-114 at 5 and P-115 at 3; with Exhibit B-73 at 8. Children who fall behind at an early age tend to fall further behind over time. Schneider Testimony. After grade three children do not receive instruction on how to read. They read to learn. Id. The Student needs direct instruction in the mechanics of reading, not comprehension. His reading class is not appropriate for his needs. She believes the Student can be brought up to grade level with continued Lindamood-Bell program, changes in his IEP goals and objectives and the services of an educational consultant. Id.

41. On November 2, 2004 Mr. DiCorleto wrote a letter to the Mother regarding the availability of a program review by Dr. Jesse Turner, an associate professor of reading and language arts at Central Connecticut State University, who was a consultant to the Granby school system. Exhibit B-82 and DiCorleto Testimony. The Mother did not want Dr. Turner to review the program. She had selected Ms. Schneider. Mother's Testimony.

42. On, October 21, 2004 a notice of a PPT meeting for November 3 was sent to the Parents. Exhibit B-83. The Parents were not able to attend. Mother's Testimony. After the age of fourteen, students are encouraged to participate in the PPT meetings. Andros Testimony. The Student attended the November 3, 2004 PPT meeting, the purpose of which was to review the IEP. Exhibit B-84. The Parents objected to the meeting occurring in their absence. Mother's Testimony and Exhibit B-85. The goals and objectives were not changed. Exhibit B-84. The Student's current grades were noted, as well as the fact that the tutoring with Mrs. Ranney had begun. Id. Mrs. Barnoski sent an explanatory letter to the Mother regarding the meeting. Exhibit B-86.

43. Christopher Saunders, the Student's reading teacher at Granby Memorial High School is certified in Connecticut as a reading consultant, a remedial reading teacher, a language arts teacher, and an English teacher. Saunders Testimony. His reading class at Granby Memorial High School, Reading Skills Development, is very skill based and focuses on reading mechanics as well as reading comprehension. It takes a sequential approach to the mechanics of reading. Specifically, the class began with word attack skills, then progressed using context clues, focused on where answers are located within the text, proceeded to following the sequence of events and demonstrating the ability to retell the story using sequence, and will then conclude by focusing on conclusions and inferences. This sequence of skills is frequently not done on a high school level. Id.

44. There are ten children, including the Student, in the reading course, and Mr. Saunders attempts to have the students read every day, with every student reading a different story over a two-day period. Id. The course is designed so that it is highly individualized while still containing group components and whole class instruction. It is important for the Student to interact with his peers in the reading class as it provides a broader context in pre-reading and similar exercises. Id.

45. In his reading class, the Student is working on fluency and decoding, vocabulary development and comprehension. Id. He is also receiving tutoring outside of the school day for two hours per week in aspects of Lindamood-Bell that focus primarily on decoding and vocabulary as well as fluency. Id.

46. As noted, at the September 29, 2004 PPT meeting, four hours of tutoring was to be scheduled during eighth period. Exhibit B-75 at 3. There were no qualified staff available during that period, so the Board offered the tutoring to the Student outside the school day. Andros and Parents' Testimony. The Student was participating on the wrestling team, which his parents felt was important and they thought the school should offer the tutoring during the school day. Parents' Testimony. Due to the Student's wrestling schedule, he was averaging approximately two hours per week of tutoring outside of school, mostly on weekends at the Student's home. Andros Testimony. The current tutor, Jackie Ranney, has a good relationship with the Student. Father's Testimony. Ms. Ranney "seems to know what she's talking about." Mother Testimony. Similarly, the Student thinks that Ms. Ranney was helping him. Student Testimony.

47. A paraprofessional works one-to-one with the Student during eighth period every school day. Saunders Testimony. This extra assistance that the Student receives during the last period of the day is intended to provide him with support in writing, reading and vocabulary similar to he would have received in the regular English classroom. Andros Testimony. More specifically, he is working on novel reading, essay writing, vocabulary and the same types of stories the students in the regular English class are working on. Id. It is basically a simplified version of the content he would have received in the English class. Id. The paraprofessional attends the Student's reading course, and some of the materials she works on with the Student are a continuation of what was addressed in there. Id. The paraprofessional either assists the Student or acquires information with which to later assist the Student, whether it is taking notes on the subject matter or understanding an assignment. DiCorleto Testimony. The paraprofessional would also assist with modifications in the classroom, and would provide direct assistance on academic classes to the Student in the Resource Room. Id. She works under the supervision of Mr. Andros. The one-to-one support that the paraprofessional provides to the Student each day at the high school is helping the Student complete any reading instruction that he cannot complete in his reading class. Eighth period is mostly used to help the Student with homework. Father's Testimony. Although the Student is receiving the same amount of homework in ninth grade as he did before, he does not require his father's assistance as much as he previously did. Id. According to Mr. Andros, he has been "able to just go through the day and take care of each class, the working assignments, the notes and things like that I think he's gotten into a groove there." Id. The paraprofessional support is not equivalent to the intensive reading instruction provided in the tutoring program.

48. Attending Lindamood-Bell program in Stamford during school days would have significant, adverse consequences on the Student's academic program at Granby Memorial High School. Unlike the middle school, which does not have a credit-based system, at the high school a student needs 21 credits, including in all the State-mandated courses, in order to graduate. DiCorleto Testimony. Were the Student to attend the Lindamood-Bell program on school days,

he would, at the very least, miss fifty percent of his school day and thus fifty percent of his ability to earn credits necessary for graduation. Id.

49. If the Student were to attend Lindamood-Bell on school days, he would be unable to participate in extracurricular activities at the school. Id. Attending the Lindamood-Bell program in his current afternoon schedule would cause the Student to miss a significant portion of the high school academic program, including math and science. Andros Testimony. Missing as much of his high school day as would result from attending Lindamood-Bell would not help him in the long run. Id. It would be beneficial for the Student to attend Lindamood-Bell during the summer and on other school vacations to attain the recommended additional 12 weeks.

50. Approximately 25 Granby special education teachers, reading consultants, tutors and other staff members received 5.5 days of Lindamood-Bell training from a consultant whom the Board flew out from Lindamood-Bell's main office in California. DiCorleto Testimony. It was the most comprehensive staff development program that Lindamood-Bell offered. Id. The purpose of the five-day Lindamood-Bell training is to teach multiple programs and provide the individuals with an understanding of all of the steps in the program. Viesselman Testimony. The Board also continues to send new staff members to Lindamood-Bell training. DiCorleto Testimony. Lindamood-Bell is a good program and the Student had to benefit from attending it. Id.

51. Dr. Joan Nicoll-Senft has considerable experience and training in reviewing and administering educational testing to students, in particular the types of testing administered to the Student by the Granby school system and by the Lindamood-Bell program in Stamford. She had extensive course work in statistics and psychometrics at the doctorate level. She has experience as an educational consultant to boards of education and students in New Jersey and Connecticut. She is currently an Assistant Professor at Central Connecticut State University teaching special education classes in the masters program. In her opinion the school system did not do sufficient testing in the 2003 triennial evaluation to show the Student's decoding and encoding abilities. It has not done sufficient testing to diagnose and identify his deficits. The 1997 triennial evaluation indicated the Student had very strong listening skills and strong comprehension skills. On the WIAT listening comprehension test the Student had a 121 standard score, which was at the superior level (4th grade level at 8 years old). Exhibit B-6 at 16. On the Durrell Test of Listening Comprehension he was able to accurately and thoroughly answer all questions through the 4th grade level. Id. at 17. The 2003 Triennial Evaluation testing did not include a listening comprehension test. A listening comprehension test was recommended by Ms. Cizman in her summer 2004 report, but wasn't done. The Student's IEP targets comprehension, which is not the best use of his time. If the Student's poor reading and writing skills were due to low cognitive abilities, he would have a low score on the listening comprehension tests as well as the reading and spelling tests. She recommends further testing to pinpoint his strengths and weaknesses, particularly in reading, and then make recommendations as to how instruction should be tailored to address any strengths and weaknesses. The IEP goals and objectives could then be developed to address those specific deficits. Dr. Nicoll-Senft Testimony.

52. The Student made significant gains in the Lindamood-Bell program from March to June 2004. As a result of the June 2004 testing, Ms. Viesselman recommended an additional

12 weeks of the program so that he could continue working on decoding through the Seeing Stars program and continue to support his concept imagery and comprehension through the Visualizing and Verbalizing program. His weakest areas on the Gray Oral Reading Test were fluency, accuracy and rate, his strongest area was comprehension. Testimony of Viesselman. Mrs. Carter, the Board's reading consultant, reported at the June 8 PPT meeting that C.'s reading skills were in the average to low average range. Exhibit B-69 at 2.

53. The 2004-05 IEP was not adequate to sustain the gains made by the Student in the spring 2004 Lindamood-Bell program. Testimony of Schneider. The IEP should contain more specific goals and objectives to target the Student's specific areas of weakness. Testimony of Dr. Nicoll-Senft. "C[.]'s IEP should list the specific goals and objectives that his reading teacher should follow to continue teaching C[.] to read." Exhibit B-73 at 6 (Ms. Cizman's recommendations). The IEP should provide a minimum of two hours per day to address these weaknesses in an intensive one-to-one specialized reading instruction program. Exhibit B-76. There was inadequate time for one-to-one specialized reading instruction. The progress reported by Mr. Saunders and Mr. Andros was not supported by gains in standardized testing. Exhibit P-115.

54. As of February 2004 the Student was functioning way below grade level in almost all areas of reading. Schneider Testimony; Exhibits B-54 and B-55. Such deficits have a tremendous impact on C.'s ability to benefit from the general curriculum through reading. Schneider Testimony and Exhibit B-73.

55. Mr. DiCorleto wrote to the Mother on January 22, 2004 that C.'s progress in reading is "best understood by examining growth in specific reading skill areas." Exhibit B-57/P-74. While the Board witnesses testified that the Student had made progress on his IEP, there was no specific data offered into evidence, other his report card for November 2004. His grades were C- (science), D (algebra), B (reading skills), C- (world civilizations), Pass (info management) and B (arch. drawing). Exhibit B-87. Three of the grades were below the C level mentioned in his IEP goals. No progress reports from tutoring with Mrs. Ranney, which began on October 1, 2004 were offered.

56. The Kurzweil program is mentioned in the IEP, but apparently has not been used. There was disputed evidence as to the need for the Kurzweil program, which was recommended by Ms. Cizman and is mentioned in the IEP. The Granby witnesses testified that the Dragon Speak program and some talking textbooks were adequate for the Student. Ms. Schneider disagreed with their analysis. The Kurzweil 3000 is apparently available at the high school. An assistive technology evaluation should be done to determine which specific computer programs would best support the Student in his mainstream classes and how he can learn keyboarding skills to take advantage of these programs. Schneider Testimony; Exhibit P-114 at 13.

57. C. is an excellent listener, motivated and has supportive and disciplined parents. He is worldly, having traveled to New Zealand and Australia in 2001, nominated through a sports program from People to People. He has also traveled to Florida three times for baseball camp through Nike. His hobby is bike racing. He has won numerous first and second place awards in

Massachusetts with an all-terrain bike. He has interests in history and science. Exhibit B-73 at 8.

58. The expense of the program and the travel distance involved from Granby to Stamford are two significant negative factors against the Lindamood-Bell program for this Student. An additional negative factor would be to have the Student attend Lindamood-Bell during school days. Weighed against these factors is the likelihood that Granby would not have sufficient staff trained in Lindamood-Bell to offer a 12-week (20 hours/week) summer and/or vacation program for the Student.

59. It is not entirely clear that the Student can be brought up to an average reading level in 12 more weeks of Lindamood-Bell instruction. It is abundantly clear, however, that if he continues in the current style of IEP, he will finish high school in three years with very poor reading skills. He will most likely not be able to become a self-sufficient working adult without better reading skills.

60. A mutually acceptable educational consultant who understands learning disabilities in reading, understands how to modify curriculum, understands how to develop and implement an IEP, and can establish a trusting relationship with all of the PPT members is necessary to assist in the planning and implementation of an appropriate IEP for C. Testimony Schneider and Dr. Nicoll-Senft; Exhibit P-114 at 15.

CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that C. is a child with a specific learning disability. 34 C.F.R. Section 300.7(c)(10).

2. The IEP serves as the centerpiece of a student’s entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child’s current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of “measurable annual goals, including benchmarks or short term objectives related to meeting the child’s individual needs.” 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.347; Roland M. v. Concord School Committee, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied 499. 912 (1991).

3. The Board has the burden of proof on the appropriateness of the program for the 2004-05 school year. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs., Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207. The Board must establish these

by a preponderance of the evidence. Walczak v. Florida Union Free School District, *supra*. The evidence here shows that the Student received some educational benefit from the IEP. The Parties differ as to whether the benefit was sufficient to meet the legal standard in Rowley. “IDEA requires only that school districts provide an ‘appropriate’ IEP, gauged by whether the IEP is ‘sufficient to confer some educational benefit.’” *Id.* In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). The Court has also cautioned that meaningful educational benefits are “not everything that might be thought desirable by loving parents.” Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2nd Cir. 1989). “Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial.” Hall v. Vance County Bd. Of Educ., 774 F.2d 629,636 (4th Cir. 1985). “Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability.” Mrs. B. v. Milford, *supra* at 1121. A higher standard of educational benefit can be required where the difference in level of education provided can mean the difference between self-sufficiency and a life of dependence. Deal v. Hamilton County Board of Educ., 392 F.3d 840, 863 (3d Cir. 2004). This is true where, as here, self-sufficiency is a realistic goal for the Student given his capabilities and potentialities. *Id.* at 864. The Board relies on IQ and other tests to show that the Student cannot be expected to read at grade level because of low cognitive abilities. There is substantial evidence in the record to indicate that the Student’s reading problems are due to dyslexia and that his listening comprehension skills show that he can learn with the proper instruction. Based on that evidence and the legal standard, it is concluded that the current IEP is not appropriate to produce meaningful educational benefits in the area of reading instruction.

4. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.550-300.556; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. *Id.* “Least restrictive environment” is defined as follows under IDEA:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that such education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. Sec. 1412(a)(5); 34 C.F.R. Sec. 300.550. FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002). In this case the Student is placed in regular education classes at the public high school for all content areas except English class. The Student was removed from the mainstream English class by a PPT decision on September 29, 2004, which concluded that he could not be educated in that class even with supplementary supports and services. Ms. Schneider claimed that he could be educated in that class with support from the Kurzweil software, however she also recommended an assistive technology evaluation and an independent consultant to work with the PPT to develop an appropriate IEP. Weighing the evidence as a whole, the Board has sustained its burden of proving that removal from the English class and substituting the Reading class for the English credit was reasonable at the time since the Student was struggling in that class and he was not trained in the use of the Kurzweil program. This issue should be revisited by the PPT when the Student's new IEP is developed.

5. The Parents claim reimbursement for an independent educational evaluation by Ms. Schneider. This is governed by 34 CFR Sec. 300.502, which provides in relevant part:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) Initiate a hearing under Section 300.507 to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under Section 300.507 that the evaluation obtained by the parent did not meet agency criteria.

...

(4) If a parent requests an independent educational evaluation a public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

On October 5, 2004 the Mother wrote a letter to Mr. DiCorleto requesting an independent evaluation of the Student's program. On November 2, 2004 Mr. DiCorleto wrote a letter to the Mother regarding the availability of a program review by Dr. Jesse Turner, an associate professor of reading and language arts at Central Connecticut State University, who was a consultant to the Granby school system. By that time Ms. Schneider had already visited the high school and begun her evaluation. The Board did not begin a due process proceeding, nor did it promptly

provide an independent educational evaluation at public expense. The issues raised by the Board regarding Ms. Schneider's qualifications and the fact that she did not perform any testing go to the weight to be accorded her opinions by the Hearing Officer, not to the Board's obligation to pay where, as here, it did not follow the regulation.

6. The Hearing Officer may "grant such relief as [she] determines is appropriate." 20 U.S.C. Section 1415(i)(2)(B)(iii). See also Conn. Gen. Stats., Section 10-76h(d)(1):

The hearing officer . . . shall have the authority to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the child or pupil . . . or to prescribe alternate special educational programs for the child or pupil. . . .

Because additional testing and evaluation of the Student is needed before an appropriate IEP can be developed and since this Hearing Officer cannot retain jurisdiction of this case, the appointment of a mutually acceptable independent educational consultant to oversee this process is an appropriate remedy. Since the close of the 2004-05 school year is only one month away, the Student has been eligible for an extended year tutoring program for several years, and the current IEP did not offer adequate hours of one-to-one reading instruction, it is appropriate relief to order that the Student receive four hours per day for 12 weeks at the Lindamood-Bell program. In view of the expense of and time involved in transporting the Student to Stamford daily, the Board may substitute a comparable in district program if approved by the PPT and the independent consultant.

FINAL DECISION AND ORDER

1. The Student was not offered a FAPE in the June 8, 2004 IEP, as modified on September 29 and November 3, 2004.

2. The parties are directed to agree on an educational consultant with expertise in the area of reading who can assist the PPT in developing appropriate goals and objectives to address the Student's reading disability.

3. The Parents are entitled to reimbursement for Ms. Schneider's independent educational evaluation.

4. The Board shall place the Student at Lindamood-Bell for 12 weeks or 240 hours of intensive instruction in Stamford including transportation unless the PPT and the educational consultant approve a comparable alternative prior to the commencement of the 2005-06 school year.

COMMENTS ON CONDUCT OF HEARING

The parties are commended for presenting their respective positions in a difficult case. The Student is commended for his willingness to commit himself to the long hours involved in participating in the Lindamood-Bell program and in the weekend tutoring program. More long hours and dedication will be needed to achieve his goal of self-sufficiency in reading.